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## CRIMINAL ABUSE OF POWER – SELECTED CRIMINAL LAW ISSUES USING THE EXAMPLE OF POLICE OFFICERS

### Consideration on the basis of the constitutive elements of a crime

#### Subject of protection, entity, party

**T**he subject of protection from the offence of criminal abuse of power is essentially focused on two areas. First of all, the subject is the broadly defined legal good that is in the private or public sphere<sup>2</sup>, whereby the good of an individual as well as the good of a group of people can be perceived as a legal private interest. The other exposed area of the subject of protection is “the proper functioning of public institutions and their authority”<sup>3</sup>.

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<sup>2</sup> Lach A, Article 231, [in:] Konarska-Wrzošek V (Ed.), *Kodeks karny. Komentarz*, wyd. II. Warsaw: Wolters Kluwer Polska, 2018, pp. 1085–1086.

<sup>3</sup> *Ibid.*

The offence under Article 231 of the Criminal Code is an individual proper offence, *i.e.* one that can only be committed by a person having a specific feature<sup>4</sup>. Therefore, a perpetrator of the criminal abuse of power may only be a person listed in the catalogue of entities of the provision of Article 115(13) of the Penal Code. The subject of crimes under Article 231(1–3) of the Penal Code may be police officers, under the provision of Article 115(13)(7) of the Penal Code as “officers of the body appointed to protect public security”. As can easily be seen, Article 115(13)(7) of the Penal Code constitutes an implicit norm referring to another legal act and its specific provision(s).

In the abovementioned case, the “target provision” is Article 1(2)(2) of the Act of 6 April 1990 on the Police (*i.e.* Journal of Laws of 2019, item 161, 125, 1091, 1556, 1608, 1635, 1726, 2020) which constitutes a range of basic tasks of the Police, which includes “protection of public safety and order [...]”. Therefore, if one of the basic tasks of the Police is the protection of public safety and order, it can be safely said that the Police (and its officers) have been appointed to protect public safety, and thus Police officers meet the “condition” set by Article 115(13)(7) of the Penal Code.

The content of Article 231(1) of the Criminal Code indicates that this basic type of crime can be committed only intentionally<sup>5</sup>. The overwhelming majority position in the doctrine of criminal law is in favour of the possibility of committing a crime of abuse of power with both direct and possible intentions<sup>6</sup>. This is also a view that I agree with. Life experience suggests that criminal abuse of functions is most often committed (at least by police officers) with possible intentions – this intensifies the validity of the abovementioned position of dualistic intentions. The only dissenting opinion which I know of against the background of the approach to the subjective side of the crime of abuse of power is a quote by E. Pływaczewski, who claims that an act defined in Article 231(1) of the Criminal Code can only be committed with direct intent<sup>7</sup>.

### Subject party

Acting to the detriment of public or private interests shall be deemed to be the perpetration of an offence under Article 231 of the Code

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<sup>4</sup> Marek A, Kodeks karny. Komentarz, wyd. V. Warsaw: Wolters Kluwer, 2010, p. 512.

<sup>5</sup> Barczak-Oplustil A, Iwański M, Article 231, [in:] Wróbel W, Zoll A (Eds), Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do Article 212–277d. Warsaw: Wolters Kluwer, 2017, p. 283.

<sup>6</sup> Kulik M, Article 231, [in:] Mozgawa M (Ed.), Kodeks karny. Komentarz., 8. wyd., Wolters Kluwer, Warsaw, 2017, p. 724; Guzik-Makaruk E M, Pływaczewski E W, Article 231 [in:] Filar M (Ed.), Kodeks karny. Komentarz, wyd. V. Warsaw: Wolters Kluwer, 2016, p. 1387; Stefańska B, Article 231 [in:] Stefański R A, (Ed.), Kodeks karny. Komentarz, wyd. 4, Warsaw: C.H. Beck, 2018, p. 1570.

<sup>7</sup> Pływaczewski E.W, Article 231, [in:] Górniok O (Ed.), Kodeks karny. Komentarz, wyd. II. Warsaw: LexisNexis, 2006, p. 749.

of Criminal Procedure, carried out in a concrete manner, *i.e.* by failing to fulfil obligations or abusing the power<sup>8</sup>.

The case-law has taken the position that an excess of power should be understood as the undertaking by the offender of actions which do not fall within the scope of their competence, with a simultaneous connection between the substantive and formal actions of the offender and those competences<sup>9</sup>. The Supreme Court clarifies that exceeding the powers may also consist in taking actions falling within the competence of a public officer, but against the legal conditions for taking such action<sup>10</sup>.

Lexicographers present a few of the designates of the word “complete”. Following this line of thinking, one should accept that “to complete” means “to do work required to bring the thing to an end”<sup>11</sup>. On the other hand, by “duty”, linguists understand “the need to do something arising from an internal (moral), administrative, legal, *etc.* order. [...]”<sup>12</sup>. Therefore, by using the above interpretations, the term “failure to comply with obligations” could be termed “*failure to carry out all of the mandatory actions in a given situation, resulting from a legal, administrative, moral and other warrant*”.

The question arises as to how to classify a situation in which a police officer undertakes his/her entitlement (not to be confused with an obligation), but does not perform all obligatory actions in a given situation, so that the fulfilment of that entitlement may be considered as complete (*e.g.* he/she uses the possibility of personal inspection, but does not provide the controlled person with the legal basis and actual personal inspection—Article 15d(4)(2) of the Act). In my opinion, the key criteria should be whether we are dealing with the implementation of an available provision (entitlement) or cogent provision (obligation). In the first case, each performance of an entitlement is contrary to the provisions governing the manner of performing that entitlement (performance of an entitlement in conditions in which this was unjustified or did not take all of the steps necessary to talk about the exercise of the power) or even if the unjustified interruption of the exercise of the power and the exercise of the power after the period of time allowed for its exercise would constitute an excess of power. *Per analogiam*, any performance of an obligation contrary to the rules governing the way in which that obligation is performed (performance of an obligation in conditions where it was unjustified, or failure to take all of the steps necessary to perform an obligation),

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<sup>8</sup> Barczak-Oplustil A, Iwański M, Article 231, [in:] Wróbel W, Zoll A (Eds), *Kodeks karny. Część szczególna...*, *op.cit.*, p. 272

<sup>9</sup> Judgement of the Supreme Court of 8 May 2007, IV KK 93/07, LEX No. 265807.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Electronic source:* <https://sjp.pwn.pl/szukaj/dope%C5%82ni%C4%87.html>, accessed: 13.03.2019.

<sup>12</sup> Dubisz S (Ed.), *Wielki słownik języka polskiego PWN o-q*, wyd. I. Warsaw: PWN, 2018, p. 36.

or even unjustified interruption of the exercise of an entitlement and performance of an obligation after the time prescribed for its performance will constitute a failure to fulfil an obligation. A breach of power in this sense is therefore not always the same as an act, just as a failure to fulfil an obligation is not always the same as an omission. The offence under Article 231(1) of the Code of Criminal Procedure is committed by a public officer who acts to the detriment of the private or public interest by exceeding his/her powers or failing to fulfil his/her duties<sup>13</sup>. For the potential criminal liability of the perpetrator, it is therefore crucial that the above two conditions are met cumulatively—acting to the detriment of public or private interests (secondary condition), resulting from a previous overstating of powers or failure to fulfil obligations (primary condition). For many years, there have been disputes in the doctrine of criminal law concerning the material or formal nature of an offence of abuse of power<sup>14</sup>. If it is assumed that “acting to the detriment of the public or private interest” is a characteristic of the offender’s behaviour (exceeding powers or failing to fulfil obligations), then the offender, by simply exceeding powers or failing to fulfil obligations, abstractly exposes the public or private interest to the risk of damage<sup>15</sup>. Such a danger, when the above concept is adopted, occurs immanently with every intentional act of overstepping or failure to comply with the obligations of a public official. In other words, such a danger is posed by every intentional act of overstepping or failure to comply with obligations. Leaving aside considerations of an exponential nature, it must be said that the adoption of the concept of the formal nature of an offence under Article 231(1) of the Criminal Code requires a broadly understood need for criminal policy. After all, it is difficult to disagree with the fact that any intentional overstepping of powers or failure to perform duties by a public official carries a very heavy burden of social harm.

If it is assumed that “acting to the detriment of the public or private interest” is the characteristic of the effect, the fulfilment of the features of Article 231(1) of the Code of Criminal Procedure will take place when the perpetrator, by exceeding his/her powers or failing to fulfil his/her obligations, brings about a specific threat of damage in a given situation in the public or private interest<sup>16</sup>. In other words: a simple exceeding of powers or failure to fulfil duties by a public official is not enough in this case to attribute to him/her the act under Article 231(1) of the Code of Criminal Procedure, if this behaviour resulted only in an abstract

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<sup>13</sup> Pływaczewski E.W, Article 231, [in:] Górniok O (Ed.), *Kodeks karny. Komentarz...*, *op.cit.*, p. 749.

<sup>14</sup> See: Bielski M, *Kontrowersje w zakresie materialnego bądź formalnego charakteru przestępstwa nadużycia władzy (art. 231 k.k.)*. PS 2011, No. 10, p. 72.

<sup>15</sup> Giezek J, Article 231, [in:] Giezek J (Ed.), *Kodeks karny. Część szczególna. Komentarz*. Warsaw: Wolters Kluwer, 2014, p. 762.

<sup>16</sup> Górniok O, Article 231, [in:] Wąsek A (Ed.), *Kodeks karny. Część szczególna. Komentarz do artykułów 222–316*. Vol. II. 2. Warsaw: C.H. Beck, 2005, p. 86.

(potential) and not a specific (real) danger of damage<sup>17</sup>. It also seems that this position is majority in the doctrine of criminal law<sup>18</sup>.

## **A police officer as an entity criminally exceeding the powers**

The powers of police officers are defined in detail in Chapter 3 of the Police Act entitled “The police powers”. It should be noted immediately that the chapter contains, in spite of the slightly misleading subtitling, provisions that establish standards of various kinds:

- materially oriented (as defining the powers of police officers *sensu stricto*, from which they may or may not exercise),
- formal (specifying the detailed manner of exercising by police officers the rights resulting from the material-directive regulations),
- material and binding standards (standards that properly define the duties of police officers),
- the formal second type (specifying the detailed way in which police officers perform their duties under the substantive and general rules),
- which entitle the persons concerned to act in accordance with their police powers or duties.

Provisions which standardise powers in the strict sense should be those which are indicated by the term ‘may’.

The first example which needs to be analysed in this work is the criminal abuse of powers by a police officer in the area of body search. A police officer is entitled to carry out a personal inspection in two cases. The first is to carry out a personal inspection in the event of a justified suspicion of a prohibited act under the threat of a penalty having been committed (Article 15(1)(5a) of the Polish Civil Code). The second is to carry out a personal check in order to find specific objects, including those which may be used to commit a criminal act; those which are liable to be confiscated in given situations; and those the possession of which is prohibited (Article 15(1), (5b) of the PGA). An abuse of power—in this case, as undertaking actions falling within the competence of a public officer, but contrary to the legal conditions for undertaking that action<sup>19</sup>—would be to carry out a personal check without a legal basis (*i.e.* a situation in which a personal check is carried out without a reasonable suspicion of a criminal offence having been committed and without the aim of finding specific objects). The phrase “reasonable suspicion” used by the legislator may cause controversy. A well-founded suspicion of a criminal act is not the same as a well-founded conjecture of a criminal act. The case-law accepts

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<sup>17</sup> *Ibid.*

<sup>18</sup> Lach A, Article 231, [in:] Konarska-Wrzošek V (Ed.), *Kodeks karny. Komentarz...*, *op. cit.*, p. 1086; Lachowski J, Article 231, [in:] Królikowski M, Zawłocki R (Eds), *Kodeks karny. Część szczególna. Vol. II. Komentarz. Article 222–316*, 4. Warsaw: C.H. Beck, 2017, p. 173.

<sup>19</sup> Judgement of the Supreme Court of 8 May 2007, IV KK 93/07, LEX No. 265807.

that a well-founded suspicion of a criminal act is a narrower concept than a well-founded conjecture of a criminal act<sup>20</sup>. The suspicion of a criminal act must be based on reasonable grounds; *i.e.*, those that allow a specific person to be charged. This concept means the existence of information which would convince an objective observer that a person may have committed a criminal act<sup>21</sup>. A similar opinion is shared by J. Tylman, who claims that there is a subjective feeling of the observer-an authority prosecuting a person for committing an offence<sup>22</sup>. The only question that remains to be asked is whether J. Tylman meant that every observer's premonition is subjective perseverance under all circumstances, or whether the author had in mind a certain freedom to assess the data that would make it possible to commit a crime. Although both of these assumptions seem reasonable, the first is probably more reasonable. The relevant literature (as is the case with the Administrative Court in Wrocław) indicates that a mere assumption is not sufficient to assume that, in a given state of affairs, there is a reasonable suspicion that a crime has been committed<sup>23</sup>. Such a justified suspicion entitling a police officer to undertake a personal check is undoubtedly, for example, a situation in which a police officer who received a report of a recent burglary and theft, together with a detailed description of the thief and information that the burglar's leg was bitten by a dog, sees a man fleeing and breathing heavily several minutes later with a bloody leg, perfectly matching the description of the burglar. Undertaking a personal inspection in such a case will be rightly motivated not only by a justified suspicion of a crime having been committed, but also by the desire to find the objects permissible by an act under Article 279(1) of the Criminal Code. (*e.g.* jewellery) or objects with the use of which the prohibited act was committed (*e.g.* a crowbar). A personal check in this situation will exhaust not only the prerequisite of Article 15(1)(5a) of the Code of Criminal Procedure, but also of Article 15(1)(5b) of the Code of Criminal Procedure. As a consequence, such a control will not constitute a breach of the powers of a police officer. What if, however, based on the abovementioned case, a police officer undertakes a personal check against a person slightly resembling the description of the burglar, but not breathing heavily, not frightened, walking without a limp and not bleeding? This will certainly lead to an illegal personal check, because it would be a check motivated by a suspicion that this particular person has committed an offence with too little probability to speak of a reasonable suspicion. The question remains very blurred, however, as to whether we could speak of an equally unlawful personal check if all of the above components of the probabilities of the offence

<sup>20</sup> Judgement of the Administrative Court in Wrocław, 3 March 2016, II AKA 35/16, *Legalis* No. 1443561.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Por.* Tylman J, [in:] Grzegorzczuk T, Tylman J (Eds), *Polskie postępowanie karne*. Warsaw: LexisNexis, 1999, p. 567.

<sup>23</sup> Brodzisz Z, Article 303, [in:] Skorupka J (Ed.), *Kodeks postępowania karnego. Komentarz*, 4. Warsaw: C.H. Beck, 2020, p. 769.

committed by the person against whom the police officer undertakes the personal check were met, apart from the appearance of the person being checked being identical to the description of the perpetrator of the offence, which would be at a relatively low level. It seems that in such a case, a personal check would be legitimate, because the probability of there being another person of the same sex breathing heavily, scared, limping and with a bloody wound on the same leg under the same temporal and local conditions as the controlled person is abnormally low. At the same time, there is a relatively high probability that the victim/direct witness to the crime who reports the crime and gives a description of the offender, acting under high stress, may have been mistaken for a description of the offender.

If a police officer knew that he/she was undertaking a check without a basis expressed as in the provisions of Article 15(1)(5a-b) of the Code of Civil Procedure, and yet he/she agreed to this, we will have to deal with his/her committing an offence under Article 231(1) of the Code of Civil Procedure with a possible intention. On the other hand, if a police officer wanted to undertake and carry out a personal inspection in an unauthorised manner (*e.g.* in order to show the controlled citizen the driving force of the authority leased over the citizen), we will have to deal with the officer committing an offence under Article 231(1) of the Code of Criminal Procedure with a direct intention. We will also encounter an intentional exceeding of powers by a police officer (Article 231(1) of the Code of Criminal Procedure), in which a police officer, wishing or agreeing to do so, has carried out a personal inspection without complying with all of the requirements set out in Articles 15d and 15e of the EEU or has carried out a check in a manner contrary to the requirements set forth in the abovementioned regulations (*i.e.*, when a police officer carried out an inspection of a person's intimate places, when this was not particularly justified, or at least did not provide his/her name and rank in such a way as to make it possible to record these data, whether or not they *a maiori ad minus* have given these data at all). We will be faced, for example, with the intention of a male police officer to check a woman's intimate areas and, after checking one intimate area, checks another intimate area, giving the inspected person the order to remove the clothes covering that area, while not allowing the controlled person to put clothing back on which covers the previously controlled intimate area, assuming that the controlled person will not claim any consequences against him anyway, because the controlled person gives the impression of being a life clumsy person who will not know how and to which authority to complain to (despite previous instructions), and even more to report a crime. The obligation to allow the inspected person to put back on clothing covering the previously controlled intimate area, while the inspected person intends to proceed with the control of the next intimate area of the inspected person is laid down in Article 15d(2) of the Police Act. Therefore, certainly in such a case, the rights were exceeded, causing significant damage (which is not necessary to exhaust the features of the act under

Article 231 § 1 of the Criminal Code, but it is included *a maiori ad minus* in the scope of the signs of this act in this case) to the victim (controlled person) in the form of a violation of human dignity and causing a series of very negative psychological experience for the victim—harm in the field of intimacy and a sense of deep shame, intensified by the fact that female nudity is still, for socio-cultural reasons, a particularly sensitive sphere. It also seems that a personal inspection by a person of a different sex than the controlled person in a situation where this is not necessary, or the behaviour previously described, of which the perpetrator is not a man but a woman, while the controlled victim is a woman, would also cause significant damage.

The possibility of using firearms by police officers is defined in Articles 16(2) and (3) of the Act of 24 May 2013 on Direct Coercive Measures and Firearms (Journal of Laws of 2019, item 2418). The cases in which firearms may be used are specified in Article 45 of the Act of 24 May 2013 on Direct Coercive Measures and Firearms (Journal of Laws of 2019, item 2418). The conditions for the use of firearms by police officers, but not only by them, as also by, among others, officers of the Internal Security Agency (Article 2(1) of the Polish Convention for the Protection of Human Rights and Fundamental Freedoms) and the State Protection Service (Article 2(3) of the Polish Convention for the Protection of Human Rights and Fundamental Freedoms) are expressed in Article 48 of the Polish Convention for the Protection of Human Rights and Fundamental Freedoms, which is consistent, if not indispensable, with the Polish legal system in connection with the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Journal of Laws of 1993, No. 61, item 284), specifically correlated with Article 2 of that Convention, which was confirmed in the case law of the European Court of Human Rights in Strasbourg<sup>24</sup>.

The intentional use of a firearm by a Police officer, although under Article 16(2) and (3) of the Police Act and in accordance with the conditions set out in Article 48 of the Act on Direct Coercive Measures and Firearms, in a case which does not exhaust one or more of the prerequisites for the use of a firearm under Article 45 of the Act on Direct Coercive Measures and Firearms, will also constitute a criminal offence. Let us therefore imagine a situation in which a policeman starts chasing a person, identifies himself/herself by shouting “Police!”, and orders this person to refrain from running away, but the person running away does not follow the policeman’s order, and so the policeman shouts “Stop or I’ll shoot!”, but the person fleeing still does not follow the policeman’s order. In this case, the policeman in question discharges their firearm in a safe direction (fires a warning shot), which still does not convince the fugitive to stop and ultimately results in a deliberate shot at the fugitive. It must be assumed that in this case, the circumstances referred to in Article 48(3)(1) of the

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<sup>24</sup> See: Judgement of the ECHR of 23 February 2010, 28975/04, Legalis No. 208383.



Act on Direct Coercive Measures and Firearms (the need to abandon the aforementioned procedure in order to avoid an immediate danger to the life or health of the policeman or any other person) or, *a fortiori*, the circumstances referred to in Article 48(3)(2) of the Act on Direct Coercive Measures and Firearms (abandonment of the aforementioned procedure in order to prevent a terrorist act) have not occurred.

In such a *prima facie* state of affairs, it seems that the policeman acted in a lawful manner. But is this the case? Let us not forget, however, that not every case of a police officer pursuing an escaping person will justify the use of firearms. The pursuit of a person who, for example, has committed an offence or a crime other than those specified in Article 115(20) of the Penal Code, or Article 148 and Article 156(1) of Penal Code, will definitely not justify the use of a firearm, as well as Articles 163–165 of the Penal Code, Article 197 of the Penal Code, Article 252 of the Penal Code, or Articles 280–282 of the Penal Code, without a weapon, explosive or other dangerous tool endangering the life or health of the police officer in pursuit or another person. A policeman, observing the procedure of Article 48 of the Act on Direct Coercive Measures and Firearms (when it was necessary) but deliberately shooting at a fugitive in a situation which does not allow it (a situation which does not exhaust any of the conditions of Article 45 of the Act on Direct Coercive Measures and Firearms) exceeds his/her powers by undertaking an activity falling within his/her competence, but against the legal conditions of that activity. There is no doubt that in such a case, a Police officer commits an offence under Article 231(1) of the Penal Code on the assumption of the formal, *i.e.* inconsequential, nature of that offence. What is more, in the hypothetical case in question, a policeman commits an offence under Article 231(1) of the Penal Code, even assuming the material, and thus the consequential, nature of that offence, where the effect is considered to be the reduction of a specific danger to the public or private interest<sup>25</sup> (danger of damage to the health or life of an escaping person).

A police officer will also commit an offence under Article 231(1) of the Penal Code in a situation where he/she joins a chase after an escaping person, *e.g.* suspected of unintentionally causing dangerous events (Article 163(2) of the Penal Code), but wilfully fails to fulfil the conditions resulting from the procedure described in Article 48 of the BC, when all elements of that procedure had to be completed. It is particularly important to bear in mind that due to the specific nature of the cases in question (acts involving the use of firearms), the intentional exceeding of powers in their case will always result in a direct threat to private interests (life or health), so regardless of the adoption of the formal or material concept of an act under Article 231(1), the constituent elements of the offence will be fulfilled here, either directly (a consequential offence) or *a maiori ad minus* (an ineffective crime).

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<sup>25</sup> See: Lachowski J, Article 231, [in:] Królikowski M, Zawłocki R (Eds), Kodeks karny. Część szczególna..., *op.cit.*, p. 173.

The unintentional commission of an offence under Article 231(3) of the Penal Code by a police officer will take place when the perpetrator, for example, does not predict the abuse of his powers (*e.g.* as a result of not foreseeing that his behaviour may be meaningfully, exceeding his powers, which he knew as well as the legal manner of handling them), although he should have foreseen it (he should have been required to know his rights and the way in which they are dealt with will not be reckless). A police officer claiming to have made a mistake (Article 28 of the Penal Code) at the moment when he committed a crime from Article 231(1) of the Penal Code, remaining in the false belief that his behaviour did not exceed his powers (because, for example, he thought that his conduct as regards his powers were within the norms governing his powers or he undertook actions which he thought were within his powers) seems unjustified. It should be required that every public officer (and thus not only a police officer) needs to have detailed knowledge of all the powers that they have. In the case of an unjustified error as to the circumstance constituting a trait of a prohibited act, the perpetrator will not be able to take advantage of the institution's benefit under Article 28 of the Penal Code.

Simply exceeding the powers is not enough. In order to fulfil the criteria of an act under Article 231(3) of the Penal Code, it is also necessary to cause significant damage (however, it seems that not only damage in the form of someone's death or direct damage to health as a result of a discharge of a firearm is involved, but also health impairment in the form of, for example, trauma, as a mental change caused by a violent and unpleasant experience<sup>26</sup> or even post-traumatic stress disorder<sup>27</sup> caused by a police chase).

### **Police officer as an entity criminally failing to perform duties**

The provisions regulating the duties of police officers (apart from the provisions of Chapter 3 of the Police Act and the provisions of other normative acts) are the provisions of Chapter 7 of the Police Act entitled "Duties and rights of the police officer". The provisions of this chapter are similar in nature to the provisions of Chapter 3 of the Police Act—thus, they include substantive and cogent provisions as well as formal provisions—defining the manner of conduct through the performance of duties, *etc.*

An example of a situation in which a failure to fulfil obligations occurs is a case in which a prosecutor orders, within the framework of criminal

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<sup>26</sup> *Electronic source:* <https://sjp.pwn.pl/sjp/trauma;2530476.html>.

<sup>27</sup> According to extreme opinion, "only extreme events such as seeing one's own child being tortured, being a participant in a natural disaster or being a victim of a kidnapping constitute a cause of post-traumatic stress disorder. Nevertheless, there are people who have full symptomatic post-traumatic stress disorder, *e.g.* as a result of testifying in court, and therefore experience a situation that does not bear the mark of extremism", Seligman M.E.P, Walker E.F, Rosenhan D.L, *Psychopatologia, Zysk i S-ka. Poznań, 2017*, pp. 197–198.

proceedings, a search of a premises at a given address to a specific police unit, as a result of which a person responsible for issuing official orders in that unit (*e.g.* a commander) issues a search order to a specific police officer who (Article 219(1) of the Code of Criminal Procedure)<sup>28</sup> intentionally fails to conduct that search within the set time limit or does not conduct it at all<sup>29</sup>. Failure to comply with such an obligation will constitute a crime under Article 231(1) of the Penal Code at the moment of revealing a cause-related link between the said failure, and a specific threat to, for example, private interests (when, on the basis of the information gathered, it appears that the dangerous offender sought has found himself another known victim from the name and surname or address of residence or other specific data allowing the identity to be established) according to the material concept of the act under Article 231(1) of the Penal Code. According to the formal concept of an act under Article 231(1) of the Penal Code, the sole intentional failure to carry out a search will constitute a crime in this case (a policeman not carrying out a search alone brings a potential danger of someone turning into the next victim of an undiscovered dangerous criminal). Unintentional failure to comply with an obligation in this situation becomes apparent when a police officer, through his/her distraction or other duties at the same time, forgets to carry out the search he/she was commissioned to carry out.

A deliberate failure to fulfil the obligation resulting from Article 58(2) of the Penal Code, *i.e.* refusal to carry out an order or an official order, the execution of which would involve the commission of an offence, will also constitute a failure to fulfil the obligation. In this case, the legislator rightly places the value of the rule of law over another value—official discipline. A police officer will commit a prohibited act from Article 231(1) of the Penal Code, in this case in conjunction (Article 11 of the Penal Code) with another prohibited act, which he will commit through the execution of a criminal order or official order. Such an act primarily causes a threat

<sup>28</sup> An example of a search under Article 219(1) of the Code of Criminal Procedure was deliberately quoted here, and not under Article 219(2) of the Code of Criminal Procedure, because the Constitutional Tribunal in the judgement of 14 December 2017, ref. no. K 17/14, recognised Article 219(2) of the Act of 6 June 1997 – the Code of Criminal Procedure (Journal of Laws of 2017, item 1904), in the scope in which it provides for a search of a person, without specifying the limits of that search, as inconsistent with Article 41(1) and Article 47 in connection with Article 31(3) of the Constitution of the Republic of Poland.

<sup>29</sup> Not only the non-performance of an obligation at all, but also the performance of an obligation, but after the prescribed law/order will also be qualified as a failure to fulfil an obligation, in the same way as the performance of an obligation against the formal requirements of the performance of that obligation (*cf.*: L. Gardocki, *Criminal Law*, 19 ed., Warsaw: C.H. Beck, 2015, p. 304). The case is similar to the case of entitlements—exercising an entitlement contrary to its legal conditions (including exercising an entitlement after the period of time set by *e.g.* the Police officer's superior) will be qualified as exceeding the entitlement, just as the performance of an activity which does not fall within the scope of a public officer's entitlements at all.

to a private interest (reluctance to become a victim of an offence if the offence coincides with an offence under Article 231(1) of the Penal Code; in this case it is directed against a specific person), as well as immanently on the level of public interest—because it always compromises the need for the security of the citizens when dealing with police officers, and diminishes the citizens' faith in the rule of law of the Police (because if one of the police officers carries out a criminal order or order of a superior, citizens have grounds to claim that there may be more such officers, and beyond this, a police officer is a profession of a certain special social trust).

The case in Article 58(2) of the Police Act is interesting in that an intentional failure to fulfil an obligation in the form of the execution of a criminal order or official order inextricably linked with another crime can often be committed under the influence of blackmail used by, for example, a superior. It is easy to imagine a situation in which a police officer agrees to carry out a criminal order or order, *e.g.* to create false evidence (Article 235 of the Penal Code), only because the person giving the order blackmailed the police officer that if the order is not carried out, anonymously compromising materials will be placed on the Internet, which will be the basis for disciplinary proceedings against that police officer<sup>30</sup>. A police officer from the above example, a person not fulfilling the obligation resulting from Article 58(2) of the Police Act, thus committing a criminal offence under Article 231(1) in the consolidated text of Article 235 of the Penal Code in connection with Article 11 of the Penal Code, will commit the offence in question intentionally, but committing the same offence under the influence of blackmail should be properly reflected in the penalty as a significant mitigating circumstance (Article 53 of the Penal Code).

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<sup>30</sup> An illegal threat is also blackmail based on the threat of dissemination of materials which harm the honour of the threatened person—see Regional Court judgement in Poznań of 24 October 2017, III K 181/16, LEX No 2403477. Such blackmail may be a designation of an executive action of the act under Article 191(1) of the Polish Penal Code – “Who uses violence against a person or an unlawful threat to force another person to act, abandon or endure [...]”.

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**Keywords:** abuse (excess) of power, criminal abuse of power, police, police officers, selected issues, criminal law issues, public official, criminal law

**Summary:** The article features the crucial issues regarding the crime of abuse of power stipulated in Article 231 of the Polish Penal Code, based on cases that could be perpetrated by police officers. The author briefly describes the basic elements of the structure of this crime, as seen through the eyes of the doctrine of criminal law and the judiciary. The author presents his own assessments, which shed new light on the questionable meanings of certain features of the crime in question. The key part of the work focuses on selected, thoroughly analysed, hypothetical cases of criminal abuse of power by police officers, and in this sense is a kind of case study.