

**POLICE AND HUMAN RIGHTS  
MANUAL FOR POLICE TRAINING**

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## INTRODUCTION

The chief initiator behind the creation of this manual is the Danish Institute for Human Rights (DIHR), an organisation with wide experience of designing and implementing educational projects throughout the world. As one of the co-founders of the Balkan Network, the DIHR gathered together non-governmental organisations from the region of the former Yugoslavia with the purpose of creating manuals for training police members. The DIHR placed particular emphasis on the human rights aspect of performing police tasks. The same projects were initiated concurrently in Croatia, Montenegro, Macedonia and Bulgaria.

The Republic of Macedonia was accepted by the UN as an independent state after the dissolution of the former Yugoslavia. Macedonia accepted all relevant UN documents such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These UN instruments have been accepted by way of succession<sup>1</sup>. However, the Macedonian Government has also legislated for state acceptance of all obligations originating in these human rights instruments.

The Republic of Macedonia joined the Council of Europe and signed numerous European human rights instruments. Of these, the European Convention of Human Rights is the most important. These documents were later ratified and introduced into the country's domestic legal system. In accordance with the Constitution, the ratified international treaties have been incorporated into the internal legal system and cannot be changed by domestic legislation.

An additional reason for creating this manual is to establish direct collaboration between the Croatian Helsinki Committee for Human Rights, representing civil society, and the Ministry of the Interior, which is a state body. These two segments of society have not been co-operating at a satisfactory level until recently. This determined attempt to achieve mutual collaboration ensures that during the process of training police officers both segments will be taken into consideration, i.e. the professional as well as the human rights perspective.

The use of this manual can achieve two fundamental goals, a) create an increasing sense of professionalism and ethics among police officers, and b) foster a higher level of citizen confidence in the system. In the current situation it is difficult to achieve certain preconditions for high-level professionalism such as the procurement of advanced technical equipment, the provision of high salaries etc. However, one can build in preconditions in order to raise the human potential of the police in educational terms. That means that police officers will become more aware of their duties and rights while at the same time becoming more conscious of citizen rights, thus achieving a level of communication which satisfies both sides.

This Manual offers human rights training relevant to basic police work. The Manual is designed to provide all the necessary elements for the conduct of human rights training programmes for law enforcement

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<sup>1</sup> This term refers to the process by which newly-established states continue to enforce the legislation of the states within which they were formerly incorporated.

officials, carrying out basic police duties, under a system developed by international and domestic instruments and standards.

This Manual provides information on sources, systems and standards for human rights in law enforcement, along with practical guidance and international instruments. It is designed to be a readily accessible and portable reference for law enforcement officers, containing a number of point-form standards, organized according to police duties, functions and topics.

The authors would like to offer special thanks to Ms. Lisbet Ilkjaer from the Danish Institute for Human Rights, and all the colleagues who helped to develop the manuals, for the inspiring comments and suggestions on the early drafts of this work.

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## CHAPTER 1

### POLICING IN DEMOCRACIES



- Where do human rights come from
- Doesn't concern for human rights hinder effective police work
- How can respecting human rights help the police
- What role does training play in protecting human rights
- Policing in Democracies
- Ethical and Legal Police Conduct
- Police and Non-discrimination

The objectives of this chapter is to give answers to the questions what are human rights and the role of the Police in the democratic state. We shall explore the importance of the police service in the protection of democracy.

#### 1.1. Where do human rights come from?

There are many international treaties and declarations, which confer rights and freedoms on individuals. Perhaps the most famous one is the Universal Declaration of Human Rights of 1948, which was adopted just after the end of the Second World War. However, the treaty, which most concerns us is – **The European Convention on Human Rights**. The newly formed Council of Europe drafted the Convention after the war with the object of providing a means of enforcing the UN declaration.

The Convention remains the major achievement of the Council and can be seen as a direct descendant of many other historic charters, which sought to enshrine and enforce rights and freedoms. For example,

- **The Magna Carta 1215**
- **The Bill of Rights 1689**
- **The American Declaration of Independence 1776**
- **The French Declaration of the Rights of Man and the Citizen 1789**

As you can see, there is nothing particularly new about human rights.

**The Council of Europe** was formed by 10 democratic European states in May 1949 to provide a structure which would secure peace, safety and freedom for the inhabitants of Europe. It should not be confused with the European Union that was formed some years later, primarily as an economic alliance. Strasbourg was symbolically chosen as the seat of the Council because of its history as a disputed territory. There are now 43 members or contracting states. The Council maintains a Committee of Ministers and the European Court of Human Rights itself in Strasbourg.

### **1.2. Doesn't concern for Human Rights hinder effective police work?**

Most people have heard the argument that respect for human rights is somehow opposed to effective law enforcement. And effective law enforcement means to capture the criminal. And to secure his conviction, it is necessary to “bend the rules” a little. A tendency to use overwhelming force in controlling demonstrations, physical pressure to extract information from detainees, or excessive force to secure an arrest can be observed now and then. In this way of thinking, law enforcement is a war against crime, and human rights are merely obstacles thrown in the path of the police by lawyers and NGOs.

In fact, violations of human rights by police only make the already challenging task of law enforcement more difficult. When the law enforcer becomes the lawbreaker, the result is an assault on human dignity, on the law itself and on all institutions of public authority. The effects of police human rights violations are multi-fold:

- They erode public confidence
- They hamper effective prosecutions in court
- They isolate the police from the community
- They result in the guilty avoiding sentence, and the innocent being punished
- They force police agencies to be reactive, rather than preventive in their approach to crime
- They bring agents and institutions of public authority into disrepute
- They exacerbate civil unrest

### **1.3. How can respecting human rights help the police?**

Respect for human rights by law enforcement agencies actually enhances the effectiveness of those agencies. Where human rights are systematically respected, police officers have developed professionalism in their approaches to solving and preventing crime and maintaining public order. In this sense, respect for human rights by police is, in addition to being a moral, legal and ethical imperative, also a practical requirement for law enforcement. When the police are seen to respect, uphold and defend human rights:

- Public confidence is built and community cooperation fostered
- Legal prosecutions are successful in court
- Police are seen as part of the community, performing a valuable social function
- The fair administration of justice is served, and, consequently, confidence in the system
- An example is set for respect for the law by others in the society
- Police are able to be closer to the community, and, therefore, in a position to prevent and solve crimes through proactive policing
- Support is elicited from the media, from the international community, and from higher authorities
- A contribution is made to the peaceful resolution of conflicts and complaints



An effective police service is one that serves as the first line of defense in the protection of human rights. Its members carry out their work in a way, which does not rely upon fear and raw power but on the contrary on the regard for the law, honor, and professionalism.

#### **1.4. What role does training play in protecting human rights?**

The effective training of police in human rights is an essential element in the global efforts to promote and protect human rights in every country. In order to protect human rights, the police must first know and understand them. Furthermore, police officers must be familiar with the various international guidelines and bodies of principles – such as the Code of Conduct for law enforcement officials and the principles on the use of force and firearms – and be able to use them as tools in their everyday work. They must understand the fact that international human rights standards concerning their work were developed to provide invaluable guidance for the performance of their crucial functions in a democratic society.

However, police officers in the line of duty should know not only what the rules are, but also how to do their job effectively within the confines of those rules. Training efforts which do not cover those concerns will likely be neither credible nor effective.

Throughout the training sessions, it is important to emphasize that knowledge of human rights is an essential professional requirement of all personnel serving in modern law enforcement agencies. The central purpose of policing, after all, is enforcement of the law, and no law stands higher in authority than the law of human rights.

#### **1.5. Policing in Democracies**

The term democracy has many meanings, and there is variety of forms of democratic government.

Democracy is linked with two ideals:

- Rule of law
- The promotion and protection of human rights

Democracy, whether viewed as a process or an end condition, is defined by broad values involving participation and formal rules about procedures such as elections.

The fundamental democratic principles set out in human rights texts are the principles of:

- Participatory and representative government
- Equal access to public service
- Universal and equal suffrage based on free and periodical elections
- Respect for fundamental freedoms

Police must orient themselves and always operate in a manner that is consistent with the Constitution and laws of the state. It is the law, created by the democratically elected representatives of the people, which must guide police action. Arbitrary enforcement of the law is inconsistent with this principle.

In the performance of their duties, the police must display adherence to the internationally recognized human rights standards. Torture or other cruel inhuman or degrading treatment of either citizens or detainees, is inconsistent with this principle and cannot be practiced or countenanced by police officers.

Human rights are derived from the inherent dignity and worth of the human person and they are universal, inalienable and equal. This means that they are inherent in every human being; they cannot be taken away from or surrendered by any person, and everyone has human rights in the same measure – regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The police share responsibility to uphold the **Universal Declaration of Human Rights (UDHR)**, **UN Covenants on Civil and Political Rights (ICCPR)**, **European Convention for Human Rights (ECHR)** and other international human rights instruments. These documents contain a number of human rights, which are particularly relevant for police work:

- Everyone has the right to life, liberty and security of person (Article 3, UDHR)
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5, UDHR)
- All are equal before the law and are entitled to equal protection of the law without any discrimination (Article 7, UDHR)
- No one shall be subjected to arbitrary arrest and detention (Article 9, UDHR).
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defense (Article 11(1), UDHR)
- Everyone has the right to freedom of opinion and expression (Article 19, UDHR)
- Everyone has the right to freedom of peaceful assembly and association, and no one may be compelled to belong to an association (Article 20, UDHR)

Other international documents directly relevant to policing work are the following:

#### **United Nations**

- UN Code of Conduct for Law Enforcement Officials (1979)
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)
- UN Declaration on the Protection of All Persons from Enforced Disappearances (1992)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- UN International Covenant on Civil and Political Rights (ICCPR), (1966)
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- UN Standard Minimum Rules for the Treatment of Prisoners (1977)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles) (1988)
- UN Convention on the Rights of the Child (1989)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- UN Declaration on the Elimination of all forms of discrimination against Women (1967)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers (1990)

#### **Council of Europe**

- European Convention of Human Rights (1950)
- European Convention for the Prevention of Torture (1987)
- Declaration of the Police (1979)
- Framework Convention for the Protection of National Minorities (1995)
- Code of Conduct (2001)

Some specific provisions of human rights texts are designed to protect:

##### **(i) The right of freedom of thought, conscience and religion**

Freedom of thought, conscience and religion is important for people, whether considered as individuals or groups, in order to enable them to form and develop ideas and ideals. This, in turn, is an essential element of democratic processes. This right is protected under the Universal Declaration of Human rights (art. 18); The International Covenant on Civil and Political Rights (art. 18); and the European Convention on Human Rights (art. 9).

**(ii) The right to freedom of opinion and expression**

Freedom of opinion and expression is essential for the political processes in the same way that freedom of thought is. The liberty to express oneself freely is a significant instrument of freedom of conscience and self-fulfillment. It enables people to contribute to debates about social and moral values. This right is protected under the Universal Declaration of Human rights (art. 19); The International Covenant on Civil and Political Rights (art. 21 and 22); the European Convention on Human Rights (art. 11).

**(iii) The rights to freedom of peaceful assembly and association**

Politics can be conducted only in associations with others and when there is a forum for the exchange of ideas, proposal and politics. This right is protected under the Universal Declaration of Human rights (art. 20); The International Covenant on Civil and Political Rights (art. 19); the European Convention on Human Rights (art. 10).

The political rights described above, which are international standards, have implication on policing in the democratic society. The word police is related to Greek words *politeuein*, which means to be a citizen or to engage in political activity, and *polis*, which means a city or state. With the expansion of the law over the several centuries, the word police also developed into being increasingly concerned with the prevention of public dangers such as crime and disorder and the prevention or redress of breaches of law. Democratic societies experienced a continual tension between the desire for order (security) and liberty. Desire for freedom and security are the two great human hopes. To help reconcile freedom with security has been the great challenge to governments thought history.

The police are the most visible governmental institution, the representation of government that citizens are most likely to observe and to have direct contact with on a regular, if not daily, basis. To civilians, the police represent “government in action” and thus may influence their overall opinions on and perspectives of the larger government, its philosophy and applicability to their daily lives. The actions of the police may strengthen or weaken the public support necessary to sustain a viable democracy.

It is ironic that the police are both a major support and a major threat to a democratic society. When the police operate under the rule of law, they may protect democracy by their example of respect for the law and by suppressing crime.

Therefore, one element in defining a democratic society is a police force that:

- Is subject to the rule of law embodying values respectful of human dignity rather than the wishes of a powerful leader or party
- Can intervene in the life of citizens only under limited and carefully controlled circumstances
- Is publicly accountable

In a democratic society, the police must not be above the law. In spite of strong pressures and temptations moving in the opposite direction, they are not to act in an explicitly political fashion. Their purpose must not be to enforce political conformity. When opponents of democracy operate within the law, the police have an obligation to protect their rights, as well as the rights of others. It is of great importance to understand that the police have no powers or authority of their own except that which they can muster through their character, both individually and collectively.

The police must serve the public and they are accountable to the public they serve.

The essence of policing is public service. In a democratic society the police are guardians of the public safety. They are accountable to the public in the execution of that task.

Openness and accountability are essential aspects of the role of the police in a democratic society. When highly controversial issues like these arise, the police must be prepared to respond to public concerns if they want to retain the confidence of the citizens. It is suggested that public confidence and trust with the police will increase with a police service that immediately investigates controversial incidents and make the result known, warts and all, as soon as possible.

One of the most elementary requirements for public confidence in the police service is a trust in the fact, that members of the service will be accountable should they mistreat citizens or their public responsibility. That trust is absent with certain parts of the population - particularly among the marginalized and the deprived, which also tend to be among those with the most frequent contact to the police. It should also be self-evident that a prerequisite to convincing the general public that the police service is dedicated to upholding and protecting human rights, is a confidence in the fact that members of the service will not abuse their rights. And the best way of generating that confidence is to convince people that in case of grievances, there is a speedy, effective and independent mechanism for getting it remedied.

#### **1.6. Ethical and Legal Police Conduct**

Policing is more than just an occupation. The special trust reposed by the public in the police requires for the police to exercise the highest standards of ethical conduct in the discharge of their duties.

The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules and the UN Body of Principles set out several important principles and prerequisites for the humane performance of law enforcement functions, including that:

- Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole
- The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws
- Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every official has an impact on the entire system
- Every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny
- Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law; enforcement official, through education and training and through monitoring

Public acceptance, therefore, is essential for an effective police. Acceptance will come mostly through trust and confidence. This trust and confidence can be built largely through reciprocity between the police and the community. Therefore, the police have to mobilize community consensus to develop institutionalized support and mechanisms.

If the police are efficient, honest, impartial and conduct themselves as servants of the public, they gain public regard and can count confidently on assistance from the general public in any emergency. In general, ethical and legal principals on whom the ethical and legal policing are based are:

- respect for, and obedience of the law
- respect for the dignity of the human persons
- respect for, and protection of human rightsle.

### **1.7. Police and Non-discrimination**

In an important sense, a democratic police is a politically neutral police. Democratic societies strive for equal law enforcement. Police must discharge their duties in a non-discriminatory manner. By this statement could be explained that law enforcement, public safety and protection of human rights must be handled in a manner which is fair and equal for all persons. Discrimination on the basis of race, gender, religion, language, complexion, political opinion, national origin, birth, property, ethnicity or other status in the delivery of police services is incompatible with policing in a democratic state. This principal applies to the recruitment, promotion, and assignment of police officers, as well.

The composition of the police should reflect the public they serve. Should their personal attitude depart from the demands of the role they are playing, this must not affect their behavior.

A multi-ethnic society places special demands on the police organization. As a result, the police must accept the need to adapt their professionalism, quality of service and their legal and wider responsibilities to the needs of a continually changing population. The goal is to provide services that are applicable and accessible to all citizens regardless of their ethnic background. In this world of ethnic and cultural diversity, the role of the police is crucial. With their special responsibility for the maintenance of law and order in society, the police are essential guardians of our social framework.

The police have a professional interest in reflecting the same ethnic diversity in their organization. One of the most important means to reach this goal is recruitment. Recruitment of police officers from minority ethnic communities will have an additional cultural value that will be beneficial to the police department as well as to the society in general. Ethnic diversity can benefit the entire organization and as a result promote professionalism.

First of all, the the police must always act - and be seen to act - with unquestionable fairness towards all groups, and with clear respect for ethnic and cultural difference. Because of their high visibility, the police must accept the fact that they need to act as a 'role-model' for all public agencies in promoting fundamental rights. Secondly, if minorities are to overcome social obstacles and play their full part, the police must strive to use their special and unique powers in support of multi-ethnic ideals. They need to use the law to its fullest extent to combat acts motivated by racism and xenophobia. The police also need to work in a proactive manner to prevent such actions, and to assist ethnic and social integration.

#### **Human Rights Standards for Good Conduct by Law Enforcement Officials**

1. Everyone is entitled to equal protection of the law, without discrimination on any grounds, and especially against violence or threat. Be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, refugees, displaced persons and members of minority groups.
2. Treat all victims of crime with compassion and respect, and in particular protect their safety and privacy.
3. Do not use force except when strictly necessary and to the minimum extent required under the circumstances.
4. Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.
5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.
6. Arrest no person unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures.
7. Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.
8. All detainees must be treated humanely. Do not inflict, instigate or tolerate any act of torture or ill-treatment, in any circumstances, and refuse to obey any order to do so.
9. Do not carry out, order or cover up extrajudicial executions or "disappearances", and refuse to obey any order to do so.
10. Report all breaches of these Standards to your senior officer and to the office of the public prosecutor. Do everything within your power to ensure steps are taken to investigate these breaches.





## CHAPTER 2

### POLICE POWERS



- **Defining police powers**
- **Types of police powers and basis for their implementation**
- **International instruments which cover use of police powers**
- **Use of powers**

The purpose of this chapter is to offer general information to the students about:

- what are police powers
- the source and legal basis for their implementation
- the tactics of their implementation

#### 2.1. Introduction to police powers

In defining its values, the democratic society begins with defining the types of powers and their implementation in relation to the international rules and constitutional norms. Those frameworks are the fundament in defining the legal rules for using police powers.

In the first case, the warrant satisfies the legal criteria for implementing the powers; therefore, the police officers start with operational-tactical activities that will allow enforcement of law and realization of the warrant.

Before activating police powers, serious security estimations have to be made with regards to the necessary number of police officers and equipment. In cases of use of high level of police powers, when there is obvious transformation of the powers in coercion, important prerequisite for success is to use a tactics of surprise. The preparation activities imply understanding the details and advance the knowledge of several options.

In the second case, when we deal with applying powers related to the law, the procedure is more sensitive. This is a situation where a police officer discovers a case and must enforce the law, separating it from other events. For example, it involves arresting a person, making decision to use force or firearms in preventing danger.

Both cases involve the use of high level police powers. However, in the case where a police officer needs to apply police powers as result of the proactive police work, additional conditions appear that need to be satisfied. **The first principle is to use minimum force**, which is necessary to enforce the law.

While recognizing police powers and providing concrete legal grounds for their application, the lawmaker has not provided solutions for cases where particularly specified powers will be used, because it is not possible. However, the law delegates a right of discretion to the police officers independently to estimate in a concrete case what type of power is necessary to be used. In view of the above mentioned, this right is also at the same time a duty for the police officers to estimate each case correctly, and after that, referring to their own professional knowledge, to choose the most appropriate tactics and power.

Making such decision is not an easy job. Very often it will be done under time pressure, in circumstances without possibility for previous preparation or estimation, when the police officer is in a vulnerable position of mental pressure, as unavoidable factors influencing the level of attention to the specific situation.

## **2.2. Defining police powers**

These types of powers are only given to law enforcement officers, who have obligation and right to serve in accordance with the law. The capacity to do so implies law norms, which allow the law enforcement officers to use powers, including force. However, it is crucial that police powers are defined by law and that they are the final source for terminating danger; it is not a question of police will.

A law enforcement officer is a person, who, under conditions stipulated by law, is competent to use police powers.

The law enforcement officer is obliged to use police powers under the stipulated conditions. The European Convention only allows police force that doesn't exceed the absolutely necessary. Criminal laws in many European countries involve the use of police powers, which are necessary to apprehend the perpetrator of an offence, and the consequences of this use have to be adequate to the consequences caused by offence.

From the abovementioned, it should be recognized **that police powers are opportunities provided by law for the law enforcement officers to undertake legally prescribed measures, methods, and means, in order to prevent criminal offences or to detect and apprehend the perpetrators of those offences.**

The concept of **reasonable force** is largely accepted in common law. In that way, there are two different approaches; reasonable force, which can be used by citizens, and reasonable force, which can be used by police officers. The word "reasonable" limits the quantity of the force in given situations, which on the other hand justify the intensity of the force. Two factors have to be stress:

- First, the intensity of the implemented force must be connected with the purpose for which the force is used.
- Second, when a person is kept in a room, for example in a police station, there is no reason to use force.

### 2.3. Types of police powers and grounds for their implementation

Protection of life and personal security of the citizens; prevention and detection of the offences; detecting and catching the offenders and delivering them to the competent official institutions; maintaining the public peace and order, the traffic safety on the roads, in the railway traffic and on the lake; control of the border crossing and protection of the green border line, or, briefly, creating high level of safety and protection in the community, are work tasks that require the law enforcement agencies to implement certain police powers.

Police powers are as follows:

- Warning
- Ordering
- Identification
- Summons
- Arrest
- Detention
- Movement restriction in a certain area or building
- Deprivation from liberty
- Escorting to the court
- Handcuffing
- Raids in homes and other premises
- Search of persons, vehicles and luggage
- Temporary seizure of goods
- Use of physical force
- Rubber truncheon
- Fire arms
- Chemical and other means of coercion
- Use of police dogs

#### 2.4. International instruments which cover use of police powers

The number of cases from the past related to violation of human rights and freedoms represented a strong reason for the international community to take wide action for promotion and protection of those values and the human being from the possibility **to be tortured, discriminated, or punished**. Guaranteeing the right to life, freedom, and protection from torture, inhuman or degrading treatment or punishment as fundamental human rights, the international community raised concerns on possible abuse of power. Due to the aforesaid, breaches of these values are connected with the people who possess legitimate powers, primarily the police. That is why universal standards are incorporated in the international instruments, according to which law enforcement officers may apply use of force only when it is really necessary and only to that degree required in their line of duty.

#### 2.5. Use of powers

A democratic society is sensitive to the use of police powers. Each abuse of power stimulates a number of public reactions. Those reactions require that the government institutions not just pay attention to the correct application of the stipulated powers, but also that the use of power is directly proportional to the necessity. Hence, the application of the powers should be monitored through two aspects:

- First, in what manner and how to incorporate these powers in the law system
- Second, what is the limit of the legally founded, socially justifiable, and allowed application of force, that does not endanger the freedom, the rights and other social and individual values and benefits

A solution to this issue could spring from the rule of law and the existing principles. The principle of legality should secure protection of the citizens and their freedoms and rights from the excessive or unlawful repression by the state bodies and furthermore secure the strict implementation of rules that protect freedoms and human rights.

The second principle important in using force by police is the legitimacy of the repression. To achieve their own function, the police may use force in kind and form, which is required and ultimate in subduing resistance and re-establishing the full peace and order, and not a bit more.

If repression is required, the legal standards and the Code of Conduct for the person responsible for enforcing the law prescribe the use of repression only to the level that is necessary for enforcing the law. This means that using legitimate force must be balanced with the legitimate target.

In this case, it is a matter of balance between the means and the purpose. Thus, the Code (Art. 3) underlines that the persons responsible for enforcing the law must use force only when it is ultimately necessary and to the level required by the exercise of their function. The force may only be used as described and allowed by law. Inappropriate and unlawful use of force by police officers will be sanctioned as abuse of powers. That is why force as a method and means applied by police in realization of their function should be the exemption as opposed to the rule. It is not a system or style of work - rather a necessity in some specific cases that cannot be solved in other ways.

The legal police powers are subject to control not just on the principle of legality, but it is permanently directed and controlled by the police deontology.

A second important attitude for the police is the question of its efficiency or professionalism. It is not possible any more to see the police as a "force with truncheon," as an instrument of physical coercion and power element based solely on force, but on the contrary – as a segment of society and a necessary institution of social control, as a middle point that reflects society. Furthermore, it cannot be forgotten that the first task of the police is to secure the safety of the citizens and secondly, the security of the constitutional order. It should be known that police deontology and professional ethics hold an important place in the education process of the police officer.

The quantity of the applied force is governed by the principle of proportionality, or the principle of using minimum force. It means that in order to subdue unlawful behavior, it will be necessary to use minimum police force, which is appropriate and just to the duration of that behavior. In that way one can see the very restrictive approach in using firearms, which is a logical step in police policy to give priority to the easier means and, according to the consequences, less dangerous police means of force.

The application of powers is possible in two ways: according to the order issued by competent institution or and according to the powers provided for by law (assessed by the police officer).

In the police law, the order to use power can be issued by the court, competent institution in the administrative procedure, competent prosecution institution and the Ministry of Interior, or its regional institution.

The order issued by the responsible police person may not be substituted with the order issued by responsible state institution.

The police officers are obliged to fulfill the tasks and orders issued by their superior officers. In this framework, they are obliged to take orders on using powers, including the most difficult order. The police officer must carry out the given order with the easiest means of coercion, without intention to estimate it.

At the beginning, the police officer must direct the use of force towards an object (taking in account that these are not dangerous objects or objects that can initiate further widespread danger), and then direct the force against a person. However, there are exceptions to this rule. If the police officer believes that the order is unlawful, the officer must inform the superior officer who has issued the order about this. The police officer will refuse to carry out the re-issued written order of the higher police officer, if its realization means making an offence.

When using police force, it is not possible to establish in advance the measures or rules, which will be standards for all cases. A police officer who uses force has to assess what kind of powers it takes to achieve the goal in every concrete situation.

The police officer must be expected to use physical force first, then police club, and finally, fire arm.

Important factors that influence the selection of the means are: the severity of the attack, the value of the protected object, the *modus operandi system*, the time and the place when the attack is made, the means which have been used during the attack, the gravity of the consequences and etc., the level of training of the officer, the preparedness of the officer for prompt and realistic assessment of the specific situation and evaluation for further action and other features important in the given situation.

### **TACTICAL COMMUNICATION STRATEGIES**

#### **Contact Method**

- (1) Extend greetings
  - Greetings humanizes the contact
  - Greetings makes the presence of an officer in uniform easier
  - Greetings reduce barriers psychologically
  - Say "Hi", "Hello", "Good Evening"
- (2) Identify yourself and your department
  - Think about what you are going to say
  - Give your first name to make the contact less formal (the idea is to reduce resistance)
- (3) Explain the reason for contact
  - State the reason why you are there
- (4) Explain justification for contact
  - Use your questioning skills to find out why the persons are there and whether they have justification for their actions
  - Do not jump to conclusions
- (5) Ask for I.D.
  - Government-issued picture I.D. such as driver's license is best
  - I.D. helps reduce resistance
  - Refer back to include name as they give it e.g. "Mr. Smith"
  - Watch movement especially of hands
- (6) Explain decision
  - Gather information and make a decision e.g. arrest, warning, let go
- (7) Bring closure
  - Closing comments are important and should relate to that contact and what happened
  - The way you say goodbye must match the action you have taken
  - Where appropriate say "Thanks for your cooperation", and say it with meaning; be public-relations oriented
  - Give consideration to how you leave the scene.

70 percent of encounters are completed at this stage.

**Questions:**

- What are police powers?
- What is the principle of minimum force?
- What types of police powers can you recognize?
- What are the bases for implementation of the police power?
- What are the most important international instruments, which influence the police power?
- How you can use police power? Explain.





**CHAPTER 3****POLICE POWERS  
AND PERSONAL LIBERTY**

- **Stop and frisk**
- **Arrest**
- **Police detention**
- **Arrest for questioning**
- **Search incident to arrest**
- **Rights of the suspects**
- **Significance of booking**

This chapter will describe police powers of search, arrest and detention. It considers what an arrest and detention consist of. Information as to the sources of these powers will then be covered. It is also the purpose of this chapter to include some cautions as to the responsibilities of the police officers. The individual being detained has clearly defined rights, and these should be observed, both to avoid personal lawsuit and to make sure evidence obtained in connection with the apprehension is legally admissible in court.

**3.1. Stop and Frisk**

In the democracies it is considered intrusive if the police stop and (briefly) detain citizens and frisk (or search) them upon their arbitrary decision and with light explanation. Most police forces in the world follow the practice of stopping suspicious persons on the street or other public places for the purposes of questioning them or conducting some other form of investigation. Stopping may be accompanied by a search of the person for dangerous weapons, drugs or other stolen or prohibited articles in some cases. Since this investigative technique is ordinarily employed when there are not sufficient grounds to arrest the suspect and thus acquire authority to search him, it is often questioned whether the practice can be squared with the human rights of the individual. The powers to stop and search citizens without arrest or proof that a crime has been committed is potentially a great limitation on the freedom of the individual to go about his everyday business without interference. Such powers would clearly be an infringement of civil liberties if it could be exercised arbitrarily. Thus, if the police are to be given powers to stop and detain individuals and to search their clothing, bodies or vehicles, such powers should be limited to situations in which it is strictly necessary and safeguards should be provided to prevent the exploitation of powers.

Very broad powers to stop and search are given under Art. 32 of the Law on Internal Affairs permitting authorized officials to conduct searches of vehicles, persons and baggage when it is in the interest of the security of the state, for the detection or apprehending of the perpetrator of a criminal or petty offense, for the protection of life, personal safety or property of citizens, for the preservation of law and order, traffic safety on the roads or security at frontier crossing points. Code of Criminal Procedure allows stops and inspections only in the course of crime investigation (Art. 142).

**Reasonable grounds for suspicion** that offending, prohibited or stolen articles or other evidence of crime may be found must be *conditio sine qua non*, i.e. without such a condition that a police officer should not have explicit powers to stop and search an individual. There must be pre-existing grounds for suspicion before any stop and search action may be taken. It is essential that the police officer has more than a mere suspicion, hunch or feeling. Although the concept of reasonable grounds for suspicion is inherently imprecise, there must be some objective basis for it. Law enforcement official should not have the powers to stop a person in order to find such grounds. Reasonable suspicion should never be supported by personal factors alone (e.g. previous convictions, a person's ethnicity, color, age, hairstyle or manner of dress) nor by stereotyped images of certain persons as likely offenders. Similarly, a refusal to answer questions may well increase suspicion, but it cannot alone amount to a reasonable suspicion since a citizen is under no general legal duty to answer police questions. This will not affect the routine searching of persons entering sports grounds or other premises with their consent, or as a condition of entry, or the ability of a police officer to search a person in the street with his consent where no powers of search exists.

Before any search of a person or vehicle takes place, the officer must take reasonable steps to give the following information: his name and the name of the police station to which he is attached; the object of the search; and the grounds or authorization for undertaking it. The person to be searched or in charge of the vehicle should also be informed about his or her entitlement to a copy of the record of the search (if they ask for it within one year).

**Article 6 Rulebook MOI**

The authorized official persons in the contacts with the citizens address decently and officially, in a clear and understandable manner communicate the reason for which they address or undertake certain other measure, inform them on the rights and obligations of the citizens, identify themselves when they wear civilian clothes and on request of the citizen when they perform the affairs in uniform. The identification by the authorized official persons is made by showing the official identity card in a manner that the citizen can read the text and see the photography, and its personal name and the organizational unit the authorized official person communicates orally if the citizen requires that.

Police powers, which consist of restriction of movement to a certain area, concern the freedom of movement of larger numbers of citizens or vehicles (which can be stopped and searched). It is understandable that the balance between the rights and freedoms of the individual will be different in case of serious offences (e.g. murder, kidnapping etc.) than in cases of misdemeanors, although the balance always must be fair. Therefore, it is reasonable that **road checks** are set up from time to time, and in particular in the event of a major crime being committed in the area. A "road check" means the obstruction of a road in order to stop all vehicles passing along it, or vehicles selected by any particular criterion. However, a road check should only be authorized when an officer of a higher rank has reasonable grounds to believe that a person has committed a serious offence and also reasonable grounds to suspect that he is, or is about to be in the area covered by the road check, as well as reasonable grounds for believing that witnesses or other evidence for such a serious crime are likely to be detected.

## **3.2. Arrest and detention**

### **3.2.1. Introduction**

As described above, the police powers to stop and search impinges upon the freedom of movement of the individual. The powers of arrest interferes with the individual freedom to a far greater extent. The fact of an arrest changes the rights of the arrested citizen. Since arrest has such an impact upon the individual citizen, it must be subject to a body of strict rules concerning the grounds for arrest and the detailed procedures.

### **3.2.2. International human rights instruments**

All major international human rights instruments guarantee the rights to liberty and security of person for everyone. No one shall be subjected to arbitrary arrest or detention.

No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law (Art. 9 ICCPR, Art. 5 ECHR).

### **3.2.3. Arrest**

#### **a) The purpose of arrest**

A criminal arrest has few basic purposes:

- To make certain that the accused does not flee to some distant place or go into hiding. This insures the accused person's availability when the case comes to trial
- To give protection to the community, since the offender may commit other crimes
- To prevent loss of evidence

**b) Arrest defined**

To arrest is to deprive a person of his/her liberty, taking him/her under real or assumed authority, for the purpose of holding or detaining him/her to answer a criminal charge. Arrest takes place when a person is held or detained against his/her will. It is a restraint, however slight, on one's liberty to come and go.

**c) Physical force is not necessary to an arrest**

It is not essential that the individual being placed under arrest be subdued, handcuffed, or held down. The restraint aspect of an arrest is just as valid when the arrestee peaceably submits to authority, whether it is real or assumed.

The intent of the arresting officer to take person into custody is the distinguishing element that makes an arrest different from mere questioning, detention or street interrogation.

**d) Mere words do not constitute an arrest**

An arrest involves more than mere words spoken by an officer. When a person accompanies a policeman at the officer's request, an arrest has not necessarily been made. In fact, when the suspect goes along voluntarily and the words of arrest are never spoken, he has not been taken into custody, and therefore he has not been arrested. The would-be arrestee is still free to go his own way if he agrees to first go along with the police officer for the purpose of clearing him/herself or just "helping with the inquiries".

**e) Citizen arrest**

Although arrests are usually made by police officers, arrests may also be made by private persons when an offender has been caught *in flagranti*, i.e. a person who is in the act of committing a criminal offense subject to public prosecution. A person is considered to be in the act of committing a criminal offense when he/she is seen by somebody while committing an act which represents a crime, or is caught under circumstances which indicate that he/she has just committed an offence (Art. 188 (1) CPL).

**3.2.4. Reasonable suspicion**

All international (and comparative) human rights standards only permit deprivation of liberty when there is a reasonable suspicion that a person has committed an offence. Reasonable suspicion supposes *the existence of fact or information, which would satisfy an objective observer that the person concerned might have committed the offence*. What may be regarded as reasonable will depend upon all of the circumstances. European Court on Human Rights emphasized that suspicion must be objectively

determined, and not just *bona fide* suspicion. However, the level of suspicion necessary for the deprivation of liberty is not equal to those which, in the later stages of the criminal proceedings, are required for charging or convicting a person. Domestic law makes difference between "grounded suspicion" necessary to order pre-trial detention by judge (Art.184 CPL) and only "grounds for suspicion" is needed for deprivation of liberty (arrest without a warrant) by the police officer under Art 188 CPL.

### 3.2.5. Arrest with a warrant

The police officer should obtain a warrant in advance of arrest. Art. 12 of the Constitution has a strong preference for a court warrant in case of arrest. This was clearly not the practice of policemen a couple of years ago, but more democracies have seen this reversal of attitudes as being particularly important in present day law enforcement. No person shall be deprived of freedom unless legal safeguards have been carefully observed; an arrest warrant is generally regarded as one of the most important of these safeguards. Today it is primarily the duty of the judiciary to make an unbiased evaluation of the facts, which indicate that someone has violated a criminal law. An arrest without a warrant is now regarded as an exception to this rule.

A warrant for compulsory appearance may be issued by a judge:

- If an order for detention is issued
- If a duly summoned defendant fails to appear and fails to justify his absence or if it is not possible to dully serve the summons and the circumstances clearly indicate that the defendant is evading the receipt of the summons.

A warrant for compulsory appearance shall be executed by the police authorities.

A warrant for compulsory appearance must be issued in a written form and must contain:

- the first name and surname of the defendant who is to be brought in
- the offence he is charged with
- the respective provision of the Penal Code
- the ground for the issuance of the warrant
- the official seal and the signature of the judge who issued the warrant

The person to whom the execution of the warrant is conferred shall serve it to the defendant and shall invite the defendant to accompany him. If the defendant refuses to comply, he shall be brought by force.

### **3.2.6. Arrest without warrant**

According to Art. 188 of the CPL, the police officer can only arrest without a warrant in exceptional cases where a person is caught committing a crime (*in flagranti*), or if there is a danger of postponement (which must be justified in court).

The police officer has to inform the person deprived of liberty, in a language understandable to him, that he/she is under arrested and familiarize him with the reasons for the arrest and his rights: the right of silence, the right to consult a lawyer, to have a defender of one's own choice in the time of interrogation as well as the right to inform a member of his family and close person about the arrest (Art. 3 CPL).

The arrested person has to be identified and by rule searched for the purpose of discovering objects suitable for attack and objects that can serve as evidence material in the further procedure before the court. (Rulebook Art. 45)

For each arrest, the authorized official person composes a report in which he states the basis and the reasons, the time and the place of arrest and to which organ and when the person is surrendered (Rulebook Art. 48).

### **3.2.7. Police detention (24 hours)**

The CPL defines the exact situations for a suspect to be detained in police custody for a maximum of 24 hours. In all other cases, the suspect must be brought before the investigating judge immediately. The judge will decide on the lawfulness of the deprivation of liberty and order release if no grounds for pre-trial detention exist (Art.188 Para. 3 CPL).

### **3.2.8. Arrest for questioning (Art. 142 Para. 3 CPL)**

The law of arrest is no longer simply machinery for ensuring the appearance of an alleged offender in court to answer the given charges. Over the years it has developed almost worldwide into an investigative tool for getting a person into a police station where he can be questioned about the offence for which he is suspected. The period of detention (following arrest on reasonable suspicion) may be used to dispel or confirm the reasonable suspicion by questioning the suspect or, with his assistance, seeking other material evidence. Still, it is not the function of the police to arrest, as it were, at large and use an interrogation process at a police station in order to determine whom they should charge before a committing magistrate.

According to the recent decision of the Constitutional Court, the police can only take citizens into police custody for so called "informative talks" with **a court order** (Art. 142 CPL).

However, as the Constitution gives every citizen (whether witness or suspect) the right to refuse any conversation with the police (actually Art. 12 of the Constitution unreasonably prohibits any questioning), every citizen brought for questioning under Art. 142 of the CPL is free to leave unless the person is arrested in accordance with Art. 188 of the CPL.

### **3.2.9. Entry to arrest**

The Constitution prohibits the police from making a warrantless entry into a suspect's home when making a routine (warrantless) arrest. However, under Art. 202 CPL police officers can enter homes and other premises if it is the location of a person for whom there is a court warrant in order to bring him/ her before a court or detention.

Thus for constitutional purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives or resides when there is reason to believe the suspect is within. If there is sufficient evidence of a citizen's participation in a crime to persuade a judge that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law.

### **3.2.10. Search incident to and after arrest**

When an arrest is made, it is reasonable for the arresting officer to search the arrested person in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

The area into which an arrestee might reach in order to grab a weapon or evidentiary items could be governed by a like rule. A gun on the table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area within his immediate control (i.e. the area within which he might gain possession of a weapon or destructible evidence.) A broader search of the place of arrest may only be made under the authority of a search warrant. If it is necessary for the arrestee to put on clothing or do other things before he is taken to the station, the police may also examine the closets and other places to which the arrestee is permitted to move.

### **3.3. Rights of the suspects**

#### **3.3.1. Right to be informed immediately of the reasons for arrest**

Anyone who is deprived of liberty shall be informed, at the time of the arrest, of the reasons for his/her arrest, and shall be promptly informed of any charges against him/her. The given information must be in a language he/she understands (Art. 5 ECHR, Art. 12 from the Constitution).

A key purpose of the requirement for the information about the reasons for deprivation of liberty is to allow detainees to challenge the legality of the arrest and detention. Therefore, the given reasons must be specific. Every person arrested should be told in simple, non-technical language that he can understand, clear explanation of the legal and factual basis for the arrest or detention.

#### **3.3.2. Right to notification of rights**

In order to exercise one's rights, one must know that they exist. Everyone arrested or detained has the right to be informed of their rights (right to silence, right to counsel, information of the family, medical examination) and an explanation of how to avail themselves of such rights (Art. 3 CPL, Art. 30 of the Rulebook, Art. 29 LIA).

#### **3.3.3. Right to inform family of arrest or detention and place of confinement**

Anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place where they are being kept in custody. If a person is transferred to another place of custody, their family or friends must be informed again. The notification is to take place without delay (Art. 3 CPL, Art. 29 LIA).



**3.3.4. Right of access to a lawyer**

Anyone arrested or detained is entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent legal authority promptly after arrest and shall be provided with reasonable facilities for exercising it. Person arrested or detained has right to communicate in private with his legal adviser, who can also be present during any questioning. If the detainee asks for a lawyer, the police officer must stop the questioning for a period not longer than 2 hours from the moment when a detainee was given opportunity to inform his lawyer (Art. 12 from the Constitution, Art.188 Para 5 CPL).

A person who asks for legal advice should be given an opportunity to consult a specific lawyer. If advice is not available by these means, the person should be given an opportunity to choose from a list of those willing to provide legal advice. If this lawyer is unavailable, he may choose an alternative. A police officer must not advise the suspect about any particular solicitor.

Any request for legal advice and the action taken on it shall be recorded.

**3.3.5. Foreign nationals have right to communicate their embassy or consular post**

If the person is a refugee or a stateless person, or is under the protection of an intergovernmental organization, they must be promptly notified of their right to communicate with the appropriate international organization.

**3.3.6. Right of access to a doctor**

People held in custody by police have the right to be examined by a doctor and, when necessary, to receive medical treatment. Law enforcement officials have a duty to ensure that assistance and medical aid are rendered to any injured or affected person whenever necessary. In appropriate cases medical care extends to dental treatment and psychiatric services. Detainees needing special treatment must be transferred to specialized institutions or civil hospitals for that treatment.

**3.3.7. Right to silence**

The right to silence is inherent in the presumption of innocence and an important safeguard of the right not to be compelled to confess guilt or testify against oneself. This right is vulnerable during the interrogation of suspects as law enforcement officials often do their best to extract a confession or incriminating statements from the detainee, and the detainee's right to remain silent frustrate these efforts.

### **3.3.8. Right to a humane conditions of detention and freedom from torture**

All people deprived of their liberty are entitled to be treated with humanity and with respect for the inherent dignity of the human person. Suspects may not be subjected to any hardship or constraint other than that resulting from the deprivation of their liberty (restrictions that are unavoidable in a closed environment).

All detained people have the right to be held only in an officially recognized place of detention.

Torture and other inhuman or degrading treatment or punishment is absolutely prohibited by the international Human Rights law. According to these standards the prohibition of torture cannot be derogated from even during the state of war and public emergency. This means that the prohibition of torture is a human right of an absolute nature.

In addition to the main human rights treaties there are two special treaties devoted to prohibition of torture: The UN Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, and The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

### **3.3.9. Right to be brought promptly before a judge**

In order to safeguard the right to liberty and freedom from arbitrary arrest or detention, these remedies must be ordered by or subject to the effective control of a judicial authority. Police powers to arrest without a court warrant is an exception to the rule. Anyone deprived of liberty must be brought before a judge immediately. It is possible to detain persons arrested in police custody for a maximum of 24 hours, as an exemption and only under circumstances provided by law (Art.188 para.3 CPL, Art. 44 PR).

The purposes of the review before a judge include:

- To assess whether sufficient legal reason exist for the arrest
- To prevent violations of the detainee's fundamental rights
- To assess whether detention before trial is necessary
- To safeguard the well being of the detainee

At the delivery of an arrested person, the police officer must inform the investigating judge of the reasons and the time of the arrest. If not completed in writing, the judge will make a record.

### 3.4. Significance of booking

"Booking" is an administrative step taken after the arrested person is brought to the police station, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts on the police "blotter", and which may also include photographing, fingerprinting, etc. In order to prevent abuses, a record of every arrest must also include: the reason for the arrest, the time of arrest, the time transferred to a police custody, the time of appearance before a judicial authority; the identity of officers involved, precise information on the place of custody, and details of interrogation. The arrest record shall be communicated to the detainee or to his legal counsel.

#### Art. 35 Rulebook MOI

For each detention of a person, the authorized official person composes an official note in which the personal data of the detained person are entered, the reasons for the detention, the day and the hour when the detention started and ended, as well as other data related to the undertaking of this measure (whether in the procedure a defender was involved, whether and when his family was informed or the legal person where the person is employed if it was requested, whether there were security and other problems in relation to the detention etc).

Enclosed with the official note in the paragraph 1 from this article is made a minute book in which is correctly stated the time of starting and ending of the detained person. The authorized official person and the detained person sign the minute book.

#### Questions:

What are an officer's rights in a stop and frisk situation? Explain.

When an officer stops an auto, does it mean that an arrest is made? How far can the police go in searching a car without a warrant? May evidence obtained in a search of this kind be used in court? Explain.

List two basic purposes in making an arrest.

Explain why it is important for an arrest to be lawfully made.

What is the basic legal purpose for a warrant? List the basic requirements of a valid warrant of arrest.

What right is there to search a person in connection with an arrest? Explain.

May a person be held in police custody without a court warrant? Explain.

#### Case 1

A remand prisoner complained that he had been assaulted by police officers at the time of his arrest on May 17<sup>th</sup> and whilst detained at the GB police station in Skopje. He alleged that at the time of his arrest, police officers beat him on the head and back with butts of firearms and that after his arrival at GB police station, police officers struck him with rubber batons about the face and head and on the back, shoulders and thighs

until, eventually, he lost consciousness. He apparently regained consciousness in a hospital, received stitches to his head wounds and was taken back to GB police station, where he was held until the following evening. The prisoner's medical file at Skopje Remand Prison recorded that he had received treatment at an outside medical center and that on admission to the prison on May 18<sup>th</sup>, he displayed injuries including two head wounds and haematoma under the left eye and on the right hip. The file also recorded that he had subsequently complained to the prison's medical service of pain in the head.

**Questions:**

- Did the police officers use reasonable force?
- What should the supervisors do?
- What are the rights of the detained person relating to medical care?
- Who is responsible for keeping records of medical examinations?
- What do you know about the Committee for Prevention of Torture? (See about the CPT including the Report on Macedonia: [www.cpt.coe.int](http://www.cpt.coe.int)).

**Case 2**

A person who had been detained at Gostivar police station on March 4<sup>th</sup> stated that police officers had beaten him in order to extract a confession. He claimed that two plainclothes officers had used batons to strike him on the back, on the soles of both feet and on the palms of both hands, in the presence of two other plainclothes officers. He had allegedly been made to kneel facing the wall while beaten on the soles of both feet, and to stand with his back to the wall holding his hands out with his palms upwards while being beaten on the palms of his hands. He claimed that his requests to see a lawyer and a doctor had been denied, even though his feet had turned dark and swollen and his toes had bled. His injuries reportedly impeded his walking for ten days afterwards.

The medical record at Skopje Remand Prison, where the person in question was taken following his detention in Gostivar police station, indicated that on arrival at the prison on 5 March, he had "haematomae on both palms and soles." By the time of the delegation's visit in mid-May, these injuries had healed.

**Questions:**

- What are the rights of the suspect during questioning?
- In which situations can a detainee be interviewed without a lawyer?
- What are the legal consequences of illegally obtained evidence?
- What should the supervisors do?

## CHAPTER 4

### SEARCH AND SEIZURE



- **Right to privacy**
- **Legal protection of privacy**
- **Inspection of Vehicles, Passengers and Luggage**
- **Search of a Dwelling or Person**
- **Search warrants**
- **Action to be taken before an application is made**
- **Entry without warrant**
- **Searching of premises: general considerations**
- **Seizure and retention of property**

The chapter is discussing some of the police powers connected with the right of privacy. It ephasises the legal grounds for searches of persons, vehicles and premises. Strict procedures and detailed records are essential guaranties for civil liberties in this sphere.

#### 4.1. Right to Privacy

##### 4.1.1. Definition of Privacy

As far as the context of the right to privacy is concerned, it can be assumed that this right should protect the individual from the possible abuse of personal and sensitive information related to that individual. “One’s natural right to privacy is simply inconceivable as a legal right, sanctioned by society, but not implemented by the government. [...] Privacy itself is beyond the sphere of law.” Privacy can be defined as “a desire of the individual to choose freely under what conditions and to what extent he will expose his privacy, his views and his behavior to others in the community”. Privacy is a limited approach by others to the individual. It is a concept connected with solitude, confidentiality and autonomy, but is not the synonym for these expressions. Beyond the purely descriptive aspects of privacy, such as isolation from society and from the curiosity and influence of others, privacy is also determined by a normative element: the right to an exclusive control of access into the private sphere of individuals. Any invasion of privacy involves a violation against the person and human dignity and freedom.

#### 4.1.2. Legal Protection of Privacy

There is no doubt that a concern for the protection of privacy is one of the basic elements of all national and international associations responsible for the protection of human rights and freedoms. The Preamble to the Charter of the United Nations contains the following goal: “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” This concern for the individual underlines the historical and philosophical foundations of the need and demands for privacy.

##### **Article 8 ECHR – Right to respect for private and family life**

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In order to justify its interference with private and family life, home and correspondence, the state must also demonstrate and prove that interference in which a person is a victim has conformed to the criteria prescribed by this Article. This can be described as a test of agreement between legal norms and the criteria of interference, purpose, necessity and proportionality.

If we look at the Macedonian Constitution, it is clear that - in contrast to the provisions of the European Convention with regard to privacy protection and the concentration of those provisions into a single article - Macedonian legislators have chosen to specify privacy as a right, connecting it with the following guarantees: the respect and protection of the privacy of one’s personal and family life and one’s dignity and repute (Article 25 of the Constitution of the Republic of Macedonia); the freedom and confidentiality of correspondence and other forms of communication (Article 17); the security and confidentiality of personal information (Article 18); and the inviolability of the home (Article 26). The manner in which these provisions are designed affirm the positive obligations of the state in creating laws that will not interfere with the choice of the way of life (private life), guaranteeing that appropriate *de jure* and *de facto* family relationships are feasible; providing appropriate legal remedies for anyone who feels that their right to the privacy of their family life has been violated; allowing access to information about facts connected with their earlier life and decisions which directly affect them; and controlling information which can affect their life.

#### 4.2. Inspection of Vehicles, Passengers and Luggage

Limited searches (called "inspections") as prescribed by the CPL in Article 142 are known as criminalistic inspection and differ from the inspections carried out by the police on the basis of the police or any other legislation, such as the Road Traffic Security Act, which are known as security inspection. The inspection of vehicles, passengers and luggage is legally based in Article 142 of the CPL on the existence of "grounds for suspicion" that a criminal offence has been committed, i.e. clues from which such a suspicion arises.

There is no doubt that such actions interfere with the fundamental rights of citizens who are protected by Article 8 of the European Convention. In the same way, the International Covenant on Civil and Political Rights, in its Article 17, sets out that no one may be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

The term "inspection" has been chosen because it describes the activity of police officers as they are allowed to use their senses such as sight, hearing or smell, but not take any actions to make something inaccessible to sight accessible in such a manner that an object or area is opened, unwrapped, unpacked, etc.

An inspection of a person is limited to external inspection of clothing and other objects, and the search (frisk) of a person limited to the search of the person's clothing, footwear, body and personal luggage. Unlike the inspection, the search can be carried out when there are good chances of finding traces and objects of importance for the proceedings. The person who is detained, deprived of liberty or escorted can be inspected with no warrant and no witnesses.

Every reasonable effort must be made to reduce the embarrassment the person being searched may experience to the minimum. In every case the police should seek the co-operation of the person being searched, even if he objects to the search initially. Reasonable force may only be used as a last resort. Searches in public must be restricted to superficial examination of outer clothing only (outer coat, jacket or gloves). The police officer may first question the suspect about his behavior or his presence in the circumstances that gave rise to the suspicion, since he may have a satisfactory explanation, which will make a search unnecessary.

During the search of a vehicle, it is permitted to remove individual parts of the vehicle and to send the vehicle to a specialized workshop if it is likely that objects of a criminal offence or connected with the criminal offence and the perpetrator might be found.

The security inspection, as its name implies, aims at eliminating a certain danger, or to prevent an attack or self-injury. The existence of grounds for suspicion that a criminal offence has been committed is not required to carry out a security inspection; it is the necessity of checking whether the person carries offensive weapons or tools, i.e. means suitable for attack or self-injury.

#### **4.3. Search of a Dwelling or Person**

The search of a dwelling is a legal action regulated in detail and the police can take it only on the basis of a warrant issued by a court. In the course of police inquiries, search as an urgent investigative action without a warrant, i.e. entering a person's dwelling and a possible search of the dwelling, is possible in the following cases: (1) if the tenant or occupant of the dwelling so desires (consent), (2) to carry out an arrest warrant, and (3) if it is absolutely necessary to remove serious danger to the life or health of people or prevent damage to property of considerable value (justifiable under Criminal Code in situations of extreme necessity).

If the police enter the dwelling or other premises, the search can be carried out to find or secure evidence only in the presence of two witnesses.

Without a warrant and without witnesses, the police can search a person while carrying out a warrant of detention, compulsory appearance or arrest if it is likely that the person is in possession of offensive weapons or tools or if it is likely that he may throw away, hide or destroy the objects which need to be seized from him as evidence in criminal proceedings.

Entering a dwelling for other purposes except for the situations enumerated above represents a criminal offence of infringing the inviolability of a person's home, and any search carried out contrary to the CPL standards represents a criminal offence of unlawful search under Criminal Code.

The legal standards for the search of a dwelling are regulated in detail, as the legislator was aware of the restricting impact the rules may have on the rights to private and family life, home and correspondence of the person. On the other hand, the legislator was aware of the importance of this action for the criminal proceedings, as it is in this area many important pieces of evidence for the criminal proceedings may be obtained.



#### 4.4. Search warrants

Under Code of Criminal Procedure (Art. 198) and in accordance with Art 26 of the Constitution of the republic of Macedonia, search of dwellings and other premises of the suspect, accused or other persons may be carried out if it is likely that with the search the perpetrator will be caught or traces of the crime or objects significant for the criminal procedure will be found.

The search shall be ordered by the court with a written elaborated order (warrant), which explicitly contains the place and the person to be searched as well as the objects searched for or confiscated from the person.

#### 4.5. Action to be taken before an application is made

Where information is received which appears to justify an application for search warrant, police officer concerned must take reasonable steps to check that the information is accurate, recent and has not been provided maliciously or irresponsibly.

The identity of an informant need not be disclosed when making an application, but the officer concerned should be prepared to deal with any questions the judge may have about the accuracy of previous information provided by that source or any other related matters.

The officer shall ascertain as specifically as is possible in the circumstances the nature of the articles concerned and their location. The officer shall also make reasonable enquiries to establish what, if anything, is known about the likely occupier of the premises and the nature of the premises themselves; and whether they have been previously searched and if so how recently; and to obtain any other information relevant to the application.

##### 4.5.1. Making an application

An application for a search warrant must be supported by an information in writing, specifying:

- The enactment under which the application is made
- The premises to be searched and the object of the search
- The grounds on which the application is made (including, where the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation)

If an application is refused, no further application may be made for a warrant to search those premises unless supported by additional grounds.

#### 4.6. Searching of premises: general considerations

##### 4.6.1. Time of searches

Searches must be made at a reasonable hour unless this might frustrate the purpose of the search.

In determining at what time to make a search, the officer in charge should have regard, among other considerations, to the time of day at which the occupier of the premises is likely to be present, and should not search at a time when he, or any other person on the premises, is likely to be asleep unless not doing so is likely to frustrate the purpose of the search.

Art. 199 (4) CPL: The search is performed during the day. It may continue at night if it has started at daylight but has not been completed. With exception, the search may be conducted at night if there is a danger of delay/postponement.

A warrant authorizes an entry on one occasion only.

The officer in charge shall firstly attempt to communicate with the occupier or any other person entitled to grant access to the premises by explaining the authority under which he seeks entry to the premises and ask the occupier to allow him to enter, unless the premises to be searched are known to be unoccupied.

If the premises are occupied, the officer shall identify himself and, if not in uniform, show his warrant card and state the purpose of the search and the grounds for undertaking it, before a search begins.

Reasonable force may be used if necessary to enter premises if the officer in charge is satisfied that the premises are those specified in any warrant and where:

- The occupier or any other person entitled to grant access has refused a request to allow entry to his premises
- It is impossible to communicate with the occupier or any other person entitled to grant access

##### 4.6.2. Notice of Powers and Rights

The search warrant shall be given before the search to the person whose premises will be searched. Before the search, the person to whom the search warrant refers will be asked voluntarily to hand over the wanted objects or persons. Art. 199 (2)CPL.

A search may be commenced without previously giving a warrant or without a previous request for turning over of the person or giving away the objects

- If an armed resistance is presumed
- It is necessary in cases of suspicion that a severe crime is conducted by a group or organization the search to be carried by surprise
- If the search is to be performed in public premises. Art. 199 (3) CPL.

#### **4.6.3. Conduct of searches**

Premises may only be searched to the necessary extent in order to achieve the object of the search, having regard to the size and nature of whatever is sought. A search under warrant may not continue under the authority of that warrant once all the things specified in it have been found, or the officer in charge of the search is satisfied that they are not on the premises.

Searches must be conducted with due consideration for the property and privacy of the occupier of the premises, and with no more disturbance than necessary. Reasonable force may only be used where this is necessary because of lack of co-operation from the occupier or when co-operation is insufficient for the purpose. Art. 202 (2)(7)CPL.

If the occupier wishes to ask a friend, neighbor or other person to witness the search, he must be allowed to do so unless the officer in charge has reasonable grounds for believing that this would seriously hinder the investigation or endanger the officers concerned or other people. A search need not be unreasonably delayed for this purpose.

The search may be performed without the presence of witnesses if their presence is not possible immediately to be provided and there is a danger of delay/postponement. The reasons for a search without the presence of witnesses must be written in the minutes.

During the search of premises or persons, two adult citizens shall be present as witnesses. Before the beginning of the search, the witnesses will be warned to pay attention to the performance of the search and they will be also reminded of their right, before signing the minutes/record for the search to write in their objections if they consider that the contents of the record is incorrect.

#### **4.6.4. Leaving premises**

If premises have been entered by force, the officer in charge shall secure the premises either by arranging for the occupier or his agent to be present or by any other appropriate means before he leaves.

An officer of the rank of inspector or above shall take charge of and be present at any search. He is responsible for ensuring that the search is conducted with discretion and in such a manner as to cause the least possible disruption to any business or other activities carried on in the premises. After satisfying himself that material may not be taken from the premises without his knowledge, the officer in charge of the search shall ask for the documents or other records concerned to be produced.

If the wrong premises are searched by mistake, everything possible should be done at the earliest opportunity to allay any sense of grievance. In appropriate cases, assistance should be given to obtain compensation.

#### **4.7. Seizure and retention of property**

An officer who is searching any premises under any statutory powers or with the consent of the occupier may seize:

1. Anything covered by a warrant
2. Anything, which he has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence

Items under (1) may only be seized where this is necessary to prevent their concealment, alteration, loss, damage or destruction.

**Art. 200 (8)(9)CPL**

During the performance of the search, only those objects and documents will be temporarily confiscated which are in connection with the aim of the search in that particular case.

If in the course of a search of premises or persons, objects are found that are unrelated to the crime for which the search warrant was issued but which point to another crime that is to be prosecuted ex officio, the object will be temporarily seized and a receipt for the seizure shall be issued immediately. The public prosecutor will immediately be informed thereof. These objects will be returned without delay if the public

prosecutor finds that there are no grounds for initiation of a criminal procedure and there is no other lawful ground according to which those objects should be confiscated.

Where an officer considers that a computer may contain information that could be used as evidence, he may require the information to be produced in a form, which can be taken away and in which it is visible and legible.

#### **4.7.1. Retention**

Anything that has been seized in accordance with the above provisions may only be retained as long as it is necessary in the circumstances. It may be retained, among other purposes:

- For use as evidence at a trial for an offence
- For forensic examination or for other investigation in connection with an offence
- Where there are reasonable grounds for believing that it has been stolen or obtained by the commission of an offence, in order to establish its lawful owner

#### **4.7.2. Rights of owners**

If property is retained, the person who had custody or control of it immediately prior to its seizure must be provided with a list or description of the property within a reasonable time on request.

#### **4.8. Action to be taken after searches**

The record of the search shall include:

- the address of the premises searched
- the date, time and duration of the search
- the authority under which the search was made. A copy of the warrant shall be appended to the record or kept in a place identified in the record
- the names of the officers who conducted the search
- the names of any people on the premises
- whether any articles specified in the warrant were found
- whether any other articles were seized
- whether force was used, and, if so, the reason why it was used
- details of any damage caused during the search, and the circumstances in which it was caused

**Article 201 CPL**

For each search of residences or persons a minutes will be constructed. The minutes is signed by the official conducting the search, the person at whose place or on whom the search is conducted and the persons whose presence is compulsory.

In the minutes there the objects and documents will be included and notified correctly.

For each act in the criminal procedure, a minutes will be constructed at the time when the act was conducted, and if it is not possible then immediately after (Article 75 (1) CPL).

**Questions**

- Which are the sources of police powers of stop and inspection of persons, vehicles and premises?
- What are the differences between inspections and searches? Explain.
- Which degree of suspicion and probability suffice as a ground for the search?
- Is there any differentiation between a suspect, accused, other persons in relation to suspicion that crime has been committed?
- At whom and where can the search be performed?
- What is the difference between home and other premises?
- Can business offices and premises be searched without a warrant?
- Is search without a warrant in compliance with the Constitution?
- What are the legal consequences of illegal search?

**CHAPTER 5****THE USE OF FORCE AND FIREARMS**

- The use of force - general
- The legal provisions for use of force
- Physical force
- Rubber truncheon
- Chemical and other force means
- Firearms
- Report on the use of force means

**5.1. Use of force - general**

Although a large percentage of a police officer's time is spent on order maintenance and service activities, police officers do become involved in dangerous or high-risk situations due to the very nature of their work. Our focus in this chapter is on the police' use of force – the force options that officers have, the factors that are associated with the police use of force, and the use of less than lethal and lethal force. Sometimes the police officers are themselves, on occasion, the victim of lethal force (in some instances by their own weapons), and from practical reasons should be useful to examine this issue, as well.

In contrast to their counterparts in other areas of the criminal justice system, the police are armed and exercise considerable discretion in when to use force and how to determine what type of force (lethal or otherwise) should be employed. Though officers are trained in the appropriate use of force during recruit training, each situation encountered in the field is different. Also, it is well known that another defining attribute of the police role is the discretion that police officers exercise in carrying out their duties. The police officers, because of the discretion they exercise, develop particular styles of policing. How officers exercise discretion and their authority to use force are two important components of high-risk policing.

Art. 2 of the European Convention on Human Rights, which contains the prohibition of intentional deprivation of life, requires that everyone's life shall be protected by the law. The second paragraph of Article 2 reads:

*“Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*

- a. in defence of any person from unlawful violence*
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained*
- c. in action lawfully taken for the purpose of quelling a riot or insurrection”*

## **5.2. The legal provisions for use of force**

In performing official assignments based on Article 34 from the Internal Affairs Law, police officers have the right to use legal force in order to overcome resistance of a person. Despite all the implications the use of force can cause, it is permitted in all organized societies, but within the framework of the law and with the objective of protecting constitutional order, security of the citizens, their life and property, as well as protection of public peace and order.

Legal regulative treats use of force exclusively as a mean for realization of official assignments, and it must not and cannot be an objective in any case.

Under the term force could be understood physical or mental force with purpose to achieve something, someone or something to be forced. Under the force, in wider framework, could be understand force for achieving certain purpose with breaking the will by somebody. In the criminal procedure relations, the power is using physical force against other person with intention this person to be forced to make or to be prevent to make something. In that direction, in the literature and in the practice is accepted the attitude that as force could be understand use of hypnoses or precursors with purpose somebody, contrary on its own will, to be moved in unconscious condition or to be incapable for resistance. The force can be direct, when is used against the person one wishes to force, or indirect if is directed against a third person.

Regarding force used by the police officers, it is possible to say that:

- It isn't illegal, because is described by law
- It isn't socially useless, because of its function for protecting the social community and it can be justified with correct social standards
- The forcing, having in mind the balance between the force and targeted issue, could be estimate as socially appropriate.



The police force is intended for being a contrast to the unfair, criminal behavior. This is visible especially in cases where legal force are used for protecting the life and personal property of the citizens, for protecting the constitution and security of the state, prevention the crime and detecting the criminals, maintenance the public order, traffic security, state border line and etc.

The police methods include not only the threat of force, but also the direct use of force and other measures, including firearms. The use of those means is incorporated in the police methods all around the world - without them, it would be impossible for the police to solve its duties.

The Criminal Code authorizes everyone in Macedonia (not only the police officers) to use force to protect themselves, or anyone under their care, from assault, as long as they use no more force than necessary (Articles 9 and 10). In addition, everyone is authorized to use as much force as is reasonably necessary to prevent the commission of certain offences. This level of force may even include deadly force, depending of the circumstances of the incident.

Force in the meaning of pressure of the will can make people do things they didn't intended to do. This can be achieved with physical or mental force. Physical force can be defined as force based on methods directly attacking the personal body integrity (by different forms of torture, including eliminating the life). The mental force is defined as manifesting the force through threats and similar behavior, which produces fear of physical force or other consequences, and which results in the wanted behavior without inflicting the personal body integrity of the forced person.

The limitation of the use of force within the police organization and between the police organization and the citizens, has arisen as a result of the increasing respect of the protection of human rights. Although, as a particular tendency in the development of the police organization, most problematic issues are resolved with force and the protection is relative. The force the police use today is more efficient, more styled than before. Also, any crises that affects society or any seriously turns in the government balance, unconditionally produce a re-estimation of values in the community and leads to the strengthen of powers.

These were the reasons for the adoption of the basic rules for use of force and firearms at the Eight UN Congress for Crime Prevention and Treatment of Crime Perpetrators. These basic rules are an attempt of the international community to unify legal provisions for the use of force and firearms, only when force is used as an exception, and in a framework every country will determine with suitable legal regulations. Special regulations were passed at the Congress, which determine the basic rights and duties of police officers in cases where they use legal force.

Our positive legal regulations are fully taking over the obligations emerging from these basic rules, having in mind the regulations from the Criminal Charges Law and Internal Affairs Law, which regulate this

matter. Force and means of force can be used when ordered by the superior officer, especially in cases where there is a reestablishment of public peace and order or some other planned official action is taken on, with the involvement of a larger number of police officers. Still, the cases where police officers decide on their own whether to use force or not and what means to use, are most common. It is important to mention that the legal obligation of a police officer is to overcome the resistance of a person without the use of force or with the use of the lightest force means, thus carrying out his official assignment. However, it has to be said that this is neither easy, nor simple, because the time for decision-making on the matter and the intensity of the intervention is measured in seconds, and the decision is conditioned by many factors, such as the type of resistance that has to be overcome, its intensity, conditions that need to be fulfilled for the use of a certain kind of force means, and the most important factor being the skills and psycho-physical readiness of the police officer, which determines the choice of the force means during the intervention.

Despite the fact that there is no universal rule for choice of force means, the police officer should act by and follow the principles listed below when making a decision:

- 1) Force can be used exclusively for overcoming the resistance of a person, when performing a official assignment
- 2) When using force, only legally regulated force means can be used
- 3) Use of force is possible only when overcoming the resistance of a person that cannot be overcome in any other way, and cannot be delayed at the moment
- 4) Force means, which is used in the intervention, can only be used in a way and under conditions regulated by a law

Use of force can last as long as the reasons for the intervention last; every additional action would constitute a breach of official authorities. The largest number of breaches of official authorities are made during use of force.

Every time a legal use of force and firearms are necessary and unavoidable, police officers are obligated to:

- Perform a restriction of that activity in relation to the graveness of the offence, which led to use of force in order to reach legal aims
- Provide a respect and protection of human life, not causing greater material damages
- Provision of suitable medical assistance to every injured or hit person in the shortest time, no matter his status before and after the intervention
- Immediate notice to the authorities about the event
- Provision of correct and timely notice to relatives and close ones of the injured or hit person

Force and force means should be used in order to overcome resistance, which can be different in intensity, and according to the existing Regulation of the Macedonian Government, the following force means can be used:

- Physical force
- Rubber truncheon
- Chemical and other legally regulated force means
- Firearms

### **5.3. Physical force**

Use of physical force can be the easiest force means. This conduct of physical force encompasses usage of blocks, arm grabs and other self-defense or attack skills, aiming to overcome or neutralize the resistance of a person. Physical force is used for overcoming the resistance of a person, who disturbs public peace and order, when the person is brought in and arrested, or when resisting an attack of a person, or an object and a person that is protected, as well as in cases when the police officer is deterred in performing his official assignments, under the assumption that those assignments cannot be done in any other way, while the concrete case cannot be delayed. This shows that the use of physical force cannot be separated from the overcoming of resistance of a person. Resistance is the common characteristic in the use of any kind of force means and it is consequently necessary to classify it by type.

Resistance is characterized as any kind of opposing to orders from police officers or the behavior of a person that obstructs the performance of an official police assignment, especially keeping and establishment of public peace and order; protection at the site of the crime; bringing, keeping or imprisoning a person etc.

Resistance can be passive or active. Passive resistance occurs when a person is not responding to the call or order of the police officer, as well as in cases where the person takes up a position (standing, lying, sitting, taking a certain static object etc.), which disables or obstructs the police officer in his normal performance of official assignments. Active resistance takes place when a person is opposing a police officer with the use of a concrete type of physical force (he tries to fight, shoves, tries to run away etc), or has a dangerous object, cold steel or firearms. Cases of urging third persons to give resistance to the police officer in the performance of official assignments are also considered as active resistance.

When talking about overcoming active resistance of a person, the police officer has the legal right to use a more heavy force means depending on the intensity of the active resistance if he cannot do it with physical force.

Use of physical force can last as long as the reasons, due to which it was used, last. This means, that the moment the resistance is overcome or neutralized, thus creating assumptions for successful performing of the official assignment, the use of force has to end. Every overstep of the framework of the official assignment with force would mean overstepping an official authorization, which can be sanctioned with suitable disciplinary or criminal charges.

#### **5.4. Rubber truncheon**

Use of rubber truncheon is allowed in the same cases that were stated as possibilities for use of physical force by the police officer, the difference being that the rubber truncheon, as heavier force means, is used for overcoming active resistance. The exception is that the rubber truncheon can be used for overcoming passive resistance, when physical force is not enough for overcoming the person, or if he is too strong for the police officer.

The use of rubber truncheon in performing official assignments constitutes a heavier force means than physical force, as the rubber truncheon can cause heavy physical injuries, even death. Therefore, every police officer should use the rubber truncheon only as means for overcoming anti-legal or immediate resistance of a person, and not as means for beating and causing injuries. Thus, having in mind the striking force of the rubber truncheon, it can be used only in the area of extremities (hands and legs), back and behind. If the police officer acted in these areas, it can be said that he overcame resistance. Every action with the truncheon on the head, neck, chest, loins, kidneys or sexual organs is out of the framework of official action - that is not overcoming resistance, but brutal beating with possible fatal consequences.

Rubber truncheon cannot be used towards children, elderly, ill persons, invalids or pregnant women.

Exception can only be taken into account under the assumption that one of the categories stated is endangering the life of the police officer or other person with firearms or other means, while, with the use of easier force means, the objective danger cannot be removed.

### 5.5. Chemical and other force means

In performing official assignments, police officers have the right to use chemical and other force means, when ordered by authorities in the Internal Ministry or a person authorized by them. Successful engagement of police in cases of citizen unrest and disturbances of public peace and order is mostly impossible without a legal and controlled use of chemical means. The use of these means in official assignments of the police is regulated with Internal Affairs Law, while the way of their application is regulated with a special legal act.

The term chemical means encompasses different types of devices- means filled with chemical matters that have the purpose of temporary and short-term disabling people and other life force. These are means, which are constructed, made and adjusted for use in complex security situations regulated by law.

Water guns, special motor vehicles, means for forceful stopping of motor vehicles and electric truncheons are also considered as force means.

The practical use of chemical and other force means is not the least simple. It is connected with an issued consent of the official in the internal affairs organ and with a command from the immediate superior officer that leads a concrete police activity and it is relevant especially in the following cases:

- In reestablishing public peace and order of greater dimension (demonstrations, mass fighting etc)
- In overcoming armed resistance of a person that has to be brought in or imprisoned
- When arresting doers of hard crimes, while they are barricaded in objects, transportation vehicles and other spaces
- When resisting an attack by another person, or an object that is protected
- In all cases when the legal bases for use of firearms have been fulfilled

### 5.6. Firearms

Based on Article 35 from the Internal Affairs Law, police officers have the right to use the hardest force means – firearms, in the performance of official assignments. It is an authorization, that has serious consequences almost without exception on the person towards whom it is used, but also on the police officer using it. The use of firearms can cause serious danger to the health, or the actual death of the person at whom it is used, as well as causing serious psychic traumas to the police officer. This is the case since the police officer appears as the judge without performing any formal proceedings, he passes judgment and

executes. At the same time, he is aware of the fact that the Constitution of the Republic of Macedonia gives guaranties about the inviolability of life and the fact that nobody has the right to pronounce a death penalty. Even in cases where the use of firearms will be estimated as justified and legal, the dilemma in the police officer's mind will always be present: whether he has done everything to avoid the use of firearms, whether it was necessary, could it be avoided.

**Legal bases for use of firearms, in accordance with the Internal Affairs Law, Article 35, will be fulfilled in the cases when there is a need of:**

1. Protection of peoples' lives
2. Resistance of anti-legal, immediate attack of endangering of his life
3. Resistance of an attack from an object or a person that is protected
4. Averting the flight of a person who:
  - is caught in performing a crime act that leads to passing a prison sentence of five or more years
  - has performed other criminal act, and there are bases of doubt that he will use firearms
  - is arrested or there is a warrant for his arrest on the bases of doubt that he has done some of the cited crimes.

**1) The police officer will use firearms when the life of a person or more persons is endangered or is in immediate danger, with the purpose of rejecting or preventing the ongoing illegal attack.** An attack that seriously endangers life of one or more persons is considered as an immediate danger, i.e. when the attacker uses fire or steel arms, dangerous object, uses techniques, or there are more attackers, who clearly show that they have the intention of seriously endangering the life of the attacked. Still, the danger should be objective and present, which means that the attack should last over a period of time and the endangerment has to be immediate. The intervention of the police officer in this case should be directed towards rejecting the attack, meaning intervention even with firearms, which is limited to the attacker and only up until the moment when the attack ceases. The objective of the police officer must be to immobilize the attacker of further action, and not his killing.

If life endangerment of a person or persons stops, the police officer has no legal basis to act with firearms.

On October 31<sup>st</sup>, three police officers were patrolling in the Skopje area when they suddenly dispatched to the scene of a crime in progress. An armed robbery had just occurred at a market store involving two males. Shortly after receiving the information, one of the police officers spotted the suspect vehicle and requested backup, as he was about to stop the car.

In response to the request, two officers in a patrol unit attended. As the three officers exited their vehicles, one of the suspects suddenly began to walk away from the suspect vehicle. When ordered to stop the suspect suddenly turned and fired a shot at the police officers. One officer was hit in the leg and went down. Fearing for his life and of the lives of his fellow officers, a second police officer returned fire and fatally struck the assailant. The other two suspects were arrested without further incident.

**Questions:**

- When is someone's life considered as endangered to the degree, so that use of firearms on this base is necessary?
- What should be the primary objective of the police officer that uses the firearms?

**2) Use of firearms in order to reject an illegal, immediate attack. The police officer will use firearms under this legal basis, when he is attacked with means and ways that seriously endanger his life.** An attack is every action from a person, directed towards hurting or endangering the body or life of the police officer. In order for the attack to constitute a serious danger to the life of the police officer, it is necessary for it to be performed with firearms or suitable means that can cause deadly injuries. Furthermore, the attack from two or more persons is also considered as a serious attack, when the time and place of the attack clearly shows the intention of the attackers (to kill or disable the police officer, in order to perform other crimes), as well as in cases where the police officer is attacked by a person, who uses martial arts on vital parts of the body (head, neck, chest, kidneys or sexual organs).

When the attacker is armed, even the act of reaching for the weapon is considered an attack on the police officer. Having all this in mind, it can be concluded that this is a legal basis, which has its support in the institute **necessary defense**.

**3) Use of firearms in order to reject an attack from an object or a person that is protected. Use of firearms is conditioned to the need to reject a serious attack of an object or a person that are protected by the police officer, making the issue of the kind of object or which person irrelevant.** The police officer will use firearms in order to protect the object, which can be destroyed, burned, robbed or damaged, thus obstructing its further use, functioning etc. Endangerment of the life of a person that is staying in the object is also considered as an attack to an object.

Two police officers had fired their guns at a suspect while he was driving a stolen vehicle. The officers stated that they were aiming at the tires of the vehicle but that shots had gone into the passenger compartment and killed the driver. The officers were charged with aggravated assault.

The defence of the accused was self-defence. Their counsel alleged that the deceased had tried to run down the two officers and that the deceased had been driver of another stolen vehicle and had, in a previous incident, run down a police officer who had attempted to apprehend him. Expert evidence presented by the defence focused on stress as an explanation for accused officers, having missed the tires of the vehicle despite the fact that they were firing at close range. The court held the psychological and firearms evidence as admissible, stating that the defence was entitled to dispel the myth of police officers as cool, calm, and deliberate at all times.

This decision served not only as a ruling in favour of police who use force in defending themselves against an unprovoked assault; it also recognized the reality of stress on the performance of police officers.

**Questions:**

- When is a person considered caught committing a criminal act and what are the required circumstances that legalize the necessary use of firearms?
- List as least 5 criminal acts, for which a prison sentence of at least 5 years is envisaged?
- What is the police officer's primary obligation when he catches a perpetrator of a crime act (before using firearms)?

**4) Use of firearms in order to prevent a flight of a person. The police officer will use firearms when preventing the flight of a person that is caught in the act performing a crime, which envisages a prison sentence of five or more years.** Furthermore, the police officer will use firearms when he has to prevent the flight of a person that has been seen at the scene of another crime act, and the person possesses firearms and leaves space for a basic doubt that he will use it (he reaches for it, points it towards the police officer or shoots at him.) In all cases, firearms are only used as end means, with the purpose of preventing the flight of the one that has been caught at the scene of the crime. This is an obligation of the police officers, to do everything in order to prevent the flight of the person. Only when all possibilities have been exhausted, and the flight is certain, use of firearms is permitted.



### 5.7. Conditions for use of firearms

Beside the legal bases for use of firearms, Articles 36 and 37 of the Internal Affairs Law envisage the conditions that need to be fulfilled in every concrete case of the use of firearms, regardless of the legal basis upon which it is acted. In other words, a standard operative procedure has been established in the cases where the police officer is forced to use firearms. That standard procedure envisages consistent respect of all conditions, without an exception, which means that the police officer will not be responsible for the consequences if he has used firearms in situations where all legal bases had been fulfilled. If even one condition has not been met, the justification of the use of firearms is brought under serious doubt.

#### FACTORS RELATED TO THE DRAWING AND FIRING OF POLICE FIREARMS

Using a reaction-time simulator, a U.S. study (Doerner, 1991) examined the relationships between an officer's length of service, gender, and race and the timely and untimely unholstering and firing of weapon. The simulator is a computerized movie projector with a standard weapon retrofitted with a laser-emitting device designed to measure the reaction time of officers drawing their weapons during specific scenarios. Fifty-six police officers were exposed to eight different scenarios by the simulator.

Among the findings:

- Officers drew their weapon before a threat materialized in 28 percent of the incidents
- A premature shooting occurred in 5 percent of the cases
- Inexperienced rookie officers were more likely to display a weapon prematurely than were experienced officers
- Female officers displayed a tendency to keep their weapon holstered longer than their male counterparts, although the gender differences were not statistically significant
- The officer's race did not affect the degree of unholstering
- Shooting accuracy declined with the length of time it took to unholster a weapon: officers who were slow to unholster their weapon were more likely to miss the simulated assailant or were unable to return fire once an attack had commenced.

Conditions that need to be fulfilled during use of firearms, under any kind of legal basis, are the following:

- Firearms can be used only during the existence of some of the legal bases and only in a situation of performing an official assignment
- Use of firearms can overcome active resistance (it must not be used for overcoming passive resistance)
- Firearms can be used only as a necessary, end means when the official assignment could not be performed in any other way, and which could not be postponed
- Before its use, the police officer has to warn the person about his intention to use firearms. This is done through the order “Stop, or I will shoot”, and if the person possesses firearms, he would say “Don’t move, or I will shoot”. As a rule, the warning is repeated three times, but in exceptions, the weapon can be used after the first warning, especially when foggy, at night (when visibility is limited etc), when the person runs in the direction of a forest, a crowd of people, as well as in cases when in reaches the weapon. The warning is of great legal and subjective significance, because with it, the police officer gives the last opportunity and chance to the person to renounce the action that subjectively fulfills the legal basis for use of firearms;
- When using firearms, the police officer must try to overcome the active resistance with fewer consequences on the life and body of the person (to aim and shoot in extremities)
- Use of firearms must stop at the moment when the person stops performing the action, which led to the use of firearms
- In cases when use of firearms can endanger the life or lives of other, innocent persons, or can cause significant material damage and endanger the surrounding (shooting in the direction of a warehouse with inflammable matters etc), its use is excluded.

Shooting animals that endanger peoples’ lives, shooting in the air due to warning, seeking for help, signaling etc. is not considered as use of firearms.

Firearms against uniformed persons can only be used in situations when all legal bases has been fulfilled, and during existence and respect of envisaged conditions for it, as for any other person.

**The four cardinal rules of firearms safety**

- Handle all guns as though they are loaded
- Never allow the muzzle to point at a person, unless you are going to discharge your firearm at that person
- Keep your **finger off the trigger** and outside of the trigger guard until your sights are aligned with the target and you intend to fire your weapon
- Be sure of your target and what is beyond it

### 5.8. Report on the use of force means

According to Article 38 from the Internal Affairs Law, every employee in the police is obliged to make a written report and submit it to the superior officer when using force means. The report on use of force means should be objective, based on the factual situation and the present circumstances. In case force has been used at the order of the superior officer, he is obliged to submit the report to the authorities in the internal affairs organ.

The superior officer is obliged to give estimation for its justification or non-justification. The estimation will only be justified if the police officer was in the framework of his official authorities during the use of force means, regardless of the consequences for the person on which they were used. This estimation will be based on the fact that consequences came as a result of a legally based action, which free the police officer from any kind of responsibility.

Every report on use of force means is filed in suitable evidence in the organ.

**Questions:**

- What is the treatment of force in legal regulative?
- Which factors influence the choice of force means and its use?
- Under which principle will be the police officer led by, while choosing and applying the force means?
- When using some of the force means, what should the police officer turn special attention to?
- Which force means can the police officer apply in performance of official assignments and based on which document?
- What does the report for use of firearms contain?
- To whom is the report submitted and for what purpose?



**CHAPTER 6****CIVIL DISORDER AND TERRORISM**

- Civil disorder
- Armed rebellion
- Police measures and police tactics
- Terrorism

**Chapter Objectives:**

To introduce human rights and humanitarian law standards in policing during civil disorder to students

Consider the sorts and the types of critical disorders

Consider armed rebellions

Identify the most appropriate police tactics to solve the issue

Consider the types of terrorism

**6.1. Civil disorder**

Citizens meet in groups on many occasions, for different reasons and with many different consequences. Most of the people in the crowd do not have the current implications with regard to the police; some of them make problems of limited scope, but others produce confrontations between the police and the members of the group. Because of the aforementioned, the latter will be the subject of our further interest.

As the front position of the criminal justice system, the police have historically been drawn into conflicts and social disorder. In addition, the police officers continue to be involved in crises and conflicts that erupt in contemporary times. This has been noted in the Macedonian society as well, especially in the period following the abandonment of the former political socialist system and orientation to build democracy. The transfer of the property from society to private owners produced global polarization and differentiation in the community. Too often, this process is made unfair, even dishonorable. The high-tech revolution, beside providing general benefits for the civilization, also influenced a stimulation of the disorder. The establishing of high technology inflicts loss of the number of traditional sectors of work, for example in factories, tendency of reducing the jobs, removing the production in the areas with low salaries. All these effects are consequences of the increasing conflicts concerning the natural resources and the global threat relating to the survival of the planet.

The civil disorder facing the community and especially the police, is an aggressive and destructive form of public disorder, which results in damages of goods or injured or dead people. The civil disorder is the extension of the crowds or demonstrations, and is as a consequence of the violent behavior, vandalism, or aggression. The basic characteristic of civil disorder is violence as the main form of expression of one's own attitude *vis-à-vis* any person or any other reason and in expressing this attitude a number of violators are involved, who gave support to their own leaders.

The violators behave under extremely high emotional tension in circumstances when their leaders and the crowd support that, especially when they intend to fight the police. The violators generally present aggressive behavior to the attempted target, without racial approach, because of the speed and dynamics of events taking place. In addition to hate, which is addressed to the specific target, they commit violent felony against other persons and objects that surround them. From the early beginning, young people are involved in crowds organized with the means for violence. Their first task is to ignite explosion of the tensions, initiate physical violence, killing and so on. These crowds could transform themselves in more dangerous form of threat: armed rebellion.

These confrontations are difficult to predict and, given a particular combination of factors, can occur virtually anywhere at any time when large number of people are present. Although the role of the police in dealing with crowds has been discussed a lot, the actual occurrence of violent crowds often catches the police off-guard and their reaction is often less than ideal. By helping the police to identify different types of crowds and to recognize different types of warning signals, it may be possible to improve police performance on this area.

Civil disorders could be stratified according to certain criteria:

1. According to duration:
  - Temporary
  - Permanent
2. According to the number of the actors:
  - Of small proportion
  - Of larger proportion
3. According to the purpose:
  - Social
  - Political
  - Nationalistic
  - Nationalistic-separatist
  - Vandalistic

## 4. According to the dominant structure:

- Pupils
- Students
- Workers
- Citizens
- Clerical
- Racial
- Party activists

**Essential principles: civil disorder**

All measures for the restoration of order shall respect human rights.

Restoration of order shall be achieved without discrimination.

Any limitations on rights shall be only those determined by law.

Any action taken, and any limitations on rights, shall be solely for the purpose of securing respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare.

Any action taken and any limitations on rights shall be consistent with the requirements of a democratic society.

No exceptions shall be allowed with regard to the right to life; the right to freedom from torture; the prohibition of slavery; or the prohibition of imprisonment for failure to fulfil a contractual obligation.

Non-violent means shall be attempted before the use of force.

Force shall be used only for legal law-enforcement purposes.

Force applied shall be proportional to legal law-enforcement objectives.

Every effort shall be made to limit damage and injury.

A range of means for the differentiated use of force shall be available.

No unnecessary limitations on the rights to free speech, assembly, association or movement shall be imposed.

No limitations shall be imposed on freedom of opinion.

The independent functioning of the judiciary shall be maintained.

All wounded and traumatized persons shall be immediately cared for.

## **6.2. Armed rebellion**

Armed rebellion is defined as part of the revolutionary action, which means discreetly prepared armed action organized by groups or movements with the purpose of violent bringing down an established constitutional order. The rebellion could also be defined as a large action by a number of people with the purpose of a forceful breakup of the social or state system, achieving own political, ideological, nationalistic, separatist or other purpose or related to opposing any subject or any measure of the state institutions.

The armed rebellion initiates with uncertain action of some armed military units or with the organizing of armed groups by an internal political enemy or an enemy of the state. It is the most extreme and the most destructive example of political fight, which has been established by different reasons. Nowadays, the armed rebellion is mostly a consequence of the conflicts between the minorities (their separatist purposes) and their residential state. In that way, support to these forces by one or more neighboring countries or movements exist.

The armed rebellion cannot be identified with the revolution, which has deeper motives, long-term goal, and wider framework. The armed rebellion is a criminal offence. Thus, its initiators try to call for a revolution or rebellion, intending to minimize the criminal liability, to display an image calling for the world's support and sympathy and to gain international significance for their cause.

The rebellion could be said to be an armed one when its participants, fully or in limited quantity, are provided with arms or appropriate instruments for attack and defense. In that case, it is not important whether the participants keep hold of the arms permanently or not, it is enough that they hold the arms for concrete purpose and that they can use or keep them in a place from where it is very easy to use them again.



**Essential principles: armed conflicts**

During armed conflicts and occupation, police are to be considered non-combatants, unless formally incorporated into the armed forces.

Police have the right to abstain from fulfilling their functions under occupation, by reason of conscience, and this shall not result in an alteration of their status.

Humanitarian law applies in all situations of armed conflict.

Principles of humanity must be safeguarded in all situations.

Non-combatants and persons put out of action by injury, sickness, capture, or other causes must be respected and protected.

Persons suffering from the effects of war must be aided and cared for without discrimination.

Acts prohibited in all circumstances include:

- murder
- torture
- cruel or degrading treatment
- corporal punishment
- mutilation
- outrages upon personal dignity
- hostage-taking
- collective punishment
- executions without regular trial

Reprisals against the wounded, sick or shipwrecked, medical personnel and services, prisoners of war, civilians, civilian and cultural objects, the natural environment, and works containing dangerous forces are prohibited.

No one may renounce, or be forced to renounce, protection under humanitarian law.

Protected persons must at all times have resort to a protecting power, the International Committee of Red Cross, or any other impartial humanitarian organization.

**6.3. Police measures and police tactics**

After receiving information on possible disorders, the police have an obligation to study it and to assess the security situation. The assessment includes presentation of the security situation, confirming the security situation, locating the security problems and preparing the security visualization on the possible directions of the escalation of the disorders. In the process of assessment, special attention must be paid on the following questions:

- The task of the police and the purpose they want to achieve,
- The nature, structure and importance of the case (here all important circumstances must be taken in account, for example, information on the number of members in the group, its structure, motivation, tactical skills, mobility, equipment, arms, intentions by persons or group, and also the potential influence on the incident or damage to the entire situation). Also questions of political, social, sociological and psychological structure must be included in the estimation
- The legality and the rules which provide the police with their responsibilities and legitimate powers
- The police forces and other forces which exist in the plan
- The site
- The time
- The climate conditions
- The opportunity to make decisions

Based on the security assessment, a plan is then made which the police will develop, as prepared by the leader of the task force.

The plan defines the responsibilities and duties of the police, and especially of the leader of the task group, of the traffic, criminal and the regular police, of the police forces responsible for protecting the events, and also of the police forces in the city and the police reservists. In the early stage of the police operation, the following should be taken in account:

- To have a clear agreement with the organizer of the meeting. If disorders are expected, in coordination with the organizer to foresee the measures which the organizer must take, on level to catch and isolate the violators
- To exchange information with the police station in the neighborhood and in larger area (in some cases also with police organization from other states), because of making assessment on the involved risk in the event
- Information to the mass media on the type and intensity of the measures, which the police intend to take (traffic regime, intensified control on certain places, etc.)
- Permanently analyzing the situation and upgrading the security assessment and the plan
- Police exercises with intention to improving the psychological capacity, improving specific police tactics, informing on further development of the situation, as well as mobilizing additional police forces
- Structure of the telecommunication equipment and checking if it is in order
- Structure of the logistical equipment and checking the opportunity for its stand-by position

Police activity before securing the site of the event could be as follows, according to the type:

- To intensify control at the border crossings, border zone, in the railway and road traffic, because of identification of the risk groups
- To control and monitor the crowd, with their accompaniments and to make careful observation of their behavior. In addition to other activity, the venue where the crowd is gathering could be directed to carefully selected places, which are surrounded by natural or artificial barriers that could be helpful in collecting the crowd and in reducing any kind of damage produced by the violent conduct.

The second group involves the following activities:

- Dispatching police officers on planned positions at the site, before the crowd gathers. In that way, police officers are in position to notice the forthcoming risk groups, and to establish appropriate control over them
- Offering appropriate help to the organizer
- Significant presence of police officers in the field
- Constant standby of special police units
- Reasonable number of undercover police officers dispersed into the crowds, with task to observe the crowd and to control the groups, which show indications and stimulate the disorders and incidents. It is necessary to "draw" them out of the crowd at the early beginning and to deliver them on the acknowledged locations
- In addition to other activities, the police should try to break up the crowd. Breaking up usually involves prior announcement that further gathering of people is prohibited because it is contrary to law and that the participants in the crowd have been ordered to leave the site. It is necessary to give reasonable time to the participants in the crowd to leave and to offer the opportunity to do it in several available directions. The people who leave the place should not be allowed to come back, for a number of reasons
- Documentation of the situation, from security point of view. Documentation should include video footage, taking pictures and audio records. This documentation should serve as database and other kind of police evidence about persons with delinquency behavior, and also for other security issues
- To provide permanent contact with the organizer and his spokesperson.

Emotional and stress factors have influence on both sides: on the crowd and the police. Psychologists say that these very factors reduce the intellectual capacity related to decision making in the field. Police should know that police interventions, when the crowd is in question, always bear the risk to make abuse of police powers, especially when police officers are exhausted, when they find themselves in risky situation, when there are injured officers or when the police officers act in huge groups. Hence training and specialization

of police officers as well as teaching them to self-discipline is very important. It is also a borderline beyond which it is very difficult to maintain such control.

In realization of sensitive police tasks, like protection of public events, with real assessment on the potential deviant behavior, police must establish close cooperation with the public prosecutor and the court in advance, for the efficient procedure against the offenders.

#### **6.4. Terrorism**

Terrorism is a kind of ultimate political weapon with long history and many different forms. It includes use of fear and violence for intimidation. In present time, terrorism is an international phenomenon. It can be manifested in different forms, such as: kidnapping vehicle, train, or aircraft; massacre of athletes at the Olympic Games; kidnapping because of racketeering (sometimes and executing) of famous political or business persons; threatening to school staff and students; taking hostages; attacks on embassies; activating bombs; and so on.

Acts of terrorism are contrary to the purposes and principles of the Charter of the UN and terrorism has been condemned in various resolutions. In particular, terrorism is expressly forbidden in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN (1970).

Terrorism is an elusive and often politically charged concept, and it has been difficult to agree on a definition for legal purposes. None of the international texts applicable to the subject matter of this chapter offers a definition of terrorism.

A variety of definitions and types of terrorism have emerged from academic studies of the subject, and these tend to distinguish between:

- 1) Criminal terrorism – carried out with purely criminal motives,
- 2) Political terrorism – carried out with purely political motives, although it is acknowledged that these motives may sometimes be mixed.

Another distinction made is between:

- 1) State terrorism – committed by agents of a state for the purposes of repression, and
- 2) Sub-state terrorism – committed by non-state groups or individuals as a form of subversion.

The Macedonian Penal Code, Article 125, titled "Terrorism":

He, who with intention to jeopardise the state constitutional order or the security of the Republic of Macedonia will cause an explosion or fire or will undertake other dangerous act or act of violence whereby a feeling of insecurity is present with the citizens, will be sentenced with a minimum sentence of 3 years in prison.

In the education of police officers, terrorism is important from the following aspects:

- Terrorism tests the basic political values, structures and processes of liberal democracies, as well as the balance between security and liberty
- Terrorism tests institutions of criminal justice - police (and other security institutions), prosecution, courts, and correction institutions - in their protective social reaction against the deviations
- Years ago, terrorism was usually directed against the wealthy or influential. Terrorist incidents nowadays are much more likely to involve innocent people as victims. The analyses by some foreign services announce more reasons for that
- Technological achievements provided terrorists with new mobility, new weaponry, and world-wide publicity
- The growth of global and regional ties provided terrorists with a host of new targets for attack, including centers for transportation, communication, and commerce
- A "revolutionary" turn occurred in the overall political environment

Proactive preparedness for coping with terrorism emphasizes improved intelligence, better physical defenses and well-drilled crisis management teams, including not only the police but also army specialists. The trend in coping with terrorist forms appears to be making it more difficult and dangerous. The modern terrorist seems to be as ready to die as to kill. Moreover, terrorists invariably get the massive publicity they seek.

On the other hand, many countries have an environment for reduction of police powers, which are used in fighting terrorist activities, because of increasing public awareness and growing public concern to preserve personal privacy. It must be acknowledged that these restrictions represent a reaction to past police abuses of civil liberties. The solution appears to be refinement of the police analysis and tactics, under strict guidelines described by law.

#### **Questions**

- What is the definition of a civil disorder?
- What kind of stratified civil disorders do you know?
- What is armed rebellion?
- What kind of police measures and police tactics can you recognize?
- What are some of the typical strategies and tactics of terrorism?
- Is terrorism ever morally justified? If yes, under which conditions?
- What counterstrategies and tactics are open to governments and security forces?



## CHAPTER 7

### **RIGHTS AND RESPONSIBILITIES OF POLICE OFFICERS**



- Rights of the police officers
- Supervision and control over police
- Remedies for police misconduct

The aims of this chapter is to provide to the users of the manual information on basic rights of the police officers and to introduce the standard legal mechanisms of supervision, control and sanctioning of police abuses.

#### **7.1. Rights of the police officers**

In performing official assignments, there is a necessity for a balance between police officer's rights, obligations and responsibilities of their actions. The Constitution, Internal Affairs Law, Criminal Charges Law and other legal regulative determine the rights, obligations and responsibilities of police employees in detail, which, at the same time, represent a legal guaranty of their balance.

Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

This is an important element of the rule of law and of making the police part of the society it serves.

## **COUNCIL OF EUROPE DECLARATION ON THE POLICE**

### **STATUS**

1. Police forces are public services created by law, which shall have the responsibility of maintaining and enforcing the law.
2. Any citizen may join the police forces if he satisfies the relevant conditions.
3. A police officer shall receive thorough general training, professional training and in-service training, as well as appropriate instruction in social problems, democratic freedoms, human rights and in particular the European Convention on Human Rights.
4. The professional, psychological and material conditions under which a police officer must perform his duties shall be such as to protect his integrity, impartiality and dignity.
5. A police officer is entitled to a fair remuneration, and special factors are to be taken into account, such as greater risks and responsibilities and more irregular working schedules.
6. Police officers shall have the choice whether to set up professional organisations, join them and play an active part therein. They may also play an active part in other organisations.
7. A police professional organisation, provided it is representative shall have the right:
  - to take part in negotiations concerning the professional status of officers;
  - to be consulted on the administration of police units;
  - to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer.
8. Membership of a police professional organisation and playing an active part therein shall not be detrimental to any police officer.
9. In case of disciplinary or penal proceedings taken against him, a police officer has the right to be heard and to be defended by a lawyer. The decision shall be taken within a reasonable time. He shall also be able to avail himself of the assistance of a professional organisation to which he belongs.
10. A police officer against whom a disciplinary measure has been taken or penal sanction imposed shall have the right of appeal to an independent and impartial body or court.
11. The rights of a police officer before any courts or tribunals shall be the same as those of any other citizen.

The Constitution of the Republic of Macedonia allows police employees syndicate organization and action. In this direction, the Syndicate represents the counter-gravitation of the working structure in the process of realization and enhancement of rights that come from employment.



**The Internal Affairs Law determines several rights of police employees, such as:**

- right for pension and invalid insurance
- right for advanced training and progress
- right for legal protection before the courts in cases of official intervention
- right for suitable conditions, protection equipment and means for professional and free performance of working assignments, in which the employee could refuse an order, if minimal conditions for performance of an official assignment had not been met
- right for a daily, weekly and annual vacation
- right for insurance from professional risks on their lives etc.

However, in order to achieve the right balance, a high level of professional responsibility is required. Police work is public and citizens who have strict criteria when police work and conduct are in question, always judge it. In the direction of reevaluating the legality of police actions, the immediate superior officers and the courts have the most significant role, which, along with the Criminal Charges Law and the Collective Agreement of the Internal Ministry, are obligated to follow the respect of professional standards, which are determined by law and code of conduct.

## **7.2. Supervision and control over police**

Having the wide specter of police authorities in mind, the issue of **control in practicing these authorities** is put forward.

In order to make the control of the police as efficient as possible, the police should be made accountable to various independent powers of the democratic state, that is the legislative, the executive and the judicial powers.

The Parliament exercises an a priori control by passing laws that regulate the police and their powers. Sometimes, the legislative power also perform an a posteriori control through designated commissions who may initiate investigations, ex officio or following complaints by the public concerning mal administration.

The executive power perform a direct control over the police, as the police are part of the executive power. Furthermore, the police receive directives from the government as to the general priority of the their activities and the Government also establishes detailed regulations for police action. It is important to emphasize that the police should be entrusted with operational independence from the executive in the carrying out their specific tasks.

The judicial powers (including the public prosecution) should continually monitor the police in their functions as a component of the criminal justice system.

The courts also perform an a posteriori control of the police through civil and criminal proceedings initiated by other state bodies as well as by the public.

It is of the utmost importance that these powers of the state are all involved in the control of the police in a balanced way.

**Control mechanisms of application of police authorities function on a horizontal and vertical scale.**

**Horizontal control** is carried out by immediate senior officers and administrators through different forms of supervision of the work of each police officer, and most commonly through an inspection in official documents, conversations with clients that have objections on the work of a concrete police officer; through immediate inspection and control of the working place of the police officer etc.

**Vertical control** is carried out by higher senior officers of the Ministry of Interior as well as a special service that works within the Ministry. This is the Unit for Professional Standards, which basic objective is to explore all cases of violation of human rights and freedoms; misuse of official position or conduct, which is not in accordance with the professional and moral principles of conduct, determined by the ethical code of police.

Citizens can submit an initiative for the research of this unit- as parties who have suffered loss, but very frequently the immediate superior officers or directors after receiving a certain knowledge.

The unit for professional standards leads an objective and impartial procedures, after which results are given to superior administrators and services, which, depending from their findings, take on measures of professional, disciplinary, material, violation or criminal responsibility.

Authority courts and public prosecution have a special position in vertical control, which is a mandate as an independent power and on the basis of its legal authorities, the position to ask for data and information on concrete events from the interior organs that are doubted to represent a misuse of official service, overstepping official authorizations or any kind of violation of human freedoms and rights.

As a signer of the Convention for Human Freedoms and Rights, the Republic of Macedonia is open for all international organizations that do researches of conditions with protection and respect of human freedoms and rights. Thus, the International Committee for Prevention from Torture and Molesting visited several institutions in the country in 1998 and 2001 (Ministry of Interior, Ministry of Justice, Public Prosecution, investigative prisons, police stations, prisons, reformatory homes etc). The committee members had the objective of immediate inspection and control in respect of the legal standards for accommodation and dealing with individuals in police, judicial or prison proceedings.

The reports of this authoritative international organization have a serious influence in directing the measures and activities of all authority institutions in improvement of conditions and raising the standards for practical protection of human freedoms and rights.

### **7.3. Remedies for police misconduct**

Security functions, also the service role, can only be realized through an appropriate and objective law realization, within a framework clearly determinate by law. Every going out from that frame is serious risk, police to be transformed in institution without social control, in institution which will be realized some own justice, no right, what in principle must be her basic goal.

For that reason, the question on police responsibility is one of the essential and most important questions that every democratic society dedicates special attention.

Responsibility as a category can be collective and unique. However, in the part of realizing police functions, it can be exclusively unique and concrete.

All measures of concrete responsibility - professional, disciplinary, material, violation or criminal are pronounced through an impartially determined procedure, which determines all objective and subjective circumstances of a concrete event. The procedure itself is regulated in the Collective Agreement of the Internal Ministry and envisages double grading.

At first, the disciplinary commission submits a proposal for a concrete measure, and the Internal Minister passes the final decision, thus ending the first- degree procedure. secondly, after an objection, the Government Commission decides after the received opinions from the employer-

Internal Ministry or the Syndicate. The decision of the Government Commission is final and can be changed only with a court decision.

However, the best remedy for overcoming cases of overstepping official authorities, misuse of the official position and violation of human rights and freedoms is professionalism of police. That can be only carried out through a system of regular education and training of police employees.

**Questions**

- What are the rights of police officers?
- What are the control mechanisms for overlooking work in police?
- What is the basic task of the Unit for Professional Standards?
- What does the Committee for Prevention from Torture and Molesting represent, and what is its objective?
- What kinds of responsibility do you know?
- Which organ gives the decision in the disciplinary proceedings at the first, and which at the second degree?