EXTORTION OF STATEMENT BY POLICE – RESPECTING THE RIGHT TO REMAIN SILENT

Katarina Živanović, PhD[1]
Ministry of Interior of the Republic of Serbia

INTRODUCTION

Respect for the right to remain silent under police questioning and the privilege against self-incrimination is a field of constant interest for the professional, scientific, and lay public. The reason for the above is that respect for the aforementioned rights is a prerequisite for the realization of modern criminal process principles, but also the postulates on which a democratic legal state rests. Namely, the importance of the right to remain silent during police interrogation and the privilege against self-incrimination stems from the following:

– These are generally recognized international standards that lie at the heart of the notion of a fair procedure and represent a fundamental assumption of respect for basic human rights (see, *inter alia*, *Ibrahim and others v. The United Kingdom,* par. 266; *Saunders v. the United Kingdom*, para. 68);
– The aforementioned right and privilege are a fundamental prerequisite for the implementation of the system of constitutional government (*Miranda v. Arizona)*;
– The right to remain silent under police questioning and the privilege against self-incrimination are closely and directly related to the presumption of innocence, which also constitutes the essence of the right to a fair procedure and which is proclaimed in Art. 6 of the European Convention for the Protection of Human Rights (ECHR);
– Violation of the aforementioned right and privilege can cause false confession of a criminal offense as well as wrongful convictions (Inbau, Reid, Buckley & Jayne, 2013: 353; Grometstein, 2008: 21; Leo, 2009: 335);
– Respect for the right to remain silent and the privilege against self-incrimination is also directly related to the protection of the inviolability of mental and physical integrity and human dignity, as the highest values in the field of human rights proclaimed by national and international instruments.

In accordance with the aforementioned importance of the right to remain silent and the privilege against self-incrimination, it is very important to point out the possibility of their violation and, therefore, the possibility of deviation from the fundamental principle of criminal procedure – the principle of fair procedure. Bearing in mind the nature of the work and the specificity of the tasks of the internal affairs bodies, i.e., the police, it is clear that the police daily face the danger of the possibility of violating the proclaimed human rights and freedoms. As Živanović (2020: 160) points out, the very nature of police work as an imperative imposes: (1) providing protection to all vital values of the state, society, and the individual from the bearers of incriminated forms of behavior and (2) providing protection to human rights and freedoms to such persons. Violation of the right to remain silent and the privilege of self-incrimination can occur when conducting the evidentiary action of hearing of the suspect. Namely, the danger of a possible deviation from the mentioned right lies in the very nature of the power balance between the suspect and authorized officials, i.e., conflicting interests that are at the center of

1 kaca_zivanovic@yahoo.com

communication during the hearing of the suspect. As indicated by Kassin (2005: 219), Leo (2009: 334) and Redlich & Meissner (2009), interrogation is a guilt presumptive process, a theory-driven social interaction led by an authority figure who holds a strong a priori belief about the target and who measures success by his or her ability to extract a confession. According to the above, it can be said that the hearing of the suspect is one of the most complex actions in the process of discovering criminal acts and their perpetrators undertaken by police (Milić and Subošić, 2011: 150). The very fact that there is a representative of the "state apparatus" on the other side causes discomfort and anxiety, even for persons who have not committed any crime, which indicates that this is a form of forced communication (Milić and Subošić, 2011: 150).

In addition to standardizing procedural conditions and principles in accordance with which the said evidentiary action must be conducted, the legislator strengthened the protection of the right to remain silent by criminalizing certain behaviors of officials during the hearing of the suspect. It is primarily about the criminal offense of extortion of statement from Art. 136 of the Criminal Code of the Republic of Serbia (Official Gazette RS, 2005), (hereinafter: CC), since only persons who act in an official capacity and during the conducting of their duties can be appeared as perpetrators of this criminal offense. In addition to the characteristics of the perpetrator, this criminal offense is characterized by the purpose of execution – extorting a statement, as well as the method of execution – using force, threats, or other illegal means or illegal methods. When it comes to the act of committing, it is important to point out that this criminal offense will exist regardless of whether the statement was actually extorted, i.e., it is important that the police took the action of the specified criminal offense with the aim of extorting the statement (Supreme Court of Serbia, 2003). On the other hand, by prescribing the mentioned criminal offense, the legislator does not completely exclude the possibility of influencing the defendant, since, for example, the suggestion of the police to the defendant that it is better for him to give a statement cannot be considered extortion of a statement (Stojanovic, 2018: 505). Bearing in mind the manner in which the crime was committed, Kesić (2018: 41) calls extortion of statement as "internal brutality", and points out that it can be understood as "the use of excessive force in official premises and other hidden places in order to achieve clearly defined goals, and most often due to extorting a confession".

In addition to the above-mentioned criminal offense, the legislator ensured the guarantee of the protection of the right to remain silent by standardizing the criminal offense of abuse and torture (Art. 137, paras. 2 and 3 of the CC). Analyzing the legal provisions that prescribe the mentioned criminal acts, it is concluded that there is no essential difference between extorting a statement (Art. 136 of the CC) and the criminal act of abuse and torture (Art. 137, para. 2 and in connection with para. 3 of the CC). As a result, such a solution leaves open the question of whether, in cases where an official used force or threat to extortion a statement from the defendant, such action will be qualified as torture (Article 137, para. 2, in connection with para. 3 of the CC) or as extortion of a statement. In principle, when an official appears as the perpetrator, in relation to the criminal offense of extorting a statement from Art. 136 para. 1 of the CC, priority should be given to the criminal offense of abuse and torture from Art. 137, para. 2 of the CC (Kolarić, 2018: 38; Ilić & Andrejić, 2023: 70; see also Živanović, 2020: 167). Therefore, in each specific case, the court considers whether the actions taken by the police in order to extort a statement can be characterized as those prescribed by the aforementioned incriminations.

Since such actions of the official affect the will of the defendant, which is in the essence of the right to remain silent and the privilege against self-incrimination, it is up to the court to assess whether the statement was given voluntarily or not. In general, the suspect's statement can be considered voluntary if the will of the suspect prevails "overbearing the suspect's will" (Inbau *et al.*, 2013: 343), since the right not to incriminate primarily refers to respecting the will of the accused to remain silent (*Jalloh* *v. Germanu*, para. 102). As Worall (2018: 131) points out, the following criteria can be used to assess whether the defendant's statement was given involuntarily: 1) the police conduct in question, and 2) the characteristics of the accused. When it comes to the behavior of the police, Worall (2018:131) further indicates that the police influence the will of the suspect to give a statement in various ways, such as torture, promises of certain benefits, psychological pressure, etc. However, it is safe to conclude that psychological pressures, promises of leniency, and deception are rarely by themselves enough to render a statement involuntary, but two or more such acts (especially if coupled with physical force) will more than likely result in an involuntary confession (Worall, 2018: 131). Finally, it is important to point out that the presumption of full enjoyment of the privilege against self-incrimination is made by acquainting the defendant with his right to remain silent, that is, with the said privilege. In this sense, any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise (*Miranda* v. *Arizona*).

METHODS AND APPROACH

Beside normative analysis of relevant legal acts and theoretical analysis of professional and scientific papers by prominent domestic and foreign authors, the following methods were used in the research: analysis of the content of the Internal Affairs Sector Reports of the Ministry of Interior of the Republic of Serbia (representation of criminal charges against officials for the criminal offense of Extortion of statement from Art. 136 of the CC) and analysis of the reports of adult perpetrators of criminal revealed by the Statistical Office of the Republic of Serbia (also representation of criminal charges against officials for the criminal offense of Extorting of statements); analysis of judgments of the European Court of Human Rights as well as the Constitutional Court of the Republic of Serbia.

Standards of the European Court of Human Rights and the Constitutional Court of the Republic of Serbia

When it comes to the European Court of Human Rights (hereinafter: ECtHR) stances regarding the protection of the right to remain silent and the privilege against self-incrimination, it is important to point out the following:

The right to remain silent under police questioning and the privilege against self-incrimination are the generally recognised international standards that lie at the heart of the notion of a fair procedure and represent a fundamental assumption of respect for basic human rights (*Ibrahim and others v. The United Kingdom,* para. 266) and by proclaiming the said right, the defendant protects himself from improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Art. 6 of the ECHR (*John Murray v. the United Kingdom*, para. 45; *Ibrahim and others v. The United Kingdom,* para. 266). The basic assumption arising from the right not to incriminate oneself is that the prosecution in a criminal case should prove his thesis against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (*Jalloh v. Germany*, para. 100; *Saunders v. the United Kingdom*, para. 68).

The right not to incriminate oneself applies to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex (*Heaney and McGuinness* v. *Ireland*, para. 57; *Saunders* v. *The United Kingdom*, para. 74). Also, the court points out that the protection of security and public order cannot justify the violation of the right to remain silent and the privilege against self-incrimination (*Heaney and McGuinness* v. *Ireland*, para. 58).

When it comes to the scope of extending the right not to incriminate, it is important to point out that it *only refers to respecting the will of the accused to remain silent, in the sense of ensuring the legal collecting of personal evidence*. In this sense, as the court points out in its decisions (*Jalloh v. Germanu* para. 102; *Saunders* v. *The United Kingdom*, para. 69; etc.), it does not extend to the use in criminal proceedings of material that may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect.

The use of the right to remain silent by the accused cannot under any circumstances be used against him; also, informing the accused that under certain circumstances his silence can be used against him should always be considered as "improper coercion" (*John Murray v. the United Kingdom*, paras. 45, 46, and 51).

Privilege against self-incrimination does not protect against the making of an incriminating statement per se but against the obtaining of evidence by coercion or oppression. Therefore, the court must first consider the nature and degree of coercion used to obtain the evidence (*Ibrahim and others v. The United Kingdom,* para. 267). Namely, if the authorities obtained the evidence through oppression or coercion, there was a violation of the rules on lawful obtaining of evidence, that is, evidence obtained in an illegal manner. As the issue of the illegality of evidence is a matter of national legal regulation, the ECtHR does not evaluate whether, according to the provisions of domestic law, certain evidence is legal or not but determines whether certain evidence was obtained in a way that violated the convention rights and then evaluates the contribution of the committed violation to the violation of the right to a fair trial – *Klaas v. Germany*, para. 29; *Jasar v. the former Yugoslav Republic of Macedonia*, para. 49; *Gäfgen v. Germany*, para. 93; *Khan v. the United Kingdom*, para. 34; *Dragojević v. Croatia*, para. 127; *Moreira Ferreira v. Portugal*, para. 83 (Živanović, 2025). The use of the statements of the accused as evidence, which were obtained by the local police authorities by acting contrary to Art. 3 of the ECHR, always leads to a violation of the right to a fair trial from Art. 6 of the ECHR, regardless of whether the treatment during which the contested statement was obtained in the specific case is appointed as torture, inhuman, or degrading treatment. As the ECtHR points out in the decision *Gäfgen v. Germany* (para. 166–167), the use of evidence obtained contrary to the convention prohibition of torture from Art. 3, "regardless of its probative value and regardless of whether its use was decisive in securing the defendant's conviction – it makes the proceedings as a whole automatically unfair" (Živanovic, 2025).

Furthermore, when assessing the violation of the right to a fair trial, the court must first consider the nature and degree of coercion used to obtain evidence (*Bykov v. Russia*, para. 92; *Ibrahim and others v. The United Kingdom*, para. 266). In this sense, the court in each specific case assesses whether the applied level of coercion leads to the destruction of the very substance of the privilege against self-incrimination (*John Murray v. the United Kingdom*, para. 49; *Ibrahim and others* v. *the United Kingdom*, para. 269), but not all direct compulsion will destroy the very essence of the privilege against self-incrimination and thus lead to a violation of fair procedure; what is crucial in this context is the use to which evidence obtained under compulsion is put in the course of the criminal trial (*Saunders v. the United Kingdom, para. 71; Ibrahim and others v. The United Kingdom*, para. 269). The degree of compulsion applied will be incompatible with Art. 6 of ECHR where it destroys the very essence of the privilege against self-incrimination (*John Murray*, para. 49).

In the court's jurisprudence, *there are three types of situations that the court considers to represent the possibility of violation of Art. 6 of the ECHR, except by the use of inappropriate coercion*. It is about the following situations that the court stated in the judgment *Ibrahim and others v. The United Kingdom* (para. 266) and referring to his earlier judgments: 1) where a suspect is obliged to testify under threat of sanctions and either testifies in consequence or is sanctioned for refusing to testify; 2) where physical or psychological pressure, often in the form of treatment that breaches Article 3 of the Convention, is applied to obtain real evidence or statements 3) where the authorities use subterfuge to elicit information that they were unable to obtain during questioning.

Finally, it is important to point out that the privilege not to incriminate is not absolute, since drawing of inferences from an accused's silence may be admissible (*Weh v. Austria*, para. 46). The ECtHR also reiterates that, given the close connection between the right not to incriminate oneself and the presumption of innocence, Art. 6, para. 2 of the ECHR does not, in principle, prohibit the use of presumptions in criminal law (*Weh v. Austria*, para. 46). Namely, the court considers that immunities cannot and should not prevent the accused's silence, in situations that clearly call for an explanation from them, from being taken into account in assessing the persuasiveness of the evidence adduced by the prosecution. Failure to provide any explanation in such circumstances may, as a matter of common sense, allow the drawing of an inference that there is no explanation and that the accused is guilty (*John Murray v. the United Kingdom*, paras. 47 and 51).

When it comes to the views of the Constitutional Court of the Republic of Serbia regarding the evaluation of violations of the inviolability of mental and physical integrity from Art. 25 of the Constitution of the Republic of Serbia (Official Gazette RS, 2006) as well as violations of the provisions prohibiting the extortion of statements from guarantors (Art. 28), it is important to emphasize the following: *the Constitutional Court considers violations of the aforementioned provisions in light of the violation of the prohibition of torture from Art. 3 of the ECHR,* and bearing in mind that the indicated constitutional rights are essentially identical to the right from Art. 3 of the ECHR. Namely, the Constitutional Court (2017) points out that Art. 3 of the ECHR covers a wide range of actions and punishments and imposes a number of positive obligations on the state. Among other things, this article includes the general obligation that all persons under the jurisdiction of a state are protected from abuse and torture.

Furthermore, it is important to point out that the Constitutional Court, depending on the specific case, assesses the violation of the procedural aspect of Art. 3 of the ECHR and the violation of the material aspect of the said article of the ECHR. When it comes to the violation of the procedural aspect, the court assesses whether an investigation has been conducted against the persons accused of extorting a statement. Thus, in connection with the violation of the procedural aspect, the Constitutional Court (2017a), (referring to the decision of the ECHR *Vladimir Fedorov v. Russia*, para. 67) established that the fact that the defendants for extorting testimony were eventually acquitted is not in itself sufficient to establish a violation of the right from Art. 25 of the Constitution, since the procedural obligation from the aforementioned article is not an obligation of the goal but of the means.

When it comes to assessing the violation of the material aspect of Art. 25 of the Constitution, the Constitutional Court accepted the "beyond reasonable doubt" evidentiary standard established by the ECtHR. Namely, the Constitutional Court (2021) stated that allegations of abuse (*inert alia* and for the purpose of extorting statements) must be supported by appropriate evidence, i.e., evidence "beyond reasonable doubt". In the aforementioned decision, the Constitutional Court, referring to ECtHR practice (*Salman v. Turkey*; *Ireland v. the United Kingdom*), states that such evidence can arise from the coexistence of sufficiently strong, clear, and non-contradictory conclusions or similar undisputed factual assumptions.

Contrary to the above, it is important to point out the decision, in which the Constitutional Court deviated from the generally accepted international standards established by the ECtHR regarding the acceptance of personal evidence obtained by torture. Namely, the Constitutional Court (2017b) found that there was no violation of the right to a fair procedure, even though the judgment of the first-instance court established that the defendant's statements were obtained illegally. The Constitutional Court supported its decision by stating that it was established that the conviction was not based only on that evidence that was found to be illegal but also on other legal evidence. However, in an opinion in this judgment, one judge pointed out that the standards of the ECtHR must also be respected in this matter.

In their separate opinion, the judge refers to ECtHR practice (*Gäfgen v. Germany*; *Stanimirović v. Serbia*), stating that the use of statements obtained by torture or other bad behavior as evidence for establishing relevant facts in criminal proceedings makes those proceedings as a whole unfair. This opinion applies regardless of the probative value of the statements and regardless of whether their use is decisive for the conviction. As stated in the separate opinion, a different legal reasoning and conclusion would lead to the legalization of a certain type of morally reprehensible procedure, which is contrary to Art. 3 of the ECHR, which in nature would mean the legalization of brutality, inhuman treatment and torture.

Representation of Criminal Charges of the Extortion of Statement (Art. 136 of the CC) and Abuse and Torture (Art. 137 of the CC) in the Republic of Serbia

In order to establish the representation of criminal charges filed against police officers and other officials for committing the criminal offense of extortion of statements as well as abuse and torture, an analysis of the Internal Affairs Sector Report of the Ministry of Interior of the Republic of Serbia and the Statistical Office of the Republic of Serbia was carried out. The analysis of the aforementioned reports covers the period 2017-2023. The results obtained from the analysis of the report are presented tabularly and graphically. The results are presented numerically.[2]

Table 1 shows the overall results obtained by processing the above reports, significant for the research in question. In this sense, the number of criminal charges against police officers submitted by the Internal Affairs Sector for the criminal offenses of extorting a statement (Art. 136 of the CC) and abuse and torture (Art. 137 of the CC) is shown. Representing data for the criminal offense of abuse and torture (Art. 137 of the CC) is expedient, bearing in mind the identity of the aforementioned criminal offenses, if it is a qualified form of the offense from Art. 137 of the CC.

In addition to the above-mentioned data, the data contained in the reports of the Statistical Office were also presented in order to show the representation of mentioned criminal offenses in general in the Republic of Serbia for the period 2017–2023.

Table 1. *Representation of Criminal Charges of the Extortion of Statements (Art. 136 of the CC) and Abuse and Torture (Art. 137 of the CC) in the Republic of Serbia*

Year	Criminal offense	Internal Affairs Sector	Statistical Office			
			Filed criminal charges	Dismissed criminal charges	Indictment filed	Unknown perpetrator
2023	Extortion of statement	0	2	Without data		
	Abuse and torture	3	381			

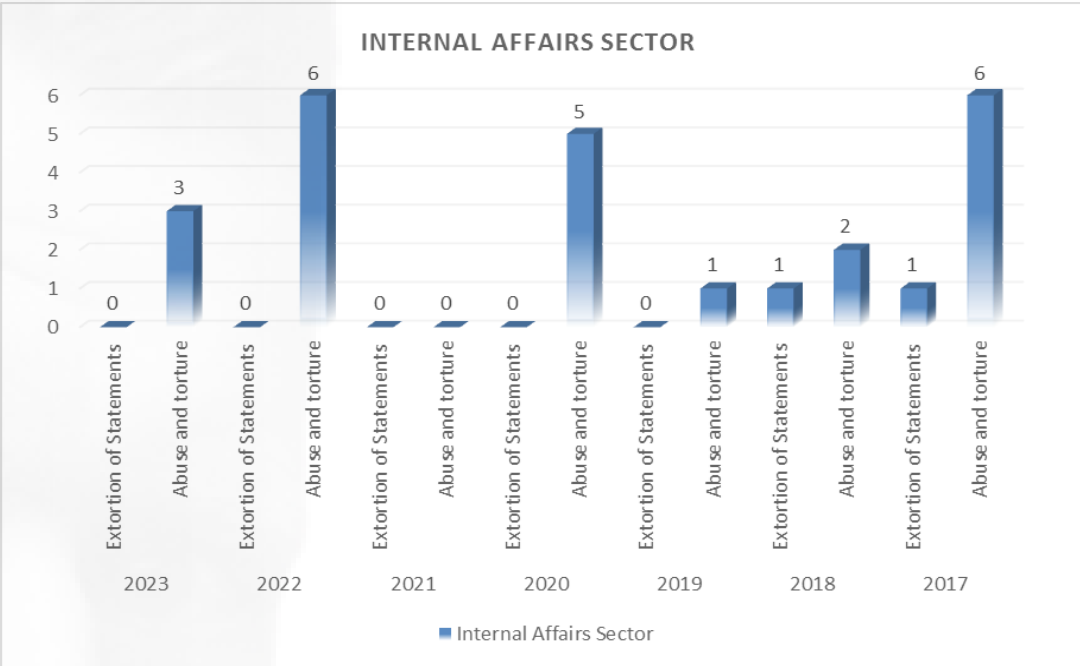
2 Also, it should be emphasized that the data from the report of the Statistical Office on the submitted criminal charges for the mentioned offenses may also include criminal charges against police officers since there is a possibility that the criminal charges against the police officer for the said criminal offenses were not filed by the Internal Affairs Sector. Accordingly, when reading and interpreting the results of the aforementioned research, this should be kept in mind.

2022	Extortion of statement	0	7	6	0	1
	Abuse and torture	6	403	272	109	23
2021	Extortion of statement	Without data	18	18	0	0
	Abuse and torture		390	233	120	37
2020	Extortion of statement	0	23	21	1	1
	Abuse and torture	5	345	219	75	50
2019	Extortion of statement	0	31	30	1	0
	Abuse and torture	1	373	263	92	18
2018	Extortion of statement	1	20	19	1	0
	Abuse and torture	2	301	211	77	13
2017	Extortion of statement	1	8	8	0	0
	Abuse and torture	6	242	152	72	18
In total	Extortion of statement	2	109	102	3	2
	Abuse and torture	23	2435	1350	545	159

In order to make it easier to see and draw conclusions from the results shown in Table 1, the results significant for the topic of the research will be classified and shown in graphs, as follows:

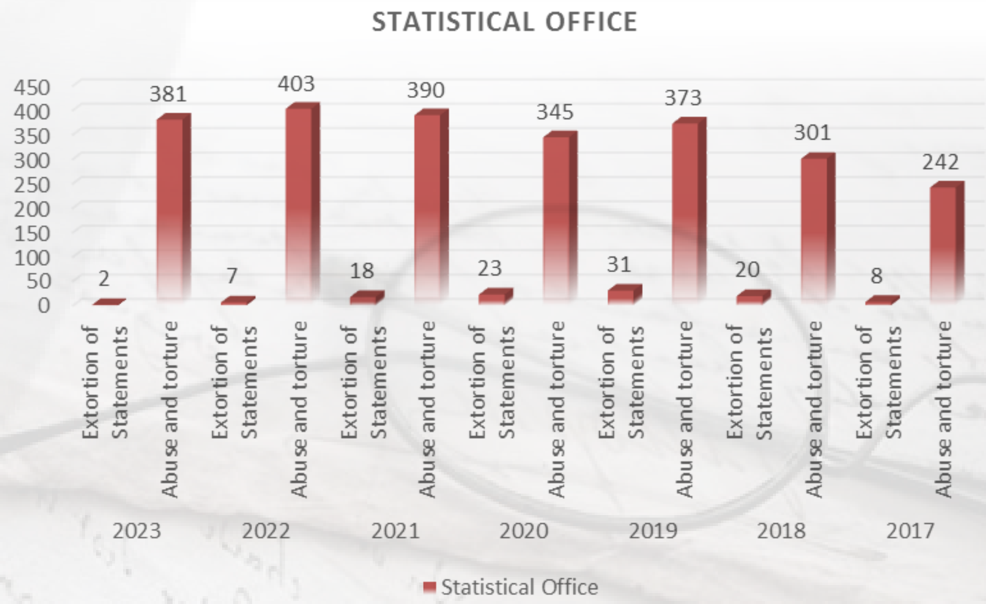
Graph 1 shows the representation of the criminal offense of extortion of statement (Art. 136 of the CC) and abuse and torture (Art. 137 of the CC) in criminal reports against police officers submitted by the Internal Affairs Sector, starting from 2017 to 2023.

As it follows from the results shown in Graph 1, the number of criminal charges against police officers in the observed period is higher for the abuse and torture (Art. 137 of the CC) than for the criminal offense of extortion of statement (Art. 136 of the CC). The largest number of criminal charges for criminal offenses from Art. 137 of the CC is six, while for the criminal offense from Art. 136 of the CC the largest number of criminal charges is 1. In 2023, 2022, 2020, and 2019, police officers were not charged for the crime of extorting a statement (Art. 136 of the CC), while in 2017 and 2018, one criminal charge was registered each for the aforementioned criminal offences. Unlike the criminal offenses from Art. 136 of the CC, for the crime of abuse and torture (Art. 137 of CC), criminal charges were filed against police officers in each of the years – 2023, 2022, 2020, 2019, 2018, and 2017. However, the number of filed criminal charges varies from one to six. Namely, a greater number of criminal charges against police officers for criminal offenses from Art. 137 of the CC was recorded in 2017 and 2022 – six criminal charges and in 2020 – five criminal charges, while the lowest number of filed criminal charges was recorded in 2019 – only one criminal charge.



Graph 1.

Graph 2 shows the total representation of criminal charges for the criminal acts of extortion of statement (Art. 136 of the CC) and abuse and torture (Art. 137 of the CC) according to the reports of the Statistical Office of the Republic of Serbia for the time period 2017–2023.



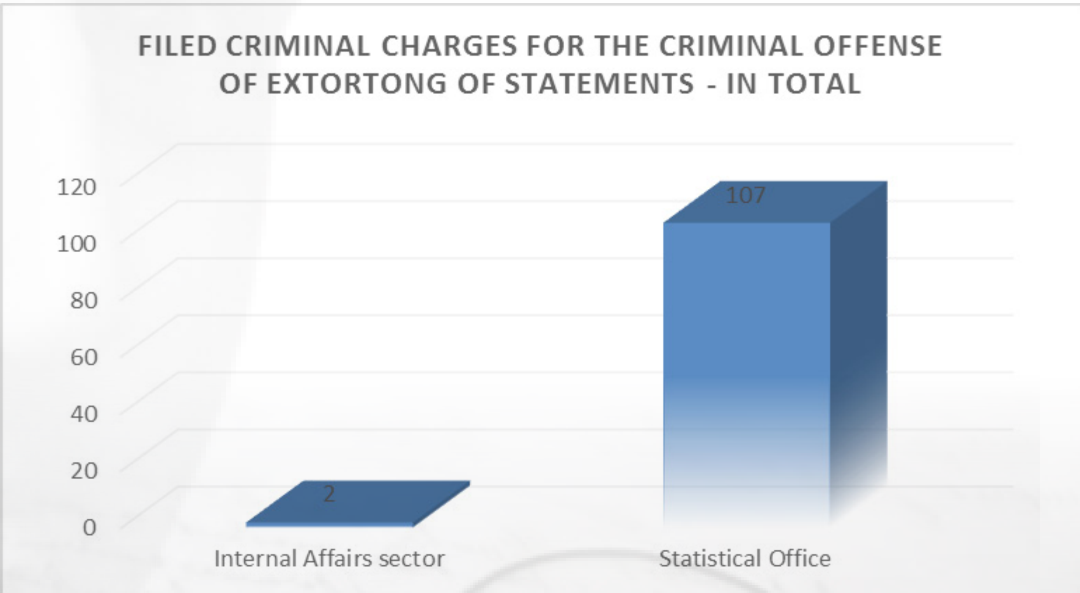
Graph 2.

From the presented results, it can be seen that the number of criminal charges submitted for the criminal offense extortion of a statement is significantly lower compared to the criminal charges submitted for the criminal offense of abuse and torture, which is logical considering that the presented results for the criminal offense of abuse and torture refer to all criminal charges and not only for charges of a qualified form when an official appears in the role of the perpetrator in order to extort a statement.

Observed from the aspect of criminal charges of extortion of statements, it is noted that the largest number was filed in 2019 (31 criminal charges), and then in 2020, 2018, and 2021. A smaller number of criminal charges of the criminal offense from Article 136 of the CC was recorded in 2017 and 2022, while in 2023, two criminal charges were filed for the said criminal offense.

When it comes to the criminal offense referred to in Art. 137 of CC, a somewhat different trend in the representation of criminal charges by age can be observed in relation to the criminal offense from Art. 136 of the CC. Namely, the largest number of criminal charges for abuse and torture was filed in 2022 (403), while a larger number of criminal reports (from 373 to 390) were also filed in 2019, 2021, and 2023. The lowest number of submitted criminal charges, in the observed period, was recorded in 2017 (242 criminal charges).

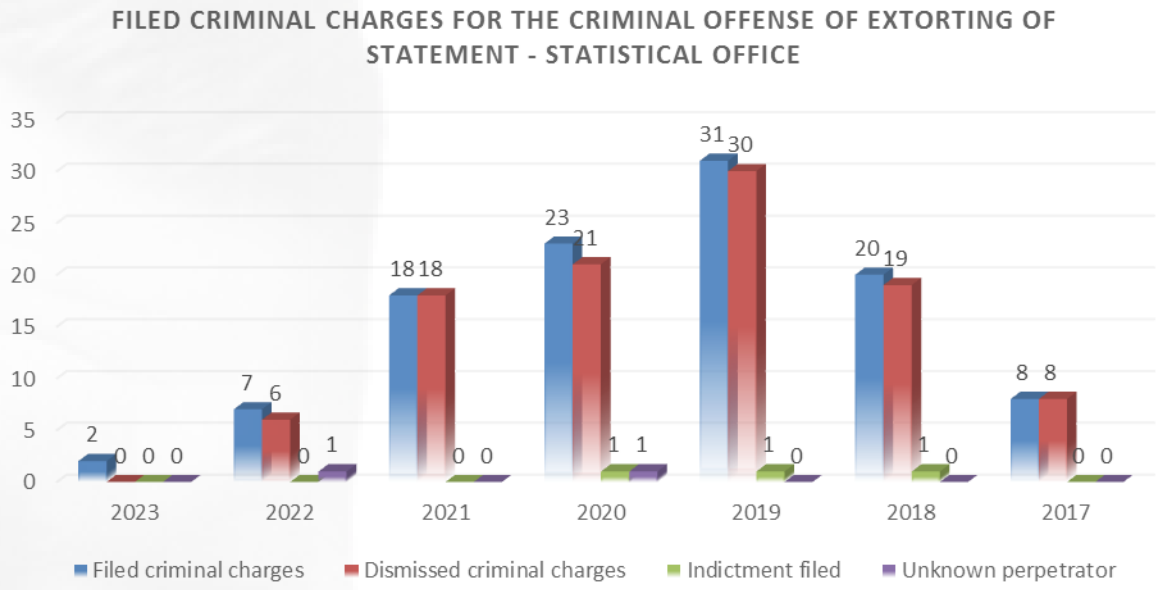
Graph 3 shows the total number of criminal charges filed for the crime of extorting a statement (Art. 136 of the CC) in the period 2017–2023, in relation to the number of criminal charges filed by the Internal Affairs Sector and the total number of criminal charges filed according to the reports of the Statistical Office.



Graph 3.

From the results shown in graph 3, it follows that a total of two criminal charges were filed against police officers by the Internal Affairs Sector in the observed period (2017–2023), while the total number of criminal charges for the crime of extorting a statement is 109. Looking at the above results, it can be established that the percentage of criminal charges filed against police officers by the Internal Affairs Sector in relation to the total number of criminal charges for the said criminal offense makes only 1.83% of the total number of criminal charges.

Graph 4 shows the number of criminal charges filed for the crime of extorting a statement (Art. 136 of the CC), the number of rejected criminal charges, the number of indictments filed, as well as the number of criminal charges filed against an unknown perpetrator. The above results are presented by year for the period 2017–2023.[3]



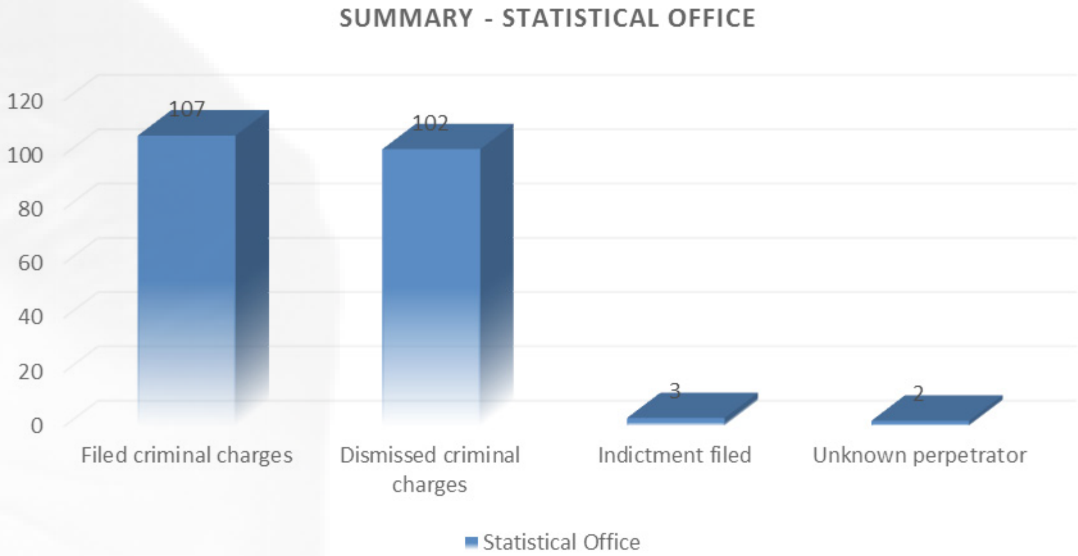
Graph 4.

Observed from the aspect of the outcome of filed criminal charges, the same trend can be observed for each of the years shown, that is, the largest number of criminal charges filed for the criminal offense of extorting a statement (Art. 136 of the CC) was rejected. Namely, in the years in which an indictment was filed on the basis of a criminal charge, in none of them was more than one indictment filed. In this regard, one indictment was filed each in 2020, 2019, and 2018, while in 2021 and 2017, all criminal charges filed for the criminal offense of extorting a statement were dismissed. In 2022 and 2020, one criminal case was filed against an unknown perpetrator.

Graph 5 shows data on the total number of filed criminal charges, i.e., the total number of dismissed criminal charges and those filed against an unknown perpetrator, as well as the total number of indictments filed for the crime of extorting a statement in the period 2017–2022.[4]

From the results shown in Graph 5, it follows that of the total number of filed criminal charges for the criminal offense of extorting statements in the period 2017–2022, the largest number of criminal charges were dismissed. Namely, out of 107 criminal charges filed, 102 criminal charges were dismissed, which makes up 95.3% of the total number of criminal charges, in about a little less than 3% (2.8%) of cases an indictment was filed, while a little less than 2% (1.87%) of criminal charges were filed against an unknown perpetrator.

3 For the year 2023, the Statistical Office's statement does not contain data on the number of rejected criminal charges, that is, on the number of indictments filed.
4 No data available for 2023.



Graph 5.

CONCLUSION

Recognition of the right to remain silent during police interrogation and the privilege against self-incrimination as a generally recognized international standard and as the basis of a fair procedure once again confirms that the protection of mental and physical integrity as well as human dignity are the highest values of society. Namely, the importance of the protection and respect of the said right and privilege, in addition to the above, is reflected in their close connection with the realization of the presumption of innocence, which also forms an inseparable part of the fair procedure. The aforementioned importance is confirmed above all by the views of the ECtHR, taken on the occasion of the violation of Articles 3 and 6 of the ECHR. In this sense, the ECtHR, inter alia, established in its decisions that: the right to remain silent under police questioning and the privilege against self-incrimination are the generally recognized international standards that lie at the heart of the notion of a fair procedure and represent a fundamental assumption of respect for basic human rights; the right not to incriminate oneself applies to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex; the use of the right to remain silent by the accused cannot under any circumstances be used against them, etc.

Considering that they are widely accepted international standards, the above-mentioned stands (mostly) form an integral part of the judicial decisions of the Constitutional Court of the Republic of Serbia. As the stands taken in the analyzed decisions refer, as a rule, to cases in which the petition or constitutional appeal is based on the illegal behavior of the police during the questioning of the suspect, it is very important to apostrophize the results of the research related to the committing of the criminal offense of extorting a statement (Art. 136 of the CC) by the police in the Republic of Serbia. Although the danger of the possibility of acting contrary to the right to remain silent is immanent to the internal affairs bodies, and bearing in mind the nature of their work, by researching the relevant reports of state bodies, it was established that police officers, when conducting the evidentiary act of interrogating a suspect, respect the right to remain silent, i.e., the privilege against self-incrimination. Namely, as it appears from the results of the research, in the observed period (2017–2023) by the Internal Affairs Sector of the Ministry of Interior, no criminal charges were filed for the aforementioned crime in four years (2023, 2022, 2020, and 2019), while in 2017 and 2018, only one case was filed each.

On the other hand, viewed from the aspect of the results obtained from the analysis of reports of the Statistical Office of the Republic of Serbia, the number of dismissed criminal charges for the criminal offense of extorting testimony is almost equal to the number of filed criminal charges for the aforementioned criminal offense.

REFERENCES

Constitutional Court of the Republic of Serbia, *Už-10205/2018*, Decision of June 17, 2021.

Constitutional Court of the Republic of Serbia, *Už-4963/2014*, Decision of September 28, 2017.

Constitutional Court of the Republic of Serbia, *Už-8791/2014*, Decision of March 16, 2017a.

Constitutional Court of the Republic of Serbia, *Už-1948/2014*, Decision of October 12, 2017b.

Constitution of the Republic of Serbia, Official Gazette RS, Nos. 98/2006 and 115/2021.

Criminal Code of the Republic of Serbia, Official Gazette RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

Grometstein, R. (2008). Wrongful Conviction and Moral Panic: national and International perspectives on Organized Child Sexual Abuse. In: Huff, R. and Killias, M. (Eds.), *Wrongful Convection: International perspectives on miscarriages of justice* (pp. 11–32). Temple University Press.

Ilić, I., Andrejić, D. (2023). Zabrana mučenja, nečovečnog ili ponižavajućeg postupanja ili kažnjavanja u krvičnom zakonodavstvu Republike Srbije. Međunarodni naučni skup „Izazovi i perspektive razvoja pravnih sistema u XXI vijeku" (pp. 65–80). Pravni fakultet Univerziteta u Banjoj Luci.

Inbau, F., Reid, J., Buckley, J., Jayne, B. (2013). *Criminal Interrogation and Confessions*. John E. Reid and Associates, Inc, Chicago.

Kolarić, D. (2017). Krivično delo mučenje – *de lege lata* i *de lege ferenda*. Tematski zbornik radova: Naučno-stručni skup sa međunarodnim učešćem Policija i pravosudni organi kao garanti slobode i bezbednosti u pravnoj državi (pp. 27–40).

Kesić, Z. (2018). Policijska brutalnost i tortura – sličnosti i razlike. *NBP. Nauka, bezbednost, policija, 23(1),* pp. 35–50.

Kassin, M. (2005). On the psychology of confessions: Does innocence put innocents at risk?

American Psychologist, 60, 215–228.

Leo, R. (2009). False Confessions: Causes, Consequences, and Implications. *Journal of the American Academy of Psychiatry and the Law*, *37*, 332–343.

Milić, N., Subošić, D. (2011). Policijsko saslušanje i pregovaranje kao posebni oblici komunikacije u policijskom postupanju. U: *Suprotstavljanje savremenom organizovanom kriminalu i terorizmu* (pp. 149–163). Kriminalističko-policijska akademija.

Ministartsvo unutrašnjih poslova Republike Srbije (2024) Izveštaj o radu Sektora unutrašnje kontrole za 2023. godinu, http://www.mup.gov.rs/wps/wcm/connect/c0719183-ca0c-4c67-956a-dc79c1b2142c/cir-GODI%C5%A0NJI+IZVE%C5%A0TAJ+2023.+SUK.pdf?MOD=AJPERES&CVID=oVQPJIo.

Ministartsvo unutrašnjih poslova Republike Srbije (2023) Izveštaj o radu Sektora unutrašnje kontrole za 2022. godinu, http://www.mup.gov.rs/wps/wcm/connect/e43904e8-a86b-4e83-b0b6-8e21bb947536/Izve%C5%A1taj+o+radu+SUK+za+2022+-ODBOR.pdf?MOD=AJPERES&CVID=oDkImx5.

Ministartsvo unutrašnjih poslova Republike Srbije (2021) Izveštaj o radu Sektora unutrašnje kontrole za 2020. godinu, http://www.mup.gov.rs/wps/wcm/connect/74913153-248b-4434-8b9d-1c57b6f64637/Izvestaj_o_radu_SUK_2020_ODBOR.pdf?MOD=AJPERES&CVID=nxZoYJD.

Ministartsvo unutrašnjih poslova Republike Srbije (2020) Izveštaj o radu Sektora unutrašnje kontrole za 2019. godinu, http://www.mup.gov.rs/wps/wcm/connect/48b08245-44ec-4cce-80db-c5fbea02b651/GODISNJI+IZVESTAJ+O+RADU+SUK+ZA+2019.+G.pdf?MOD=AJPERES&CVID=n8ivRuv.

Ministartsvo unutrašnjih poslova Republike Srbije (2019) Izveštaj o radu Sektora unutrašnje kontrole za 2018. godinu, http://www.mup.gov.rs/wps/wcm/connect/bc8a9e9a-dc2e-43bd-8c65-a5214289d-e5d/SUK+godisnji+izvestaj+za+2018.pdf?MOD=AJPERES&CVID=mD3oKne.

Ministartsvo unutrašnjih poslova Republike Srbije (2018) Izveštaj o radu Sektora unutrašnje kontrole za 2017. godinu, http://www.mup.gov.rs/wps/wcm/connect/86c43fc4-cfa3-4a1d-b15c-eaeeb9f69560/izvestaj+o+radu+za+2017.god.pdf?MOD=AJPERES&CVID=ma5bX-9.

Redlich, A., Meissner, C. (2009). Techniques and Controversies in the Interrogation of Suspects: The Artful Practice versus the Scientific Study. In: Skeem, J., Douglas, K. and Lilienfeld, S. (Eds.), *Psychological science in the courtroom: Controversies and consensus* (pp. 124–148). The Guilford Press.

Republički zavod za statistiku (2024) Saopštenje, https://publikacije.stat.gov.rs/G2024/Pdf/G20241186.pdf.

Republički zavod za statistiku (2023) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://www.stat.gov.rs/publikacije/publication/?p=15510.

Republički zavod za statistiku (2022) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://www.stat.gov.rs/publikacije/publication/?p=14921.

Republički zavod za statistiku (2021) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://www.stat.gov.rs/publikacije/publication/?p=13310.

Republički zavod za statistiku (2020) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://www.stat.gov.rs/publikacije/publication/?p=12776.

Republički zavod za statistiku (2019) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://www.stat.gov.rs/publikacije/publication/?p=12218.

Republički zavod za statistiku (2018) Bilten Punoletni učinioci krivičnih dela u Republici Srbiji – prijave, optuženje i osude, https://publikacije.stat.gov.rs/G2018/Pdf/G20185643.pdf.

Supreme Court of Serbia, *Kž. 1524/02,* Decision of September 10, 2003.

Stojanović, Z. (2018). *Komentar krivičnog zakonika*, Beograd.

Worrall, J. (2018). *Criminal Procedure*. Pearson.

Žianović, K. (2025). Illegal Evidence in Criminal Proceedings: Collecting of Evidence by Authorized Officials of Internal Affairs Bodies. *NBP. Nauka, bezbednost, policija*, 30(1), https://doi.org/10.5937/nabepo30-49965.

Živanović, K. (2020). Zlostavljanje, mučenje i iznuđivanje iskaza osumnjičenog u krivičnom zakonodavstvu Republike Srbije. *Bezbednost, 62(1),* pp. 157–173. https://doi.org/10.5937/bezbednost2001157Z