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PRINCIPLES OF PERFORMING OFFICIAL DUTIES³

Introduction

While performing their duties, police officers are exposed to contact with dangerous persons on a daily basis, which creates threats and risky situations resulting from interpersonal relations. It is these working conditions that can contribute to a potential threat to police officers' health and life in relation to the performance of their official duties. The difficulties involved in undertaking police activities are reflected in mental and physical health requirements which apply to every police officer. The reason for such requirements is that, on the one hand, police service is performed under almost constant pressure from citizens, institutions and superiors, and, on the other hand, adequate handling of duties, dangerous situations included, requires a healthy, physically fit and mentally balanced performer. When on duty, police officers have powers which determine their authority and which are not at the disposal of any other person.

One of the most important responsibilities of police officers, which has recently been in a rapidly growing demand, is to perform official duties in order to safeguard the democratic rights of individuals and groups of citizens. Such official activities are undertaken in the course of police operational duties in order to maintain public order and safety, ensure peace and suppress negative social phenomena. Police duties involve, as

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a matter of fact, difficult and complex situations, which cause considerable physical, physiological and psychological stress. As far as the police officer's professional profile is concerned, one of the key issues is the requirement of physical readiness and endurance maintained at the highest possible level, which in physical education and sports training is presented as the achievement of the optimal level of physical fitness, together with the requirement of good health and high work capacity, even after reaching the performance limit. These requirements are determined by the nature of a given police activity, which is particularly noticeable in situations when coercive measures need to be used. The use of force often results in maximum physical strain on the body and in the appearance of various factors causing fatigue and mental stress.

In many situations, an official duty is seen as a legitimate and necessary professional sports skill which is performed by a police officer without any visible signs of aggression. Service activities are often linked with conflicts and escalated crisis situations, which undoubtedly require a performer who is able to apply certain procedures and to adopt an appropriate attitude. At the same time, attention should be drawn to the fact that it is essential that the very nature and importance of individual fundamental rights and/or freedoms being affected by the performance of official duties must be born in mind. The intensity of police response must not go beyond what is necessary to achieve the objective pursued by the intervention. At the same time, police officers must fulfil their legal obligations, respect the honour and dignity of another person and their own in order to avoid unjustified harm, and to comply with the police code of ethics. The combination of all these conditions is reflected in a single service activity, which is always unique and specific, and therefore must be assessed individually. It is also important to mention Article 64 of the Police Act⁴, which stipulates that a police officer is obliged to immediately report to his or her superior any service activity in which force has been used. If there is any doubt as to the appropriateness and legitimacy of its use, or if the force has resulted in death, injury or damage to property, the superior is obliged to make sure that the force has been used in accordance with the law.

Official duty

The Police Act defines the performance of official activities both in a positive and negative way. An official duty is understood as an action by a police officer defined and carried out under the Police Act, which directly interferes with another person's fundamental rights and freedoms. Official activities are undertaken by police officers in the course of their operational duties in order to ensure the fulfilment of the responsibilities defined in Article 2 of the Police Act, as well as to maintain public

⁴ The Act on the Police No. 171/1993 Sb. as amended; hereinafter: Police Act.

order and safety, and prevent a potential threat to life, health or property, or another negative situation. The performance of official activities shall always be conditional upon the commission of a crime, minor offence or at least a reasonable suspicion that one of the above mentioned acts has been committed.

According to the Police Act, the positive definition of police officers' obligation to perform official activities is divided in terms of time into two categories, *i.e.* - the necessity to carry out official activities while on duty⁵ and - the obligation to take action when off duty⁶. It should be stressed that the negative definition of the obligation in question includes situations when a police officer is not required by law to carry out his or her duties, in particular when his or her physical condition and capacity to act are significantly impaired by medical substances or other means or when an activity to be undertaken requires special training which he or she has not been provided with, the police officer cannot intervene because of the important interest of the service connected with carrying out the activity⁷ (failure to perform official activities in a given situation is only possible if the police officer is on duty). In matters concerning important interests of the service, a police officer is obliged to assess a specific situation and to respond appropriately if there is a threat to life or health or a threat of damage to property of considerable value, or if there is a threat to a matter of greater importance than that in which the police officer is currently involved. The above does not apply to a person authorised to act by the police, who acts under permanent or limited control, and the performance of an official action may not only expose the person or reveal their identity but may also cause other negative consequences. An officer may take an action, but if he or she does not do so, no consequences can be drawn from the failure to perform his or her duties. It should be emphasised, however, that despite the absence of an obligation

⁵ A police officer on duty is obliged to respond when a crime or a minor offence has been committed or when there is a reasonable suspicion of a crime or a minor offence having been committed.

⁶ A police officer on duty is obliged to respond in the event of a crime or an offence that directly endangers life, health or property.

⁷ An important interest of the service shall be understood as: engaging in an immediate pursuit of the perpetrator of a criminal activity or making sure that such a pursuit is undertaken, covert investigation activities or the use of intelligence and technical means, intervention under common command, safety of protected persons, protection of designated premises, protection of an endangered witness and a crown witness, encrypting or a courier service obligation which would probably delay the delivery of an encrypted message or transported hazardous items, police aviation activity, working with explosives or taking actions to remove an immediate threat, the failure of whose elimination would have more serious consequences than the failure to taking new actions or necessary measures.

to undertake official actions, a police officer is obliged in each and every case to notify the nearest police department of the necessity for such actions to be performed.

Prior to undertaking official activities, a police officer is obliged, if the nature of a given event makes it possible, to use an appropriate verbal order, which includes a warning expressing the consequences of the order not being complied with. The order should be clear, understandable, concise and decisive, with the words 'in the name of the law' being usually used at the beginning. If the circumstances of the event permit, the verbal command is also directed at the person against whom the official action is taken. The conditions for the admissibility of intervention also determine the values, in particular those rights and freedoms which are being affected by the intervention (*e.g.* the right to privacy, which may be violated by the use of criminal intelligence and technical means, is particularly protected)⁸.

The reason for performing a police activity is in particular a breach of a legally protected interest, a threat of such an interest being violated, or a disturbance of public order. A connection in terms of time between the performance of official duties and an unlawful conduct of an individual is required. In the absence of such a link, the reasons for the intervention will cease to exist, but the reason for prosecuting the offender for previous unlawful conduct will remain, regardless of whether that person has committed a crime or a minor offense. The purpose of police response is, in particular, to prevent or stop a crime or an act prohibited under criminal liability criminal, to prevent violation of public order, to limit the consequences of a criminal act, to apprehend the perpetrator of such an act, *etc.*

In connection with the above, it is necessary to define the concept of operational service, which is police activity related to the performance of duties specified in the Police Act or other generally applicable legal provisions. The concept of an official activity, in comparison with the concept of operational service, is interpreted in a completely different manner, although its definition and analysis is based primarily on the definition of operational service and on the content of the service itself. The operational service is secondary to the concept of a police activity, which by its very nature fully meets the requirement for the existence of a conflict — two antagonistic forces — which appear between a police officer on the one hand and a member of the public on the other. Thus, there is the specificity, surprise and a high probability of a dangerous situation occurring while tasks are being carried out in terms of operational service, and there is the performance of an official activity as a very stressful situation, which has a negative impact on the mental state of the parties involved and which can lead to unpredictable, negative reactions. In this context, there

⁸ Čentěš J, Šimonová J, Oprávnění na zastavování a prehliadku dopravného prostriedku [in:] Grivna T, (Ed.), Pocta Pavlu Šámalovi k 65. narodeninám. Čtvrtstolietihľadánispravedlnosti na Nejvyššímsoudě, Praha, 2018.

is a need to learn how to recognise, analyse and resolve conflicts. The unanswered question is: 'How does one resolve the conflict and is the human mind good enough to answer this question?' When resolving a conflict using operational means, the ultimate goal is to minimise violence and damage, because such effects are considered inappropriate. In a specific way, the goal corresponds to the preferred principle, which is the principle of the least possible use of legitimate force, which ultimately leads to a secure, non-militant solution to the conflict. From the point of view of the methodology of conflict resolution procedures, all operation of police authorities and related security principles can be treated as a complex set of interventions, actions and other activities (measures).

The reason for performing operational duties (police activities) is a violation of the legal order or principles of social coexistence. There must be a time continuity between the execution of an intervention and a violation of the legal order. In the absence of this link, the reasons for the intervention cease to exist; in an extreme case they would never appear.

The purpose of operational activity is to prevent violation of the legal order, and if it has already been violated - to restore it, minimise the consequences, apprehend the perpetrator, provide victims with medical or other assistance, *etc.*

Operational tactics is defined as actions which define the manner in which police officers act and are commanded during interventions against an individual violating legally protected social relations. These actions are taken to prevent illegal activities, or to end them. Operational tactics entails determining the right procedures or legal measures for handling specific cases or situations, as well as for choosing the means and forces which should be used to determine the optimal procedure for successfully completing an operational activity. Operational tactics is variable and relies on the type of illegal activity, its intensity, threats, consequences *etc.*, therefore it may change depending on a specific situation. At the beginning there may be a number of its variants which may change during an operation. The choice of police tactics is primarily influenced by the social threat resulting from the behavior of the individual against whom the police are taking their action, environmental characteristics, location and time of the intervention. Quite often, the police end up using coercive measures. It is also common that during individual stages of police intervention, the intensity (aggression) of the offender's behavior is changing, which means that the offender may at some time move from showing passive resistance to an aggressive behavior, escalating into a direct physical attack on the responding police officer.

Based on thinkable conflict projections that may occur during police interventions, it is possible to prepare parametric rationality methodologies as part of the theory of rational choice⁹.

⁹ See: Berzi L, Theory of Police and Security Services (special part), A PF Bratislava, 1996, p. 33.

Basic principles of performing official duties

While performing their official duties, police officers are primarily obliged to respect the honour and dignity of another person as well as their own. Therefore, they must respect the principle of proportionality and act in a manner consistent with the provision of Article 19(1) of the Constitution of the Slovak Republic and Article 10 of the Charter of Fundamental Rights and Freedoms¹⁰. At the same time, they must not allow unjustified harm to a person nor may they let a situation happen when a possible infringement of that person's rights or freedoms as a result of police activity will exceed the level necessary to achieve the objective. However, if the rights and freedoms of a given individual are violated, a police officer is obliged to inform them as soon as possible about their rights specified in the Police Act or in accordance with other generally applicable legal regulations. The District Court in Trenčyn clearly takes the position that, *e.g.*, evidence obtained without proper cautioning (pursuant to Article 8(2) of the Police Act) cannot be considered as evidence obtained in accordance with the law¹¹.

Performance of police duties is governed by principles based on law. When determining which of them can be considered as fundamental principles, the only factors which can be taken into account are their definitions contained in the Police Act and the frequency of their application.

The principle of legality means that every official intervention must be defined and conducted within the limits of the law. A police officer must not do harm that would not be necessitated by legal or other compelling reasons. However, every person must also be aware of the fact that although the Constitution of the Slovak Republic, as the fundamental right, provides citizens of the Slovak Republic with a number of freedoms and rights, it is also possible for them to be restricted based on the principles set out therein - *i.e.* only by way of an act, while preserving fundamental rights and freedoms (Constitution of the Slovak Republic, Article 13). It is possible to impose obligations on an individual, provided that this is done in accordance with the law. This means, for example, that the exercise of the right to object laid down in Article 32 of the Constitution of the Slovak Republic is not absolute, *i.e.* it cannot be exercised without respecting other legal provisions and the rights and obligations arising therefrom. An individual is also obliged to respect the law and not to expose other persons to danger, *e.g.* as regards personal safety and free movement of traffic (Article 13 of the Constitution of the Slovak Republic and Article 3(2) of Act No. 8/2009 Sb.). Thus, if an official takes official action in the field of law, he/ she is entitled to interfere with fundamental rights and freedoms¹².

¹⁰ See: Decision of the Supreme Court of the Slovak Republic No. 2 Szo 20/2008; decision of the Supreme Court of the Slovak Republic No. 2 Szo 5/2009.

¹¹ The decision of the District Court in Trenčín of 24 February 2015, records of proceedings in case No. 23To/186/2014.

¹² Decision of the Supreme Court of the Slovak Republic No. 8 Szf 46/2012.

In the context of other provisions set out in the Police Act, a police officer must be aware of how to use a particular power or coercive measures in accordance with the law. The above are situations where he is obliged *ex lege* to choose a so-called more prudent procedure, or to decide which rights cannot be restricted in a given situation at all. In connection with this principle, a police officer must also comply with the so-called abuse-of-authority prohibition.

In order to demonstrate a violation of the principle of legality, one can refer to Article 22 of the Police Act, which states that a police officer is entitled to check whether a person against whom police action is taken is in possession of a weapon, and if they are in possession of one, the policeman is entitled to take it away. From a legal point of view, the exercise of the authority to carry out a personal search must have no other purpose than the detection and possible seizure of a weapon which could endanger the life or health of the police officer (*e.g.* in the case of possession of drugs)¹³.

Another important fundamental principle is **the principle of proportionality**, according to which official action must be proportionate to the nature and seriousness of the offence so as not to cause unjustified harm to another person¹⁴. A police officer may interfere with a person's rights and freedoms only to the extent necessary to achieve the intended purpose. As stated above, the legal definition of the requirement to respect and take into account the principle of proportionality has been emphasised in the provisions regulating the performance of police duties and the use of coercive measures and weapons. According to Article 8(1) of the Police Act, a police officer is required to choose the adequate intervention procedure, so as not to exceed the limit of force continuum which is necessary to achieve the intended objective, and at the same time not to cause unjustified harm.

The principle of proportionality has been mentioned in Article 50(4), which defines the use of coercive measures, in particular the intensity of their use, which must not be manifestly disproportionate to the risk. Since the use of weapons constitutes a serious interference, account should be taken of Section 61(4) of the Police Act, which emphasises the application of the principle of proportionality and prudence - by requiring that weapons be used carefully and fired only to cause injury to a person, so that the life and health of others are not endangered.

Therefore, police activities should be carried out in accordance with the circumstances of a given situation as it develops, a specific threat or a pre-existing threat or an illegal situation against which the intervention is taken. The intention of this principle is to strike a balance between the purpose and the applied measures.

The principle of proportionality manifests itself at three basic levels:

¹³ The decision of the District Court in Trenčín of 24 February 2015 in case No. 23To/186/2014.

¹⁴ See: *e.g.* Article 8, Article 50(4), Article 61(4) of the Police Act.

Adequacy of the chosen measures - it is necessary to apply only measures specified in the relevant law which cause the least harm to a person and allow to achieve the aim of the intervention.

1. Appropriate use of the chosen measures - it would be a breach of the principle of proportionality if the legal measures were used, but their use would be disproportionate (*e.g.* the use of a baton to respond to a verbal attack which would result in a serious injury).
2. The time of an intervention - a police officer may only intervene or use force if there is a specific danger or threat. The intervention and use of force may not take place in any other situations, *e.g.* for preventative purposes or to take revenge¹⁵.

During a search for a suspect, a police officer is subject to the provisions set out in Article 23(1)(2)(b) of the Police Act and is entitled not only to issue an order to stop a vehicle, but also to inspect one. In these circumstances, under the principle of proportionality, it is appropriate and lawful for a police officer, in accordance with Article 22(1) of the Police Act, to check that the wanted person, as well as the person present in the vehicle, are not armed. This is the case, for example, if the responding officer is aware that the passenger and the wanted person have jointly committed a criminal act. However, in the context of the discussed principle, the form and manner of the police officer's intervention must be consistent with the scope of necessary operational activities as defined in Article 8(1) of the Police Act. Given the legal definition of a weapon (Article 122(3) of the Penal Code), a person should be ordered to empty everything in their possession, including removing items from bags, handbags, *etc.* If, instead of or together with the weapon, another item is found which may be related to the commission of an offence, Article 2(2) of the Police Act and Article 92 of the Code of Criminal Procedure should be followed¹⁶.

Comparing the principle of proportionality with the Czech legislation, it must be said that it is the Act on the Police of the Czech Republic No. 273/2008 Coll. which emphasises the importance of the said principle by regulating it expressly in Article 11, according to which a police officer is obliged, in particular, to prevent unjustified harm resulting from his/her action. In addition, a police officer must ensure that a person whose safety is threatened is not harmed by a decision to refrain from taking action and must act in a manner which infringes the rights and freedoms of the person who is the target of the intervention or the rights and freedoms of third parties who are not involved in the intervention only to the extent necessary to achieve the objective of the intervention. Although the above provisions are also contained in the Act on the Police of the Slovak

¹⁵ Petovsky M, Odlerova M, Skinar T, *Ustawa o Policji. Praktyka stosowania*. Plzen: 2017, pp. 51 - 52.

¹⁶ The decision of the Supreme Court of the Slovak Republic of 26 June 2012, Ref. No.n. 2 Tdo 27/2012.

Republic, in the former act there is a separate provision which emphasises how essential it is that the principle of proportionality be respected.

The *ex officio* principle (the principle of acting by right of office) expresses an obligation for a police officer to undertake an intervention when a crime or another prohibited act has been committed, or when there is a reasonable suspicion that a criminal act has been committed (Article 9 of the Police Act), which means that a police officer acts by right of his/ her office.

The principle of possibility requires a police officer to consider whether or not it is necessary to perform official activities. A police officer assesses the objective and subjective circumstances of an official activity. A police officer uses as a matter of fact the so-called administrative deliberation, which is often influenced by his/ her own experience. In connection with the principle of possibility, the authors believe that it is necessary to mention the so-called principle of legitimate expectations, described in other generally applicable legal regulations. However, in the context of well-established case law, police officers are also obliged to comply also with this principle, which means that they should apply the same or similar procedure in identical or similar cases which require from them taking official action.

Principle of assistance and support is understood as the obligation for police officers to respond even when the authority which is obliged to do so fails to fulfil its responsibilities. In such cases a police officer makes an intervention either at the request of another authority or on his/ her own initiative or decision. The application of this principle is typical in the event of so-called conflicts of competence, cooperative activities by *e.g.* police and municipal guard, or police action at public sports events. This principle results from Article 2 of the Police Act, and more specifically from sections which state that police forces only cooperate with other authorities in carrying out specific tasks, *e.g.* those which involve maintenance of public order, assurance of civil aviation safety, *etc.* According to Article 74 of the Police Act, if a municipality is unable to protect public order relying on its own resources and measures, it shall request assistance of the police authorities. On the other hand, if there is an imminent danger of a breach of public order, police forces shall take urgent action to restore it and inform the competent authority of this fact.

The principles of promptness, decisiveness and firmness can be classified as tactical rather than legal ones. Their application involves a police officer choosing which procedure should be used to take official action, in order to secure the fastest possible successful completion of an operation, with the best possible results, and preventing the spread of undesirable effects (such as disturbances of public order, violent demonstrations or protest marches). The principle in question applies not only to the performance of the action itself, but is also logically linked to arriving at a particular scene, prompt response and providing immediate information about the occurrence of unlawful behaviour, *etc.* Therefore, it is very important that police officers are informed about an imminent threat without

the least delay. On immediate arrival at the scene police officers should choose the right operational procedure and take decisive action. The application of this principle is supposed to prevent persistent unlawfulness, offenders fleeing the scene and other harmful effects and destruction.

A police officer is required to take appropriate remedial action, taking into account the nature and circumstances of the incident, which means that the above does not apply to situations requiring urgent action where the application of a remedial measure could logically undermine those actions or cause significant property damage, injury or other destruction. Moreover, a police officer is not obliged to take a remedial measure in case of sudden violations of a legally protected interest which require urgent response. It should be stressed that a police officer cannot legally order an individual to produce their identity document before starting to perform an official duty. If circumstances allow, a police officer may exercise the right to repeatedly check a person's identity and impose penal sanctions, including warnings.

The principle of alertness - which is also included in the so-called tactical rules relevant to performing official duties. The idea behind this principle is that police officers should not expose themselves to direct danger of attack. They are obliged to continuously monitor the situation, keep an eye on the subject of the intervention, and observe the surroundings in order to prevent an unexpected attack or to overcome active resistance. In practice, police officers are often involved in situations when a resisting individual is aggressive, making the situation even worse and requiring a law enforcer to overcome resistance aimed to being stopped from performing their official duties (*e.g.* using physical force to stop a motorist who is reasonably suspected of being under the influence of alcohol and who refuses to stop for a traffic check voluntarily).

The principle of tactfulness, persuasion and instruction expects police officers to have a positive influence on the people involved in their activities before, during and after they have been completed. This principle is also closely related to the way of communication, which has to be precisely tailored to the person being addressed. It can also be reflected in the form of a verbal command, which should be concise, understandable, simple, unsophisticated, definitive and empathic. If the situation allows it, and a police officer has sound knowledge of local residents and environment, it is desirable that the subject of police intervention should be addressed *e.g.* by name or a title. A police officer should always behave politely and respect the dignity of other people and should never adopt a moralising or patronising attitude.

And finally, **the principle of information**, which is based on the importance of possessing relevant information, provided to police officers in a direct manner, preferably before they start to perform their official duties. Relying on this information, law enforcers can decide whether or not to carry out an official action, and if they decide to respond - they can use the information to choose the right operational tactic.

Conclusion

There are a number of external factors which appear when police officers perform official activities and directly or indirectly affect their course. As it develops, the situation may be also affected by the behavior of law enforcers themselves, since they must constantly make decisions with a view to complying with the fundamental principles of performing official duties, as well as be prepared for various circumstances and anticipate them. While performing official duties, not only knowledge of and compliance with the discussed principles are necessary, but also good knowledge of tactics, local residents and environment, and many years of professional experience, all of which can help police officers perform their official duties in the optimal and most effective manner.

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Summary: Abstract: The article discusses the principles of performing police official duties. Police officers cannot rely solely on discretion when performing police activities. Their performance is regulated in the relevant legal acts. Moreover, when performing official activities, police officers should demonstrate not only knowledge of the law, but also good knowledge of intervention tactics and techniques, professional knowledge, physical fitness, and the ability to assess the situation, all of which can contribute to the optimal and most effective police performance.

