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Legal analysis of the rights of police officers solving spectator
violence incidents in the Czech Republic

Martin Hrinko

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ABSTRACT

The article is concerned with the legal aspects of repressive measures taken by the Police of the Czech Republic against persons committing unlawful acts of spectator violence and the response of public authorities dealing with this phenomenon (football hooliganism in particular) with respect to specific regulations of Act No. 273/2008 Coll. on the Police of the Czech Republic. The article focuses on the emerging phenomenon of spectator violence, which developed in the cradle of football – England and is currently becoming a severe social problem in the Czech Republic as well as in other countries of Central Europe. Having been the officer in charge of operations conducted against urban violence, the author also shares in this article his practical experience.

Martin Hrinko, PhD

Colonel Ing.

Police of the Czech Republic,

Regional Headquarters of Moravian-Silesian Region

martin.hrinko@seznam.cz

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1. Introduction

The article outlines and qualifies from legal perspective the most frequently used rights of officers of the Police of the Czech Republic when solving problems connected with spectator violence (as contained in Act No. 273/2008 Coll. on the Police of the Czech Republic). The article is concerned with the emerging phenomenon of spectator violence, which developed in the cradle of football – England, and is currently becoming a severe social problem in the Czech Republic as well as in other countries of Central Europe. The article analyses chosen regulations contained in Act No. 273/2008 Coll. on the Police of the Czech Republic, effective from 1.1.2009. Based on this act, the Police of the Czech Republic have changed, among others, policies of detection, documenting, police interventions against football hooligans and have made the use of forces and means during the interventions more efficient.

2. The rights of the police as stated in Act No. 273/2008 Coll. on the Police of the Czech Republic

CHAPTER IV - Cooperation and other police relations

Part 1 Cooperation

§ 14 During a police action, the police cooperate with armed forces, security corps and other public services, as well as with corporate bodies and natural persons (in this case these are the municipality, the representatives of the Football Association of the Czech Republic and the organisers);

§ 15 Within the framework of cooperation, the police particularly draw attention of the subjects mentioned in §14 to matters which are in their scope of activity and, if not secured, might lead to risks or disturbance of public order and safety (e.g. the police might advise the subjects on the number of organisers, on security check of the visitors upon their entrance at the stadium for weapons, pyrotechnics, alcoholic beverages, etc.).

CHAPTER V – Restriction of individual freedom

§ 24 General provisions

A person whose individual freedom is restricted by a police officer must not be subject to torture, cruel and outrageous treatment and must not be treated in a way which disrespects human dignity.

§ 25 Use of handcuffs

According to this regulation, a police officer is entitled to restrict free movement of a person (who physically attacks a police officer or any other person; who is a threat to his/her own life; who damages property or attempts to escape) by fettering them using handcuffs and attaching them to a suitable object. Besides the common metal RALK handcuffs, heavy armed police squads (police officers of order service of the Police of the Czech Republic) also use single-use plastic handcuffs depending on actual time pressure and severity of the situation (see Figure 1).

§ 26 Detention

Detention of a person is probably the most frequently used regulation and the most efficient repressive regulation used by the police officers when their warnings against unlawful conduct are evidently inefficient. Police detention as stated in § 26 Act No. 273/2008 Coll. on the Police of the Czech Republic (Para. 1 f) and Para. 1 a), in particular) can be used against a person who „by their conduct are a threat to their own life, lives or health of other people and may damage property“. Regulation § 26 Para. 1 f) Act No. 273/2008 Coll. on the Police of the Czech Republic also entitles the police to put a person „caught committing a tort, and if there is reasonable belief that they will continue committing the act or will obstruct an officer trying to clarify the case“ under detention. These violations of public order and civil life are very common and due to the circumstances (presence of an excited crowd) there is often a reasonable belief that they will continue with their misbehaviour. In many cases, these regulations can be used in a cumulative manner. Detention as such had been hardly ever used until the long-expected football match of the 2010 season in Ostrava between FC Baník Ostrava and AC Sparta Praha, where, historically, according to the regulation, the highest number of fans committing unlawful acts were put under detention in the Czech Republic (almost 300 persons – see Figure

1, 2). The reason why detention had not been used before might have been a supposition that such a distinct interference with individual freedom is not well-grounded.



Figure 1: Regulation §§ 25, 26 Act No. 273/2008 Coll. on the Police of the Czech Republic in practice. This photo comes from the football match between FC Baník Ostrava and AC Sparta Praha on 2 May 2010. The fans have single-use plastic handcuffs on their hands.

The purpose of this regulation is to ensure detention of persons who repeatedly commit unlawful acts and the previous penalties imposed on them by the police prove to be inefficient; as well as to ensure detention of persons suspected of committing a tort and who are likely to commit another tort in the future regardless of the fact that they already have been or will be punished for that behaviour. Primarily, the detention of offender should ensure public order, therefore the main purpose is not to arrest an offender for further proceedings. Before, the police were obliged to start the proceedings (as stated in Act No. 283/1991 Coll. on the Police of the Czech Republic in § 13 Para. 6); the so-called great amendment to the Code of Criminal Procedure introduced by Act No. 265/2001 Coll. annulled the obligation from 1 January 2002. The new Act No. 273/2008 Coll. on the Police of the Czech Republic does not require the proceedings to be started. The aim is therefore to ensure safety by preventing offenders from committing any other unlawful acts. Another reason why

detention is not used very often is that it seems to be work burden for the officers who have to make more records of the particular cases. This notion is, however, not well-founded. The binding directive only obliges the officers involved in the incident to make a record of detention of a particular person, instruct the person and confirm that the person was taken over by another police officer, who then makes a record of all the objects which were withdrawn from the person.



Figure 2: Regulation § 26 Act No. 273/2008 Coll. on the Police of the Czech Republic in practice. This photo comes from the football match between FC Baník Ostrava and AC Sparta Praha in 2010. The fans do not obey the warnings of the police and attack the police officers.

Within the framework of the procedure of detention, the imposed acts of procedure (writing a protocol on withdrawal of a weapon, on damage accounting, on personal inspection, on a medical examination, etc.) can be inscribed in one single official record, therefore, it is not necessary to make any more records. Only in special cases (e.g. if a police officer uses a weapon during the incident) it is necessary to make an additional official record. This procedure had proven very useful in the past and so there is no need to alter it in any way in the new § 26 Act No. 273/2008 Coll. on the Police of the Czech Republic. Neither do the binding directives say that it is necessary to make any more records. Therefore the use of detention in practice is not demanding from administrative perspective. The police must start the acts of procedure if the offender committed unlawful act, regardless of the fact whether the police puts the offender under detention or not (as stated in § 10 Act No. 273/2008 Coll. on the Police of the Czech Republic). In

case a person is put under detention for committing offence, the police (according to § 58 Para. 2 Act No. 200/1990 Coll. on offences) then carry out investigation for evidence. An official record is made from the findings, and is, along with announcements of an offence having been committed, handed over to relevant authority. It is to be stressed that although, according to the act, the police shall proceed in the aforementioned manner (i.e. collect evidence), in case of detention, the person suspected of unlawful conduct is already put under detention and the evidence was already gathered to support the fact (a video recording, testimonies of the police officers or other people who witnessed the incident). In this case, the police carry out only the necessary acts of procedure (identification of the person, inspection, etc.). However, the police do not carry out questioning, the process of disclosure, etc.; as if this person was put under detention on the basis of § 26 Para. 1 Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic, the purpose of the detention is to prevent the person from unlawful conduct in the future, to ensure public order. As this person is not put under detention in order to carry out questioning or the process of disclosure, there is no need (and even no legal duty) to follow the proceedings. As for the maximum time limit of detention, it is 24 hours since the start of detention, whatever number of offenders is concerned (§ 26 Para. 3 Act No. 273/2008 Coll. on the Police of the Czech Republic). During mass public events, where unlawful conduct is very common among the people, it is not sufficient to keep safe separation distance between the two opposing sides and ignore their tortious acts. According to the Department of Security Policy of the Ministry of Interior of the Czech Republic (for the purposes of this article abbreviated to DSP) the key to improving the situation is to make the use of detention on the rioting fans the most efficient possible. A penetrative procedure against the hooligans is necessary, using all legal measures including short-time restriction of individual freedom (detention). This procedure does not only ensure public safety, but also immediately restrains the offenders and prevents them from committing further unlawful acts in the future. However, if the offenders are not suppressed for their unlawful conduct, their sense of indemnity increases. Let us focus on definition of § 26 Para. 1 Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic, which entitles a police officer to put a person, whose conduct represents an immediate threat to their life as well as to lives and health of other people and their property, under detention.

When assessing whether the offender represents an immediate threat it is always important to consider all circumstances with respect to the actual situation. Among others, it is important to assess the characteristics and the possible extent of offender's threat compared with the safety means and police forces available at given situation. Furthermore, it is essential to stress, that the state of immediate threat can occur more easily when initiated by a large group of people (regarding often limited police forces) than in case of unlawful conduct of separate individuals. In other words, the more people who commit unlawful acts together are there and the less police forces are there available, the sooner the state of immediate threat occurs. Therefore, there is a higher number of detentions recorded (§ 26 Para. 1 Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic) during mass public events (e.g. demonstrations, parades, sport matches, and events during which encounter of two opposing sides is expected) than in case of a conflict which emerges accidentally between several individuals themselves. Of course, the reasons for establishing that there exists immediate state of threat must be concrete, conclusive as well as sustainable enough. These circumstances must then be stated in an official record of detention. To give an example of detention according to § 26 Para. 1 Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic, let us imagine a situation in which two opposing groups of people are **immediately** headed to the same meeting point to take part in a put-up violent encounter (they are going there by tube, phoning each other to plan the meeting point). The police have most certainly already obtained concrete and sustainable evidence by then so they accompany the groups on the train. With respect to group sizes (tens of people) it is obvious that if it came to the point of violent encounter, the police would not be able to separate the groups. If there exists evidence that lives, health or property are under immediate threat and the police forces are limited and unable to solve the mass conflict if it occurs (having considered the situation with respect to all the aforementioned factors), it is possible to put a group of people under detention (according to Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic). The police officer, however, always has to consider the actual situation: the regulation might be used if the course of events is leading to a violent encounter of opposing groups of people planned beforehand, and if one single police intervention can prevent them from the encounter. In these circumstances, the police officer can assess the

situation as being a state of immediate threat to life, health or property as described in § 26 Para. 1 Letter a) Act No. 273/2008 Coll. on the Police of the Czech Republic. To conclude with, the act of detention makes the action of the police dealing with unlawful conduct at mass public events easier and, at the same time, does not represent work burden from administrative perspective. Particularly, it entitles police officers to deal efficiently and immediately with a person who infringes law (with respect to the principle of congruity).

§ 28 - § 33 Police cells

According to this regulation, a police officer is entitled to put a person in a police cell if the person is bonded, detained, arrested, or sent to the cell for execution of a punishment of imprisonment or for other reasons as stated in § 63 or § 65 Act No. 273/2008 Coll. on the Police of the Czech Republic if it is impossible to ensure the proceedings stated in § 63 or § 65 Act No. 273/2008 Coll. on the Police of the Czech Republic because the person resists further proceedings.

CHAPTER VI – Object treatment

§ 35 Weapon transfer and withdrawal, personal inspection

§ 37 Detention, object withdrawal, destruction of an object (e.g. explosive systems, briefcases containing wires, ...) – done during a security check of a stadium or designed routes)

§ 43 If the police task requires it, the police officer is entitled to restrict a person from entering a certain police-designed place or restrict them from staying at that place, or instruct them to stay at a particular place so that their life and health is preserved and is not subject to risk.

CHAPTER IX – Use of coercive measures and weapons

§ 52 Coercive measures – only a specification

§ 53 General rules of use of coercive measures

§ 54 Use of handcuffs and other means to restrict offender's space orientation

§ 57 Duties of a police officer after having used a coercive measure or a weapon

§ 58 Special restrictions

§ 59 A police intervention under centralised command

Execution of a police intervention under centralised command or its cancellation is to be decided by its commander. An intervention executed by order service is conducted by commander of order service (Article 10/1 of Binding Directive of the Chief of Police No. 10/2009). Before a police intervention under centralised control is executed, the police appropriately encourage the offenders to give in or stop their unlawful conduct and warns them of the possible use of coercive measures, weapons, etc. (Article 10/6 of Binding Directive of the Chief of Police No. 10/2009 and of Binding Directive of the Chief of Police No. 200/2007 as amended by Binding Directive of the Chief of Police No. 121/2008).

CHAPTER X – Work with data

§ 62 Making records

For the purposes of further proceedings, the police are entitled to make sound, visual or any other records of persons or objects found at public places, or to record the course of a police operation (e.g. photos, videos of the operation, of the stadium, etc. – done mostly by spotters);

§ 63 Proving identity

A police officer is entitled to request proof of identity particularly from a person who is suspected of criminal act or tort, or from a person who is required to give an explanation of certain matter, from a person who enters or leaves a police-designed area (where access is forbidden), or from a person who carries a weapon at public place and there is a reasonable suspicion that the person will use it to threaten or harm other people (in case of fans, their often carry various types of knives, brass knuckles, wooden bats, telescopic truncheons, etc.), etc.

3. Conclusion

The article is concerned with legal aspects of repressive measures taken by the Police of the Czech Republic against persons committing unlawful acts of spectator violence, and the response of public authorities aiming to abate this phenomenon (football hooliganism in particular) with respect to specific regulations of Act No. 273/2008 Coll. on the Police of the Czech Republic.

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