2.1 Legal framework of police work

The organisation and remit of the police are regulated by a number of laws and by-laws. Only a portion of these regulations have been enacted since 2001 (when police reform in Serbia began), and out of those only a few are harmonised with the new Constitution of the Republic of Serbia adopted in 2006 (hereinafter: the Constitution). The majority of the remaining regulations date from before 2001 and they are still not harmonised with the Constitution and with the aims of police reform.

This chapter gives a brief overview of the legal and political context of police reform (I). It then provides a brief overview of regulations relating to the organisation and remit of the police (II). It also indicates the regulations through which the legal facet of policing extends to other areas such as services (III). Finally, the chapter highlights the main challenges facing police reform in Serbia (IV).

I. Legal and Political Context

The reform of legislation relating to the organisation and remit of the police has developed within a wider legal and political context consisting of: 1. the Constitution; 2. Ratified international agreements, including the Stabilisation and Association Agreement (chapter VII: Justice, freedom and security), as well as the other international legal and political documents dealing with standards of human rights in policing, and; 3. The government’s strategic directions in police reform. Although the government did not adopt a separate strategy for police reform, there is a number of strategic government documents relating to police reform (such as the National strategy against money laundering and financing of terrorism and the Regulatory reform strategy of the republic of Serbia for the period 2008-2011).

II. A brief overview of regulations related to organisation and remit of the police

Regulations on the organisation and remit of the police can be divided into the following groups: 1. Regulations on police organisation; 2. Internal affairs regu-
lations which are directly enforced by the police or which are overseen by the police; 3. Regulations on certain powers, tasks and methods of police work, and; 4. Regulations that stipulate the control of police work and the conditions for the transparency of its work.

(1) Regulations on police organisation

1.1. The Law on police (2005) is supported by sixteen by-laws (adopted in 2006 and 2007). There are six other by-laws adopted on the basis of the previous Law on internal affairs. These six by-laws should be harmonised with the Law on police. Furthermore, the Law on police should be formally harmonised with the Constitution.

1.2. The remit of the Ministry of Interior is regulated by the Law on ministries (2008), and civil servant regulations apply to the police in a subsidiary manner (i.e. they apply to issues not regulated by the Law on police). For issues that are not regulated by the Law on civil servants, provisions of the Labour Law apply. Since the police is a public administration body, the Law on public administration (as well as other regulations related to public administration bodies and their obligations towards the government) apply. The Law on general administrative procedure applies to its administrative procedures (apart from in certain administrative areas which are regulated by separate procedure regulations).

1.3. The police has its own internal regulations which stipulate issues important for police work (internal instructions and guidelines). These regulations are endorsed by the Minister of Interior and are not published. Most of them are classified documents. Since they often directly influence police performance, it is very important that there is some kind of control of their content. However, these regulations usually escape the usual mechanisms of external control and oversight. Hence, without external insight into their contents, it is impossible to evaluate the level of harmonisation with the aims of police reform or with the Constitution and the law.

(2) Internal affairs regulations which are directly enforced by the police or which are overseen by the police

This group covers a substantial number of regulations which are enforced or whose enforcement is being overseen by an internal affairs authority, i.e. within the scope of the Ministry of Interior’s work. One part of this group of regulations (especially those of an administrative nature) could be enforced by other administrative bodies. This was one idea considered during the process of conceptualising police reform. However, no significant developments in this regard have occurred to date and almost all the regulations that determine the competencies of internal affairs authorities are listed below. The list comprises 19 laws and 55 by-laws:
2.1. Law on public peace and order (1992, with amendments)
2.2. Law on public assembly (1992, with amendments)
2.3. Law on prevention of violence and hooliganism at sports events (2003, with amendments)
2.3. Law on basic organisation of road traffic safety (1988, with amendments) and ten by-laws; Law on road traffic safety (1974, with amendments) and eight by-laws
2.4. Law on protection of state borders (2008) and four by-laws
2.5. Law on foreigners (2008) and two by-laws; Law on asylum (2007) and five by-laws
2.6. Law on firearms and ammunition (1992, with amendments) and three by-laws
2.7. Law on transport of explosive materials (1985, with amendments); Law on transport of hazardous materials (1990, with amendments) and four by-laws; Law on explosive materials, inflammable liquids and gases (1977, with amendments) and one by-law.
2.8. Law on fire protection (1988, with amendments) and eight by-laws
2.9. Law on citizenship of the Republic of Serbia (2004, with amendments) and three by-laws
2.10. Law on permanent and temporary residence of citizens (1971, with amendments) and one by-law
2.11. Law on introduction of unique identity number of a citizen (1976) and two by-laws; Law on unique identity number of a citizen (1978, with amendments) and one by-law
2.12. Law on identity cards (2006) and two by-laws
2.13. Law on travel documents (2007) and two by-laws

As can be seen from the above list, 14 out of the 19 laws date from before the adoption of the Constitution, meaning that they need to be harmonised with the Constitution. Some of the laws date back to the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia (when competencies were divided between republic and federation levels). These laws are often used to highlight the failure to create a suitable framework for efficient police performance or successful fulfilment of security interests (especially in areas such as road traffic safety, public peace and order, firearms and ammunition, as well as fire protection). There are issues that are not yet encompassed by this group of laws, such as the private security sector.

(3) Regulations on specific police powers, tasks and methods of work

3.1. Specific police powers, tasks and methods of work are covered by the Criminal procedure code (2001 and 2006) and the Law on misdemeanours (1989 and 2005). The former regulates the powers of the police in pre-investigative
procedures, such as information gathering, arrest and detention of suspects, establishing individuals’ identity, securing evidence, temporary seizure of objects, searches of property and individuals, suspect interviews and data gathering through special investigative measures (e.g. wiretapping), as well as obligations of the police towards the prosecution and judicial authorities. The Law on misdemeanours regulates the powers of the police related to the filing of misdemeanour charges and evidence gathering. It covers initial misdemeanour proceedings and the issuing the mandatory fines, as well as the obligations of the police towards the misdemeanour procedure authorities.

3.2. There are a number of special laws which regulate police powers, tasks and methods of work, including how the police is organised to conduct special tasks, such as organised crime (the Law on organisation and competencies of public authorities in the suppression of organised crime, 2002, with amendments), cyber-crime (the Law on organisation and competencies of public authorities for fight against cyber-crime, 2005) and war crimes (the Law on organisation and competencies of public authorities in war crimes procedures, 2003, with amendments). Furthermore, the Law on the protection programme for participants in criminal proceedings (2005) and the Law on seizure of proceeds of crime (2008) establish and define the roles of special organisational units within the Ministry of Interior.

3.3. The Ministry of Interior (the police) has specific duties when implementing ratified international agreements which refer to cross-border organised crime and terrorism. The Ministry is the focal point for many established forms of international cooperation such as visas, border control, asylum and migration, prevention and control of illegal migration, suppression of money laundering and financing of terrorism, suppression of illicit drugs, as well as the fight against organised crime and terrorism. Some of these are not yet regulated by national legislation, which is one of the preconditions for Serbia’s membership of the ‘white’ Schengen List.

(4) Regulations on external control of the police and conditions for transparency

4.1. External control of the police is covered by the Rules of procedure of parliament, the Law on government and the rules of procedure of the government, as well as the Law on the protection of citizens (2005, with amendments). Similarly, control of police work is covered by procedure laws which enable the prosecution and the courts to conduct the ex ante control. There are also regulations that allow for legal means and procedures within ex post control of police work (appeals procedures, court protection and compensation of damages before the regular courts, as well as the constitutional appeal before the Constitutional Court)
4.2. The regulations that ensure conditions for transparency in the police are the same as those which refer to the entire public administration and other public authority bodies; the *Law on free access to information of public importance* (2004, with amendments), the *Law on prevention of conflict of interest in the discharge of public office* (2004), the *Law on protection of personal data* (2008), the *Law on the supreme audit institution*, and the *Law on public procurement* (the latter governs the extent to which police procurements are not exempt from general public procurement regimes).

### III. Regulations covering the policing of other areas, such as services

Reform of police legislation is objectively more important than reform of the police itself. The application of laws (and in some cases by-laws) which determine police competences and the regime of policing, extend to other parts of the state apparatus. In such cases, by improving the quality of police legislation there will be wider impact on the legal framework for other state bodies and services to which the legal regime of policing affairs applies. This relates to the following bodies and services:

1.1. The *Law on the Armed Forces of Serbia* (2007) prescribes that authorised Military Police personnel have commitments and competencies stipulated by the law regulating criminal procedures towards employees of the Ministry of Defence and members of the Armed Forces of Serbia, and within the criminal investigation activities, the law regulating police work, as well as the regulations based on that law.

1.2. The *Law on security intelligence agency* (2002) stipulates the manner in which regulations relating to competencies, as well as regulations on rights, responsibilities and obligations of police officers are applied to members of the agency.

1.3. The *Law on intelligence services of the FRY* (2002), which applies to two military services (the Military Security Agency and the Military Intelligence Agency), also stipulates that in pre-investigative proceedings these services have police competences (those of the internal affairs bodies).

1.4. The *Customs Law* prescribes that authorised customs officers have the right to carry firearms and ammunition, as well as the right to use arms under the same conditions and in the same manner prescribed for authorised police officers. The *Law on tax procedure and tax administration* (2002, with amendments) prescribes that the Tax Police has authority to act as an internal affairs body in pre-investigative proceedings in order to tackle tax-related crime and tax offenders.
1.5. Although judicial and prison administration competencies are regulated by separate laws (the \textit{Law on organisation of courts} and the \textit{Law on execution of penitentiary sanctions}), regulations that relate to means of coercion are similar to those used by the police.

\section*{IV. Challenges}

Changes in the legal framework of the police have been implemented only partly, and the greatest progress has been made with the new \textit{Law on police}, as well as with the \textit{Law on protection of state borders}, \textit{Law on foreigners}, \textit{Law on asylum} and \textit{Law on travel documents}. However, the legal framework of the police reform needs further harmonisation. This should be based on two fundamental conditions. First, harmonisation with the Constitution and ratified international agreements (formal and legal harmonisation). Second, harmonisation with wider aims of police reform, obligations stemming from the Stabilisation and Association Agreement (Articles 80 – 87), as well as obligations undertaken within the framework of regional cooperation (material harmonisation). Both conditions could be fulfilled simultaneously. A plan should be developed by the Ministry of Interior and adopted by the government. The Ministry of Interior should receive expert assistance in preparation of new legislation. Particular attention should be given to moving some administrative tasks from the Ministry of Interior to other ministries or administrative bodies.