# HUMAN ASPECTS OF SECURITY

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# USE AND APPLICATION OF FIREARMS BY THE POLICE IN THE LIGHT OF HUMAN RIGHTS STANDARDS IN POLAND

One of the fundamental expectations of every society is gaining the sense of security, ensuring that the interests of an individual are secured, interference in the private sphere is minimized and freedoms and physical integrity are not compromised. The above mentioned values constitute the basis for personal security, and ensuring it is one of the main tasks of the Police (Ławrynowicz-Mikłaszewicz, 2014: 64–66). To enable an internal security unit such as the Police an effective performance of duties regarding ensuring security, law enforcement and providing assistance, it has been authorised to perform numerous activities and at the same time it has been equipped with various instruments of influence. One of such particular tools is the ability to use or apply firearms. The aim of this article is to assess the rules, possibilities and manners of using and applying firearms by the Police in terms of compliance with human rights. Striving to reach the research objective specified in this manner, we have assumed that the following hypotheses will be verified:

– effective execution of police tasks aimed at ensuring internal security is linked to the necessity to have authorization to use and apply firearms;
– abuse and excessive use of firearms constitutes a significant threat to human rights and security of the citizens as well as it adversely affects the relationship between the Police and the society;
– it may be assumed that the Police as the security unit of a democratic country is appropriately committed to the observance of human rights using its statutory authorisation to use and apply firearms.

The key methods applied while preparing this article were the legal analysis and the institutional analysis. In the alternative, a descriptive method with the application of the critical analysis of the literature on the subject was also employed.

## GENERAL FRAMES FOR USE AND APPLICATION OF FIREARMS

In terms of the need to ensure and protect civil liberties, the authorization to use firearms requires determining precise limits of its application for the state bodies to follow. As Mariusz Jagielski points out, they were shaped gradually and took form of four concepts: the exclusivity of the statute, the proportionality, the principle of a democratic state and the essence of a specific freedom (right). The first of the con-

cepts – the exclusivity of the statute – means that all activities limiting the ability of an individual to enjoy constitutional rights and freedoms granted to them need to have a statutory legal basis. In the area of using firearms this requirement was fulfilled by the adoption of the Act of 24 May 2013 on measures of direct coercion and firearms. The second concept – the proportionality – means that any actions interfering with rights or freedoms should be restricted to the extent necessary to achieve this objective. With regard to the use of firearms this rule means that it is admissible only if the application of direct coercive measures was insufficient to achieve the objectives or it is impossible due to the circumstances. The rule also requires that the firearms are used in a manner that may cause the least possible harm. The third concept – the principle of a democratic state – states that the limitations regarding enjoying constitutional freedoms and rights may be put into place only if they are necessary in the democratic state. The requirement to confront the admissibility of using or applying of firearms with the criterion of democratic state has a consequence – the obligation to assess the objectives of undertaken actions. They need to be justified in light of the political status and the constitutional axiology. At the same time, adopted regulations must ensure full and effective supervision so as to control whether there is no abuse or excessive use of power in this scope. The concept of the essence of freedoms and rights is based on the assumption that in each right and each freedom an individual has there is a pillar and a rim.

In the case of using firearms, the protected good of an individual which may potentially be limited will usually be their life and health. Thus, it is difficult here to distinguish in it a pillar and a rim. That is why with reference to the use of firearms the concept of freedom and rights is in practice treated as an extension of the principle of proportionality.

We should assume that the main obligation that arises from it is causing the least possible discomfort for an individual (Jagielski, 2015: 51–56). In this place we should draw attention to the division of terms *use* and *application* of firearms that is present in the Polish legal order. In line with the Act on measures of direct coercion and firearms, the use of firearms is "firing a shot towards a person using penetrating ammunition" (Journal of Laws 2019, item 2418, article 4, section 7), whereas the application of firearms is "firing a shot using penetrating ammunition towards an animal, an object or in any other direction not posing a threat to a human being" (Journal of Laws 2019, item 2418, article 4, section 10). Some of the situations where the law is breached are those where intervening law enforcement officials acting so as to maintain public security and legal order have to use or apply firearms. Usually, specific officials and specific citizens participate in this type of events. However, in a wider perspective they may affect the quality of the relationship between the Police and the entire society. It is understandable that these relations may worsen as a result of an unjustified and disproportionate as compared to the need use or application of firearms. As a result, the legislator introduced a number of restrictions with regard to firearms indicating that:

– they may be used or applied only if the use or application of direct coercive means turned out to be insufficient to achieve the objectives of this use or application or it is not possible due to the circumstances;

- the use and application of firearms should be carried out in a manner that causes the least possible damage;
- the use or application of firearms should be abandoned if the objective of its usage or application has been achieved;
- deciding to use or apply firearms, one should act with particular caution and treat this solution as a last resort (Piaczyńska, 2010: 62).

As Kamil Frąckowiak rightly points out, these general directives force law enforcement officials to adopt specific methods of acting, starting from the moment when the decision to use firearms was made to their actual use against a specific person or their application. They also impose an obligation to undertake actions which may prevent the use of firearms (e.g. warning or mediating actions).

Law enforcement officials are also obliged to minimize the effects of using firearms (e.g. where possible, they should shoot at these parts of the body whose shooting does not pose a threat to life). Also, they need to exercise extra caution as regards bystanders. They should not use firearms in the crowd, in means of public transport, and if there is a need to use a weapon in a city or a built-up area they should fire in the direction perpendicular to and not along the street or road (Frąckowiak, 2014: 6–7). So as to minimize the effects of using firearms, anti ricocheting ammunition is used, which law enforcement officers patrolling the streets, stations, airports and other public utility buildings are equipped with. At this point it should be additionally emphasised that an official authorised to use or apply firearms may use or apply them only for the purposes specified in the act and solely to execute tasks of the Police (Pieprzny, 2011: 116–122).

## CIRCUMSTANCES DICTATING REASONS FOR POLICE OFFICERS TO USE WEAPONS

In line with Article 45 of the Act on measures of direct coercion and firearms (Journal of Laws 2019 item 2418) a police officer is entitled to use firearms when there is at least one of the following circumstances:

- a need to repel a direct, unlawful attempt on:
  - life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt;
  - the premises, equipment and areas which are crucial or in order to counteract activities aimed at such an attempt;
  - property which simultaneously poses a direct threat to life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt;
  - a safety of a convoy or an escort;
- a need to counteract a person:
  - disregarding a call to immediate abandonment of arms, explosives or other dangerous tools, the use of which may endanger life, health or freedom of an officer or another person;
  - who makes unlawful, forcible attempts to capture a firearm from an officer or another person entitled to its possession;

- a direct pursuit of a person subjected to the permissible use of firearms in order to repel a direct, unlawful attempt on:
  - life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt;
  - the premises, equipment and areas which are crucial or in order to counteract activities aimed at such an attempt;
  - property which simultaneously poses a direct threat to life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt;
- a direct pursuit of a person;
  - disregarding a call to immediate abandonment of arms, explosives or other dangerous tools, the use of which may endanger life, health or freedom of an officer or another person;
  - who makes unlawful, forcible attempts to capture a firearm from an officer or another person entitled to its possession;
  - a person with respect to whom there exists a justified suspicion of the perpetration of a terrorist attack, perpetration of a murder, intentional grave bodily injury, causing a disaster, causing a treat of a disaster, causing a general threat, rape, other sexual act, taking or detaining a hostage, the perpetration of robbery, aggravated larceny, extortion with violence;
- a need to apprehend a person subjected to the permissible use of firearms in order to repel a direct, unlawful attempt on:
  - life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt;
  - the premises, equipment and areas which are crucial or in order to counteract activities aimed at such an attempt;
  - property which simultaneously creates a direct threat to life, health or freedom of an officer or another person or in order to counteract activities aimed at such an attempt.

  Firearms may also be used in order to apprehend a person:
- disregarding a call to immediate abandonment of arms, explosives or other dangerous tools, the use of which may endanger life, health or freedom of an officer or another person;
- who makes unlawful, forcible attempts to capture a firearm from an officer or another person entitled to its possession;
- a person with respect to whom there exists a justified suspicion of the perpetration of a terrorist attack, perpetration of a murder, intentional grave bodily injury, causing a disaster, causing a treat of a disaster, causing a general threat, rape, other sexual act, taking or keeping a hostage, the perpetration of robbery, aggravated larceny, extortion with violence;
- making an attempt at the safety of a convoy or an escort;
- if they sheltered in a place difficult to approach, and the circumstances of the event indicate that they may use firearms or other dangerous tools.

A police officer is entitled to use firearms in the case of seizing or preventing the escape of a detained person, a temporarily detained person or a person serving a penalty of deprivation of liberty, if:

- the escape of the detained person endangers the life or health of a police officer or another person;
- there is a justified suspicion that the imprisoned person may use firearms, explosives or another dangerous tool;
- the deprivation of liberty took place in connection with a justified suspicion or ascertainment of the perpetration of an offence of a terrorist nature, a murder, intentional grave bodily injury, causing a disaster, causing a treat of a disaster, causing a general threat, rape, other sexual act, taking or keeping a hostage, the perpetration of robbery, aggravated larceny, extortion with violence.

Moreover, in line with Article 47 of the Act on measures of direct coercion and firearms (Journal of Laws 2013, item 628) firearms may be used in the case when at least one of the following actions need to be taken:

- stopping a vehicle if its operations pose a threat to life or health of a police officer or another person or poses a threat for crucial premises, equipment or areas;
- overcoming an obstacle preventing or making it difficult to seize a person or saving life or health of a police officer, another person or rescuing property;
- breaching public order or safety by a person deprived of liberty, detained or placed in a guarded centre or arrest for the purpose of expulsion;
- raising an alarm or calling for help;
- neutralizing of objects or equipment which may pose a threat of explosion, at the same time causing a threat to health and life of a police officer or another person;
- inactivating an animal whose behaviour poses a direct threat to life or health of a police officer or another person;
- firing a warning shot;
- destroying or disabling an unmanned aerial vehicle in the following cases:
  - the flight or operation of an unmanned aerial vehicle poses a threat to life or health of a person, poses a threat to protected premises, equipment or areas, disrupts the course of a mass event or poses a threat to the safety of its participants, there exists a justified suspicion that it may be used as means of a terrorist attack;
  - an unmanned aerial vehicle performs a flight within the air space in the area where flight restrictions have been introduced or in the area located above the territory of the Republic of Poland in which the flight of an aerial vessel is forbidden from the terrain level to a specified altitude, determined in the Act of 3 July 2002 – Aviation law (Journal of Laws 2019, item 1580 and 1495, Article 126a).

It should be pointed out that firearms may not be used or applied by a Police subunit. However, in the situations posing a threat to life or health of a police officer or other persons, the police officer belonging to a Police subunit is entitled to use firearms or apply them solely on conditions specified in the Act on measures of direct coercion and firearms exclusively in a situation threatening life or health of a police officer or another person.

The specific sensitivity of situations and events in which police officers are entitled to use or apply firearms makes them display a particularly high level of discipline and precision of action when they undertake this type of operations. The above mentioned

sensitivity is caused by the fact that the use of firearms is linked to presenting specific threats to health and life of persons. At this point we should refer to the wording of Article 3 of the Universal Declaration of Human Rights and to Articles 6 and 9 of the International Covenant on Civil and Political Rights. These acts state that:

– "Everyone has the right to life, liberty and the security of person" (*The Universal Declaration of Human Rights*, 1948, Article 3);
– "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" (*The International Covenant on Civil and Political Rights*, 1966, Article 6);
– "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law" (*The International Covenant on Civil and Political Rights*, 1966, Article 9).

In this regard it is noteworthy that the right to life is the supreme right and without it being effectively ensured all the other human rights cease to be meaningful. Police service, a uniformed and armed force serving the society and aiming at the protection of people's safety and the maintenance of public safety and order (Journal of Laws 1990, No. 30, item 179, Article 1) is not a profession where only routine and repetitive actions, relating to resolving ordinary problems occurring at regular intervals, may be applied. Due to the varied, extremely complex and frequently hazardous nature, in terms of safety, of the types of situations in which police officers need to operate they are expected to display the ability to identify complicated circumstances with all their nuances and not only to distinguish between the good and evil (de Rover, 2002: 288).

As it has already been mentioned, the state has given police officers power to use or apply firearms when it is necessary to achieve lawful objectives regarding safety. However, at the same time the state empowering police officers to use firearms did not shirk its responsibility for the protection of every person's right to life, freedom and safety. Consequently, these powers were described precisely in the acts specifically determining the circumstances when firearms may be used or applied.

## THE RULES FOR PROCEDURES PRECEDING THE USE OF FIREARMS AND THE SPECIAL USE OF FIREARMS

Additionally, what is crucial from the point of view of respect for human rights, an obligation was introduced to follow specified procedures preceding the use of firearms. As part of the the full procedure in line with Article 48 of the Act on measures of direct coercion and firearms (Journal of Laws 2013, item 628) before they are used, a police officer undertakes the following actions:

– identifies his type of force by the exclamation "Police!"
– requests to conduct in compliance with the law, in particular for:
  – immediate abandonment of arms, explosives or other dangerous tools, the use of which may endanger life, health or freedom of an officer or another person;
  – waive absconding;
  – refrain from using violence.

In the event of failing to follow the above mentioned requests, a police officer warns of using firearms with an exclamation: "Stop, or I'll shoot!", and if the call turns out to be ineffective, they fire a warning shot in a safe direction. The full procedure or its specific elements, in particular the firing of a warning shot, may be derogated from if their execution posed a direct threat to life and health of a police officer or another person or it was necessary to counteract the event of terrorist nature mentioned in Article 2 of the Act of 10 June 2016 on anti terrorist actions, or a situation in which there exists a suspicion that it was caused by the perpetration of an act of a terrorist nature or it poses a threat of such a perpetration occurring. Also, before beginning to convoy or escort, a police officer warns a person deprived of liberty of the possibility of using firearms against them if they make an attempt at escaping, if:

– the escape of the person endangers life or health of a police officer or another person;
– there is a justified suspicion that the person may use explosives, firearms or other dangerous tools;
– deprivation of liberty occurred in connection with a justified suspicion or ascertainment of the perpetration of an offence mentioned in Article 115 § 20 (terrorist offence), Article 148 (homicide), Article 156 § 1 (grievous bodily harm), Articles 163–165 (causing a life-threatening event), Article 197 (rape), Article 252 (taking or detaining a hostage) and Article 280–282 (extortion) of the Act of 6 June 1997 – The Criminal Code.

It should be noted that the Police also has its counter-terrorist force whose officers were given power for special use of firearms pursuant to the Act of 10 June 2016 on anti terrorist actions (Journal of Laws 2016, item 904). It should be pointed out that the provisions of this Act did not aim at breaching elementary rules of human rights protection, in particular the rule of life protection. A premise to introduce a special use of firearms became an assumption that the life of a victim constitutes a superior value as compared to the life of a perpetrator of the attack. The legislator provided a possibility of a special use of firearms in order to increase the efficiency of police actions in situations when terrorist events occur, at the same time ensuring the legal safety of police officers firing this type of shot. We should indicate that such solutions are admissible in view of rules of the international law regulating human rights protection issues. The possibility of deprivation of life in defence of any person from unlawful violence is provided in Article 2 of the Convention for Protection of Human Rights and Fundamental Freedoms. It is also included in the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials adopted by the UN (Kaczmarczyk, 2019: 7–9).

In line with Article 23 of the above mentioned Act as part of counter-terrorist actions (Journal of Laws 2016, item 904) if it is necessary to counteract a direct, unlawful and violent attempt at life or health of a person or to free a hostage, and the usage of firearms in a manner causing the least possible damage is insufficient and counteracting such an attempt or freeing a hostage in another manner is not possible, it is admissible, taking into consideration all circumstances of the terrorist event and the possibility of counter-terrorist actions, to use firearms against a person making an attempt or taking or detaining a hostage, whose result may be the death or a direct threat to life or health of the person. In line with the statutory terminology, such a special use

of firearms according to the rules specified in the Act of 24 May 2013 on measures of direct coercion and firearms with the reservation of distinctness provided for by the Act on anti terrorist actions. Article 7 section 1 which states that firearms are used in a manner causing the least possible damage and Article 48 of the Act on measures of direct coercion and firearms which specifies actions which should be undertaken before using firearms do not apply to their use (Cymerski, Matysek, 2017: 303–304).

A special use of firearms may be performed by police officers who are in composition of the unit carrying out counter-terrorist actions. A decision on the admissibility of a special use of firearms may be taken and withdrawn by a person in charge of the operations. After receiving the decision on the admissibility of a special use of firearms, a commander of the counter-terrorist unit may give an order for a special use of firearms by the officers of the counter-terrorist unit, specifying the objective and the manner of this usage. A special usage of firearms is documented by the commander of the counter-terrorist unit who prepares a report on a special use of firearms immediately after having completed actions and submits it to the person in charge of the operations (Journal of Laws 2016, item 904, Article 23).

## PREVENTION OF ABUSE IN THE USE OF FIREARMS AND QUALIFICATIONS OF POLICE OFFICERS

Bearing in mind the fact that the use of firearms is an extreme situation, it is worth noting that the quality of police services regarding safety and restraint in reaching for a gun depends to large extent on skills and attitudes of police officers in the scope of:

– communicating with participants in the event in which the police intervene or undertake other actions;
– conducting in situations genuinely or potentially confrontational or relating to violence.

Appropriate training of police officers regarding proper conduct in situations giving premises for the use or application of firearms is crucial in the analysed context. So as to prevent mistakes and abuse with respect to the use of firearms police officers participate in shooting trainings which are aimed at mastering and perfecting the skills regarding safe and efficient use of these arms. These trainings conducted in conditions simulating the reality are supposed to shape and strengthen habits of lawful conduct and perfect the skills of a proper assessment of a situation, reconnoitring and selection of a target as well as taking a decision to use or abandon the use of firearms. The shooting training program includes theoretical and practical trainings, workouts, program shootings, exams and test (Official Journal of the Polish Police Headquarters 2006, No. 3, item 9). The key element affecting the respect for human rights in practical actions of the Police is law enforcement officials adopting appropriate ethical values. In the light of the internal regulations of the Polish Police regarding professional ethics of a police officer in all their actions they are obliged to respect human dignity and observe and protect human rights, in particular respect every person's right to life. In the light of the rules of professional ethics a police officer taking a decision to use firearms or apply direct coercive measures should exercise extreme caution and constantly bear

in mind the nature of these measures (Official Journal of the Polish Police Headquarters 2004, No. 1, item 3). Extrapolating across the board this thread of our considerations, it may be stated that professional training, experience and moral qualifications define the results of a confrontation of police officers with situations and events where the question of using firearms arises. Legal frames which the legislator tries to give to such situations are definitely necessary and essential, but they may only offer general guidelines, they never constitute ready-made solutions. In this context it is worth noting that the knowledge of the catalogue of human rights is not sufficient to understand what respect for them actually means. Practice shows that observance of fundamental rights and freedoms is shaped as a result of direct interactions of police officers with people. Owing to that reason, training of police officers with regard to human rights may not be separated from their day-to-day practical application.

From the point of view of building respect for human rights with regard to the Police using firearms the general legal disposition which states that police officers may use firearms only in a situation when it is absolutely necessary and only within the limits needed to fulfil their duties is crucial (Wentkowska, 2017: 105–109). This rule emphasises that the use of arms should occur in exceptional situations and it should never exceed reasonable limits of the necessity to achieve lawful objectives. As a result, the use of firearms must be regarded as a last resort. In this case it is also noteworthy to mention The Basic Principles of the Use of Force and Firearms by Law Enforcement Officials specified by the 8th Congress of the UN on Crime Prevention and Treatment of Offenders which was held in Havana, Cuba from 27 August to 7 September 1990. The above mentioned principles include:

- equipping law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms;
- developing and introducing non-lethal (incapacitating) weapons;
- equipping law enforcement officials with self-defensive equipment (shields, helmets, bullet-proof vests and bullet-proof means of transportation) in order to decrease the need to use weapons of any kind;
- specifying the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- ensuring that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- prohibiting the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- regulating the control, storage and issuing of firearms and ammunition, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- providing for a system of reporting whenever law enforcement officials use firearms in the performance of their duty (de Rover, 2002: 292–293).

Achieving and following such standards is possible be means of *inter alia*:

- an appropriate recruitment process which includes checking moral, psychological and physical capabilities of candidates for service as police officers;
- systematic trainings and tests of skills of using and applying firearms by police officers.

## ADMITING POLICE OFFICERS TO HAVE FIREARMS AT THEIR DISPOSAL

In the context of the responsible use of firearms by law enforcement officials that is in compliance with human rights internal police regulations regarding having firearms at their disposal are of key importance (Official Journal of the Polish Police Headquarters 2015 No. 57). In their light, firearms are issued to law enforcement officials who acquired basic professional qualifications. Before issuing individual firearms to law enforcement officials their knowledge regarding the construction and rules of operating of the issued weapons and safety conditions regarding using this weapon is tested. The above mentioned regulations also specify the rules for law enforcement officials of handling the weapon issued to them. In line with the rules, officials are obliged to among other things:

– carry short firearms while on duty if its is required by the type of official tasks they perform;
– exercise extreme caution so that no unauthorised person gets hold of the firearms;
– follow the rules for storage of firearms specified by the law;
– ensure regular maintenance of and care for the firearms issued to them.

So as to handle firearms safely it is it is crucial to comply with the following prohibitions of:

– making firearms available to unauthorised persons;
– making unauthorised changes to and repairs of firearms and ammunition;
– holding firearms while participating in mass events in a private capacity, consuming alcohol and taking narcotic drugs, psychotropic substances, and substances acting similarly to alcohol, also under their influence, during hospital or sanatorium treatment and a sick leave.

Additionally, in the regulation mentioned above the Police Commander in Chief introduced a prohibition of carrying firearms in other circumstances than the ones mentioned above which may lead to the loss of firearms or unauthorised persons gaining access to them in an unlawful manner.

## SPECIAL PROTECTIVE RULES FOR HUMAN RIGHTS REGARDING THE USE OF FIREARMS BY THE POLICE

From the perspective of human rights, it is of fundamental importance that there exists a rule which stops police officers from using firearms against persons except:

– in self-defence or in defence of others against the imminent threat of death or serious injury;
– to prevent the perpetration of a particularly serious crime involving grave threat to life;
– to arrest a person presenting such a danger and resisting the authority of law enforcement officials.

These reservations are accompanied by the general rule which states that reaching for firearms may only occur when less extreme means are insufficient and it is abso-

lutely inevitable to protect human life. There are also important rules of conduct which police officers must follow before using firearms which require them to:

– identify themselves as police officers;
– issue an ample warning of the intention to use firearms in a manner allowing the person to follow the warning;
– fire warning shots at a safe direction (except for situations when it could expose them to excessive risk and would pose a threat of other person's death or grave injury, or would be clearly inappropriate or pointless).

So as to effectively ensure human rights protection a standard was adopted which states that unauthorised or excessive use of firearms by law enforcement officials is subject to disciplinary accountability regulated in the Act on the Police or penalty under the criminal law as a common crime. Such cases also constitute a breach of human rights since excessive use of power to use firearms may be regarded as the infringement of human dignity and integrity. Unauthorised or excessive use of firearms by law enforcement officials is also a threat to proper relationships between the Police and the society, which it serves, and may cause damage requiring long-term corrective measures. It is understandable that with the rule of law such abuse may not be tolerated. Thus, it should be noted that not only should such acts be prevented by proper and regular education and training of police officers but also they should be combated by implementing appropriate solutions regarding monitoring and control. These include *inter alia* procedures connected with conduct in situations when firearms were used. Accordingly, in the cases when as a result of using firearms a person was injured or there were other visible symptoms of a threat to life or health of this person, a police officer should immediately administer first aid, and if necessary call qualified first aid or entities rendering medical rescue services. A police officer may refrain from administering first aid if one of the following occurs:

– administering it may threaten life, health or safety of a police officer or another person;
– administering first aid would result in a police officer waiving protective actions towards persons, important facilities, equipment and areas or as part of a convoy or an escort;
– administering aid to the injured person was ensured by other persons or entities obliged to do so.

In the case of refraining from administering first aid or when an injured person objects to being given it, a police officer is supposed to ensure that qualified first aid or entities rendering medical rescue services are called. A police officer may not refrain from ensuring medical rescue actions to a pregnant woman against whom firearms were used. In the case when as a result of using firearms a person was injured or there occurred other visible symptoms of threat to life or health of this person or the person died, an animal was injured or died or property was damaged, a police officer secures the scene, also from third party access, establishes witnesses of the event, informs an appropriate superior or a person working on call of the event. In situations when as a result of the use or application of firearms there occurred symptoms justifying the need to administer a person qualified first aid or medical rescue service or the person died or property of significant value was damaged, an appropriate superior or the person working on call immediately:

– ensures that qualified first aid or entities providing medical rescue services are called to the injured person, if needed;
– ensures that any leads and evidence of the use or application of firearms are secured;
– informs the competent local prosecutor.

Moreover, the responsibilities of a superior include: determining whether the usage or application of firearms was in compliance with the law and immediately informing an appropriate senior superior. It should be added that a police officer is obliged to report promptly to his/her superior or an on-call police unit on the incident involving the use or application of firearms.

## PROCEDURES IN THE SITUATIONS OF BREACHING LEGAL REGULATIONS REGARDING THE USE OR APPLICATION OF FIREARMS BY POLICE OFFICERS

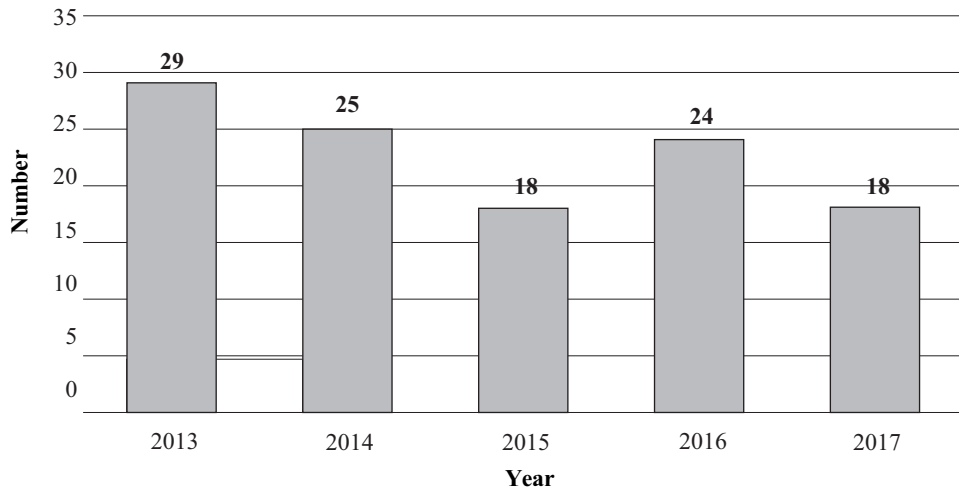
If there exists a suspicion or a presumption that there occurred an excessive use or application of firearms, an impartial and thorough review process needs to be undertaken immediately. In the case when an abuse is concluded, (disciplinary or criminal) sanctions need to be imposed on respective officers. In the course of the procedure appropriate attention should be given to the needs of victims. Consequently, the Police and its supervisory bodies aim at establishing effective reporting and controlling procedures referring to all incidents when a person died or was seriously injured as a result of police officers using firearms. The same applies to situations when police officers used firearms in connection with fulfilling their duties. It is also crucial that:
– in cases of death, serious injury or other grave consequences a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control;
– persons affected by the use of firearms or their legal representatives shall have access to an independent process;
– superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of firearms, and they did not take all measures in their power to prevent or suppress such use;
– no disciplinary or criminal sanction is imposed on law enforcement officials who refuse to carry out an order to use force and firearms, or who report such use by other officials.

It should be clearly stated that obedience to orders shall be no defence regarding unlawful use of firearms. If law enforcement officials knew that an order to use firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it, they shall be held responsible. In any case, responsibility also rests on the superior who gave the unlawful order (de Rover, 2002: 298–300).

Summing up, it should be stated that arbitrary, non-compliant with legal regulations cases and manners of using or applying firearms by law enforcement officials not only constitute a breach of discipline, a breach of criminal law regulations but

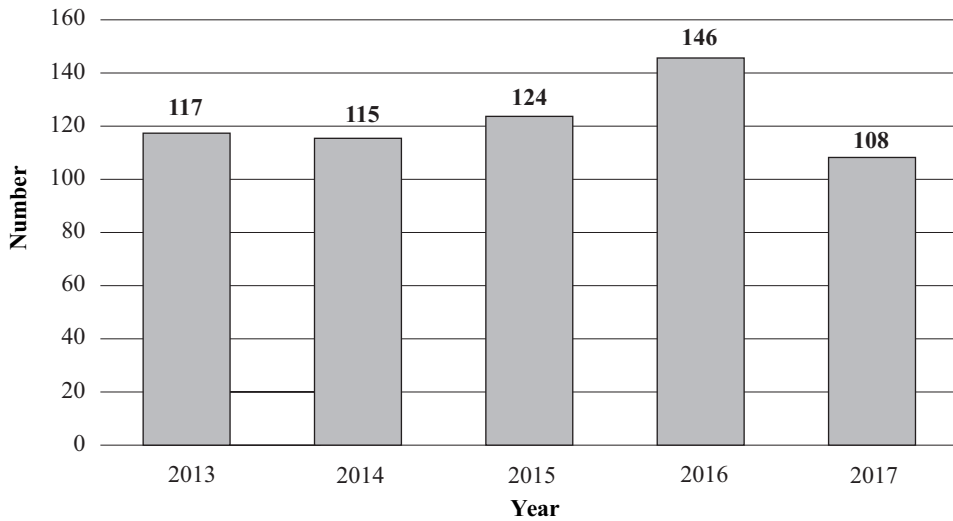
foremost a breach of human rights. It is worth noting that in such situations apart from individual consequences (relating to the loss of life or harm on health) there also occur collective consequences in form of disrupting the relations between the Police and the society which it serves. The results of these disruptions often demonstrate dramatically and cause damage which sometimes may be beyond repair. Thus, these are also the reasons why such abuse must not be tolerated and should be effectively prevented. Basic, tested action instruments in this scope include appropriate and systematic education and training of law enforcement officials and proper procedures for monitoring

**Chart 1. The use of firearms by law enforcement officials from 2013 to 2017**




**Source:** Own elaboration based on data from the Polish Police Headquarters.

**Chart 2. The application of firearms by law enforcement officials from 2013 to 2017**




**Source:** Own elaboration based on data from the Polish Police Headquarters.

and control regarding the problems of them using firearms. In view of the effectiveness of these tools, data regarding cases of using and applying firearms by law enforcement officials after the introduction of the provisions of the Act on firearms and ammunition of 24 May 2013 are crucial. They indicate that the number of cases of using and applying service weapons by law enforcement officials since 2013 has been decreasing systematically, which may prove that the forms of training and controlling law enforcement officials are appropriate and effective.

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The analysis of regulations regarding conditions for using firearms by law enforcement officials leads to a general conclusion that they are in compliance with the human rights standards and encourage their effective protection. It relies upon the implementation to legal regulations and rules for practical application of solutions and procedures which are taught to law enforcement officials as part of their schooling and trainings. Their essence is that firearms may be used solely in compliance with legal regulations and only to the extent that is necessary to achieve the legitimate objective. The rules regarding the use of weapons against persons as a last resort and emphasising the need to minimize the effects of their use are effectively emphasised. The picture of control and supervisory solutions regarding situations involving the usage or application or firearms by law enforcement officials is also presented in a positive light. The simultaneous analysis of legal regulations and practical operations of the Police as well as a reference made to statistics shows that law enforcement officials are effectively required to exercise restraint in the use of firearms and act in proportion to the seriousness of the offence. Independently from this generally positive assessment, it is important to recognize the need to further improve existing solutions, particularly in the area of:

– the legitimacy of maintaining division of regulations into the possession and use of weapons;
– the rights of proceedings taken in cases of legitimate use of weapons;
– increasing the readability and precision of the catalog of situations that allow the use of weapons;
– intensification and modification of training in the use of firearms in Police units.

It seems that the right step to take effective action on the above issues would be (based on the occurrences of use and use of firearms) to review existing regulations by an interdisciplinary expert team and make recommendations for changes. Such a team could include, for example, experienced prosecutors, practitioners and police experts, as well as representatives of institutions and organizations specializing in the protection of human rights.

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**ABSTRACT**

The article is devoted to the assessment of the rules, possibilities and manners of using and applying firearms by the Police in terms of compliance with human rights. The first part of the study contains analyses focusing on general frames for the use and application of firearms and circumstances giving premises for the use or application of these arms. In the next section, the discussion covers the conduct of law enforcement officials preceding the use of firearms and refers to the question of the so-called special use of firearms. The content of the final part of the article covers mechanisms preventing abuse regarding the use and application of firearms and procedures for situations of breaching legal regulations for the use of such arms. The article closes with the summary where, based on the analyses of existing solutions and available statistical data, a conclusion is made that the Police exercise proper caution so as to ensure the observance of human rights in relation to holding legislative power to use and apply firearms. The key methods applied while preparing this article were the legal analysis and the institutional analysis. In the alternative, a descriptive method with the application of the critical analysis of the literature on the subject was also employed.

**Keywords:** internal security, individual security, human rights, firearms, the Police

## WYKORZYSTYWANIE I UŻYWANIE BRONI PALNEJ PRZEZ POLICJĘ W POLSCE W ŚWIETLE NORM PRAW CZŁOWIEKA

**STRESZCZENIE**

Artykuł poświęcony jest ocenie zasad, możliwości oraz sposobów użycia i wykorzystania broni palnej przez Policję w kontekście przestrzegania praw człowieka. W pierwszej części opracowania zawarte zostały analizy poświęcone ogólnym ramom używania i wykorzystania broni palnej oraz okolicznościom stwarzającym przesłanki do użycia lub wykorzystania tej broni. W kolejnym fragmencie rozważania koncentrują się wokół postępowania policjantów poprzedzającego użycie broni palnej oraz odnoszą się do kwestii tzw. specjalnego użycia broni palnej. W końcowej części artykułu znajdują się treści poświęcone: mechanizmom zapobiegającym nadużyciom w zakresie używania i wykorzystywania broni palnej oraz procedurom postępowania w sytuacjach naruszenia prawa dotyczącego użycia i wykorzystania tej broni. Tekst kończy się podsumowaniem, w ramach którego na podstawie analizy istniejących rozwiązań i dostępnych danych statystycznych sformułowano ogólny wniosek o właściwej dbałości Policji o przestrzeganie praw człowieka w związku z posiadaniem ustawowych upoważnień do używania i wykorzystywania broni palnej. Zasadniczymi metodami użytymi przy pisaniu artykułu były analiza prawna oraz analiza instytucjonalna. Pomocniczo zastosowano również metodę opisu połączoną z wykorzystaniem krytycznej analizy literatury przedmiotu.

**Słowa kluczowe:** bezpieczeństwo wewnętrzne, bezpieczeństwo jednostki, prawa człowieka, broń palna, Policja

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