

USE OF FORCE BY THE POLICE IN SERBIA AND CROATIA: STATE AND TENDENCIES

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INTRODUCTION

When the ancient Romans were confronted with the fact that the Praetorians (the emperor's bodyguard), already accustomed to seeing them as powerful tools in the emperor's hands, began to impose rulers at will, they asked the inevitable question: *Quis custodiet ipsos custodes* - Who will guard the guards themselves? Thus, even at that time, it was clearly seen that the power given to armed police bodies cannot only be taken away from the citizens, but also that the police, instead of the expected support of the system, can serve completely different purposes - to undermine influence, power and survival of political authorities. The police role can be reduced to an ordinary instrument in the hands of political power, and police institutions identified with the holders of that power (Ganija, 2010: 59-64).

Coercion carried out on behalf of the state has a legal character (i.e., the character of coercion permitted by law) and differs from impermissible or unlawful coercion which is prohibited and punished by law. The legal character of coercion is reflected in its purpose and conditions for application. The general goal of state coercion is to make the state capable of ensuring compliance with prescribed legal rules. These legal rules contain orders for the conduct of other subjects of the association and citizens, as well as the sanctions for non-compliance with these orders (Milosavljević 1997: 206).

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The state as a social creation has a monopoly of coercive measures, the direct implementation of which it entrusts to state bodies, limiting respect for human and minority rights and civil liberties guaranteed by the constitution and international legal acts, the principles of legality, proportionality, restraint and subsidiarity. The possibility of using coercive means is one of the most important elements of distinguishing the police from other authorities, according to which it has a great responsibility in the application of law and authority (Nikač, 2017: 191). In Western European and Anglo-American literature, a single name is used for all means of coercion, and that is force or coercion (see: Terrill, 2005). Modern democracies are characterized by the delegation of the apparatus of force, i.e. the delegation of the possibility of using force. In addition to the police, the security services, the army, customs, communal militiamen, security officers, private detectives and stewards also have the opportunity to use coercive means (Leštanin, 2021: 107-109).

The police are one of the law enforcement agencies and, according to many, probably the most important, because they perform difficult operations and, as a rule, are not popular in society. This is understandable when it is known that it is in human nature that man (individual) does not tolerate prohibitions and authorities, that he/she simply needs to be free and liberal. This is especially the case today in the 21st century and among young people, so the principles of freedom and necessary prohibitions are often confronted. The police therefore have an important social status and a great responsibility in the community, especially today in the developing and countries in transition. Of course, the role and importance of judicial and other bodies, as well as independent corrective factors, should not be diminished (Nikač, 2013: 1685). On the one hand, the police, due to their essentially authoritarian activities, can be said to be an anomaly in a democratic society, because their work seriously encroaches on the sphere of human rights, while, on the other hand, their existence is inevitable because it ensures respect for these same human rights and freedoms. In other words, the police are at the same time a symbol of protection of freedoms and rights of citizens, but also a source of their endangerment. The most indicative example of this is the use of coercive means (Kesić, Bikarević, 2018: 245-258).

The use of force by state representatives (in this case police officers) is limited not only by regulations (constitution, law, etc.) but also by the exercise of basic human rights and respect for civil liberties. A modern approach to security issues implies that the police are a service that develops an advisory role and provides assistance to citizens, especially by getting acquainted with information relevant to personal and property security. The condition is that it is not in conflict with the law and that it does not jeopardize the performance of (policing) police work (Nikac, 2016: 196).



DATA

In order to perform a legal analysis of use, the domestic literature on the use of coercive means is relevant. For the purpose of this paper, the data on the use of coercive means by the police were collected and stored in the database of the Unified Information System of the Ministry of the Interior, in the software application "Use of coercive means". Only the means of coercion in which the procedure of assessing justification and regularity was completed were taken into account. The data from the Statistical Office of Republic of Serbia relating to the number of inhabitants were used (<https://www.stat.gov.rs/sr-Latn/oblasti/stanovnistvo/procene-stanovnistva>). When it comes to Croatia, the data from the Statistical Surveys of Basic Safety Indicators and Results of Work in the Period 2016-2020 were used (<https://mup.gov.hr/pristup-informacijama-16/statistika-228/statistika-mup-a-i-bilteni-o-sigurnosti-cestovnog-prometa/283233>), as well as the data on the number of inhabitants (<https://www.dzs.hr/>). Based on the obtained data, the tables were made from which the figures were derived.

METHODS

First, the normative method was used to analyse the legal norms that regulate the use of coercive means in Serbia and Croatia. Taking into account the subject of research, it was necessary to apply the methods of social sciences and humanities. Thus, the method of analysis of the content of documents containing statistical indicators on the use of coercive means in Serbia and Croatia for the period 2016-2020 was applied. The collected data were first processed and then presented by graphical models in the paper. This area was analysed in spatial and temporal frames, and certain conclusions were drawn by the method of synthesis and on the basis of the performed analyses.

LEGAL-THEORETICAL ASPECT OF THE USE OF FORCES

We can observe police coercion in a broader or narrower sense. In a broader sense, police coercion implies the means of coercion and their use, while in a narrower sense it implies only the means of coercion. Coercion is applied directly to persons or objects, but the ultimate goal is to force a person to obey. The use of force by the police is exclusively a possibility and not an obligation where the conditions for their use are prescribed by law, and the manner and technical characteristics are determined by bylaws (Leštanin, Nikač, 2016: 233). In a broader



sense, the term coercion can be understood as the use of physical or mental force to achieve a certain goal, to force someone to do something, not do or suffer, of course, against their will (Arlov, 2020: 35).

Some American theorists view the issuance of verbal orders as a means of coercion, which it essentially is, because the order also exerts force on the person and directs his/her behaviour in a certain desired direction (see: Garner et al., 2004: 109-125; Hickman et al., 2008: 563-604; Terrill et al., 2008: 57-76).

In addition to the legal classification of the (use) of coercive means, from a theoretical point of view, depending on the criteria, coercive means can also be classified a) according to the consequences they produce on non-lethal and deadly outcome; b) according to the type of force, verbal and physical; c) according to the degree of expertise in use, correct and incorrect, and e) according to the final assessment and compliance with the law, justified (legal) and unjustified (illegal) (Nikač, 2019: 167-180).

Means of coercion should be distinguished from coercive measures. Coercive means are used and coercive measures are applied. Direct police coercion is the action on persons or objects through the application of coercive measures or the use of coercive means. Police coercion is a part of coercion that belongs to law and the state. Its application is the most direct expression of state power and at the same time the sharpest form of encroachment on human rights. It is an expression of the state monopoly of power, but as such it is a necessary evil (Miletić, 2009: 195).

The Constitution of the Republic of Serbia (the Constitution) guarantees the right to life and considers human life inviolable (Article 24 of Constitution of Republic of Serbia, *Official Gazette*, 98/2006). In the categorization of basic human rights, the right to life occupies the first-class place. Such a status of this right logically derives from life itself as a value, without which there are no other guaranteed rights. Hence, the right to life as a kind of both logical and legal source is connected with all other human rights (Orlović, 2014: 161-162). In addition, the Constitution guarantees the inviolability of human integrity, both physical and mental, where it prohibits any torture, inhuman or degrading treatment or punishment (Article 25 of Constitution), and protects human dignity (Article 23 of Constitution). In that context, slavery, a position similar to slavery, and forced labour are prohibited (Article 26 of Constitution), the right to liberty and security is guaranteed with additional guarantees for persons deprived of their liberty (Article 27-31 of Constitution), the right to equal protection of rights and remedies (Article 36 of Constitution) and other rights. The Constitution of the Republic of Croatia gives the same guarantees (See: Articles 16, 21, 22, 23 and 25, *Official Gazette* 56/90, 135/97, 113/00, 28/01, 76/10 и 5/14).



When the basis for police use of coercive means is analysed in principle, two models are possible. The first treats a police officer as a 'citizen in uniform', recognizing only those rights that every other citizen has, while on the other hand, a special normative structure is possible (Veić, Martinović, 2019: 453-467). Serbia and Croatia have adopted a second model and regulated the use of coercive measures by the police through special laws. National regulations prescribe the use of coercive means, ranging from almost unlimited powers to use coercive means, including firearms, to extremely restrictive regulations limiting the use of coercive means to extreme necessity and necessary defence, and even narrower (Škrtić, 2007: 211).

The Serbian Police Law (Official Gazette No. 6/2016, 24/2018 and 87/2018; hereinafter: SPL) lists a total of 13 means of coercion, so that in the first place it is the mildest (physical strength) and in the last place the most difficult means of coercion (firearms) (Nikač, 2019: 167-180). The Croatian Law on Police Affairs and Powers (Official Gazette no. 46/09, 92/14 and 70/19) also lists 13 means of coercion by weight. Apart from positively determining the means of coercion, the laws also regulate the general and special conditions for their use, while the technical characteristics, manner and tactics of application are in the domain of bylaws, which is a very rational solution from the point of view of legality (Leštanin, Nikac, 2016: 233).

As a necessary precondition for the use of coercive means there is the existence of a certain 'harmful' event that threatens the basic values in society, such as life, body integrity and property of greater importance. For example, in Serbia, a police officer has the right to use physical force to repel an attack from himself or another person or an object or space he secures, to overcome the resistance of persons disturbing public order to be brought, detained or captured, and to prevent self-harm of some person (Leštanin, Nikač, 2016: 233).

The form and amount of force (degree of control) that a police officer will use is dictated by the current situation as: security of police officers and others, resistance to be overcome, type of offense, constitution, presence of weapons, available forces and possible reinforcements, place of intervention and environment, etc. Control is the force that a member of the police uses against a person in order to neutralize illegal physical actions of a person in order to manage (control) a certain situation. The use of force is an action performed by a member of the police in order to manage the situation, i.e. to control the resistance of persons or to neutralize illegal physical actions of persons. When a police officer decides which level of control is reasonable, his decision depends on the activities of the person he is acting against (verbal disobedience, passive resistance, active resistance, assault on a police officer) and he is allowed to use only as much force as necessary to achieve a legitimate aim. The degree of control and the level of force reflect the



degree of their possible effect. A higher degree of control is allowed only if a lower degree is not sufficient to perform an official task (Amanović, 2003: 426-427).

In addition to meeting the legal requirements for the use of coercive means while using these means, certain principles must be respected. In accordance with international standards and provisions of the national law, the basic principles and the principles of the use of coercive means have been established: legality (means, conditions and manner of use are strictly provided by the law and bylaws), protectionist-humanistic principle (the protection of human life), respect for personal dignity treatment of all persons with respect, without discrimination and endangerment of dignity, proportionality (gradation of funds according to type and intensity), gradualness (use from mild to severe, in the function of task performance), the principle of functionality (the use of funds only if there are reasons), safety and efficiency (safe use by the person against whom it is used, other persons and the police officer, fast and precise), economy and expediency (execution of the task using coercive means with minimum harmful consequences), etc. (Nikač, 2012: 346-347).

FINDINGS

Serbia

The use of coercive means was monitored in the five-year period (2016-2020) on the territory of Serbia through 11 identified parameters: 1) Total number of uses of coercive means; 2) Coercive means used in accordance with the law, i.e. not used in accordance with the law; 3) Means of coercion used by type (physical force, baton, means of restraint, etc.); 4) Means of coercion used according to the lines of work of the Police Directorate; 5) Coercive means used according to the territorial division of the Police Directorate; 6) Number and structure of persons against whom means of coercion have been used; 7) Type of police work in which the use of coercive means occurs; 8) Types of police powers during the application of which the use of coercive means occurs; 9) Consequences for citizens arising from the use of coercive means; 10) The reason for the use of firearms; and 11) Measures taken against persons against whom coercive means have been used.



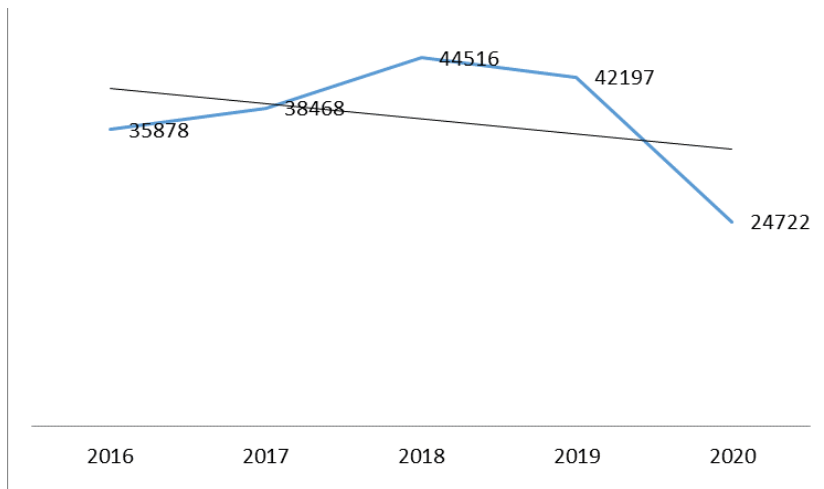


Figure 1 – Total number of uses of coercive means in Serbia

Figure 1 shows the declining trend in the use of coercive means in Serbia, where a slight increase was recorded in the first three-year period and then a sharp decline. In the observed period, a total of 185,773 coercive means were used, of which only **eight** were assessed as illegal and incorrect (0,004 %).

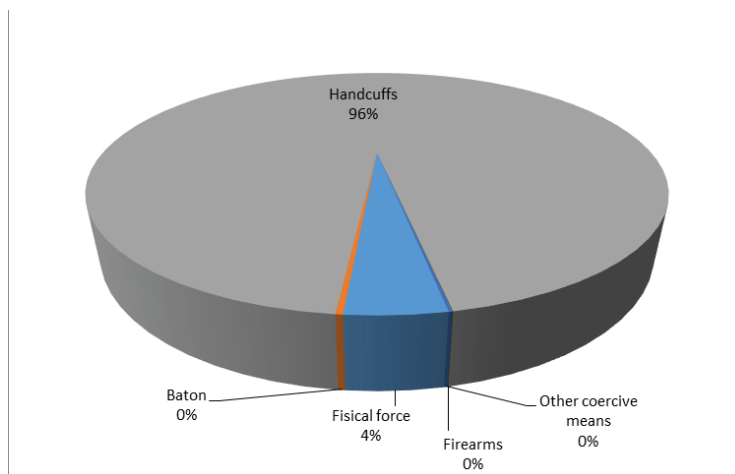


Figure 2 – Number of coercive means according to type

If we look at the means of coercion by type (Figure 2), we see that in most cases handcuffs (178,758 - 96%) were used, followed by physical force (7,645 - 4%), baton (553), other means of coercion (357) and fire weapons (44).

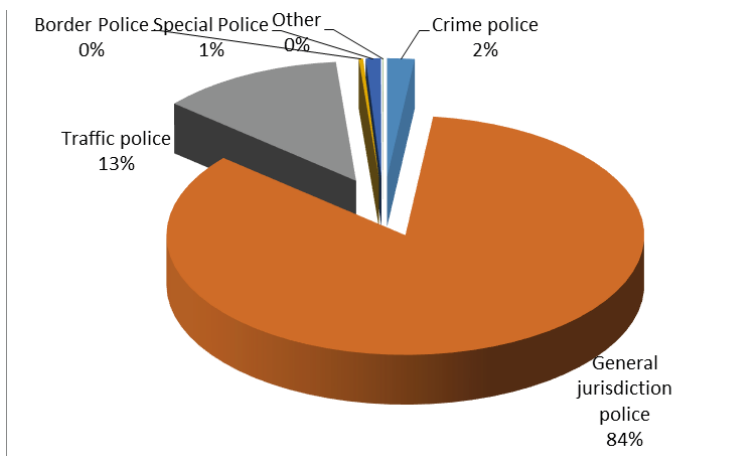


Figure 3 – Use of coercive means by lines of police

Looking at the means of coercion used according to the lines of work of the General Police Directorate (Figure 3), we see that the police of general jurisdiction (84%), traffic police (13%), criminal police (2%), and special units (1%) used them the most. Other lines of policing participated insignificantly in the use of coercive means.

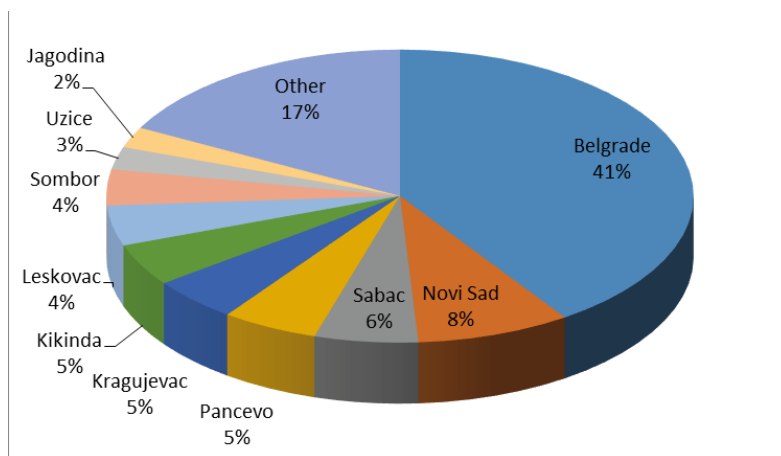


Figure 4 - Territorial distribution of the use of coercive means

Analysing the territorial distribution of the use of coercive means (Figure 4), we see that the highest use was in the Police Department (PD) for the city of Belgrade (41%), PD Novi Sad (8%), PD Sabac (6%), PD Pancevo, Kragujevac and Kikinda (5%) and other police departments have a share below 5%.

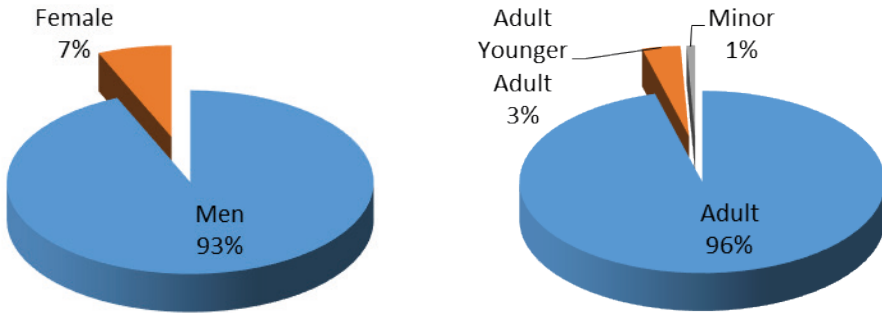


Figure 5 – Structure by gender and age

The analysis of the number and structure of persons according to whom coercive means were used (Figure 5) shows that in 93% of cases they are male and only in 7% of cases they are female. According to age, 96% are adults, 3% are younger adults and only 1% is minors.

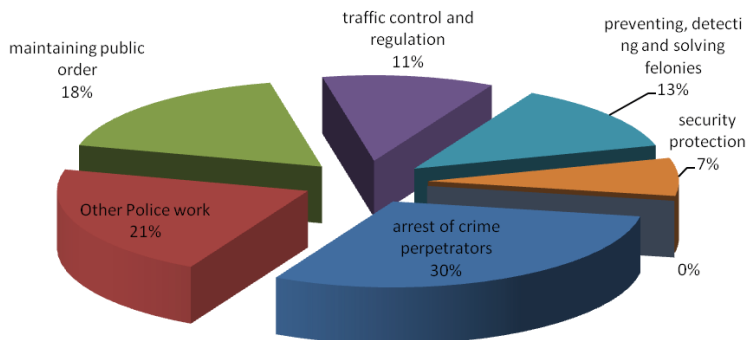


Figure 6 - The police work in which coercive means were used

If we look at the use of coercive means through the prism of the police work in which they were used (Figure 6), we see that coercive means are most often used in detecting and apprehending perpetrators (30%), maintaining public order (18%), preventing, detecting and solving felonies 13%, traffic control and regulation (11%) and in security protection 7%.

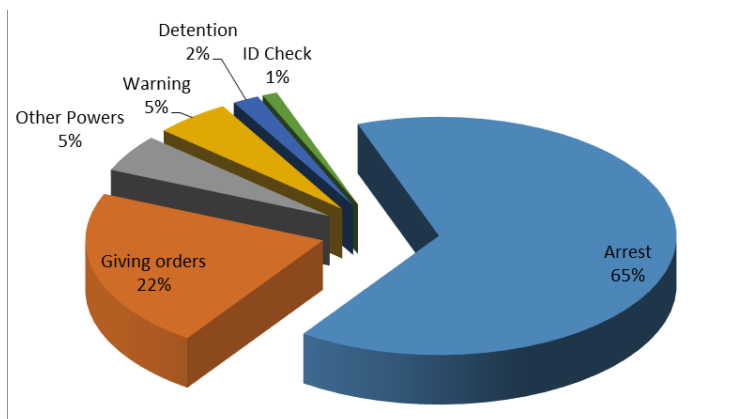


Figure 7 - *Type of police powers during which coercive means were used*

The analysis of the use of coercive means according to the type of police powers during which coercive means were used (Figure 7) shows that coercive means are most often used when arresting persons (65%), giving orders 22%, warnings 5%, detention 2% and 1% identity check.

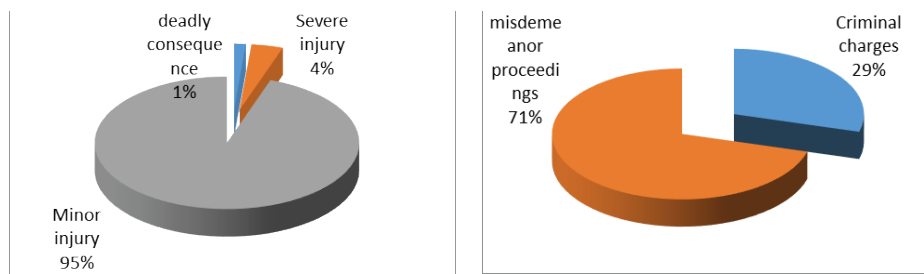


Figure 8 - *Consequences for and measures against citizens*

When we look at the consequences for citizens from the use of coercive means (Figure 8), we see that the majority suffered minor bodily injuries (95%), severe bodily injuries 4% and 1% deprivation of life (fatal consequences). From the measures taken against citizens against whom means of coercion were used, we see that in most cases misdemeanor proceedings were initiated (71%) while in 29% of cases criminal charges were filed with the competent public prosecutor.

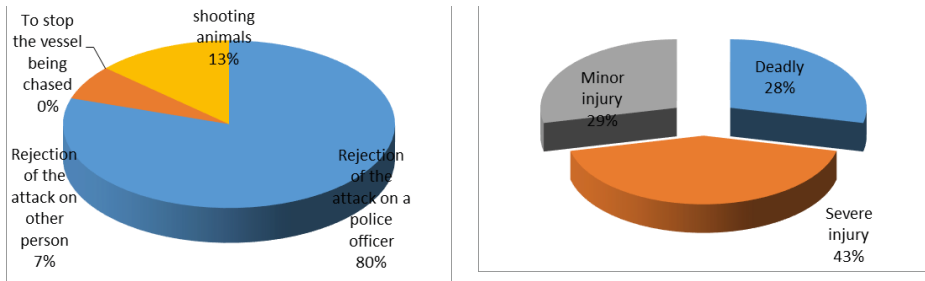


Figure 9 – *Reasons for using firearms and consequences*

Firearms are a means of coercion that causes the most severe consequences on the persons against whom they are used. Considering the reasons why fire was used (Figure 9), the rejection of attacks by a police officer is the most common, followed by the use of animals and the rejection of attacks on another person. According to the type of consequences for a person from a firearm, we see that the most common is a serious bodily injury (43%), a minor bodily injury 29% and a fatal consequence in 28% of cases.

Croatia

The use of coercive means was monitored in the five-year period (2016-2020) on the territory of Croatia through 10 identified parameters: 1) Total number of use of coercive means; 2) Coercive means used in accordance with the law, i.e. not used in accordance with the law; 3) Means of coercion used by type (physical force, baton, means of restraint, etc.); 4) Means of coercion used according to territorial division; 5) The reason for the use of firearms; 6) Type of police work in which means of coercion are used (reasons for use); 7) Number and structure of persons against whom means of coercion have been used; 8) Consequences for citizens arising from the use of coercive means; and 10) Consequences for police officers resulting from the use of coercive means.

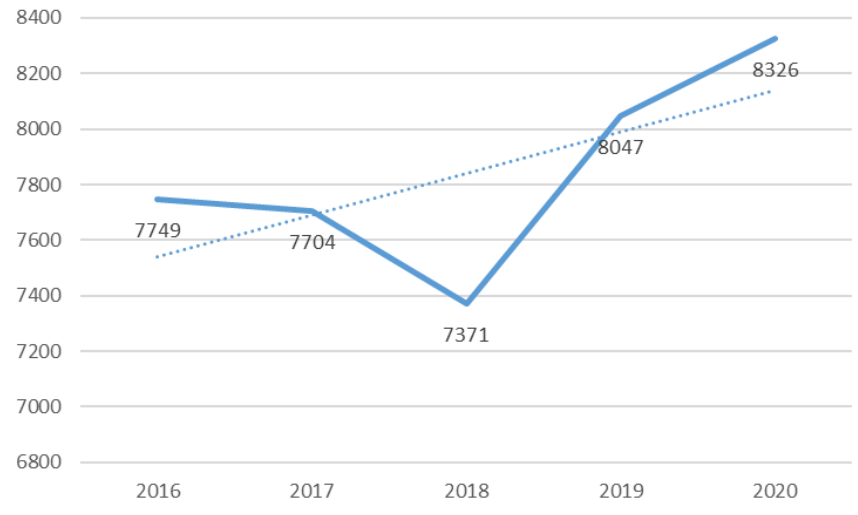


Figure 10 – Total number of uses of coercive means in Croatia

In Croatia, in the observed period, there is a trend of increasing the number of uses of coercive means, except in 2018, when there is a decline (Figure 10). In the observed period, a total of 39,197 coercive means were used, of which only 12 were assessed as illegal and incorrect (0.03%).

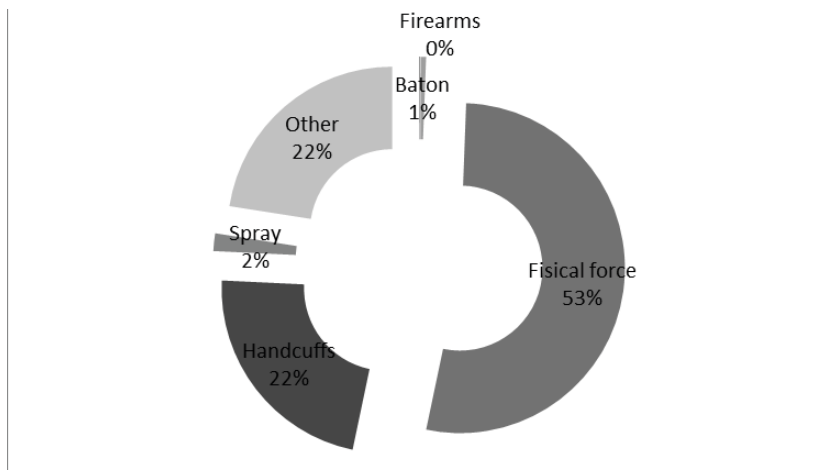


Figure 11 – Using coercive means by type

Observing the means of coercion by type (Figure 11), it is noticed that physical force is most often used (20,656 - 53%), followed by other means of coercion

(8,828 - 22%), handcuffs (8,804 - 22%), gas spray (675 - 2%), baton (208 - 1%) and firearms (26).

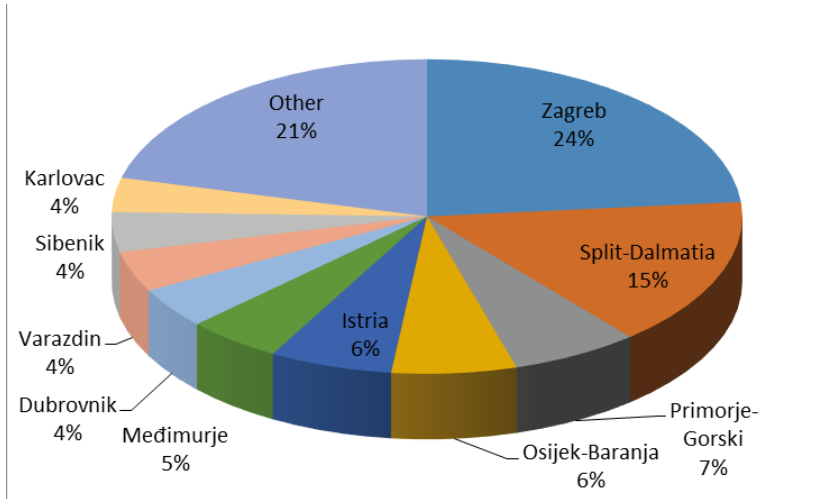


Figure 12 - Territorial distribution of the use of coercive means

If we analyse the territorial distribution of the use of coercive means according to police departments (Figure 12), we see that the Zagreb police mostly resort to its use (24%), Split - Dalmatia 15%, Primorje - Gorski Kotar 7%, Osijek - Baranja and Istria 6%, Međimurje 5% while others participate with a percentage below 5%.

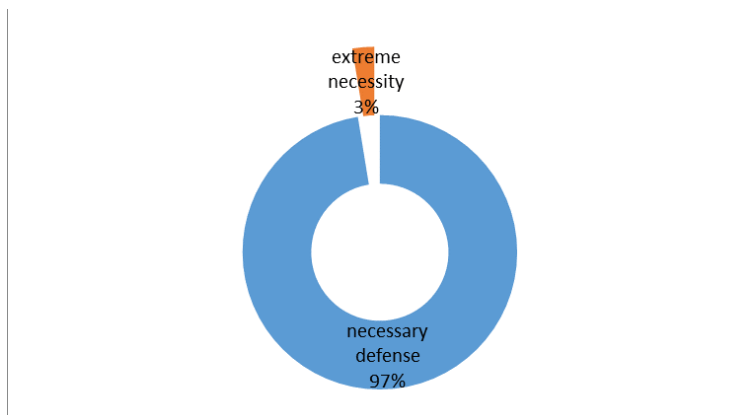


Figure 13 - Most common reason for the use of firearms

The most common reason for the use of firearms in Croatia in the observed period was necessary defence (97%), while extreme necessity occurs in only 3% of cases (Figure 13).

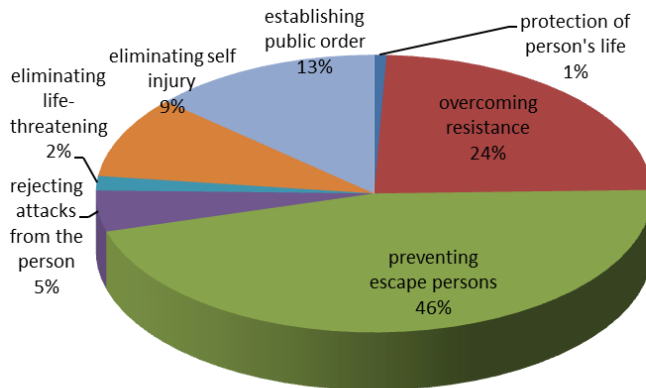


Figure 14 – *Reasons for the use of coercive means*

Analysing the type of police work and the reasons for the use of coercive means (Figure 14), it is noticed that preventing the escape of persons is the most common reason (46%), overcoming the resistance of persons 24%, establishing public order 13%, preventing self-harm 9%, repelling attacks from persons 5%, elimination of dangers 2%, and protection of life 1%.

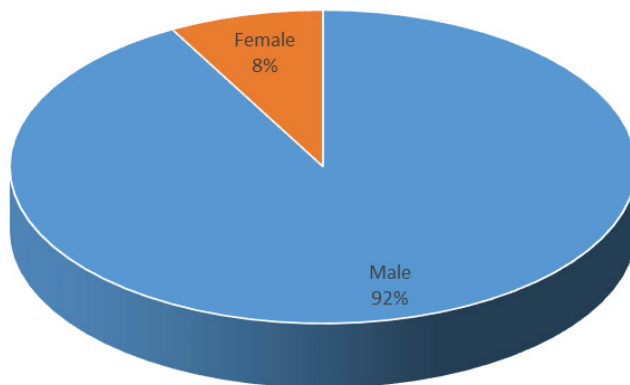


Figure 15 – *Use of coercive means by gender*

Coercive means were used against a total of 20,653 Croatian citizens, of which 92% were male and only 8% were female (Figure 15). When we look at the police officers who used it, we see that the share of police officers is only 4.5% of the total number of police officers who used coercive means.

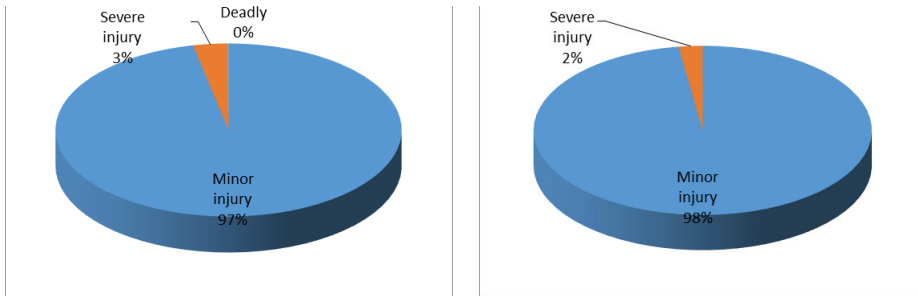


Figure 16 – *Consequences for citizens and police officers*

Citizens

Police officers

When we look at the consequences for citizens from the use of coercive means and the consequences for police officers in the events that took place, we see that most of them are minor bodily injuries. Only three citizens died in the observed period as a result of the use of coercive means.

DISCUSSION

Serbia and Croatia have different trends in the use of coercive means. On the one hand, in Serbia there is a decline in the observed period, while in Croatia there is an increase in the total number of uses of coercive means. In absolute numbers, Serbia records a much higher number of means of coercion used than Croatia, so the absolute numbers have been linked to the number of inhabitants in order to obtain the rate of use of means of coercion per 100,000 inhabitants. In addition to the fact that this was done at the state level, the rates were set aside in the capitals of Belgrade and Zagreb.

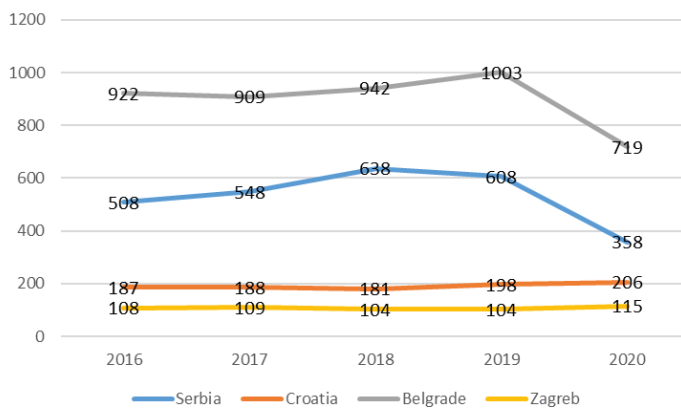


Figure 17 – Trends of using coercive means

As we can see, the trends in the capitals are equated with the state trends but the situation is different (Chart 17). Croatia has a much more favourable rate of use than Serbia and it is relatively even, while Serbia recorded a slight increase in the first three years, and later the rate of use of coercive means decreased, but it is still much higher than Croatia. Belgrade, as the capital of Serbia, has the most unfavourable rate of use of coercive means, while Zagreb has the most favourable rate. The rate of use of coercive means in the previous period in Serbia increased (Nikač, 2019: 167-180).

Of the total number of coercive means used during the procedure of assessing the justification and regularity of use in Serbia, only 0.004% was assessed as illegal or incorrect, while in Croatia the percentage is higher and amounts to 0.3%. In both observed countries, the percentage of unjustifiably used means of coercion is relatively small, which is favourable from the aspect of exercising human and minority rights. In previous years, Serbia recorded a slightly higher number of unjustified uses, but that is negligible. There are no firearms among the unjustifiably used means of coercion, which is very good from the aspect of exercising the rights and freedoms of citizens and protecting basic values in society.

Looking at the type of coercive means used, a significant difference can be noticed. In Serbia, handcuffs are most often used, while in Croatia there is physical force. When it comes to Croatia, such trends have been recorded in the past. Analysing the territorial distribution in both countries, the means of coercion are mostly used in the capitals. The same trend was noticed in the earlier period. The most common reason for the use of firearms in Serbia is the attack on a police officer, while in Croatia it is necessary defence. This is just a matter of language difference, and the same reason applies.



Coercive means are most often applied to adult men when performing activities related to the suppression of crime. It is less commonly used when performing preventive tasks. As far as Croatia is concerned, such trends have been recorded in the past (Pavić, 2010: 167), as well as in Serbia. The analysis of injuries sustained from the use of coercive means shows us that in most cases these are minor bodily injuries and less often there are serious bodily injuries, i.e. the death of the person against whom the means of coercion were used.

CONCLUSION

Although coercive means are an 'attack' on the most basic rights of citizens (the right to life and the right to bodily integrity), coercive means remain the most effective means of combating the most extreme forms of endangering the legal order of a state. This especially refers to the fight against crime and the maintenance of stable public order and peace. The basic precondition is their legal and correct use. Legitimate means that all legally prescribed conditions for their use must be met before use, and correct means respecting all procedures and techniques of use.

In the end, the question can be asked, which state is more repressive? Only for the needs of this research and from its results, we conclude that it is Serbia. Although it must be acknowledged that recently (the last three years) Serbia has seen a decline in the number of means of coercion used, which can be considered a good trend.

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