

Theoretical and legal aspects of the rules for the use of physical force and aid by the police authorities of the Republic of Bulgaria

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Abstract

The purpose of the study is analysis of the main theoretical, legal and organizational aspects, related to the rules for the use of physical force and aids by the police authorities in the Republic of Bulgaria.

The thesis of the author is that there are gaps and ambiguities in the regulatory framework.

The study proposes clarification of the rules for the using of physical force and aids by the police officers and the relevant prohibitions.

The analysis of the normative acts, the basic concepts and the organization of work will help to optimize the activity of the competent state authorities in the implementation of this police power in the Republic of Bulgaria. This is particularly important and necessary for bringing the normative acts and the organization of the activities of the police bodies in line with international standards.

The current development includes an analysis of the main theoretical and legal aspects of the rules for the use of physical force and aids, leaving out of the scope of the work, the main tactical aspects, special police tactics, tactical actions in high-risk situations, crowd control and tactical thinking.

Key words: police powers, rules, physical force, aids.

Introduction

The criminogenic situation in the Republic of Bulgaria has been very dynamic in the recent years. The main factors, generating crime are the continuous reforms in state institutions, lack of trust in them, high levels of corruption, unemployment and low incomes. The political and economic situation in the country has recently been a prerequisite for the holding of more and more events of a different nature, which often turn into conflicts, both between the citizens themselves and between them and the law enforcement authorities.

In this regard, one of the priority strategies of the Republic of Bulgaria is the effective counteraction to crime (Crime Prevention Strategy 2021-2030).

According to the current Bulgarian legislation, the Ministry of Internal Affairs is a state body whose activity is aimed at crime prevention, protection of the rights and freedoms of citizens, and preservation of public order. In this sense, the police authorities have been granted a number of powers in terms of type and nature, regulated in Chapter Five “Powers”, Section I “Powers of the Police Authorities” of the Ministry of Internal Affairs Act. The use of each of them should be consistent with the nature of the offense committed and the degree of its public danger. To the extent that these powers affect the rights and legitimate interests of citizens, their application is carried out in accordance with the legal norms, regulating the grounds and procedure for their application (Timchev, L., 2020, p. 181).

In recent years, however, it is the dynamics in the socio-political and socio-economic situation in the country that have gradually caused public sensitivity towards the powers of police officers and, more specifically, regarding the use of physical force and aids. Society is particularly negative in identifying cases where the use of physical force and aids was unlawful. This gives rise to mistrust of the police authorities, and it can be reasonably assumed that at the present moment the authorities of the Ministry of Internal Affairs with police powers are performing their activities in a hostile social environment.

In this regard, the problem of the application of the police powers regulated in the Ministry of the Internal Affairs Act and the protection of the fundamental rights and freedoms of citizens is currently very topical. The question of the use of physical force and aids by the police authorities in the Republic of Bulgaria, and the public relations arising in this connection, must be examined.

A key role in the lawful application of these specific police powers is the clear regulation of the prerequisites, in the presence of which grounds for seeking criminal liability from police officers should not arise. In this sense, as bodies of the executive and administrative authority, the police authorities should carry out their activities according to the competences granted to them, in strict compliance with the norms provided for in the law (Timchev, L., 2020, p. 182).

The police officer should perform his/her duties in a way that excludes the possibility of confrontation and collision with the citizens. However, in practice there are a number of cases where obligations cannot be fulfilled in a peaceful manner based on negotiations and dialogue, leading to the use of physical force and/or aids. Therefore, it should be reasonably assumed that the regulation of the use of physical force and aids by police officers aims to prevent abuse in the performance of official duties when persuasion, advice and warning are ineffective (Slavchev, B., Markova, An., Dilova, Kr., 2002, p. 68).

The police authorities carry out their activities according to comprehensively regulated powers, in strict compliance with the norms provided for in the law. In this sense, the requirements for the lawful use of physical force and aids are subject to legal regulation, both in Bulgarian legislation and in a number of international acts.

Results and Discussion

In addition to the specific scenarios in which the use of physical force and aids is legally permissible, specific rules are also regulated in the Ministry of Internal Affairs Act, as follows:

1. Obligation for police authorities to use physical force and aids only when it is absolutely necessary.

According to Art. 85, para. 1 of the Ministry of Internal Affairs Act, the employees of the Ministry with police powers may use physical force and auxiliary means in the performance of their official functions only when this is absolutely necessary. In other words, the legislator sets a condition for the application of this specific police power, namely the presence of absolute necessity.

In Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that “Deprivation of life shall not be considered contrary to the provisions of this article when it results from the use of force recognized as absolutely necessary”. This gives us a reason to assume that the concept was borrowed from the Convention and was directly implemented in the Bulgarian legislation.

Given the lack of a legal definition and in an attempt to interpret the meaning of the words forming the concept, according to the Bulgarian interpretive dictionary, it was found that “absolute” means “which is not bound to anything and does not depend on another; unconditional”. “Necessary” in turn is interpreted as needed, required, inevitable, mandatory (<http://talkoven.onlinerechnik.com>). The above gives us reason to assume that “absolute necessity” is present when the factual situation requires the use of physical force and aids by the police officer due to the lack of another possibility to protect the life, health, rights of citizens and the legal order established in the state.

The question of whether or not to use physical force and aids is subject to assessment for each specific case. It is necessary to analyze the factual situation, the behavior of the perpetrator of the crime and the type of crime. It must be established categorically that the use of this power was

absolutely necessary and that there was no unreasonable use of physical force and aids by the police officers. It is important to note that the regulation of the concept of “absolutely necessary” in the Ministry of Internal Affairs Act and Communications aims to unequivocally explain to specialists in this field and to citizens that the police authorities apply this authority only as a last resort. In this sense, it can be reasonably concluded that the concept of “absolute necessity” is synonymous with the expression “only if they cannot be implemented in any other way”. That is why the purpose of the redaction was to unify the terminology used in the Bulgarian legislation with European regulations. (Timchev, L., 2020, p. 176).

2. Physical force and aids should be used after a mandatory warning, except in cases of sudden attack and in the release of hostages.

The use of physical force and aids is a type of measure of administrative coercion, in view of which a warning should be given to the perpetrator before the application of this authority. The goal is to provide an opportunity for the perpetrator to refuse to commit or complete the illegal act. The police officer should warn the perpetrator in a clear and unambiguous manner that, in order to fulfil official duties and in case of non-compliance with police orders, physical force and aids will be used.

Given the lack of a real possibility to foresee specific situations and a corresponding course of action, it can be assumed that, regardless of the factual situation, the police officer should always identify himself, issue a clear and comprehensible warning to the perpetrator, and provide adequate time for him/her to execution of the given police orders.

It is important to note that a warning is a kind of humane act that should not be neglected in case there is time and opportunity to give it. It is another question, however, in the presence of a situation with a high degree of risk, when the police officer reacts promptly, taking into account many factors and circumstances, whether giving a warning will not turn out to be a fatal waste of time from the point of view of protecting the rights and freedoms of individuals, affected in the case.

The law allows the use of physical force and aids without warning, and specific scenarios are also regulated – in the event of a sudden attack and the release of hostages.

The rules for the use of weapons are similarly regulated.

It is essential to note that the provision of Art. 86, para. 1 of the Ministry of Internal Affairs Act does not specify the type of attack – armed or not. This necessitates the conclusion that an unarmed attack is meant in this case. Next, it is not clear what kind of attack it is – against citizens and state bodies or against buildings and other objects. In view of this ambiguity, it should be assumed that the provision applies to any type of attack where it is not possible to give a warning. As for the cases of the release of hostages, given the nature and specificity of these acts, the use of not only physical force and aids, but also weapons are permissible (Timchev, L., 2020, p. 176).

3. Physical force and aids are applied depending on the specific situation, the nature of the violation of public order and the personality of the offender.

In order to clarify the essence of the provision of Art. 86, para. 2 of the Ministry of Internal Affairs Act, first of all, the meaning of the concept of “public order” should be clarified.

Public relations develop through the possibility of predicting the behavior of the subjects, through rules that regulate these relations and indicate the due behavior (legal and moral norms). In this sense, public order includes compliance with the legal order, ethics and good manners.

In a number of Bulgarian normative acts, the protection of public order is regulated.

The Constitution of the Republic of Bulgaria regulates the use of rights in compliance with public order (Art. 37, para. 2; Art. 41, para. 1), as well as obligations to protect public order (Art. 105, para. 2; Article 143, paragraph 3). According to the Law of Combating Anti-Social Behavior of Minors and Juveniles, “Anti-social behavior is an act that is dangerous to the public and illegal or contradicts morality and good manners” (Art. 49a, Item 1). In the Law of Administrative Violations and Punishments, those culpably committed acts that violate the “established order of state administration” are defined as administrative violations (Article 6). In the Decree of Combating Petty Hooliganism, it is regulated that “petty hooliganism” is an indecent manifestation, expressed in the use of profanity, swearing or other indecent expressions in a public place in front of many people, in

an offensive attitude and behavior towards citizens, towards authorities or the public or in quarrels, fights or other similar actions that disturb public order and peace. The Criminal Code also regulates the protection of public order, as in Art. 325 states that hooliganism represents indecent actions that grossly violate public order and express clear disrespect for society.

Court practice accepts that “a behavior incompatible with morality may not constitute a violation of the law... It is sufficient that the act violates the established public order in the state and the behavior is assessed as compatible with morality” (Decision 3830 from 01.04.2008 of the Supreme Court). In this sense, when assessing the compatibility of behavior with public order, it is necessary to take into account not only the observance of legal norms, but also the ethical and moral requirements imposed in society (Kolarov, Em., 2009).

Given the above, it can be reasonably assumed that the provision of Art. 86, para. 2 from the Ministry of Internal Affairs Act includes a wide range of violations of public order. In this regard, before using physical force and aids, the police authority should assess the factual situation and take into account the degree of public danger of the act. In other words, the use of physical force and aids presupposes the presence of a risky situation in which the person against whom this power is applied is a perpetrator of an act of high public danger and a danger to the life, health or property of third parties is created. In addition to assessing the factual situation and the type of violation, it is also important to assess the perpetrator’s behavior. In this sense, it is inadmissible to apply this power in the execution of the orders of the police officer, the cessation of the violation and the absence of a threat to the life, health or property of other persons.

4. Obligation to take measures to protect the life and health of persons against whom physical force and aids are directed.

The right to life has a fundamental character because it is a condition for the normal and full existence of the entire system of human rights and freedoms. In this regard, the same is regulated in Art. 28 of the Constitution of the Republic of Bulgaria and in a number of international legal acts on human rights – art. 3 of the Universal Declaration of Human Rights, Art. 6 of the International Covenant on Civil and Political Rights, Art. 4 of the American Declaration of Human Rights (Zaharieva, P., 2006).

In view of the above, the Ministry of Internal affairs regulates the obligation to take measures to protect the life and health of persons against whom physical force and aids are directed. This police power should always be applied according to the factual situation in strict compliance with the regulations.

It is important to note that this imperative applies to cases where the situation allows and there is an opportunity to preserve the life and health of the persons against whom physical force and aids are applied. This is understandable, given the specificity of the tasks and the nature of the activity of the police authorities in combating crime and protecting the public order established in the country. In this case, it is a question of a factual possibility, in the presence of which the protection of the life and health of the person is mandatory. This also applies to cases where there is physical coercion by one person on another. Taking all possible measures to protect the life and health of the victim is a primary task for the police authorities in the event that they are at the scene of the accident.

5. Obligation to stop the use of physical force and aids immediately after achieving the goal of the applied measure.

It can be reasonably assumed that the legislator intended to ensure maximum protection of the life and health of perpetrators. The adopted provision in the Bulgarian legislation also ensures the achievement of the objectives of the European Convention for the Protection of Human Rights, which states that everyone’s right to life is protected by law and that no one can be subjected to torture or inhuman treatment or punishment (Art. 2 and Art. 3).

The introduction of an obligation for police authorities to cease the use of physical force and aids immediately after achieving a legitimate objective is another measure to protect the rights and freedoms of citizens.

The meaning of the expression “achievement of the legal goal” and “the goal of the applied measure”, which is not clarified in the Ministry of Internal Affairs Act, must be commented upon. In this sense, we can assume that the achievement of the applied measure is actually the legal goal. It, in turn, will be present whenever the police officer has fulfilled his official duties – arresting, thwarting the escape of the perpetrator of a crime, etc. In any situation, the use of physical force and aids must be ceased after the offender’s resistance has been ceased. All actions of the police authority can then be defined as an unlawful excess of authority resulting in the commission of a crime.

Next, it is important to emphasize that the application of physical force and aids cannot be intended to cause physical suffering. The power is regulated with a view to placing the offender in a state of impossibility to continue his illegal behavior (Boyadzhiev, N., 1987).

Repelling an unlawful attack on a police authority is a typical example of achieving an objective by using physical force. This also applies to cases of assault against citizens or state authorities. Practice shows that the cessation of illegal behavior in most cases is only temporary, but the police officer is obliged after the performance of his official duties and the achievement of the legal objective to cease the use of physical force and aids. On the other hand, it should be noted that in order to prevent the offender from committing other illegal acts, it may be necessary to use handcuffs or straitjackets. A typical example of this is the assault (regardless of the object) by a dangerous mentally ill or alcohol/drug addict. Having regard to the nature and duration and also the damage, caused by these diseases and conditions, it should be permissible to use some of the permitted aids to the unit where the offender must be escorted. It is necessary to assess the person’s behavior and determine whether handcuffs or straitjackets should be used for the safety of the person and others.

6. Prohibition on the use of physical force and aids in relation to visibly minors and pregnant women.

The regulation of this provision is dictated by the fact that this category of persons is not able to show resistance that requires the use of physical force and aids.

Minors are a category of persons who, by presumption, can be assumed that they do not have the opportunity to show serious resistance, and the use of force and aids against them is not justified (Kovacheva, Yu., 2007).

A refinement of the legislation is the introduction of the term “visible”, given the norms of the People’s Police Act of 1976. This is essential especially when it comes to pregnant women.

However, despite the fact that the legislator visibly protects minors and pregnant women, the cited prohibition does not apply to cases of mass riots, if all other means have been exhausted.

7. Prohibition of using life-threatening force to detain or prevent the escape of a person committing or having committed a non-violent act, if the person does not pose a danger to the life and health of another.

The provision of Art. 86, para. 7 of the Ministry of Internal Affairs Act introduces a ban on the use of life-threatening physical force when countering a non-violent crime. The legislator specified the type of criminal act, in the composition of which there should be no element of violence (theft, fraud, document crime, etc.). There must also be an absence of danger to the life and health of third parties. In this regard, it can be reasonably assumed that in the presence of such a danger, the use of physical force and aids is permissible (Timchev, L., 2020).

Conclusions

Combating crime and maintaining order in the country is one of the main priorities for the state. As part of the executive authority, the police authorities are called upon to carry out their activities in accordance with the competences granted to them, in strict compliance with the norms provided for in the law. Among the various forms of counteracting negative phenomena are the powers granted by the Ministry of the Internal affairs Act.

One of them is the use of physical force and aids, which is applied in the presence of the legally regulated hypotheses and the above-mentioned rules.

In conclusion, the following summaries, conclusions and recommendations can be made about the use of physical force and aids by police authorities as a power:

1. In regulating the grounds for the use of physical force and aids, the legislator has deliberately used the word “may”, which indicates that the application of this specific power by police officers is an opportunity, given to the operational autonomy of each police officer and is permissible only in the presence of the specific hypotheses regulated in the Ministry of Internal Affairs Act.

2. The use of physical force and aids is permissible only in the presence of absolute necessity. The regulation of this concept in the Ministry of Internal Affairs Act aims to unequivocally clarify that the police authorities apply this power as a last resort.

3. The use of physical force and aids may be applied both cumulatively and alternatively.

4. This specific power must be used after a clear and unequivocal warning has been given, except in cases of hostage release and surprise attack.

5. Before using physical force and aids, the police authority must make a quick assessment of the factual situation, determine the nature of the violation of public order and the personality of the offender.

7. When using physical force and aids, the police officer has an obligation to protect the life and health of the persons, against whom they are directed, which clearly shows that in the performance of their official duties, the police authorities do not aim to harm the life and health of offenders, and cessation of their illegal activity.

8. The use of physical force and aids ceases immediately after the goal is achieved, which means that the legislator intended once again to ensure the maximum protection of the life and health of offenders.

9. Special protection of life and health is provided for visibly minors and pregnant women, and a ban has been introduced on the use of physical force and aids against them. Except in cases of mass disorder, when all other means have been exhausted.

10. The procedure for the use of physical force and aids is regulated in Ordinance and Methodological Guidelines for the use of different types of techniques for the use of physical force and aids, technical characteristics and safety rules for use and their storage, approved by order of the Minister of Internal Affairs.

11. The application of this police power, as well as others, is related to the preparation of the relevant documentation. This is one of the guarantees for effective protection of the rights and freedoms of the persons to whom it is applied.

Given the negative public response regarding the use of physical force and aids by the police authorities, it is suggested that the Ministry of Internal Affairs should take active action in order to clarify to the public when and in what kind of situations it is legally permissible to apply this authority. To explain what its purpose and that in no case is it about harming the health or life of the offenders, but about the fulfilment of official duties.

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