

# The Role of Macedonian Police in Modern Society: the Use of Force as a Legitimate and Legal Instrument

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## Abstract

*Police is one of the most important institutions of a country. Operational policing is formally and legally defined in the Law on Police. In performing its tasks police can or is allowed to use means of force. Legal solutions have exactly determined and noted that forceful means are available to the police, but also contain provisions which exactly determine situations during which police forces can and should use exactly those means. Often we have witnessed situations where there is a disproportionate use of force. It is legitimate to ask, whether the misconduct of police officers achieved the goal of solving a particular situation or does it cause a counter effect. Such situations force us to seriously analyze these examples in the country, but also the most common consequences arising i.e. resulting from a police officer's misconduct. Are there opportunities and ways to use certain experiences of Western countries which will be easier and simpler to be incorporated into Macedonian legislation? Those experiences will primarily refer to raising the level of responsibility and awareness among police officers about situations where they can use means of force.*

**Keywords:** legal solution, means of force, operating activities, police, purpose, responsibility.

## 1. Introduction: historical overview of development and social place of police

Historical approach is used so we can get a certain knowledge of operations and functioning of police during past times. Such method of research will help us to understand the role that this organization had in the past and how that role over time and with the change of certain socio - political conditions evolved or how it complicated apparatus began to change under reforms and upgrades, reaching to a position that we have today in these modern and democratic societies. The beginning of police forces as

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organized entity is tied to modern times, but most sources speak for some forms of police forces and policing since Ancient times. In fact the roots of police should not be looked anywhere else, but simply and only in original Greek city - polis.<sup>4</sup> In the polis, police would guarantee, in particular maintain a certain internal social order.

The development of the police function parallels the development of the state. The police function existing within a kinship-based society, as a product of the whole society, is transformed into a police function that predominantly represents the interests of the dominant class in a class-dominated society while at the same time purporting and appearing to represent the entire society.<sup>5</sup>

The process of social evolvement, the changes in regulations systems inside communities have contributed in the process of creating states as the highest level of organized social forms of life. Establishment of states at the same time meant that there will be many rules which will accompany them. Rules and legislation are the inevitable part of state organization; they are the assets which are secured by police forces and the ones important for the existence of their organizational framework. States are the ones that have the monopoly of using force to keep citizens under its legal boot and make them accept, respect and implement their obligations and relevant politics.

A society dominated by a ruling class needs a coercive instrument to maintain this class's control over basic resources and over a labor force necessary to produce the surplus product to support and sustain its class (Haas, 1982: 173-174).<sup>6</sup>

If we analyze the role of police during 20<sup>th</sup> Century, we should mention and conclude that even in such an important 100 years, police forces have experienced a position of constant transformation, but always aiming towards meeting and fulfilling the needs of governments. It has never been important who the holder of power inside borders is: are those one the people or is it the sovereign (monarchy).

In the middle of the last century a textbook example of direct and rather complete use of police in direction of states' interests (the goals and interests of the ruler) if the functioning of the German police in the period of Nazi Germany. During the ruling of Adolf Hitler power was incarnated through totalitarianism. Symbols of the state were primary and above all. People were dominated by the opinion and view that everything which is located inside the country is secure and that everything which is outside cannot harm what Germany has inside its borders. Police was largely used to impose authority; its role was decisive, especially in securing the Hitler's ideas and securing fascist ideas. Institutes of justice and righteousness were relativized and marginalized; means of force were everyday assets while police was Hitler's right hand.

In the period after the end of the Second World War there were changes in the process of police control. The essence of those changes can be found in the fact that after a long time, human rights and freedoms, human dignity, prosperity and respect got their place on the pages of few important international documents.<sup>7</sup> Same important place in the process of protection of human rights and freedoms, as most imperative arising, has

<sup>4</sup> Оливер, Бачановиќ. Полицијата и жртвите. Скопје, 1997 година, стр 34.

<sup>5</sup> Robinson, Cyril D., Richard Scaglion. "The Origin and Evolution of the Police Function in Society: Notes toward a Theory". *Law and Society Review Vol.21 (1)*: 110

<sup>6</sup> Ibid. p.109

<sup>7</sup> Universal Declaration of Human Rights, available at: <http://www.indiedownloads.com/2769630/download-universal-declaration-of-human-rights-pdf.html> [04.11.2016]

the European Convention on Human Rights and Freedoms<sup>8</sup>, which defined those human rights and freedoms, accentuated and emphasized the obligations for all member states, all obligations they should implement as signatories of the Convention.

## 2. Legal framework for policing in the Republic of Macedonia

The fact that police during its everyday work is exposed to direct contacts with citizens and the fact that it has complex activities in today's system of interpersonal and social relations, asks right and legally strong position of Macedonian police, a position where it won't be able to abuse its powers and will use them in accordance to legal solutions.

After 1991, Macedonia with gaining its independence gave citizens the central position into society which meant forming democratic system, focusing on human rights and freedoms, prosperous society where police will protect its citizens and will provide their and theirs state security. Such social structure means that police basically has tasks and obligations which are strictly legally obligatory for them and that they are not able to act outside those frameworks.

Police and state should be situated and set into a positive collision and should work in a synergy together. Thus, the principle of rule of law cannot be understood solely as a system of laws which are used to ensure peace and order, protect civil rights, have righteous judiciary etc. It should be understood as a wider concept which includes realization of certain values, such as democracy, legal fairness, certainty, equality. In order for our country to justify its positions as democratic, modern country, it should set state apparatus and every institution and body, especially police forces, inside legal circles and assure that each one of them will act according to rules.

It is expected the area of power held by police to be a core of disagreements and discussions in favor and against the use of certain means of force given to police forces and which is the level of their legality and legitimate use in every specific situation. Macedonian Constitution<sup>9</sup> as a fundamental and as the highest legal act in the country, in its provisions among all the others fundamental values of Macedonian social and political system underlines human rights and freedoms which are recognized with every international document. Its legal framework is and should be the basis from which every other institution should derive appropriate legal solutions in accordance and in manner imposed by it. Every basic right, obligation, duty, possibilities, actions, restrictions of citizens and governmental institutions arise from its provisions.

## 3. Macedonian legal solution for police organization and use of means of coercion and force

Police work in Macedonia is provided in the Macedonian Law on Police.<sup>10</sup> This Law regulates the police affairs, the Police organization, police authorizations, and the rights

<sup>8</sup> European Convention for human rights. Available at. [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [04.11.2016]

<sup>9</sup> Article 8 paragraph 1 from the Constitution of the Republic of Macedonia

<sup>10</sup> Law on Police. Official Gazette of the Republic of Macedonia, N. N.114/2006, 148/2008, 6/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016

and obligations arising from the employment of police officers in the Ministry of Interior, which are not being regulated by the Law on Internal Affairs.<sup>11</sup>

The provisions of the Law accurately identify and determine the rights and obligations held by the police under the implementation of their daily activities. According to the Law<sup>12</sup>, the police function is to protect and respect the fundamental freedoms and rights of citizens guaranteed by the Constitution, laws and ratified international treaties, protect legal order, prevention and detection of offenses, measures undertaken to prosecute the perpetrators of such offenses and maintain public order and peace in society. Basically the implementation of the above mentioned obligation of the police is used to effectively provide police actions for fulfilling the obligations from article 5 of the Law on Police, including:

1. protection of life, personal safety and property of citizens;
2. protection of human rights and freedoms of citizens guaranteed by the Constitution, laws and ratified international agreements;
3. prevention of criminal acts and offenses, detection and apprehension of their perpetrators and undertaking other legally defined measures to prosecute perpetrators of such crimes;
4. identifying and looking for direct and indirect benefit obtained by committing a crime;
5. maintaining public peace and order;
6. regulation and control of traffic;
7. control of movement and stay of foreigners;
8. border checks and border surveillance;
9. providing assistance and protection of citizens in case of emergency;
10. protection of specific persons and objects; and
11. other matters specified by this Law.

The Law on Police gives legal basis for collection, processing, use, transfer, keeping, and deleting of personal data by police, the Administration for Public Security, as body within the MOI, and the police officers when performing their police authorizations. There is also legal basis for maintaining personal data records with set deadlines for their keeping and possibility for re-examination in special cases by commission which includes one representative from the Directorate for Personal Data Protection. Generally, the Law on Police ensures legal protection of personal data by referring to application of the Law on Personal Data Protection and determines the Directorate for Personal Data Protection as competent body in accordance to this Law to supervise the undertaken activities for processing of personal data.<sup>13</sup>

The most sensitive situation which in most cases causes the attention of public, especially experts in the area is the abuse of means of force. These kinds of situations are result of the legal provisions which give to police officers the right to use means of force in legally defined situations. Macedonian Police Law allows precise determination of situation and conditions which must be fulfilled so force can be used, it defines which

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<sup>11</sup> Human Dynamics. Directorate for Personal Data Protection. *Analysis of the Police Sector Legislation in regard to Application of Personal Data Protection*. 2011. p.9

<sup>12</sup> Article 3. Law on Police. Official Gazette of the Republic of Macedonia, N. N.114/2006, 148/2008, 6/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016

<sup>13</sup> Human Dynamics. Directorate for Personal Data Protection. *Analysis of the Police Sector Legislation in regard to Application of Personal Data Protection*. 2011. p.21

actions constitute police force<sup>14</sup> and which are the possible means of force<sup>15</sup> that can be used by authorities.

Police authorizations stipulated in this Law are:

1. check and determination of the identity of persons and objects;
2. information collection;
3. summoning;
4. apprehension;
5. detention;
6. search of persons and objects;
7. redirecting, directing or restriction of the movement of persons and means of transportation in a particular area for necessary period of time;
8. warnings and orders;
9. temporary dispossession of objects;
10. search of certain facilities and premises of state bodies, institutions exercising public authorizations and other legal persons and insight in certain documentation;
11. stop, examination or search of persons, luggage and means of transportation;
12. securing and inspection of the crime scene;
13. reception of charges;
14. public announcement of awards;
15. recording on public places;
16. collecting, processing, analyzing, using, estimation, transmission, storage and deleting data, as well as personal data procession under the terms and manner determined by this and separate Law;
17. application of special investigative measures and undercover sources of data and protection of the persons encompassed by the regulations for witness protection.<sup>16</sup>

The recent changes and amendments of the Law on Police from March 2015, beside the assets available to the police for resolving some situations, especially means which can be used in situations when police intervenes against groups.<sup>17</sup> These changed provisions were accepted by nongovernmental organizations with reserve, since such changes and widening of the possible situations of using means of force used against groups will threaten basic human rights and freedoms guaranteed by both domestic positive legislation and international documents, and will give police so many possibilities to suppress demonstrations with totalitarian methods.

On the other hand, the Law on Internal Affairs regulates the internal affairs, the organization and responsibility of the Ministry of Interior, the categories, status and special responsibilities and authorizations of the employees in the Ministry, the control over the performance of the duties in the Ministry, the employment rights and

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<sup>14</sup> Use of force is legitimate, proportional physical or mechanical pressure, during which police have used means and methods that are part of this law, directed towards a person from police officer, only in case when police affairs cannot be fulfilled with another methods.

<sup>15</sup> Means of force are: physical force, police truncheon, and use of handcuffs, devices for forced stopping of cars, police dogs, and chemical means, and firearms, special kinds of equipment, firearm and explosives.

<sup>16</sup> Article 28 Law on Police. Official Gazette of the Republic of Macedonia, N. N.114/2006, 148/2008, 6/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016

<sup>17</sup> Physical force, police truncheon, electric paralyzer, chemical means, rubber bullets, police dogs, special vehicles for public order and peace, and pyrotechnical and explosive equipment.

obligations of the employees in the Ministry, the material liability, as well as the compensation for damage and disciplinary liability of the employees in the Ministry. LIA generally provides legal basis for collection, processing, use and maintenance of records and keeping personal data (including health data) in accordance to the goals set forth by law. In accordance to the principles stipulated in the Law on Personal Data Protection, the LIA contains obligation for deletion of personal data when it is determined that they are incorrect or when the reasons and conditions for which they were processed, ceased to exist. The Law stipulates that the authorized officers and the Administration for Security and Counterintelligence as a body with the MOI can collect and process personal data. The LIA generally provides legal protection of the processed personal data by referring to application of the regulations on personal data protection, including the fact that the Directorate for Personal Data Protection supervises the legality of the activities undertaken in regard to the processing of the personal data.<sup>18</sup>

#### 4. Cases of abuse of police powers and means of coercion and force in the Republic of Macedonia

Police being the right hand of government in most cases knows to cross the legal framework and to abuse its legal authorizations. Whether those situations are result of police officers' incompetence, their arbitrariness, the lack of knowledge, very wrong assessment of the situation, the lack of adequate preventive policy, violation of human rights and freedoms or not, their most often consequence are injured citizens. In such situations, Macedonian citizens have the opportunity to report police illegal activities, their disproportionate use of force and coercion, abuse of authority, immoral and unethical behavior of police officers.

Disproportionate and indiscriminate use of force by the police is one of the main challenges for free exercise of FOA according to analysis and singled out by almost all of the interviewees. This finding is confirmed by human rights organizations and relevant national and international institutions. More specifically, disproportional use of force by the police was registered during the 5th of May protests, the protests in Gjorce Petrov.<sup>19</sup>

The Macedonian Helsinki Committee also noted excessive use of force by the police when dispersing the May 5th protest. The committee stressed that "the police officers did not limit use of force only towards aggressive protesters but kicked and trampled all protesters, some of whom were sitting calmly on the ground with their hands in the air." These actions by the police constitute a violation of international human rights standards. According to the European Court of Human Rights, "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior".<sup>20</sup>

<sup>18</sup> Human Dynamics. Directorate for Personal Data Protection. *Analysis of the Police Sector Legislation in regard to Application of Personal Data Protection*. 2011. p.9

<sup>19</sup> Western Balkans Assembly Monitor Project. *Freedom of Assembly in Macedonia*. Skopje, 2016. p. 16

<sup>20</sup> European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00 (2004) as cited in Human Rights Council (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Maina Kiai. A/HRC/20/27. p.8

In the 2015 Report, the Ombudsperson found “increased police brutality compared to 2014, where one of the more characteristic examples is the public protest of the citizens in front of the Government in May 2015.” Following the protests, a team of the Ombudsperson visited the detained in the police stations and visually noted injuries among the arrested. The arrested persons complained of police brutality during the arrests, but had no complaints regarding the treatment in the police stations.<sup>21</sup>

In most cases of police brutality and excessive use of means of force, beside regular, yearly reports by national institutions, in most cases, victims of this kind of actions forwards their case applications to the European Court of Human Rights in Strasbourg. Some of those cases are *Dusko Ivanovski Vs Macedonia*<sup>22</sup>, then *Jovche Lazarovski Vs Macedonia*<sup>23</sup>. Both cases are result of their unlawful detention and use of inadmissible means of coercion and force in the process of their arrests. Also, we should mention the case of *Pancho Velinov Vs Macedonia*<sup>24</sup>, because of police misconduct.

The most evident example of reckless behavior of police forces in direct violation of human rights, serious violation of basic constitutional values, is the case of *El Masri Vs Macedonia*<sup>25</sup>. In this case, El Masri applies to the Court because of the Macedonian police treated him, of the means of force they used and the fact they crossed the legal framework for those assets.

## Conclusion

Modern theoretical concepts and explanations about the role police forces have into society elaborate Peel's reforms, concepts of community policing and police forces in democratic conditions and states. These concepts have their own characteristics and propose different means of actions by police forces. Such frameworks of police work defines police activities as mostly preventive ones, measures which will provide security by using specific preventive tactics and strategies.

The concept of community policing is based on the direct cooperation between police forces and citizens. Their joint work is directed towards solving fundamental problems inside the local communities, such as suppression of crime, reduction of fear of crime and enforcing the feeling of security inside those communities, prevention and reduction of various social disorders.

One of the most important parts of the concept of democratic societies is the police. Beside them democracy is characterized by separation of powers, free media, equality, responsiveness to citizens' needs, participation of citizens inside governments etc. Police forces should protect human rights and freedoms inside such societies, and also to guarantee the rule of law which is the core concept known to democracy.

The political conditions<sup>26</sup> in the Republic of Macedonia, the characteristics of our society as multicultural, multiethnic, multi - religious, should be used to act towards

<sup>21</sup> Ombudsman of Republic of Macedonia, Annual Report on the level of respect, promotion and protection of human rights for 2015, Skopje, 2016, p. 22

<sup>22</sup> *Dusko Ivanovski Vs Macedonia*. Application no. 10718/05

<sup>23</sup> *Jovche Lazarovski Vs Macedonia*. Application no. 4922/04

<sup>24</sup> *Pancho Velinov Vs Macedonia*. Application no. 16880/08

<sup>25</sup> *El Masri Vs Macedonia*. Application no. 39630/09

<sup>26</sup> Раде, Рајковчевски. Градење безбедносна политика: Случајот на Република Македонија. Фондација Конрад Аденауер. Факултет за безбедност, Скопје, 2014, стр. 68

positive direction for the Macedonian authorities to create a police service which be able to meet the democratic changes and challenges coming out from above mentioned differences inside our society.

Macedonian police should direct its actions towards working in accordance with legal solutions, not going over legal frameworks; police should be the keeper of citizens' security, and not the long hand of political elements inside a country.

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