

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	Inquiry report – Section 18
Result of inquiry	Errors found
Relevant Czech legislation	273/2008 Coll., Section 2, Section 26, Section 63
Relevant EU legislation	
Date of issue	10 June 2016
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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, 10 June 2016
File No.: 2455/2016/VOP/MK

Report on inquiry initiated on the Defender's own initiative into the procedure of the Police of the Czech Republic in the security operation "China"

Based on the information published by the media, [1] which gave rise to suspicions of unlawful conduct on the part of police officers during the security operation carried out in connection to the visit of the president of the People's Republic of China in Prague, I decided to initiate inquiry on my own initiative pursuant to Section 9 (d) of 349/1999 Coll., on the Public Defender of Rights, as amended.

A – Subject of inquiry

In my inquiry, I focused on the following four matters:

- (1) Police action against activists near the lampposts at the Evropská street;
- (2) Police steps in connection to the resolution of conflicts between the supporters of the Chinese president and Mr M.;
- (3) Police conduct during the removal of a Tibetan flag from the office window near the Hilton building where the Chinese president was accommodated;
- (4) Police conduct in the building of the Academy of Performing Arts (FAMU).

B – Findings of fact

Within my inquiry, I asked the internal investigation department of the Police Presidium to provide me with the files prepared by the internal investigation department of the Prague Regional Police Directorate. An inquiry on site at the internal investigation department of the Police Presidium also took place.

I also had access to several publicly available videos (available at www.youtube.com).

As a comprehensive source of information, I had available the report of the internal investigation department of the Prague Regional Police Directorate of 12 April 2016 designated “Report on the data collected – summary of inspection activities” and “Report on the data collected” of 6 April 2016, which relate to matter 4.

B.1 Police action against activists near the lampposts at the Evropská street

The facts can be summarised based on the video recording [2] as follows: Two activists tied to lampposts at the Evropská street were replacing Chinese flags with Tibetan flags. This action was observed by a number of persons standing under them; some of these persons were also chained to the lampposts. Later, police patrols arrived on the scene and, after informal conversation, the police officers called upon the activists to cease their unlawful conduct (consisting in damaging property of others, i.e. offence under Section 50 (1)(c) of Act No. 200/1990 Coll., on infractions, as amended [3]), invoking the phrase “in the name of the law”. Since the activists did not comply with the police instruction, a vehicle with a high-lift platform arrived in the area to assist in removal of the two men with the use of coercive means. To avoid injury to the persons on the ground, the police marked an area near the lampposts and instructed the persons present there to leave it; the phrase “in the name of the law” was again invoked. The police subsequently used coercive means against persons who ignored the instruction, thus allegedly committing an offence under Section 47 (1)(a) of the Infractions Act [4]; the persons were detained pursuant to Section 26 (1)(f) of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended, [5] and transported to the Bartolomějská police station for processing. The two men removed from the lampposts were also detained for the same reason.

B.2 Police steps in connection to the resolution of conflicts between the supporters of the Chinese president and Mr M.

The video recording [6] shows Mr M. wearing a Tibetan flag around his neck in close distance to supporters of the Chinese president who were reacting angrily to other opinions – see their conflict with men carrying the Easter pomlázka (a traditional braided whip made from pussy willow twigs). Shortly after the conflict with the pomlázka-carrying men, Mr M. got amid the Chinese president supporters, who started beating him with flagstaves. Police officers on site, who up to that point had been trying to resolve the conflict with the pomlázka-carrying men, reacted to the situation by taking Mr M. out of the crowd while using coercive means. However, the police officers took no action against the aggressors, i.e. the supporters of the Chinese president. By contrast, they took Mr M. to the service car where they

detained him pursuant to Section 26 (1)(a) of the Police Act [7], verified his identity (apparently pursuant Section 63 (2)(d) of the Police Act [8]) and transported him to the Bartolomějská police station. The detention lasted one hour. The reason given by the police officers for not taking any action against aggressors from among the supporters of the Chinese president was that it was not clear at the time who started the brawl.

B.3 Police conduct during the removal of a Tibetan flag from the office window near the Hilton building where the Chinese president was accommodated

The request of the police to remove a single Tibetan flag displayed in a window of an office building neighbouring the Hilton where the Chinese president was accommodated caught media attention; there were suspicions the police tried to arbitrarily remove symbols the Chinese leader could have found offensive.

The police justified their request by stating the removal of the flag was requested by the police sniper who deemed it a security risk (regardless of the country the flag represented) as it could have provided cover to a potential shooter. The owner of the flag removed it voluntarily after being asked by the police.

B.4 Police conduct in the building of the Academy of Performing Arts (FAMU).

The available written documents show that two police officers in civilian clothes were instructed by their superiors to check with the building owner whether he knew that there was a Tibetan flag hung from the balcony with two persons present, which supposedly presented a security risk or a risk of damage to property due to the presence of nearby supporters of the Chinese president who were equipped with flags on long flagstuffs. Two-man police patrol found from the porter that the building belonged to FAMU and that the administration was probably aware of the Tibetan flag. The superior officers (Capt. Pavel Dalešický, Chief Inspector of the President of the Czech Republic Protection Unit, and 1st Lt. Ing. Zdeněk Šída, head of the Krakovská local police department of the Prague I District Police Directorate) [9] were not satisfied with this information and sent the patrol again to verify the information with FAMU administration. According to the police officers who went to the building, one of them spoke with the dean's secretary who confirmed that the dean was aware of the situation.

The internal inspection found an error in the conduct of the commanding officers who should not have sent the police officers for the second time. Specifically, the internal inspection found errors in the conduct of 1st Lt. Šída consisting in the fact that he sent a patrol to the place, even though he already knew the building belonged to FAMU and the police officers have already carried out his first order to ascertain the situation. Capt. Dalešický apparently made an error consisting in requesting co-operation from the section commander (1st Lt. Šída) in the matter of dealing with the Tibetan flags on the FAMU building, since such procedure was at variance with the instructions and the purpose of assessment of risks to the protected person.

For the sake of completeness and fairness, I consider it necessary to mention the opinion of Capt. Dalešický, who said his motivation to check on the persons on the balcony was to protect the VIP who was to pass nearby. For this reason, he asked 1st

Lt. Šída and his colleagues in the field to check on the persons on the balcony and ascertain the security risk they might have posed.

C – The Defender’s assessment of the case

C.1 Police action against activists near the lampposts at the Evropská street;

No documents available to me show why the identity of persons suspected of committing an offence (either against property or public order) was not ascertained on the site and why they were detained and transported to the Bartolomějská police station.

Section 26 (1)(f) of the Police Act indicates that a person may be detained if caught in an act of committing an administrative offence and there is justified concern that the person would continue in the unlawful conduct or undermine proper investigation of the case.

I am not aware of any justified concern that the persons concerned were about to continue in unlawful conduct; I especially cannot imagine, how persons who “merely” ignored the public official’s instruction to leave the area could have continued in unlawful conduct. Further failure to comply with the instructions at a time when the two men had already been taken down from the lamppost was, in my opinion, impossible by definition as there was no further reason to repeat the instruction. The same applies to the justified concern of undermining proper investigation of the case, where the same applies to the men on the lamppost.

Therefore, I conclude that there was no reason to detain and transport the persons who were not committing any administrative offence aside from ignoring the instruction to leave the designated area.

C.2 Police steps in connection to the resolution of conflicts between the supporters of the Chinese president and Mr M.

I consider the use of coercive means against Mr M. in the initial stage (i.e. at the time he was attacked by the supporters of the Chinese president) as justified, up until the risk of his bodily harm subsided.

However, I regard his subsequent detention under Section 26 (1)(a) of the Police Act as erroneous. I believe the Czech Republic is a civilised country where violence against people with other opinions is impermissible. Therefore, the police should have focused their attention on the aggressive supporters of the Chinese president; the police should have found and taken steps to detain the persons who demonstrably committed unlawful acts consisting in at least an offence.

As regards the situation on the ground, I understand the police officers’ attention was focused on the conflict with the pomlázka-carrying men and they were taken off guard by the ensuing brawl. However, I can see no reason why the police officer did not, immediately after getting Mr M. to safety, take steps against the flagstaff-carrying

activists who were standing nearby. This raises the issue of the way the entire situation was documented by the police. If the police officers monitored the brawl (made a video recording), they could have immediately identified the suspects and taken appropriate steps against them. I thus propose to ensure a police officer tasked with making a video recording be present in tense situations where conflicts with the subsequent use of coercive means can be expected.

In this matter, I conclude that the police made errors consisting in unnecessary detention of Mr M. and his transport to the Bartolomějská police station, failure to take action against the attackers and the related organisational failure to ensure proper monitoring of the events on the ground. The failure to take steps against the persons who attacked Mr M. is in stark contrast with the detention of persons who merely failed to leave the designated area near the lampposts.

C.3 Police conduct during the removal of a Tibetan flag from the office window near the Hilton building where the Chinese president was accommodated

If I had found, based on the available documents, that the police selectively removed nearby symbols not conforming to the Chinese president's sentiment, I would have considered it a major failure of the Police of the Czech Republic and a serious violation of the freedom of expression as guaranteed by the Charter of Fundamental Rights and Freedoms. As I know of no other instances of removal of obstacles in the line of sight of police snipers besides this case, I must conclude that no error on the part of the police can be demonstrated.

C.4 Police conduct in the building of the Academy of Performing Arts (FAMU)

In this part, I offer no evaluation of what could or could not have constituted a security risk to the protected person. I am focusing my attention to the motivation of the commanding police officers, its legitimacy and the scope in which orders were carried out.

The available documents show that there are inconsistencies concerning the reason why the two police officers were sent to the FAMU building, especially the second time. There are conflicts between the description of the situation as provided by 1st Lt. Šída and the two police officers who went to the FAMU building, and the description given by Capt. Dalešický, who cited potential security risks to the protected person (see part B.4). The overarching motivation supported by testimonies of persons present in the FAMU building seems to be to ascertain whether the owner of the building knew there was a Tibetan flag hanging from the balcony, where two persons were also present, which posed a risk of property damage (e.g. broken windows).

I consider such motivation as legitimate and conforming to the mission of the police to serve the public in accordance with Section 2 of the Police Act.

The exact wording of the order given to the two police officers is not clear, but it most likely was to inform the owner of the building of the situation (i.e. there was a Tibetan flag hanging from the building and there were people nearby who could damage the building). Subsequently, the police officers found from the porter (!) that the building

belonged to FAMU and the administration was probably aware of the flag. After that, the police officers apparently informed the porter of the clashes outside. However, only informing the porter was apparently not what their superiors had in mind. For that reasons, the police officers were sent again, this time with the specification they were to inform FAMU administration.

When the officers arrived to the dean's office, one of them spoke to the secretary who apparently confirmed that FAMU administration was aware of the flag. It is not clear whether she was informed of the clashes outside and the persons on the balcony, but it is unlikely she was.

Therefore, even though I understand the intention behind the police orders, I regard their implementation as completely confused. The police officers did not reach FAMU administration, i.e. the dean, and only spoke with his secretary. Her information that the administration was aware of the flag can be considered reliable. However, it is not clear why the police officers did not take the opportunity to also convey information that would have clarified and legitimised their actions: provide information that there were unknown persons on the balcony and that there were "clashes" going on with pro-Chinese activists wielding flagstaffs that could have caused damage to the building. If the above information was conveyed in full and along with the assurance that the police would naturally do everything in their power to prevent damage, all involved persons would be clear about what had happened.

In this matter, I believe the police made an error consisting in a confused conduct on the part of both commanding officers and both police officers who were carrying out their orders.

D – Conclusions

Based on the above findings and considerations, I have reached the conclusion in the sense of Section 18 (1) of the Public Defender of Rights Act that the Police of the Czech Republic made errors consisting in:

- unnecessary detention of persons and their subsequent transportation to the Bartolomějská police station (see parts C.1 and C.2);
- failure to take action against persons who attacked Mr M. (see part C.2);
- confused actions of police officers during their inquiry in the FAMU building (see part C.4).

I am sending this inquiry report to the Director of the Prague Regional Police Directorate and request that he respond to the found errors within 30 days of its delivery and inform me of the remedial measures he adopted. The report summarises my current findings, which may be reflected in my final statement.

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

[1] e.g. <http://domaci.ihned.cz/c1-65225110-policie-me-zatkla-aby-chranila-moje-zdravi-rika-fotograf-kteremu-cinane-vzali-tibetskou-vlajku-a-zbili-ho>

[2] <https://www.youtube.com/watch?v=gXp8tiXOldY>

[3] *A person shall be deemed to have committed an offence if he or she deliberately causes damage to the property of others by theft, embezzlement, fraud, or destroys or damages a thing belonging to the property, or attempts the aforesaid actions.*

[4] *A person shall be deemed to have committed an offence if he or she fails to comply with an instruction given by a public official within the exercise of his powers.*

[5] *A person may be detained by a police officer if caught in an act of committing an administrative offence, provided there is justified concern that the person would continue in the unlawful conduct or frustrate proper investigation of the case.*

[6] <https://www.youtube.com/watch?v=5ct2KzuUI8E>

[7] *A person may be detained by a police officer if the person's actions present an immediate danger to the person's life, the lives and health of other persons, or property.*

[8] *A police officer may instruct a person to identify himself or herself if explanation is required from the person.*

[9] *The service ranks of the two police officers are indicated differently in various documents; I cannot guarantee their accuracy.*