

Polish Journal of Political Science

Volume 7 Issue 2 (2021)



Polish Journal of Political Science

Volume 7 Issue 2

Editorial Board

Clifford Angell Bates Jr., University of Warsaw

Stephen Brooks, University of Michigan

Michael Freeden, University of Nottingham, University of Oxford

Shpresa Kureta, Her Excellency Ambassador of Albania to Poland

Paolo Pombeni, University of Bologna

Agostino Massa, University of Genoa

Bohdan Szlachta, Jagiellonian University in Krakow

Tomasz Żyro, University of Warsaw

Chief editor

Jarosław Szczepański

Editor

Karolina Kochańczyk-Bonińska

Cezary Smuniewski

Editorial Secretary

Adriana Golanko

Katarzyna Gruszka

Paulina Szczepańska

eISSN 2391-3991

Original version: e-book

Visit our site: www.pjps.pl

Submit your paper: pjps@inop.edu.pl

(this page is intentionally left blank)

Table of Contents

Articles

Daniel Mielnik

Comparative analysis of the use or making use of direct coercive measures and firearm in selected European countries. *De lege lata* analysis and *de lege ferenda* postulates p. 7

Justyna Jarocka

Spór o dowody z kontroli operacyjnej w procesie karnym – gwarancyjny charakter art. 168b k.p.k w świetle konstytucyjnych praw i wolności p. 33

Karolina Zakrzewska

The issue of space and existence in the context of the Heideggerian concept of dwelling and the Arendtian figure of a stateless person p. 57

Michał Domińczak

Evolution of Polish Building Law 1928–1939 as an Example of Spatial Policy Development p. 81

Daniel Mielnik

Research and Development Institute of the Academy of Justice¹

ORCID: 0000-0001-6508-0273

Comparative analysis of the use or making use of direct coercive measures and firearm in selected European countries. *De lege lata* analysis and *de lege ferenda* postulates

Abstract

The issue of direct coercive measures and firearm falls *in concreto* within the subject of the protection of the state internal security – since it belongs to the activity scope of entities holding competences for use or making use of the above. The entitled entities mostly include services, formations or inspections which are established for the protection of widely understood security, in particular public safety and order. The objective of this study is to attempt to conduct *de lege lata* analysis and the comparative analysis of the use or making use of direct coercive measures and firearm in selected European countries, and also to indicate *de lege ferenda* postulates. The objective of this study is to attempt to conduct *de lege lata* analysis and the comparative analysis of the use or making use of direct coercive measures and firearm in selected European countries, and also to indicate *de lege ferenda* postulates. The triangulation of research methods is applied in this study. The following methods are used: descriptive, theoretical-legal, comparative with the elements of legal comparative literature.

Keywords: direct coercive measures and firearm, law, comparative analysis, national security, uniform services

¹ Formerly: Higher School of Criminology and Penitentiary Science in Warsaw

Introduction

The issue of direct coercive measures and firearm falls *in concerto* within the subject of the protection of the state internal security – since it belongs to the activity scope of entities holding competences for use or making use of the above. The entitled entities mostly include services, formations or inspections which are established for the protection of widely understood security, in particular public safety and order.

The “security” term originates etymologically from the Latin expression “*sine cura*” (*securitas*), which in the Roman times meant political stability (K.A. Wojtaszczyk and A. Majerska-Sosnowska, 2009: 11); whereas notions with a similar meaning have outlasted until the present day and they are still used in a few European languages. For instance, in English there is *security* and in French – *securite* (E. Nowak and M. Nowak, 2011: 13).

The objective of this study is to attempt to conduct *de lege lata* analysis and the comparative analysis of the use or making use of direct coercive measures and firearm in selected European countries, and also to indicate *de lege ferenda* postulates.

The triangulation of research methods is applied in this study. The following methods are used: descriptive, theoretical-legal, comparative with the elements of legal comparative literature.

The legal status of this study is as of 30 October 2020.

I. *De lege lata* analysis

The Law of 24 May 2013 on direct coercive measures and firearm (Official Gazette of 2019, item 2418; hereinafter referred to as: “DCM Law”)² became effective on 5 June 2013 and it substituted the former various legal acts of varied importance, regulating the issues concerning the use or making use of direct coercive measures and firearm by those entitled in this regard.

The said Law comprises, in particular, the catalogue of direct coercive measures and firearm, the cases and rules for their use or making use of them by entitled persons, as well as pre and post-use or making use of procedures or the documentation method for their use or making use of them (M. Jurgilewicz, 2015).

Article 2 of the DCM Law indicates the group of entities entitled to use or make use of direct coercive measures and firearm, which include:

- the officers of the Internal Security Agency (Article 2.1.1 of the DCM Law);
- the officers of the Foreign Intelligence Agency (Article 2.1.2 of the DCM Law);
- the officers of the State Security Service (Article 2.1.3 of the DCM Law);
- the officers of the Customs and Fiscal Control Service (Article 2.1.4 of the DCM Law);

² Legislative information – which was the governmental bill concerning direct coercive measures and firearm, form No 1140 of the Sejm of the Republic of Poland of the seventh tenure. The details of the legislative process: <http://www.sejm.gov.pl/Sejm7.nsf/Przebieg-Proc.xsp?nr=1140> – access of 30 June 2020.

- the officers of the Central Anti-Corruption Bureau (Article 2.1.5 of the DCM Law);
- the wardens of the State Hunting Guard (Article 2.1.7 of the DCM Law);
- the officers of the State Fishing Guard (Article 2.1.8 of the DCM Law);
- the officers of the Police (Article 2.1.9 of the DCM Law);
- the officers and soldiers of the Military Counterintelligence Service (Article 2.1.10 of the DCM Law);
- the officers of the Prison Service (Article 2.1.11 of the DCM Law);
- the officers and soldiers of the Military Intelligence Service (Article 2.1.12 of the DCM Law);
- the wardens of communal (municipal) guards (Article 2.1.13 of the DCM Law);
- the officers of the Border Guard (Article 2.1.14 of the DCM Law);
- the wardens of the Forestry Guard (Article 2.1.15 of the DCM Law);
- the officers of the Marshal's Guard (Article 2.1.16 of the DCM Law);
- the officers of the railway security guard (Article 2.1.17 of the DCM Law);
- the officers of the Park Guard (Article 2.1.18 of the DCM Law);
- the soldiers of the Military Police or military law enforcement agencies (Article 2.1.19 of the DCM Law);
- security staff authorised to use or make use of direct coercive measures or firearm pursuant to the provisions of the Law of 22 August 1997 on the protection of persons and property (Official Gazette of 2020, item 838; Article 2.1.20 of the DCM Law);

- the inspectors of the General Inspectorate of Road Transport (Article 2.1.21 of the DCM Law).

Whereas, pursuant to Article 2.2 of the DCM Law, the persons entitled to use or make use of direct coercive measures are also as follows:

- the members of law enforcement services, referred to in the Law of 20 March 2009 on the security of mass events (Official Gazette of 2019, item 2171; Article 2.2.1 of the DCM Law);
- the employees of reformatories, juvenile shelters or youth fostering centres (Article 2.2.2 of the DCM Law).

In Article 12.1 of the DCM Law, the legislator indicated the closed catalogue (due to the lack of the expression “in particular”) of direct coercive measures. They include:

- physical strength in the form of the following techniques: transport, defence, attack, overpowering (Article 12.1.1(a)-(d) of the DCM Law);
- cuffs fastened on: hands, legs or combined (Article 12.1.2(a)-(c) of the DCM Law);
- straitjacket (Article 12.1.3 of the DCM Law);
- restraining belt (Article 12.1.4 of the DCM Law);
- restraining net (Article 12.1.5 of the DCM Law);
- safety helmet (Article 12.1.6 of the DCM Law);
- stick (Article 12.1.7 of the DCM Law);
- water restraining measures (Article 12.1.8 of the DCM Law);
- service dog (Article 12.1.9 of the DCM Law);
- service horse (Article 12.1.10 of the DCM Law);
- non-penetrative bullets (Article 12.1.11 of the DCM Law);

- chemical restraining means in the following form: the manual throwers of restraining substances, the backpack throwers of restraining substances, tear gas grenades or other devices intended for throwing restraining means (Article 12.1.12 (a)-(d) of the DCM Law);
- objects for restraining persons by means of electricity (Article 12.1.11 of the DCM Law);
- security cell (Article 12.1.14 of the DCM Law);
- isolation ward (Article 12.1.15 of the DCM Law);
- isolation room (Article 12.1.16 of the DCM Law);
- road spikes and other measures for stopping or immobilising motor vehicles (Article 12.1.17 of the DCM Law);
- vehicles (Article 12.1.18 of the DCM Law);
- measures for overcoming construction closures and other obstacles, including explosives (Article 12.1.19 of the DCM Law);
- pyrotechnical means with deafening and dazzling properties (Article 12.1.20 of the DCM Law).

Pursuant to Article 11 of the DCM Law, direct coercive measures may be used or made use of in the event of the necessity of undertaking at least one of the following actions, e.g.:

- enforcing a behaviour required under law, according to the instruction given by the entitled person (Article 11.1 of the DCM Law);
- repulsing a direct, unlawful attempt against the life, health or freedom of an entitled person or other person (Article 11.2 of the DCM Law);
- counteracting actions directly aimed at an attempt against the life, health or freedom of an entitled person or other person (Article 11.3 of the DCM Law);

- counteracting the infringement of public order or public safety (Article 11.4 of the DCM Law);
- counteracting a direct attempt against areas, objects or devices protected by the entitled person (Article 11.5 of the DCM Law);
- protecting order or safety on areas or in facilities protected by the entitled person (Article 11.6 of the DCM Law).

The use of a direct coercive measure means its application against a person; whereas, making use of a direct coercive measure means its application against an animal or in order to stop, block or immobilise a vehicle or overcome an obstacle (Article 4.6, in connection with Article 4.9 of the DCM Law).

Whereas, in accordance with Article 45 of the DCM Law, firearm may be used when there is at least one of the following cases, e.g.:

1) the necessity of repulsing a direct, unlawful attempt against the life, health or freedom of the entitled person or other person, or the necessity of counteracting actions directly aimed at such an attempt, important objects, devices or areas, or the necessity of counteracting actions directly aimed at such an attempt,

2) the necessity of opposing a person disregarding a call to immediate abandonment of arms, explosive material or other dangerous object, the use of which may endanger the life, health or freedom of the entitled person or other person.

A specific *conditio sine qua non* of applying direct coercive measures, pursuant to Article 6.1 of the DCM Law, is their use or making use of them in the manner indispensable for achieving the objectives of such use or making use of,

proportionally to a hazard degree, at the same time choosing a measure with as low harm as possible. On the other hand, under Article 6.2 of the DCM Law, the use or making use of firearm is permissible only when the use or making use of the direct coercive measures proved to be insufficient for the achievement of the objectives of the said use or making use (item 1), or their use is not possible due to given circumstances (item 2).

Furthermore, direct coercive measures or firearm may be used or made use of in the manner with as low harm as possible (Article 7.1 of the DCM Law). The use or making use of direct coercive measures or firearm must be abandoned when the objective of their use or making use of them is attained (Article 7.2 of the DCM Law). Direct coercive measures are used or made use of with utmost caution, considering their properties which may pose a hazard to the life or health of the entitled person or other person (Article 7.3 of the DCM Law). When taking a decision on the use or making use of firearm, utmost caution is required and treating its use as a last resort (Article 7.4 of the DCM Law).

II. Comparative analysis

a) France

Legal basis:

(Fr. *Code pénal*; eng. *The Criminal Code*)

(Fr. *Code de Procedure Penale*; eng. *The Code of Criminal Procedure*)

(Fr. *Code de la Sécurité Intérieure*; eng. *The Code of Internal Security*)

(Fr. *Code de la Défense*; eng. *The Defence Code*)

It is worth underlining that in France the use of force by services (especially by the Police) is strictly regulated and controlled. Its use is deemed justified in a situation when enforcement agency officers face a direct threat – both for themselves and for third persons. In such cases, the French legislation clearly provides that a given person in such circumstances shall not bear any criminal liability. It must be indicated that officers may use firearm in two cases, i.e. in the event of detaining a given person and in self-defence and the defence of other persons.

Whereas, Article 73 of the French Code of Criminal Procedure authorises arrest (i.e. police arrest) in situations of flagrant offences. Nevertheless, what must be emphasised here, the use of force is required to be necessary and proportionate. The provision of Article R211-13 of the French Code of Internal Security establishes the rule of absolute necessity and proportionality.

What is important, Article 122-5 of the French Criminal Code provides that criminal liability shall not apply to a person who, in the presence of an unjustified attack against such a person or another person, uses coercive measures for self-defence or the defence of other person; unless there is disproportionality between the defence measures used and an attack type – in such a case, the said person may (although not necessarily) be subject to criminal liability.

Furthermore, it must be accepted that the use of coercive measures in the form of fastening cuffs, does not hold the attribute of discretion. The provision of Article 803 of the French Code of Criminal Procedure provides that cuffs (or chains) cannot be fastened groundlessly, unless a given person is deemed dangerous for officers or other persons and there is a situation consisting in such a person's attempted escape.

Whereas, Article L. 2338-3 of the French Code of Defence includes the catalogue of situations in which coercive measures may be used, among others, the immobilisation of vehicles, boats or other means of transport whose drivers fail to comply with the stop order.

What is interesting, pursuant to Article R211-9 of the French Code of Internal Security, a gathering may be dispersed by the police force after two summons to disperse have remained without effect.

In France, following the example of the Polish Police Bureau of Internal Affairs, there is a special institution responsible for ensuring that police officers comply with the laws and regulations and the code of ethics of the national police force. This is the General Inspectorate of the National Police. The said body may conduct investigations (that is institute proceedings) both at the court and administrative level.

Various penalties may be imposed on officers who used coercive measures in an unauthorised manner, e.g. a warning, a reprimand, suspension in duties, temporary expulsion from service (from one month to two years) or permanent expulsion from service. Furthermore, the punishment of a fine, deprivation of liberty (based on the French Criminal Code; depending on the loss) may be imposed. What is important, administrative penalties, as well as those included in the Criminal Code, may be imposed on the officer. Nevertheless, in practice, when the ordered deprivation of liberty amounts to six months (or more), then administrative penalties are revoked.

It must be noted that in 2017, 1085 criminal investigations and 276 administrative investigations were submitted to the General Inspectorate of National Police. What is essential, 809 infringements on the part of officers were established in 288 administrative investigations.

b) Croatia

Legal basis

The Law on Police Tasks and Powers; Official Gazette 76/09, 92/14, 70/19)

The Law on Police (Official Gazette 34/11, 130/12, 89/14, 151/14, 33/15, 121/16, 66/19)

Pursuant to Article 81 of the Croatian Law on Police Tasks and Powers, coercive measures are as follows:

- physical strength,
- spray chemical retaining means,
- stick,
- restraining net,
- devices used for stopping or immobilising a motor vehicle,
- service dog,
- service horse,
- special vehicles,
- chemicals,
- firearm,
- special weapon,
- explosives (pyrotechnical means),
- water sprinkler devices (water cannons).

Article 82 of the said Law provides that coercive measures are used in the cases described in the Act, in order to protect human life, overcome resistance, prevent an escape, repulse attacks, as well as to eliminate a threat, if probable. Coercive measures applied in relation to children, the disabled, persons whose mobility is impaired significantly, as well as pregnant women and noticeably sick persons – are used obligatorily after the previous warning of their use.

Analogously to the Polish legislation – Croatian police officers, pursuant to Article 83 of the Law on Police Tasks and Powers, cannot use coercive measures except situations in which they are required by the necessity of achieving official objectives. Furthermore, an officer, at each time, should apply the mildest coercive measure possible by means of which it is possible to attain a given objective. What is important, an officer is obliged to stop the application of coercive measures as soon as the reasons for which they were used cease to exist.

Whereas, in line with Article 84 of the commented Law – a police officer is empowered to use physical strength in order to overcome the resistance of a person infringing public order, as well as a person who must be transported, detained or arrested and counteract actions aimed at auto-aggression (i.e. self-mutilation), etc. Moreover, a police officer is entitled to use an aerosol consisting of irritant chemicals. A police officer is also authorised to use a police stick in a situation when using physical strength or the said spray does not bring in or does not guarantee any results.

As per Article 85 of the Law on Police Tasks and Powers, an officer is entitled to apply measures resulting in the immobilisation of a person in order to make it harmless, as the form of self-defence or in a situation when such a person escapes. Furthermore, such a measure may be applied when a detained person mutilates itself or other persons.

Article 86, in connection with Article 89 of the said Law, refers to the indication of a situation when a service vehicle may be used. In line with its reading, the use of such a coercive measure is intended for stopping a motor vehicle in order to prevent a person who committed a crime from escaping (crime prosecuted *ex officio*). Additionally, such a measure

is applied when a prisoner escaped or a detention order is issued for such a person. Furthermore, a service vehicle is used in a situation of the unlawful passing of a border by a vehicle or when such a vehicle infringes the territory under the supervision of officers (i.e. strategical objects). The measure under discussion may also be applied when a driver does not follow the police officer's instructions. What is essential, a service vehicle or other vehicle (by default – a civil vehicle) may be used to fulfil the above described tasks.

Another coercive measure which may be applied by officers is the already mentioned service dog. Under Article 87 of the said Law, it may be used (on a leash and in a muzzle) in a situation when there are analogous prerequisites for using physical strength, spray or stick. Obviously, a service dog may be unleashed and without a muzzle for instance during an attempt to catch an escaping perpetrator of the offence (prosecuted *ex officio*), in relation to a person infringing border control regulations, in relation to persons threatening the safety of so called state strategical objects or in the event of flagrant public order infringement. What is interesting, unleashing a service dog by an officer and the lack of a muzzle – is regarded tantamount to a situation when an officer is entitled to use firearm.

Widely understood chemicals may be used – pursuant to Article 90 of the Law under discussion – in the need of recovering public order which was infringed “on a larger scale”, and also to prevent the activity of a group of persons threatening people and property of “higher value”. Furthermore, the said measures may be used in the event of closing a given person in a room and counteracting its resistance.

What is more, in line with Article 91 of the same Law, an officer is authorised to use firearm as a last resort and

in necessary protection. In addition, firearm may be used when an officer is not able, by any other means, to arrest a person who committed a crime punishable with the imprisonment of at least 10 years. Additionally, such a coercive measure may be used in relation to the imprisoned who escaped from the penitentiary unit (sentences for an act subject to the punishment of at least 10 years' imprisonment). Analogously to the Polish legislation – Croatian police officers, before shooting, under Article 92 of the said Law, are obliged to say the following phrases: “Stop, Police” and then “I will shoot”. After having said that, there is a warning shoot into the air (caution – such a shoot may be performed if persons or property are not at risk). Moreover, it must be noted that an officer does not have to give the above oral instruction in the situation of a direct threat to its life or the life of another person. Restrictions concerning the use of firearm are included in Article 93 of the Law under discussion. There is information that this type of coercion must not be applied if it may endanger the life of other persons. Furthermore, it must not be applied in relation to children and juveniles.

The Croatian officers, pursuant to Article 94 of the said Law, are also authorised to use firearm against animals if there is no other possibility of eliminating a threat for the life and health of other persons. What is interesting, this measure is also applied when an animal is seriously ill or injured, and a veterinarian or other person is not able to save that animal's life.

In the context of discussing the service responsibility of officers, it is also recommended to refer to the regulations of the Law on Police mentioned at the beginning of this paper. In accordance with Article 93 of the said Law – an officer is subject to punishment in the event of infringing its

duties or if it fulfils such duties without due diligence or with negligence. Furthermore, an officer bears liability when its actions violate the provisions of the Constitution, laws, regulations and other acts concerning its service. An officer is also subject to the punishment when it infringes the good name of the service.

c) Czechia

Legal basis

Law No 283/1991 on Police

(č. 283/1991 Sb. o Polícii ČR)

Law No 119/2002 on firearm and ammunition

(Zákon č. 119/2002 Sb. o strelných zbraniach a strelive a o zmene zákona č. 156/2000 Zb. O overovaní strelných zbraní, streliva a pyrotechnických predmetov a o zmene zákona č. 288/1995 Zb. o strelných zbraniach a strelive (zákon o strelných zbraniach) v znení zákona č. 13/1998 Zb. a zákona č. 368/1992 Zb. o správnych poplatkoch v znení neskorších predpisov a zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov, (zákon o zbraniach) v znení neskorších predpisov. Zákon č. 310/2006 Sb. O nakladaní s niektorými vecami využitelnými na obranné a bezpečnostné účely na území Českej republiky a o zmene niektorých zákonov (zákon o nakladaní s bezpečnostným materiálom).

Law No 361/2003 on employing security forces members

Zákon č. 361/2003 Sb. o služobnom pomere príslušníkov bezpečnostných zborov v znení neskorších predpisov.

Law No 310/2006 Coll. on handling some useful objects for the purposes of defence and safety in the territory of the Czech Republic and on amending some laws

Zákon č. 310/2006 Sb.o nakladaní s niektorými vecami využitelnými na obranné a bezpečnostné účely na území České republiky a o změne niektorých zákonov (zákon o nakladaní s bezpečnostným materiálom)

To begin with, it must be indicated that the Czech officer is authorised to use coercive measures and firearm only when it completed specialised training courses within their proper use. As per § 52 of the Law on Police (the Czech Republic), coercive measures are, among other things, as follows: physical strength, paralysers, restraining gas, service stick, non-penetrative bullets, other types of firearm, restraining belt, means for motor vehicle immobilisation, service dog, service horse, water cannon, firearm, warning shot and handcuffs.

Whereas, the provisions of Law No 171/1993 describe situations in which the use of physical strength, service stick, paralysers and pepper spray is justified.

d) Hungary

Legal basis

Law No XXXIV of 1994 on Police

In line with the Police Law, the Hungarian officers, when applying coercive measures, are obliged, primarily, to respect constitutional rules and other normative acts concerning human rights. What is important, as in Poland, an officer is obliged to adapt a measure type in an adequate manner to a specific situation and must consider a proportionality principle – i.e. when there are circumstances for using physical strength only, it must not use firearm. The catalogue of the said measures is included in chapter 6 of the said Law. In accordance with its reading, they are divided into

two categories, i.e. ordinary coercive measures and measures used by officers to counteract unrests in which physical strength is used. The first category includes: the use of physical strength, handcuffs, service stick, pepper gas, paralysing, service dog, closing a road section, the use of firearm. The second category includes: the use of long service stick, smoke grenade with tearing gas, water cannon, service horses, restraining net, rubber ammunition gun (non-penetrative) and devices used for throwing restraining means.

e) Slovakia

Legal basis

Law No 171/1993 on Police (Zákona č. 171/1993 Z. z. o Policajnom)

The Regulation of the Minister of Internal Affairs No 67/2014 on armament, engineering and chemical technology, and materials

Rozkaz ministra vnútra SR č. 67/2014 o systemizácii výzbrojnej, ženijnej a chemickej techniky a materiálu

Decision of 24 May 2004 on manual throwing devices

Rozhodnutia z 24. mája 2004, ktoré sme si vyžiadali od Odboru vedecko-technického rozvoja Prezídia PZ

Coercive measures used by the Slovakian officers are commonly referred to as “non-lethal weapons” or “less lethal weapons” (B. Planka and L. Kovárník, J. Tureček) which – in accordance with the Police Law – are to make a given person or a given group of persons harmless. The measures under discussion involve: the use of physical strength, paralysing (taser), non-penetrative bullets, chemical restraining means, service stick (personal), defensive shield or pepper gas.

What should be mentioned here are reusable handcuffs, known in Slovakia as *Lapaj* which are similar to cable ties but which may (and often are) be reused. According to the author of this study, the said device is the hybrid of a cable tie and lasso which may be attached (more specifically, thrown onto) to every part of the body of a person to whom such a measure is applied.

Whereas, in line with the decision of 24 May 2004 on manual throwers, an officer may use such a type of coercive measure in order to neutralise a danger.

f) Germany

Legal basis

The Law of 3 October 1961 on direct coercion in exercising public power by the federal officers of law enforcement agencies (UZwG)

Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes (UZwG); Full name: Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes in der im Bundesgesetzblatt Teil III, Gliederungsnummer 201-5, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 43 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist

The Law on the Federal Police Officer of 19 July 1960 - Official Gazette I, p. 569

Des Bundespolizeibeamtengesetzes vom 19. Juli 1960 - Bundesgesetzbl. I S. 56

German officers, as per § 1 of the said Law, are obliged to act in accordance with law, and they are also entitled

to use coercive measures in their duties. In line with § 2, direct coercive measures involve the use of force against persons or objects, where force means physical strength and the use of other means – also firearm. In accordance with § 2 of the said normative act, physical coercive measures consist in the use of physical strength by an officer. The further analysis of § 2 leads to a conclusion that water cannons, service vehicles, service dogs and other devices used for immobilisation – constitute the additional elements of direct coercive measures when the use of physical strength turns out to be insufficient. Direct coercive measures also include firearm, (chemical) irritant (neutralising) materials and explosive materials.

Analogously to the Polish legislation and other, already mentioned countries – German officers, under § 3, in connection with § 4 of the Law under discussion, while applying direct coercive measures, must respect the fundamental human rights (including the German Constitution) and the principle of the proportionality of the measures used.

Pursuant to § 8 of the Law, an officer is entitled to overpower a given person when there is a risk of attack against itself or other person. Furthermore, such a measure may be used in the situation of (active and passive) resistance on the part of a person concerning whom given operations are carried out. In addition, the use of the said measure is a result of i.a. attempted escape or the possibility of committing a suicide by a given person.

While referring to the conditions of firearm use, it is worth mentioning § 9 of the said Law from which it arises that the use of this direct coercive measure is allowed only for i.a. the officers of Police, Border Guard, Customs Guard, Water and Sailing Guard, the officials of judicial body entrusted

with a task consisting in ensuring safety in protected facilities and of other entities who under special laws are authorised to use firearm.

What is important, firearm – pursuant to § 10 of the discussed normative act – may be used only against one person (*Schußwaffen dürfen gegen einzelne Personen nur gebraucht werden*) for the purpose i.a. of preventing committing a crime by such a person or when a prohibited act was already done. Furthermore, this measure may be applied for in flagranti cases. Nevertheless, this provision also stipulates that firearm may be used against a crowd which uses or intends to use force, and when the application of other direct coercive measures will not or did not bring in any result.

Analogously to other presented legislations – the use of firearm under § 12 of the Law is connected with numerous restrictions, i.e. it may be used only as a last resort when other direct coercive measures are not effective. What is important, shooting by an officer should aim at immobilising a person and not killing. Furthermore, before using this measure, it is required to ensure whether it does not pose a threat to any third persons or whether a firearm is not used against a child.

III. *De lege ferenda* postulates

The author of this study wants to indicate that he is not an entity entitled to issue any recommendations concerning the use of direct coercive measures because he is not a person applying such measures and he is familiar with the psychological aspect of their application, as well as (perhaps, first and foremost) the effects of their use against a person. *Prima facie* it could appear that the application of the most

serious coercive measure, especially firearm, does not affect psychologically a person applying such measures – nothing is further from the truth. The use of firearm by an officer of each of the entitled formation surely is a last resort and its use affects the further functioning of such an officer; therefore, such a person, directly after using firearm, stays under the psychological supervision and receives psychological support.

Furthermore, it must be noted that the Polish legislation is complete within this scope.

De lege ferenda it may be only indicated that it would be advisable to revise the regulations within the use of firearm. The author of the study, taking into account humanity and a respect for the superior right of a human to life – recommends considering the possibility of removing this measure from the catalogue discussed in this study. Its possible use could be reserved only for intelligence agencies. An optimal solution would be inventing a new type of *quasi*-firearm which would cause the immediate overpowering of a given person without a threat of the loss of life.

Conclusion

Recapitulating the above considerations *in concerto* it must be noted that the use or making use of direct coercive measures and firearm by entitled formations for the purpose of ensuring the protection of internal security is of a varied nature, not mentioning the practical aspects of using such measures. What is important, entities entitled by the legislator to use coercive measures hold such a competence which is included in the Law. Moreover, it must be underlined that the law on direct coercive measures and firearm, which is currently

in force, repealed the dispersed normative acts concerning this subject. Such a legislative procedure enabled the normative ordering of the said subject matter.

Furthermore, it must be indicated that the presented legislative solutions based on the selected European countries – as a rule – are tantamount to those implemented in the Polish legislation.

Bibliography

a) Normative acts

Poland

The Law of 24 May 2013 on the direct coercive measures and firearm (Official Gazette of 2019, item 2418)

The Law of 22 August 1997 on the protection of persons and property (Official Gazette of 2020, item 838)

The Law of 20 March 2009 on the safety of mass events (Official Gazette of 2019, item 2171)

France

Code pénal; eng. *The Criminal Code*

Code de Procedure Penale; eng. *The Code of Criminal Procedure*

Code de la Sécurité Intérieure; eng. *The Code of Internal Security*

Code de la Défense; eng. *The Defence Code*

Croatia

The Law on Police Tasks and Powers; Official Gazette 76/09, 92/14, 70/19

The Law on Police; Official Gazette 34/11, 130/12, 89/14, 151/14, 33/15, 121/16, 66/19

Czechia

č. 283/1991 Sb. o Polícii ČR

Zákon č. 119/2002 Sb. o strelných zbraniach a strelive a o zmene zákona č. 156/2000

Zb. O overovaní strelných zbraní, streliva a pyrotechnických predmetov
a o zmene zákona č. 288/1995 Zb. o strelných zbraniach a strelive (zákon

o strelných zbraniach) v znení zákona č. 13/1998 Zb. a zákona č. 368/1992 Zb. o správnych poplatkoch v znení neskorších predpisov a zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov, (zákon o zbraniach) v znení neskorších predpisov.

Zákon č. 310/2006 Sb. O nakladaní s niektorými vecami využiteľnými na obranné a bezpečnostné účely na území Českej republiky a o zmene niektorých zákonov (zákon o nakladaní s bezpečnostným materiálom).

Zákon č. 361/2003 Sb. o služobnom pomere príslušníkov bezpečnostných zborov v znení neskorších predpisov

Zákon č. 310/2006 Sb. o nakladaní s niektorými vecami využiteľnými na obranné a bezpečnostné účely na území Českej republiky a o zmene niektorých zákonov (zákon o nakladaní s bezpečnostným materiálom)

Hungary

Law No XXXIV of 1994 on the Police

Slovakia

Zákona č. 171/1993 Z. z. o Policajnom

Rozkaz ministra vnútra SR č. 67/2014 o systemizácii výzbrojnej, ženijnej a chemickej techniky a materiálu

Rozhodnutia z 24. mája 2004, ktoré sme si vyžiadali od Odboru vedecko-technického rozvoja Prezídia PZ

Germany

Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes in der im Bundesgesetzblatt Teil III, Gliederungsnummer 201-5, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 43 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist

Des Bundespolizeibeamtengesetzes vom 19. Juli 1960 - Bundesgesetzbl. I S. 56

b) Bibliography

- Jurgilewicz M. (2015), *Direct coercive measures and firearm. The use or making use of them in the protection of internal security*, Warsaw.
- Nowak E., Nowak M. (2011), *The outline of the state security theory. Security management*, Warsaw.
- Planka B., Kovárník L., *Neletální zbraňové systémy-technické a taktické aspekty*.
- Tureček J., *Aktuální problémy použití elektrických paralizérů*.
- Wojtaszczyk K. A., Majerska-Sosnowska A. (2009), *State security. Selected aspects*, Warsaw.

c) Other

Governmental bill concerning the direct coercive measures and firearm, form No 1140 of the Sejm of the Republic of Poland of the seventh tenure. The details of the legislative process: <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=1140> – access of 30 June 2020.