

Record Card

File number	2455/2016/VOP
Area of law	Activities of the Police of the Czech Republic – other
Subject	protection of health and property
Type of finding	Final statement – Section 19
Result of inquiry	Errors found
Relevant Czech legislation	
Relevant EU legislation	
Date of issue	4 August 2016
Date of filing	14 April 2016

Headnote

Police officers are not authorised to detain a person whose health or life are in danger (Section 26 (1)(a) of Act No. 273/2008 Coll., on the Police of the Czech Republic), unless the health or life of the person are in danger as a direct result of the person’s actions. If health or life of a person is in danger in connection to the expression of the person’s opinion, it is not permissible to regard the exercise of the person’s freedom of expression, as opposed to a physical attack by the person’s opponents, as the cause of the immediate danger.

Note: The headnote is not necessarily included in the Defender’s opinion.

Document:

Brno, 8 August 2016
File No.: 2455/2016/VOP/MK

Final statement including proposed remedial measures concerning the procedure of the Police of the Czech Republic in the security operation “China”

A. Conclusions of inquiry

In the inquiry initiated on my own initiative, I found errors in the procedure of the Police of the Czech Republic consisting in:

- unnecessary detention and transport of persons who did not commit unlawful acts other than ignoring the instruction to leave a designated area;
- unnecessary detention and transport of Mr M., failure to take action against attackers and insufficient monitoring of the situation on the ground;
- chaotic actions of police officers in the FAMU building.

Concerning the events near the Hilton, I concluded that no police error could be demonstrated.

More details are provided in the inquiry report.

B. Statement of the authority

I asked the director of the Prague Regional Police Directorate (hereinafter the “Regional Director”) to provide a statement to the conclusion of the inquiry. I received his response on 1 July 2016. [1] He stated that he did not agree with my conclusions, with the exception of the need for a better documentation of similar events, where he had already taken necessary steps.

Concerning the first matter (detention and transport of persons who ignored the instruction to leave the designated area near the lampposts), he stated that these persons were given a clear instruction to leave by the police officers, which the persons ignored. The detention and escort of these persons was ordered because there was a cause for concern that they would continue in unlawful conduct, which would make the performance of police duties very difficult as these persons would continue disturbing the area which they were instructed to leave. Only the detention and escort of these persons to the police station ensured evacuation of the designated area.

Concerning the second matter (the actions taken by the police against Mr M. and the inactivity *vis-à-vis* the supporters of the Chinese president), the Regional Director stated that Mr M.’s repeated provocations of the Chinese activists created situations endangering peace and public order and presented an immediate danger to his health. The Chinese activists were not detained due to the confusing nature of the event.

Concerning the third matter (FAMU), the Regional Director noted that informing the porter (a FAMU employee) of the possible damage to the building in relation to the conflict between the protesters in front of the building and the persons on the balcony was sufficient. He rejected my negative assessment of the fact that the police officers only spoke with the secretary, stating that there was no reason to interrupt the dean’s meeting, especially after the secretary reiterated the dean was aware of the situation. The error only consisted in the conduct of the section commander and the officer of the President Protection Unit who sent out the second patrol, since the identity of the owner of the building had already been established and the police officers had carried out their instruction to inform about the situation.

He objected to my objection that errors concerning the events near the Hilton could not be demonstrated and reiterated that there was no error at all since the police officers were merely carrying out the instructions of the police sniper who evaluated the flag as a security risk.

C. Final evaluation

Regarding the continuing differences in assessment of the above issues that were the subject of my inquiry (except for the need to document police actions better), I cannot consider the adopted remedial measures as sufficient. For this reason, I issue this final statement pursuant to Section 18 (2) of the Public Defender of Rights Act. The final statement also includes proposed remedial measures.

C.1 Detention and transport of persons in the lamppost area

I insist on my conclusion that the detention and transport of persons who did not commit unlawful acts other than ignoring the instruction to leave the designated area was unnecessary.

There is no doubt that the detained persons were suspected of committing an offence. However, the issue is whether there was reasonable concern they would continue in the unlawful conduct.

In my opinion, after the police officers removed these persons from the designated area, they had room to take further steps against the men suspended from the lampposts. The concern that the removed persons would re-enter the designated area was entirely unfounded. I infer the absence of a justified concern [2] that the persons would continue in the unlawful conduct, which is an obligatory condition for detention, *inter alia*, from the fact that these persons offered only passive resistance and were not actively defending themselves. Moreover, there was a police vehicle available on site with sufficient capacity to temporarily hold the persons if they showed any intention to further undermine the performance of police duties. Their transport to the police station was thus unnecessary and disproportional as the police tasks could have been accomplished with less severe measures.

C.2 Detention and transport of Mr M. and failure to take steps against Chinese activists

I insist that the detention and transport of Mr O. M. was unnecessary.

It is true that Mr M. presented his political opinions openly and was right in the middle of his opponents, by which he basically invited them to physically assault him. Nevertheless, Mr M. did not commit any kind of unlawful conduct, unlike the Chinese activists who attacked him.

I understand that the police were primarily aiming to protect Mr M. from further attacks by rescuing him from the crowd of activists.

I do criticise, however, the fact that the police subsequently detained the person who had not committed any unlawful conduct, in order to calm down his aggressive opponents, who had.

I indirectly understood from the statement of the Regional Director that he was not denying that action against the Chinese activists should have been taken, but claimed it did not happen because there was not enough information on who Mr M.'s attackers were. I comment that had the police focused on the attackers instead of Mr M. (after his separation from the attackers), the result could have been different.

C.3 Conduct of police officers in the FAMU building

I continue to consider the conduct of the police officers participating in informing FAMU administration of the impending risk to be confused.

Firstly, I object to the allegation that I saw the conveying of the information “merely” to the secretary negatively. I noted in the inquiry report as follows: “Her information

that the administration was aware of the flag can be considered reliable.” By that I meant that I, too, thought it was not necessary to interrupt the dean’s meeting.

I insist on my conclusion with respect to this matter since the conveying of the information to the porter, who apparently responded that the administration “probably knew” about the flag, was likely not sufficient for the commanding officers and it is understandable they wanted to know more details.

C.4 Conduct of police officers near the Hilton

I found no error on the part of the police in the removal of the Tibetan flag.

There was probably a misunderstanding in this respect. As I noted in the inquiry report, I would have considered it an error if the police had selectively removed certain symbols from the vicinity of the hotel where the Chinese president was accommodated. This suspicion was not demonstrated because I have no information as to whether the police steps in building No.: XXXXX at XXXXX were an isolated occurrence and what other things had to be removed from windows (or other places) at the instigation of police snipers.

D. Remedial measures

I recommend to the Regional Director to:

(A) revise his conclusions concerning the lawfulness of the detention and transport of certain persons taking into consideration the lack of a legal basis for such a procedure;

(B) inform all involved persons of my conclusions.

I am sending this final statement to the director of the Prague Regional Police Directorate and request that he inform me, pursuant to Section 20 (1) of the Public Defender of Rights Act, whether he adopted the proposed remedial measures. I am expecting his response within the statutory period of 30 days of the delivery of my final statement.

If the Regional Director does not adopt the proposed remedial measures or I find the measures insufficient, I will proceed pursuant to Section 20 (2) of the Public Defender of Rights Act and inform the superior authority; alternately, I may be forced to inform the public of the case, including the names of the persons authorised to act on behalf of the Prague Regional Police Directorate.

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights

[1] Ref. No. KRPA-235518-2/ČJ-2016-000066-Č372 and KRPA-235518-3/ČJ-2016-000066-Č372

[2] see Section 26 (1)(f) of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended