

---

## PROTECTION OF HUMAN RIGHTS IN CASES OF POLICE POWERS EXCEED IN THE REPUBLIC OF NORTH MACEDONIA

**Temelko Risteski**

Faculty of Law, FON University – Skopje, Macedonia, [temelko\\_mkd@yahoo.com](mailto:temelko_mkd@yahoo.com)

**Georgi Tonovski**

Faculty of Law, UCLO University – Bitola, Macedonia, [gtonovski@yahoo.com](mailto:gtonovski@yahoo.com)

**Vesna Sijic**

Republic of Serbia, [vesnasijic@live.com](mailto:vesnasijic@live.com)

**Abstract:** Police in a democratic society is a service of the citizens. Its main tasks are the maintenance of public order and peace, the direct protection of human rights of citizens, the prevention of criminal acts and the fight against crime. As a service of the citizens, the police is obliged to respect human rights while performing the activities within its competence. The police have a dual role in securing human rights. On the one hand, it is obliged to protect human rights. On the other hand, when taking police powers, it should be extremely careful and not allow human rights to be endangered by exceed police powers.

The powers of the Macedonian police in the performance of the activities under its competence are prescribed by the Law on Internal Affairs and the Law on Police. They are numerous. Among them are the use of firearms and other means of coercion. In addition, it has the right to examine citizens, the right to detention and deprivation of liberty. These and other powers of the police are always followed by a latent danger of being exceeded and thus, human rights to be harmed.

The paper deal protection of human rights in cases of exceed police powers such as unlawful and unprofessional conduct, offensive and degrading behavior, harassment, excessive use of force with elements of torture, brutal behavior, bodily injuries, etc. In addition, the paper includes mechanisms for prevention of overstepping of police powers from the aspect of human rights protection.

**Keywords:** police, powers, exceed, human rights, protection

### INTRODUCTION

In a democratic society, the power stems from the citizens and belongs to the citizens. The organs and institutions of government are service of the citizens. The police, as a subsystem of the organization of the internal affairs system, is service for the citizens. The central place in this system belongs to the Ministry of Interior, as an organ of administration and, at the same time, an organ of executive power.

Within its competence, the Ministry provides professional assistance to citizens, legal entities and state bodies in the exercise of the prescribed rights and obligations, protection of life and personal safety of citizens and property.

The employees in the Ministry are obliged to protect and preserve the life and property of the citizens in the performance of their duties and tasks, to respect their freedoms and rights and to apply, in the prescribed manner, only the measures and means of coercion prescribed by law or by-laws.

Police officers are workers at the Ministry of Interior. For the performance the duties and tasks under their competence, they are given, by law, numerous police powers. Police powers are, in fact, a legitimate opportunity for police officers to undertake legal activities and use lawfully prescribed measures and actions to prevent socially negative activities or to detect and apprehend the perpetrators of those activities.

According to the Law on Police, the police officers have a lot powers: from checking and establishing the identity of persons and objects, to means of coercion: physical force, police stick, means for binding persons, device for forcible stopping of vehicles, official dog, chemical means, firearms, as and special types of equipment, weapons and explosive devices.

In the exercise of these powers, the police officer is obliged to act humanely and respect the dignity, reputation and honor of the persons, as well as the basic freedoms and rights of the individual and citizen (Article 32 of the Law on Police).

The application of police powers must be proportionate to the need for which they are undertaken. Only those with which the least harmful consequences and in the shortest period of time the goal will be achieved, are applied from the police powers.

But numerous and diverse authorizations give police officers a sense of strength and power. The one who has power, he risks to abuse it. The overstepping of police authorizations actually constitutes an abuse of the power of the police officers stemming from those powers. According to previous research, the most common are the overstepping of police authorizations: excessive use of force with elements of torture, harassment and police brutality, offensive and degrading behavior, unlawful and unprofessional conduct, non-compliance, unlawful conduct during the search and abuse of official duties.

#### **REASONS FOR EXCEEDS OF POLICE POWERS**

There is no doubt that a person having authorizations has a power. The magnitude of the power is proportional to the number of authorizations. The Law on Internal Affairs, and especially the Law on Police, gives police officers numerous authorizations. They even give them authorization to use force. That means they give them great power. Whether the police officer will abuse that great power, or will not abuse it, depends on his knowledge, his education, his culture, his ability to govern himself, to manage his actions. Power is always abused by insufficiently matured, no self-contained, unconfirmed and frustrated individuals. Such police officers there are many in the ranks of the Macedonian police. The main reason for this is the poor normative setup of the choice of and the employment of police officers that enables the employment of morally discredited individuals in the ranks of the police.

The reason for infiltration of morally discredited police officers in the police force, no doubt lies in the legal provisions of Article 95 of the Law on Police from 2006 that did not include restricting employment of police officers under convictions for crimes against the constitutional order and security of the Republic of Northern Macedonia, against holding the rights and freedoms of man and citizen, the armed forces of the Republic of Northern Macedonia, duty, major crimes against life, against property or crimes committed out of cupidity reasons or because against the job applicant there are criminal proceedings for any of these crimes. The only limit to the employment of candidates for police officers in the police, in terms of convictions, referred to not having a final decision of court order prohibiting the performance of a profession, activity or duty during such a measure. Identical provisions regarding employment conditions in the Ministry of Interior, was in the Law on Internal Affairs in 2006. Interpreting these provisions, without exaggeration, we can conclude that employee of the Ministry of Interior, and of course the police, can be citizen of the Republic of Macedonia who has committed serious crimes on parole in court case, with a final decision not imposed a ban on performing profession, activity or duty. This means that a candidate for police officer, without exaggeration, could be a murderer<sup>1</sup>, robber, rapist, pedophile, gang member, participant in trafficking or illicit drugs trafficking etc. Such officers are not creators and protectors of security and freedom, but rather triggers of fear and non-freedom. Creators and guardians of the security and freedom of citizens can only be highly professional, psychophysical healthy and morally clean police officers. They will be trust citizens and will addressee them for assistance and cooperation.

Subsequent amendments to the Law on Police, Article 95 is inserted provision that, among other requirements, as a condition for employment in the police provides vetting to prove that there is no security risk by hiring a person - candidate for the police Service. Police Law does not define the term security risk. This term is defined by the provision of Article 3, paragraph 4 of the Law on Internal Affairs as "risk of a security breach in the performance of work under the jurisdiction of the Ministry." This definition of security risk obviously is not aimed at protection of the Ministry, nor for the purpose of protecting the citizens of morally inappropriate, police officers and leaves broad space for a free evaluation of those opting for employment for each specific candidate and thus leaves space in the future in the police force to receive candidates who are not eligible to perform honest and accountable police service.

<sup>1</sup> In the beginning of June 2011, police member of the special police unit 'Tigers', that was on duty securing the solemn lodge where the prime minister and other ministers were sitting on the occasion of celebrating election victory at parliamentary elections, deadly beat the 29 years old Martin Neshoski, ho as follower of the winning party, overwhelmed by the victory, attempted to climb the solemn lodge, but after being warned, gave up. After that the policeman started chasing him, and when he caught him he caused him deadly body injuries, that were fatal for him. The authorities tried to hide cover this case. But after a series of protests by angry citizens, against the officer (known as being violent in his neighborhood) criminal proceedings for an offense of murder was initiated and he was sentenced to prison.(See Libertas, Internet edition from 06.06,2014).

With this on mind, there is no doubt that the Law on Police should incorporate restrictions on employment in the police force contained in the provisions of Article 48 of the Law on Internal Affairs from 1995<sup>2</sup>. The provisions of paragraph 1, of this article, along with the special conditions for employment in the police force was stipulated that a candidate for a police officer was not to be convicted of a crime against the constitutional order and security of the Republic of Macedonia against the economy, freedoms and human rights and freedom of citizens, armed forces of the Republic of Macedonia, duty, major crimes against life, property or crime committed out of cupidity avarice; and condition that against him there are not criminal proceedings for any of these crimes.

In order to increase the sense of strength and the appearance of rough inhuman force, contributes giving names to some of the police units as blood-thirsty animals, tigers, wolves, lions and so on. Such names psychologically stimulate some of the members of these units to act as tigers, as wolves etc. Man should be neither a tiger, nor a wolf. He should be before all, and above all man. As a member of a special police unit, he should be a brave, skillful, strong and dignified person, and in performing his duties to act as a person, not as a beast - a tiger or a wolf. Police officers "beasts" - "tigers", "lions" or "wolves" often beastly deal with their fellow citizens, and police officers humans behave in a human manner. Therefore, the appointment special police units with names of blood-thirsty beasts should end. They simply need to be named according to their purpose or with serial numbers such as the first police battalion, the second police company, and so on.

Among other things, ignorance is a very important reason for overstepping police powers. Knowledge is the foundation of virtues. If the police officer is capable to make a clear distinction between the proper and the improper conduct, he will certainly choose the proper one. Here, of course, we are talking about normal persons, not for individuals with psychopathological elements in the structure of the person. "The virtue can be learned," says Socrates. "Through knowledge it is adopted. People cannot act fairly if they have not learned what righteousness is before ... No one deliberately sinned. Sinning comes from ignorance. The wise one knows what is good and applies it; he knows what is evil and evades it. "

In order to distinguish the correct from incorrect behavior, police officers should have solid legal and ethical knowledge. The policeman should perfectly rule the regulations of his profession, on the one hand, and on the other hand, he should be solidly ethically educated. The Code of Police Ethics for him should be a reading with which he will constantly hang out. Ethical principles are always above the legal. If a person is well-educated, he will behave responsibly toward the legal regulations of his profession and will apply them consistently. There are rare cases of persons who know the legal regulations of their profession, but do not respect them. They do not respect them because they have not developed responsibility, as the main professional component of the personality character.

Police officers, as employees of the Ministry of Internal Affairs, should behave with a maximum high level of responsibility in the performance of their duties in the service and in relation to the service. The responsibility of the police officers as employees in the administrative organ is manifested as a three-dimensional social phenomenon. The first dimension encompasses the individual's responsibility towards him, in front of his conscience, in front of his system of moral values in which responsibility, as a moral value, manifests itself as a sense of duty and care for the quality performance of work tasks, followed by a critical attitude and rigor towards himself and others for their irresponsible behavior and by seriousness in the work.

The second dimension of responsibility covers the responsibility of the police officer as a public official in relation to citizens as clients and users of his services.

The third dimension of responsibility covers the responsibility of the police officer towards the administration as a public service in general and the responsibility to the Ministry of Interior as the organ of the administration in which he works - in particular.

Ethical education of police officers should equally cover all three dimensions of responsibility, because they represent dialectical unity and, if any of these dimensions is not represented or is insufficiently represented in the work of the police officers, it cannot be said about responsible person of the police officer.

### **THE EXCEEDS OF POLICE POWERS AND HUMAN RIGHTS**

Any exceed of police powers is a violation of the laws and by-laws that regulate the work of the police officers in the performance of their duties. The violation of these laws leads to a feeling of insecurity among the citizens. Safety is the basis of security. Only the citizen who knows that the laws and regulations adopted on the basis of the constitution of the state, as its basic law, are respected, fills sure. Respecting the laws and the bylaws is actually

<sup>2</sup> Official Gazette of RM, n19/95.

respecting the constitutional order established by the Constitution, or otherwise respecting the state's order. Dialectic contrary of order is clutter and chaos. People feel safe and secure in conditions of order. Disorder and chaos are sources of insecurity and fear. Where there is insecurity and fear, there is no freedom. That is why, by the police powers exceeds, the right to freedom of person is attacked.

The excessive use of force, accompanied by torture directly attacks the right to physical integrity of man. Excessive use of force can lead to the endangerment of human life, even to murder. Man's life is its greatest value. If life is lost, the man is lost. He is no longer among the living people in society. Society consists of living people.

In the function of human life are his physical and moral integrity. According to the Constitution, the life of man and his physical and moral integrity are inviolable. This means that no one has the right to jeopardize them. The beginning of the endangerment of these greatest human values means the beginning of excessive use of force.

Protecting the physical and moral integrity of the citizen, the Constitution of the Republic of Macedonia prohibits any form of torture, inhuman or degrading treatment and punishment.<sup>3</sup> By harassment of the police officer and by police brutality, the citizen is tormented. The harassment is inhuman behavior of a person towards a person. In a democratic society, man for man should be a man. In particular, this applies to a police officer whose main task is to serve the citizen. The one who serves should behave in a service, not masterly. Masterly behavior of the police is a characteristic of the police state. The democratic state is a state of the citizens. It is a civil state, not a police one.

A service-oriented police officer should respect the citizen. The Constitution of the Republic of Macedonia guarantees to the Macedonian citizen the respect and protection the right to dignity and reputation.<sup>4</sup> The offending and humiliating conduct of the police officer towards the citizen is an attack on his dignity and reputation, and at the same time, an attack on his moral integrity and, as such, it is prohibited by the Constitution and punishable by the penal laws of the Republic (the Criminal Code, the Law on Misdemeanors against the Public order and peace and other laws).

The moral crisis threatens the Macedonian society with inconsistent negative consequences. In such a moral crisis, it is difficult to survive on the principle of personal dignity with all its moral values. Police officers are people of blood and flesh. In such a social state, they easily succumb to the pathological phenomena in society. The pathological in society is abnormal, contrary to the social order. A police officer, who succumbed to the pathological in the society, behaves contrary to the order in society, contrary to the regulations and moral norms of the profession. Such behavior means exceed its powers.

The conduct that is contrary to the laws and regulations regulating police work, among other things, is a source of the other most frequent overstepping of police authorizations. They are unlawful, unprofessional conduct, failure to act, unlawful conduct during the search and abuse of the service by police officers. With these exceeds, depending on the circumstances under which they were made, the means used, the ways of their execution, the endangered values and so on, practically attack all human rights guaranteed to the citizens by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and other international legal acts on human rights.

### **PREVENTION THE EXCEEDS OF POLICE POWERS**

In order to answer the question about the prevention of overstepping police authorizations, we need to start from the reasons why it comes to them.

As we saw the first reason for the exceeds of police powers, the infiltration of morally inadmissible persons into its ranks. Social organizations, institutions, systems, and so on are made up of people. They function as service systems for people working to meet the needs and interests of others outside their organizational structure. Having this in mind, we can conclude that there is no better organization, better institution than the people they make up.

In order to ensure quality staff in the police, it is necessary to provide adequate legislation on the criteria for admission of candidates in its ranks. Those criteria should be strict, clear and precise. With their implementation in the selection of cadres to fill police lines, police should be allowed to enter mentally stable, physical strengths and durable, morally blameless dignified and prominent citizens.

<sup>3</sup> See: Article 11 of the Constitution.

<sup>4</sup> Each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and his/her dignity and repute (Constitution of the RNM, Article 25).

The education and training of candidates for police officers is the second important factor in preventing overstepping of police powers. The education of police officers covers general and vocational education. Prior to admission to the service as well as during the service, each police officer should receive general and vocational education as well as appropriate teaching in the field of social problems, public freedoms, human rights,<sup>5</sup> especially those prescribed by the European Convention on Human Rights. This education is in the function of honest, impartial and dignified performance of police duties, because it enables them to perform with a higher quality level that relies on solid general education and in-depth professional knowledge of all matters that the police officer should perform at community policing to effectively address the problems that arise in doing business. The police officer should have a good knowledge of the social situation in the field where the service is performed, especially the socio-pathological phenomena on that field. In particular, he should know the human rights and freedoms well, because the performance of police affairs carries the risk of. In the framework of vocational education, the legal education comes first. Police officers need to be well aware of the regulations that regulate police work. Such knowledge is a guarantee that they will not make mistakes when applying police powers in the performance of their official duties.

The knowledge in the field of police tactics is an important element of the professional education of the police officers. They are closely related to legal knowledge and actually knowledge and skills for the practical application of police regulations in specific situations.

Knowledge on police equipment and its possibilities is in a dialectical relationship with knowledge in the field of police tactics. A number of overstepping of police authorizations is a consequence of insufficient knowledge on the technique and the equipment with which the actions are undertaken within the framework of police tactics in taking actions in the framework of police operations.

In addition to legal education, an important place belongs to ethical education. According to the Code of Police Ethics (Article 27, paragraph 1), the training of police officers, through different levels of police education, with clearly defined goals, should provide a profile of police competence and culture, a high degree of initiative, professionalism and expertise in the execution of police function. From this provision it can be seen that the goal of education is the construction of cultural personalities of police officers who, when performing police affairs, will culturally and kindly refer to the citizens with maximum respect for their human dignity and their rights guaranteed by the Constitution of the Republic of Macedonia and with international legal acts on human rights.

The high degree of initiative, professionalism and expertise are moral values without which the efficient and effective execution of police tasks cannot be imagined. This is because police officers will often be alone in the situation, without the presence of their superiors, and without the possibility of contacting them to perform complex and dangerous tasks in servicing the citizens. Such situations require stable personalities of police officers, individuals who control their emotions to the maximum and rationally respond consistently to the police regulations. The policeman should be dignified, resolute, self-initiated, and daring person. By respecting his dignity, he will also respect the dignity of the citizens with whom he comes in contact and respects his human rights.

Control over the work of the police is of great importance in the prevention of exceeds of police powers. It can be internal and external. Violating and endangering those rights of citizens, of course, if they are not well known.

Internal control over the work of the police is performed by the by the managerial police officers and the Sector for Internal Control and Professional Standards at the Ministry of Interior.

According to the Law on Internal Affairs (Article 39) external control over the police is performed by the Parliament of the Republic of Macedonia<sup>6</sup> and by the Public Attorney (Ombudsman).

## INCLUDING CONCLUSION

The state is an organization of citizens. Human rights are guaranteed to the citizens with the Constitution of the Republic and in detail are regulated by its laws. The attack on the human rights of citizens is an attack on the Constitution and laws. Therefore, the exceeds of police powers should be prevented.

<sup>5</sup> Police training based on democracy, the rule of law and respect for the fundamental freedoms and rights of man and citizen, develops, according to the objectives of the Police. (Article 26 of the Code on the Police Ethics)

<sup>6</sup> The control is carried out directly by a special committee of the Assembly. The main goal of this control is to prevent the removal, overstepping of powers and misuse in the field of intelligence by the Office, which, if they come to them, can be harmful to the constitutional order and the security of the state.

There is no doubt that the most effective method of prevention is to build a moral profile of law enforcement officers in accordance with the Code of Police Ethics. The moral, conscientious, responsible and dignified police officer will not fall below the level of human dignity and use excessive force against the citizen to whom he should serve.

Moral norms of the Code of Police Ethics are most easily accepted by conscientious and responsible persons. Therefore, in the selecting staff for employment in the police, serious checks should be carried out. This will allow the police to find prominent, morally high-quality, conscientious and responsible persons.

In the prevention of exceeds police powers, control over the work of police officers plays a significant role. We consider that priority should be given to the external control performed by the control and protection institutions of the society: the Parliament, the Public Prosecutor's Office, the Public Attorney's Office and the courts.

Internal control performed by senior officers of the police officers and the Internal Control and Professional Standards Department of the Ministry of the Interior is often ineffective due to collegiality between police officers. The arm is not weighing scale, says one of the police apologists. It is true that the arm is not a weighing scale so he can correctly figure out when he hits, where he will hit and how much he will hit the citizen. But the arm is commanded by the brain. If it is a brain of a conscientious and responsible police officer, the arm will not strike when it does not need, or how it does not need it.

Regarding the prevention the exceeds of police powers, we would make the following recommendations:

- zero tolerance by government institutions when there are elements of police abuse or torture, thus avoiding the possibility of police collegiality and the protection of police officers who have violated the rights of citizens in the exercise of police powers;
- respecting the international and domestic standards for dealing with persons deprived of their liberty;
- respecting the principles contained in international human rights law and police work for effective research into documenting torture and other cruel, inhuman or degrading treatment by police officers;
- organizing special trainings for using non-violent skills and techniques for overcoming resistance or attack, without manifesting power and excessive use of force;
- organizing special trainings on the application of ethical standards in policing and in respecting the human rights of persons deprived of liberty, with special emphasis on the protection against torture;
- Creating a clear definition of what the use of force means in the cases of apprehension or prosecution of the suspects;
- Full and consistent compliance with the legal and by-law acts regulating police authorizations;
- Introducing sanctions in the domestic legislation that will more effectively sanction the overstepping the police authorizations.

## REFERENCES

- [1] Against Torture - Basic Documents, Helsinki Committee for Human Rights, Skopje, 2004.
- [2] Jankuloski Z., Police and Human Rights, Papyrus, Skopje, 1994.
- [3] Kalajdziev G., Police and Human Rights - Police Training Manual, Helsinki Committee for Human Rights, Skopje, 2002.
- [4] Krausho R., Human rights and their protection under international law, brochure for the police, Ministry of Interior, Skopje, 2002.
- [5] Stojanovski T., Police Ethics and Deontology, "2 August", Stip, 2006.
- [6] Risteski T. and oth. Police activities in function to achieve the right to security and freedom of citizens of the Republic of Macedonia, Proceedings, Security and Euroatlantic perspectives of the Balkans, police science and Police Profession, International scientific Conference, 25-26 may 2012, Ohrid, 2012.
- [7] Risteski T. Control Ower the Police in the Republic of Macedonia. Thematic Conference Proceedings of International Significance, Archibald Reiss Days, 2014, page 19-29.
- [8] Standardization of the basic police procedures (project), Ministry of Interior, Skopje, 2008.
- [9] Tomshich -Stojkovska A., Efficiency in the protection of Human Rights Where Police Powers are Exceeded, Coalition of Civil Associations, Skopje, 2009.