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## ISSUES OF POLICE POWERS OF IDENTIFICATION IN SLOVENIA

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### **Abstract**

Police officers exercise the police power of establishing identity on a daily basis. It is one of the mildest repressive measures that police officers use to interfere with the human rights and fundamental freedoms of citizens. Any restriction of human rights and fundamental freedoms in police procedures must comply with the requirements of a democratic society, the rule of law and the supremacy of law. The fundamental rule of any democratic society or state is that the state has no right to interfere with the rights of an individual until there is a certain degree of probability that the individual has violated the legally defined social norms. A sound knowledge of police powers is the basis for the lawful, professional and correct execution of police tasks. It is also important that those involved in police procedures are aware of the duties of a police officer. The latter is important not only to enable people to assert their rights if they feel they have been infringed, but also to ensure that people do not resist or otherwise encourage harsher police action in the legitimate exercise of police duties.

This article fully defines the legal basis of the police authority to establish identity in the police procedure. It outlines the types of police procedures and the ways in which persons may fail to cooperate in the procedures, as well as the measures taken by police officers to ensure the successful performance of the police task, which include the police powers of arrest and detention. The issue of recording police procedures by the police and by citizens is also highlighted.

Finally, guidelines are given that relate to the issue of the power under consideration and to ensure the safety of police officers.

**Keywords:** *police, establishing identity, recording of police procedures, arrest, detention, human rights and fundamental freedoms, legality*

## 1 Definition of police powers

Under The Police Tasks and Powers Act<sup>1</sup>, police officers carry out duties and powers to ensure the fundamental duties of the police, which include:

- ensuring the safety of individuals and communities,
- respect for human rights and fundamental freedoms; and
- strengthening the rule of law.

The Police Tasks and Powers Act also defines the concept of police task, police power and police procedure. A police task is defined as a task prescribed by the Police Tasks and Powers Act or by another law and is carried out through the use of police powers or other official acts. A police power is a measure established by law which enables police officers to perform police duties and which, as a rule, interferes with human rights or fundamental freedoms or other rights (Police Tasks and Powers Act, 2013, Article 3).

Police officers perform police duties and exercise their powers *ex officio*, by order of the police chief, by order of a court, a public prosecutor or any other authority authorised to do so by a specific law (Čas, 2019, p. 62). When performing police tasks, police officers assess which decisions, police powers or official actions they will take in order to effectively prevent and eliminate danger, taking into account the facts and circumstances known to them at the moment of assessment (Police Tasks and Powers Act, 2013, Article 7). Tactical discretion is a provision that facilitates the police officer's work and, when used reasonably, can give legitimacy to his or her performance of a particular task, of course, taking into account the fact that the police officer in particular cases is well aware of the normative regulation in the field of police powers. In this respect, the police officer makes decisions on the basis of the circumstances that were present at a given moment and that led to the decision to carry out a particular authorization (Pozdrec and Kotnik, 2023, p. 17).

The principle of respect for human personality and dignity and for other human rights and fundamental freedoms determines the humane and dignified treatment of other persons by police officers. It is a constitutional commandment that this principle imposes on police work. The Constitution of the Republic of Slovenia (hereinafter referred to as the Constitution) guarantees respect for human personality and dignity in criminal and other procedures, as well as during deprivation of liberty and execution of sentences (Žaberl et al., 2015, p. 70). The principle of legality, in turn, indirectly implies the exclusion of illegality of the lawful action of the authorised person and is one of the fundamental principles for the use of security police powers (Žaberl et al., 2017, p. 273).

Interference with human rights and fundamental freedoms is permissible only where the Constitution allows it and only in cases where the law provides so (Čas, 2023, p. 83). Police powers may therefore only be used in cases provided for by law and only in the manner provided for by law and/or the relevant by-law. Any police power, even the mildest, constitutes a certain interference with human rights or freedoms that may be restricted only by the Constitution and the law. Therefore, police powers cannot be prescribed by a by-law, but only by a statutory act, and a by-law (regulation, act) can only define the manner or procedure for the exercise of a particular police power. A sub-legislative act may also, if necessary, further elaborate on police powers (Žaberl, 2006, p. 24). Thus, the Rules on Police Powers<sup>2</sup> regulates the manner of exercising police powers laid down in the law regulating the tasks and powers of the police and in other laws, insofar as they define powers of the same kind (Rules on Police Powers, 2014, Article 1).

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<sup>1</sup> The Police Tasks and Powers Act was adopted on 30 January 2013 and entered into force on 3 May 2013. Prior to this, The Police Act which was applied since July 18, 1998 was in force in the Republic of Slovenia.

<sup>2</sup> The Rules on Police Powers was adopted on 10 February 2014 and entered into force on 2 April 2014.

## 2 Police procedure

In their work, police officers meet many different people every day and the nature of their work requires them to interact directly or indirectly with people. Many times, police officers are forced to act to prevent a breach of the law or to ensure compliance with legal requirements (Žaberl, 2006, p. 44), and in carrying out their duties they have to make decisions quickly, which often makes it difficult to judge which powers are permissible to use. A hasty decision, a wrong choice of measure, and often inexperience, quickly lead to an overstepping of police powers and a violation of the principle of proportionality (Klemenčič et al., 2002). The basic mission of the police and the related successful performance of their tasks is linked to an exemplary and sound knowledge of the permissible threshold of interference with human rights. A good knowledge of police powers or the rights and duties that police officers have in the performance of their work is the basis for the lawful, professional and correct performance of police tasks (Žaberl et al., 2017, p. 290).

Article 8 of the Police Tasks and Powers Act defines police procedure as any action implemented by police officers for the purpose of performing police tasks. It further stipulates that any natural person, legal entity or public authority subject to police procedure or any person who is present at the location of a police procedure, shall comply with decisions, orders, instructions or requests of police officers that are necessary to ensure the safety and smooth implementation of the police procedure (Police Tasks and Powers Act, 2013, Article 8).

When police procedures are initiated, the individual concerned is prevented from moving freely because he or she has to obey the officer's orders and commands. Participation in police procedures means restriction of the individual's movement in the place (Žaberl, et al., 2015, pp. 54-56). In police procedures people's rights are closely related to the tasks performed by police officers (Klemenčič, et al., 2002, pp. 63-64), therefore in the police procedure itself it is the duty of a natural person, legal entity or state body to comply with the orders, commands, instructions and requests of police officers that are necessary to ensure the safety and smooth conduct of the police procedure (Pozdrec, 2020, p. 18).

Police officers ensure relative security in the procedure before they start carrying out the procedure. By approaching the person and creating a so-called "security triangle", police officers are in control of the person at all times. Although ensuring security at the highest percentage is impossible, police officers must the aim to do so throughout the entire procedure (Pozdrec and Kotnik, 2023, p. 20).

A "Security triangle" is a position in which the police officers stand laterally or diagonally from the person that is undergoing the police procedure. The person is usually within arm's reach of the police officer and the distance increases in proportion to the danger of the procedure. The police officers stand at an angle of 30 to 45 degrees lateral to the person. They position their body laterally or in such a position as to minimise the impact surface of their body, a position which allows the best reaction to a possible attack or resistance by the person (Practical Procedure, Use of Police Powers, Unification of Police Procedures, 1997, pp. 9-10).

The Catalogue of Standards of Police Procedures presents professional security measures from a practical procedure in the field of police powers that are necessary for the efficient and safe performance of police tasks (Nemanič et al., 2022).

In the Catalogue of Standards of Police Procedures, the profession has defined three types of procedures (Nemanič et al., 2022):

1. STANDARD,
2. SENSITIVE and
3. DANGEROUS.

A standard procedure is a police procedure involving one or more police officers standing in a security triangle, guarding the procedure and observing the surroundings. In the case of a sensitive procedure, it is already an escalation of the police procedure, requiring greater caution than in a normal procedure and involving orders and warnings. The police officers stand in a security triangle and can also

prepare for the possible use of coercive means. The hand may be on the weapon and the stream may be unlocked. If a person reaches quickly into a pocket or similar, the officers will stop the person and check what is in the pocket. In a case of a dangerous procedure the life of the police officer or another person is at risk. The procedure is usually initiated from ambush or cover with a drawn weapon in hand. This is followed by commands, a security check and police handcuffing, and only then the identification procedure follows (Practical Procedure, Use of Police Powers, Standardisation of Police Procedures, 1997, p. 72).

### **3 Police power of identification**

Establishing identity is better known in the public domain as legitimation. The name of the power of legitimation was derived from the term legitimation, which meant the obligation to possess and present an identity card. Given the more specific grounds for establishing the identity of a suspect, the current term – establishing identity - is certainly more appropriate. It indicates the essence of this power, which is to establish the identity and personal data of a certain person in the cases provided for by law (Žaberl, 2001, p. 63). Identity verification is an official act that can be carried out by officials who are specifically prescribed by the legislator to exercise this power (Žaberl, 2001, p. 63). It is a measure, an act or a task that establishes whether a certain person is really who he or she claims to be or is thought to be (Čas, 2019, p. 82), and the police officers also establish the personal data<sup>3</sup> of a person in a police procedure. Usually the establishment of identity is necessary for their further lawful and professional work (arrest, detention, measures to trace the perpetrator of an offence or crime, execution of a police task, etc.) (Pozdrec, 2020, pp. 87-88).

Establishing identity is usually the first contact a police officer has with an unknown person, therefore he does not know how they will react. Many people do not want to be identified for various reasons. Some are simply offended by having to comply with a police officer's request to show a document to prove their identity. Or they may be criminals or offenders who deliberately want to conceal their identity in order to avoid the process. For this reason, it is not uncommon for a police officer to find himself in extremely unfavourable and dangerous circumstances during the identification process. Therefore, the rules of the profession dictate in particular that the police officer must act deliberately and thoughtfully in the identification process in order to effectively prevent a dangerous attack or escape of the controlled person, given the circumstances. The issue of personal safety must be particularly emphasised in the identification process (Ferenc and Žaberl, 2003, p. 2).

The Identity Card Act stipulates that a citizen of the Republic of Slovenia must carry an identity card or other official identification document which contains accurate personal data, a photograph showing the holder's likeness and which is not damaged or worn out, except where it would be unreasonable to do so in the circumstances, and that he or she must make the identification document available for inspection for the purpose of verifying his or her identity at the request of an official person authorised to do so under the Act (Identity Card Act, 2011, Art. 3). In the Republic of Slovenia, any document containing a photograph of the holder and issued by a state authority has the status of an official identification document. The most common official identification documents are ID card, passport, border pass, driving licence, a weapons certificate and certificate of competence as a boat master (Ministry of the Interior, 2023a).

#### **3.1 Purpose of the identification**

The purpose of establishing identity is to find out who the person in the police procedure is and to establish its personal data by examining identity documents, where the information that is not contained in

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<sup>3</sup> The processing of personal data is prohibited if it is carried out in a manner which constitutes or results in impermissible discrimination based on nationality, race, colour, religion, ethnic origin, gender, language, etc. or any other personal circumstance of the individual (ZVOP-2, 2022, Article 2, paragraph 2).

the identity documents is obtained by police officers by questioning the person or by means of checks with the official authorities (Žaberl, 2006, p. 90).

Pursuant to the Police Tasks and Procedure Act, police officers may establish the identity of a person who:

- must be apprehended, brought or detained,
- is in an area, place, space, facility or neighbourhood where movement is prohibited or restricted,
- is in an area, place or facility where measures are being taken to search for or trace the perpetrator of a crime or offence or objects and traces relevant to criminal or offence procedures.
- by behaving, acting or loitering at a particular place or at a particular time, gives reason for suspicion that he or she might commit, is committing or has committed a minor or criminal offence,
- based on a description, has a likeness to a wanted person,
- by behaving, acting or remaining in a particular place or at a particular time raises suspicions that the child or young person is a runaway from home or from an educational institution, in a social welfare institution, health care facility, or lost,
- is obviously in a weak state and the establishment of identity is requires for emergency aid,
- could provide beneficial data for performing the official tasks of the Police" (Police Tasks and Powers Act, 2013, Article 40).

The provisions of Article 40 of the Police Tasks and Powers Act clearly state that this power is used for both repressive and preventive purposes. Thus, the individual provisions of Article 40(1) show that police officers may or must also establish identity in cases where it is necessary to establish the identity of a person who, by his behaviour, conduct or presence in a particular place or at a particular time, gives rise to suspicion that he is about to commit, is committing or has committed a criminal offence or an offence. The law dictates that in such a case, police officers must establish objective elements, which include being in a particular place, and subjective elements, which include the behaviour and conduct of the person who raises suspicion that he or she is about to commit, has committed or is committing a crime or offence (Police Tasks and Powers Act, 2013, Article 40). The presence of a person in a particular place or time is considered to be presence in public places where movement is permitted under certain conditions, in the vicinity of secure facilities, facilities of special importance or in other places, in particular where there is a significant daily, periodic or instantaneous migration of people, or on public transport, if these are security risk areas (Pozdrec, 2020, p. However, it should not be ignored that mere 'appearance' and 'presence of a person in a particular place' are not sufficient grounds for police officers to interfere with a human right, and it is therefore necessary to link these two characteristics to the police officer's conclusion that the person is committing, has committed or is about to commit a crime or offence. The latter also follows from the decision of the Constitutional Court RS U-I-152/03 of 23 March 2006<sup>4</sup> and the judgment of the Supreme Court, No. I Ips 257/2008 of 6 November 2008<sup>5</sup>, where it is stated that "a police officer may carry out an identification procedure if he has sufficient minimum information that raises suspicion in his mind that a person is committing or is about to commit a crime or an offence" (Žaberl et al., 2015, pp. 131-132).

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<sup>4</sup> The Constitutional Court followed the proposal of the Ombudsman, who challenged the first paragraph of Article 35 of the Police Act in the constitutionality review procedures, on the grounds that the establishment of identity solely on the basis of appearance often constitutes only an unjustified disturbance of an individual who respects the rule of law, and that the interference is not necessarily effective in terms of the prevention and detection of offences or criminal offences. Given the importance of the rights affected by the interference, it is also disproportionate in relation to the effectiveness of securing the legitimate aim pursued by the interference (Decision of the Constitutional Court of the Republic of Slovenia U-I-152/03 of 23 March 2006).

<sup>5</sup> In the above-mentioned judgment, the Supreme Court states that mere observation or surveillance of a certain area or object, "ambushes" and other classical methods of police work do not constitute the carrying out of a covert investigative measure of secret observation and surveillance, which consists in the systematic, continuous or repeated observation of a suspect or a certain person for a long period of time, using technical devices to obtain material evidence for the purposes of criminal procedures (Supreme Court Judgment, No. I Ips 257/2008 of 6 November 2008).

### 3.2 Specific features of the identification procedure

Place and time are important factors in establishing identity, as they play an essential role in terms of security. When conducting the procedure in an open area, the police officer has the advantage of being able to observe the place and the surroundings in their entirety, as well as the persons approaching. At the same time, he/she must be even more alert to the possible flight of the person in question. However, when a police officer is in a confined space, there is a greater risk of attack from other persons who may corner the officer, and it is also more difficult for the officer to position himself in a position to carry out the procedure safely. The person in question will not flee in a confined space, and is therefore more likely to resist or attack the officer (Practical procedure, use of police powers, standardisation of police procedures, 1997, p. 23). Establishing identity in the rain or fog is considerably more difficult than establishing identity in the daylight or in a lighted place. When police officers perform procedures at night, they have to use a flashlight to assist them and it is also more difficult to spot any peculiarities in the person they are dealing with and they have to be even more prepared in case the person resists or attacks (Practical procedure, use of police powers, standardisation of police procedures, 1997, p. 27). As mentioned, people usually prove their identity with a public document bearing a photograph issued by a public authority. Police officers look at the document to establish identity and compare and check the information in the relevant records. If a person is masked or disguised, police officers may ask the person to identify himself or herself in order to establish his or her identity beyond doubt (Pozdrec, 2020, p. 89).

If a police officer doubts the authenticity of a public document, or if the person does not have it in his or her possession, or if the identity cannot be established with certainty, police officers may establish the identity by an interview, in which they verify the identity by means of information from official records, other documents, with the assistance of other persons, or at another place or in any other way proposed by the person, provided that it is safe and reasonable to do so. If a police officer is unable to establish the identity of the person, he/she may bring the person to the police premises and carry out an identification procedure<sup>6</sup> (Police Tasks and Powers Act, 2013, Article 41). By bringing<sup>7</sup> the person, the police officers shall temporarily restrict the person's movement and bring him/her to the police premises, to the official premises of another authority or to a specific place. Before the person is taken into custody, the police officer must carry out a security check of the person, inform the person of the reasons for the arrest and order him or her to go with him or her, and warn the person of the consequences if he or she resists the arrest or tries to escape (Ministry of the Interior, 2014). Detention<sup>8</sup> for identification purposes can last only for as long as the identity is not established (Ministry of the Interior, Police, 2021).

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<sup>6</sup> The identification procedure includes checking data in police and administrative records and other databases that the police officer is authorised by law to obtain, comparison of fingerprints and palm prints, photographs and personal description of the person, oral swabs, and other operational and criminal-technical tasks. The photograph and the personal description may also be published (Police Tasks and Powers Act, 2013, Article 41).

<sup>7</sup> A person who is the subject of police procedure shall be temporarily restricted in his or her movements if he or she is actually prevented from moving freely for the purpose of carrying out a specific police authorisation or other official act, but this restriction may last only for the time strictly necessary to carry out the police authorisation or other official act. The latter also applies to arrest on the basis of a warrant issued by a competent authority; the law governing criminal procedure, except in the case of deprivation of liberty; and the law governing the procedure for misdemeanours. The period of temporary restriction of movement shall not exceed six hours (Police Tasks and Powers Act, 2013, Art. 56).

<sup>8</sup> A police officer may order the detention of a person on the basis of the provisions of Article 157(1) and (2) of the Criminal Procedure Act, Article 109(2) and Article 110(2) of the Offences Act, Article 64 of the Act on the Duties and Powers of the Police (Police Tasks and Powers Act) and Article 24(1) of the Road Traffic Rules Act. The detention of a person may be ordered by a police officer on the basis of the provisions of Article 157(1) and (2) of the Criminal Procedure Act, Article 109(2) and Article 110(2) of the Act.

Once the identification procedure is completed, the police officer completes the POL-85 form<sup>9</sup> or the identification card, and then enters the person into the FIO (Phonetic Index of Persons) information system<sup>10</sup> (Ministry of the Interior, Police, 2023b).

The POL-85 form contains the personal data of the person that the police may collect, which are set out in Article 124 of the UNPOOL. This information is then kept or stored for 1 year from the date of identification. After the expiry of the retention periods, the data from the records managed by the police are blocked and anonymised in accordance with the regulations. The data from the records are then kept for 10 years after blocking and anonymisation (Police Tasks and Powers Act, 2013, Articles 123-129).

If an individual does not carry an identification document with accurate personal data and his/her photograph, or refuses to present the document to an official person authorised to do so, the police officer may impose a fine of EUR 50 (Article 24(1)(1) Identity Card Act, 2011, Article 24) for this offence.

#### **4 Non-cooperation of persons in police procedures**

In recent years, there have been more and more cases of people refusing to cooperate with police officers, in order to make the officer uncomfortable and thus discourage him from writing a ticket. One issue that is increasingly being raised in this context is the insulting and filming of police officers. Police officers are exposed to the public when carrying out procedures, which puts them under all the more pressure to react in the correct way and at the same time carry out the task legally, which is even more difficult when they are aware that someone is filming them.

When performing police tasks, the police strive to create and maintain public trust, as this is the foundation for successful policing. A single police officer's misconduct can outweigh the good work of thousands of police officers, because people view the police as a community rather than as individuals, and so when a single police officer makes a mistake, they blame all police officers, not just one (The International Association of Chiefs of Police, 2009).

##### **4.1 Recording police procedures**

As a police officer is a public figure who can be filmed, citizens are allowed to record police procedures. However, the recording must not interfere with the police procedures when the police officer is exercising police powers, or pose a danger to the police officers and the persons subject to the procedures against whom police powers are used (Žaberl et al., 2015, p. 365).

Police officers are a visible authority in society and have the right to interfere with human rights under certain conditions. But police powers can quickly be overstepped. If a citizen records an incident where police powers have been exceeded, there is no obstacle to publish the footage. Therefore, police officers must not obstruct or restrict persons recording police procedures. Police officers may restrict them where the recording would pose a danger to police officers and other persons. Persons filming police officers have the status of a non-relevant observer and may film a police officer in order to exercise their right under the Constitution (Citizens' Recording of the Police - Opinion of the Information Commissioner, 2013).

The recording of the exercise of police powers constitutes the exercise of the constitutional right to freedom of expression, as laid down in Article 39 of the Constitution, which thus guarantees citizens the right to freely express their thoughts and constitutes the central purpose of the right to freedom of expression, i.e. the right to discuss the State and its acts and affairs (Constitution, 1991, Article 39). The above is also

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<sup>9</sup> The POL-85 form shall contain all the personal data about the person under investigation, the place and time of the arrest and the reason for the identification (Ministry of the Interior, Police, 2023b).

<sup>10</sup> FIO is the aggregate of all police, statutory evidence built around a single police person index, which can also be accessed through phonetic search (Lenarčič, 2002).

guaranteed in Article 10 of the European Convention on Human Rights (hereinafter ECHR)<sup>11</sup>, which also includes duties and responsibilities in the exercise of the right to freedom of expression, and consequently it may be subject to formalities and to restrictions or penalties provided by law and which are necessary in a democratic society for the security of the State, its territorial integrity, public safety and the prevention of disorder or crime (Act on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1994, Article 10).

#### **4.2 Issues related to the recording of police procedures**

Police officers, as public servants, have a significantly lower expectation of privacy, and thus of the protection of personal data, in the performance of their duties than individuals in the private sphere (Police Recording of Citizens - Opinion of the Information Commissioner, 2013).

The right to freedom of expression is the right to record the conduct of police officers. Society has expressly allowed the police to interfere with the human rights and fundamental freedoms of the individuals who make up that society. All for the purpose of protecting public order, investigating crimes or, in general, ensuring the security of society. Society therefore rightly expects the police to exercise this great responsibility responsibly and prudently. However, in the multitude of interactions in the exercise of their powers, there are instances where police officers exceed their powers (Citizen Recording of Police - Opinion, 2013). In recent years, concerns about police brutality and other forms of misconduct have led many citizens to record their interactions with law enforcement agencies. This can be useful evidence in any subsequent investigation of a police officer's conduct. Recording can be in the form of video, photographs or audio recordings (Justia, 2023).

The main purpose of the right to record police procedures and to publish the recordings is to prevent police officers from exceeding their powers. So if a citizen has recorded an event where police powers have been exceeded, there is no obstacle to the publication of the footage. Therefore, police officers must not obstruct or restrict persons recording police procedures. They may only restrict them where the recording would pose a danger to police officers and other persons (Citizens' Recording of Police – Opinion of the Information Commissioner, 2013).

Nowadays, many videos are posted on social media. The problem arises when the footage reveals personal details of the police officer (e.g. name), which can lead to threats against the officer for revenge, etc. Often, published footage is shown in a way that casts police officers in a bad light. Footage of police officers typically shows force being used against an individual who has breached law and order, committed a crime, etc., but does not show previous actions of the police officers, such as warnings and orders against the person or the use of a lesser means. Such recordings have a strong impact on the public image of the police and the police officer who was exercising the power and whose conduct was recorded also suffers the consequences.

In view of the above, these recordings may constitute protected personal data under the General Data Protection Regulation (hereinafter GDPR<sup>12</sup>), where they identify or make identifiable an individual, in particular where the individual is clearly and unambiguously identifiable in the recording and could thus be identified, or where other personal data relating to the individual (e.g. his/her name, year of birth, etc.) are processed at the same time as the recordings. In this case, the processing of the recordings must have an appropriate legal basis. If the individual in the recording is not identifiable, the applicable provisions of the

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<sup>11</sup> The European Convention on Human Rights (ECHR), also known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, is an international treaty for the protection of human rights and fundamental freedoms in Europe. It was opened for signature in Rome on 4 November 1950 and ratified and adopted on 3 September 1953.

<sup>12</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).



GDPR do not bind the person who further uses the recording. However, if the individual considers that his/her personality rights are being infringed by the use of the photographs, he/she may avail himself/herself of the civil or criminal remedies available to him/her under the law, which, as stated above, fall within the competence of the courts (Ministry of the Interior, Police, 2022a).

## 5 Using a camera to record police procedures

Police officers may use technical means for photography and video and audio recording used by the police to monitor the lawfulness of the exercise of police powers. When using these means, the participants in the communication must be informed in advance and the purpose of the recording must be explained to the person by the police officer. However, if the information would make it impossible or obviously difficult to carry out a specific police task, the person need not be informed (Police Tasks and Powers Act, 2013, Article 114).

A camera attached to a police uniform, i.e. a body worn camera or body worn video (BWC or BWV<sup>13</sup>) is a small camera worn by a police officer on his/her uniform. The BWV is used to monitor what is happening from the officer's perspective, and the content on the camera is also recorded (video and audio recordings of arrests, use of coercive force, etc.) (Miller and Toliver, 2014). The video and audio recordings from BWCs can be used by law enforcement to demonstrate transparency to their communities; to document statements, observations, behaviour, and other evidence; and to deter unprofessional, illegal, and inappropriate behaviour by both law enforcement and the public (Bureau of Justice Assistance, 2015). The BWV can be used to document the use of coercive force, etc. by law enforcement agencies and the general public. In Slovenia, the use of body cameras to record police procedures expanded in 2020, with 222 body cameras distributed to police forces according to the latest data (Ministry of the Interior, 2022b).

In Slovenia, police officers record their actions using the AXON BODY 2 camera, which they wear on their protective vest. The camera records the action from the officer's perspective in a wide-angle view. The footage provided by a police body camera can help prevent negative incidents while alleviating citizens' mistrust by providing greater transparency of police actions. It is said that a picture tells a thousand words, and a video expands that vocabulary exponentially. Police body cameras are also a shield for the police officers themselves, protecting them from false accusations (Axon, n.d.). The review of footage is thus subject to three main institutes - proportionality, legality and professionalism. Thus, an unjustified complaint about the procedure can be quickly dismissed by the police, as the latter is justified by physical evidence. Video and audio recording can show that a police officer has acted lawfully, professionally and efficiently. The use of wearable cameras also ensures the protection of human rights and fundamental freedoms, especially in terms of ill-treatment and the prevention of torture and inhuman or degrading treatment or punishment (Žaberl et al., 2015, pp. 365-366).

In accordance with internal regulations, police officers use body cameras to record police procedures that are defined as dangerous procedures according to the Catalogue of Standards for Police Procedures and are protected by firearms. They also record interventions (e.g. domestic violence, breach of public order, etc.) and other events where, depending on the circumstances, the use of coercive means may be expected, and it is important that they start recording these police procedures as soon as they arrive on the scene. The body cameras used by police officers allow so-called pre-recording, which means that the camera also records what is happening a few seconds before it is switched on, which is particularly useful

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<sup>13</sup> The first prototypes of the wearable camera were developed in 1998 by American researcher Steve Mann, who mounted the camera on a backpack to discreetly document everyday events. Wearable cameras were first used by the police in 2005, when testing of cameras began in the UK. A major turning point in the timeline of police use of body cameras occurred in 2014, after a police officer fatally shot a citizen in Missouri, United States of America. His death, and the subsequent protests and civil unrest, sparked renewed calls for greater police accountability and transparency. Increased scrutiny has prompted law enforcement authorities to rapidly implement programmes to equip police officers with wearable cameras.

in cases where the procedure unexpectedly becomes sensitive or even dangerous, and the recording of the latter is compulsory according to police instructions (Ministry of the Interior, 2022b).

There are some disadvantages of using BWC. One of the disadvantages relates to high costs, but studies have shown that the annual cost per user of police body cameras is matched by the savings from fewer complaints against police officers and the reduced time taken to resolve complaints about evidence captured by wearable cameras. Perhaps the most sensitive concern about body-worn cameras is privacy. After all, police body cameras can catch people at their worst moments and, of course, there is the concern that embarrassing or damaging footage could be released without their consent, regardless of their actual involvement in the event (Axon, n.d.). As a matter of fact, Slovenian law dictates that police officers, when they start to use a body camera, inform the person present that a police procedure or a public gathering is being recorded. If the circumstances do not allow it, the person is informed as soon as possible. However, if it would be impossible to carry out a specific police task, persons subject to the use of technical means don't have to be informed (Police Tasks and Powers Act, 2013, Art. 114).

## **6 An example of establishing identity in practice**

Through the article it can be seen that police officers encounter various, often unexpected situations during their work. The following is an example of one such situation, where a description of the implementation of the the police power of establishing identity procedure is presented, as a result of which a Slovenian police officer lost his life while on duty.

That morning a police patrol was on duty in the area of a settlement close to the border with the Republic of Croatia. The officers received a tip-off from the Operational Communication Centre of the Police Directorate (hereinafter referred to as the OKC PU) that a young boy was wandering around the settlement and in broken English he was asking people for a job.

While driving slowly through the settlement, by the side of the road the officers noticed a stranger who might fit the description. The boy was barefoot and wearing a red T-shirt and tracksuit bottoms. He was lying in the grass, staring at the road. The police officer driver stopped the vehicle in the immediate vicinity of the unidentified man and the other police officer got out and approached the unidentified man to ascertain his identity. Meanwhile, the police officer driver drove their vehicle a few metres further with the intention of withdrawing it to the edge of the carriageway. Without any prior communication, the unidentified man suddenly turned towards the approaching police officer and stabbed him in the chest and neck area with a large kitchen knife he had with him. Due to the extensive injuries, the wounded police officer was barely able to ask for help and then laid down. Another police officer, who just got out of the police vehicle, saw the incident and immediately pulled out his Beretta pistol, inserted a bullet into the barrel and pointed it at the stranger, who was standing motionlessly. The stranger than ran in the direction of a nearby meadow, prior to the police officer could take more action. The officer then approached his injured colleague and started to administer first aid to him, as he was bleeding profusely. He immediately informed the OKC PU of the incident and requested medical assistance. The remaining police patrols arrived at the scene and the officers assisted the injured policeman by applying compression grips to stop the bleeding. The injured policeman was then treated by paramedics and taken to hospital. Due to the serious injuries, the police officer died in the hospital.

Whilst still at the scene, the police officers began tracking down the perpetrator of the crime. Soon they found a body lying motionless in a nearby meadow, and a large metal kitchen knife lying next to the body. A crime scene search was carried out and it was found that the unidentified perpetrator, after committing the crime, had run to a nearby meadow at a distance of about 45 metres from where he had stabbed the police officer and committed suicide by stabbing himself repeatedly in the chest in the area of the lungs and the heart with a knife.

During the examination of the body, which was attended by a health centre doctor and paramedics, a black wallet containing identity documents was found in the suspect's trouser pocket, from which the officers established the perpetrator's identity.

Further information gathered by the police identified the perpetrator as a German national who had attempted to cross the border with Croatia as a passenger on a bus, but had been refused due to inadequate identity documents. After being refused, he went to a nearby petrol station where he stole a large kitchen knife, which he used to stab a police officer and committed suicide the same day.

In the following days, Slovenian police officers contacted the German security authorities to confirm the identity of the perpetrator. They were informed that he was being treated as a missing person. It was also established that the perpetrator had suffered from schizophrenia and suicidal tendencies for the last four years and was being treated in a psychiatric clinic. He was also known to the German police as a drug user.

At the conclusion of the case, a report on the offence of murder was submitted to the District Public Prosecutor's Office pursuant to Article 148(10) of the Criminal Procedure Act (hereinafter the ZKP)<sup>14</sup> (Ministry of the Interior of the Republic of Slovenia, Police, 2017, pp. 55-56).

As a result of this case and other similar cases, recommendations have been made to improve the legality, professionalism and safety of the exercise of police powers, practical procedures and other measures in police proceedings:

- in cases of life-threatening attacks on themselves or others, police officers should take increased risks and exercise tactical discretion to take all measures to protect the life and personal safety of police officers and other persons and to provide first aid;
- it is important that police officers are deployed together to carry out sensitive or dangerous police procedures and other tasks; this will certainly contribute to the successful deterrence of unexpected attacks, even in seemingly routine procedures;
- before they start their duty, police officers should check the number and condition of long-barrelled weapons and the number and adequacy of protective equipment, and they should consistently use complete protective equipment with ballistic protection, both vests and helmets, especially when carrying out dangerous procedures (Ministry of the Interior of the Republic of Slovenia, Police, 2017, p. 57);

## Conclusion

Police officers are often confronted with people who do not want to take part in police procedures. Establishing identity is the most frequently used police power in police procedures. If a person starts to resist and complicate the procedure in order to confuse the police officer and avoid punishment, the police officer must not allow it. The recording of police procedures poses a considerable problem. Mostly because of the complication of the procedures and the subsequent posting of the recordings on social networks. The

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<sup>14</sup> Article 148(9) of the ZKP provides that the police, on the basis of the information and evidence gathered, shall draw up a criminal complaint or supplement the criminal complaint received (Article 147(4)) and send it in writing by post or by secure electronic communication to the competent public prosecutor. The indictment or supplementary report shall describe the facts established and shall indicate and submit the evidence and material collected which is necessary for the decision of the public prosecutor or which may be useful for the successful conduct of the proceedings; however, the contents of statements made by individual persons in the course of the collection of information shall not be included in the indictment or supplementary report. In the event that it is established that, on the basis of the information and evidence gathered, there is no basis for a criminal charge, the police shall send a report to the public prosecutor pursuant in accordance with paragraph 10 of the aforementioned Article (Criminal Procedure Act, 1994, art. 148).

footage published often shows only a partial picture of the whole situation, excluding the previous leniency measures taken by the police officers and showing the use of force against an individual. As a result, citizens quickly form the opinion that the police officers did not act professionally and lawfully, when this is not the case. On the other hand, citizens' filming can also be a good thing, as it can be used to identify police misconduct. The latter is certainly unacceptable and constitutes a breach of professional obligations. One way in which police officers can protect their reputation is by recording the procedures with a wearable camera. These have more advantages than disadvantages, as they can contribute to a greater sense of security and more appropriate behaviour on the part of the public as well as police officers, and can also influence the public perception of the police organisation. It is possible to turn on the wearable camera in almost all standard and sensitive police procedures. Upon arrival at the scene, the police officer warns the person that the police procedure will be recorded. In the case of dangerous police procedures, when there is a sudden attack on a police officer, it is not always possible to turn on the camera, because the police officer must first and foremost prevent a simultaneous attack on himself, a colleague or someone else.

Not all police procedures are currently filmed in Slovenia, as most are quite normal and non-confrontational. Recording all police procedures could lead to an overload of the information system and a rapid saturation of the storage capacity. Given that the use of wearable cameras also entails risks of abuse and breaches of privacy and security of personal data, it is important to put in place appropriate control mechanisms over their use and the protection of the data collected.

The case of establishing identity that was highlighted in the article, unfortunately had a tragic ending. This is all the more proof of the fact that police officers must be aware of the responsibilities of their profession and follow the guidelines that apply to events with different levels of threat. It is important that in the event of life-threatening attacks on themselves or others, police officers exercise tactical discretion to take all measures to protect the lives and personal safety of police officers and other persons. The use of wearable cameras in the course of their work further enhances the lawfulness, professionalism and safety of the exercise of police powers, practical procedures and other measures in police proceedings.

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