

Police Use of Weapon and the Use of Excessive Force

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Abstract: It is generally accepted that using a weapon within the framework of policing and especially the use of force, is a method of last resort. This study compares the use of excessive force in the United Kingdom, the United States and Turkey. After the September 11, 2001 (9/11) terrorist attack, some powerful countries have become more sensitive to future attacks and have provided their law enforcement agencies with increased powers, whereas in Turkey, we have done the opposite. Turkish law enforcement agencies have equipped their personnel with less power and have made it difficult for them to use force against suspects illegally. In conclusion, it is suggested that Turkish law enforcement statutes be normalized and increased, the same as western democracies have done.

Key words: Deadly force • Probable cause • Proportionality • Police • Accountability

INTRODUCTION

As the use of excessive force is usually a reminder of aggressive and racist police practices, it has always been difficult to address the police use of force whether it is deadly force or police beatings. Even though this study is limited by the lack of comprehensive information on police activity, the available evidence will reveal some disturbing patterns of police misconduct in Turkey, the United States (US) and the United Kingdom (UK).

It is reasonable to note that this issue has legalistic, democratic and societal aspects. In terms of using deadly force, the Eleanor Bumpurs case [1], which took place in the United States in 1984 and the James Ashley case [2], which occurred in the United Kingdom in 1998 are two examples of police use of excessive force [with deadly consequences], as well as case histories to be presented from Turkey.

To better understand the similarities and differences between these cases, the use of deadly force in the United States necessitates at least two assests, which are: 1) Probable cause and 2) imminent risk of someone else's life. There is also (in the US) the Constitutional perspective, of whether the police officer or vigeriously the police agency, violated suspect's 4th Amendment's Constitutional guarantee. This will also assist in

conceptualizing the relevant situations in the United Kingdom with respect to its laws, regulations and acts enacted.

Finally, besides accountability and police limitations, ethical perspective of using fatal force will be discussed.

Police Use of Weapon in Terms of the Use of Excessive

Force: The United States' police forces have historically, been influenced by that of the British Police. In England, the police were armed until the 1800s, but they were subsequently unarmed in the following years. That did not mean however, that the police were not able to carry arms any more. Some special units were permitted to carry firearms. Today, the situation is similar. Halbrook [3] evaluates that there has been a Second Amendment tradition that gives the citizens in the United States the right to bear arms for self-defense; since historically no one could afford an unarmed police force. In the early history of the United States, there use to be a Common Law practice to regulate the use of force. Later, this practice was abolished by the federal congress, as it sought to codify and unify existing legislation. However, it is interesting to note that there were no written policies as to how and when to use guns in the United States until 1970's.

The police use of fatal force is the ultimate exercise of governmental power. However, in the United States' colonial era, the life of a person was not guaranteed by laws. Later, the situation with the use of deadly force against civilians relatively improved. As there are other circumstances in which the life of a civilian in the United States is taken by the government, death is preceded by a lengthy process of review, to ensure that the taking of a life is legally justified [4]. Today, in the United States, from the administrative point of view, when there is a complaint of police misconduct, police beating or killing, there are four responsible bodies to review compliance with the laws. They are as follows:

- The State's Attorney [General], or in certain jurisdictions, the local District Attorney.
- The Police Department.
- Internal Affairs Division, a component within the Police Department
- The Coroner or local Medical Examiner.

In New York City, there is also an additional component to review alleged police misconduct; the Civilian Complaint Review Board.

Similarly, the British Police, just as the American Police, can be criticized for using lethal force unreasonably. As Mawby [5] maintains, the Colonial Police forces were used to suppress national uprisings and labour unrest in the many parts of the British Empire. He also argues that the British Police is still under the influence of the colonial period. One important difference is that the police in the United Kingdom were disarmed principally in the 19th century. Nevertheless, for example, the fact that Section 3 of the Criminal Law Act of 1967 maintains that "any person may use force... for lawful purpose" arouses much criticism from the opponents in both Ireland and the rest of the United Kingdom, as they find the law too permissive.

In case deadly force is used in the United Kingdom, the responsible bodies are:

- The Crown Prosecution Service,
- The Police Department
- The Independent Police Complaints Authority. [Even though the Police and Criminal Evidence Act (PACE) is criticized for extending the police powers, it also established this independent authority].

Cases of death in Turkey are preceded by a more lengthy process than the ones in the United States and United Kingdom. There are two primary means to scrutinize the police use of excessive force in Turkey. From the administrative point of view, there is a Committee of Discipline in each province and the Central Higher Committee of Discipline. In Turkey, in terms of judiciary power, investigations are conducted by the prosecutor, according to the additional, Article Number 9 of Law Number 2559. In short, the responsible bodies to scrutinize the police use of excessive force are:

- The Police Department,
- The Ministry of Interior,
- The Prosecutor,
- The Parliament (Human Rights Scrutiny Committee and Turkish National Assembly's Human Rights Commission).

This study will not touch upon the International, European or United Nations' Regulations and Conventions on Human Rights of related issues. Two police use of lethal force cases in the United States and United Kingdom and some similar cases in Turkey are presented below. The cases will be analysed, compared and contrasted.

Before mentioning the case histories, it must be noted that the term "use of force" is not valid in Turkey. On the contrary, one should look into "police power to use force". The introduction and the results of the legal perspective for the use of deadly force and use of force issues are quite different in the United States from that of the European Law and the laws of other countries. Undoubtedly, the background of this is the American people's right to keep and bear arms, based on the principle of self-defence. However, the most important justification for the "use of force" is the protection of public order. In the United States, the American police "power to use a weapon" [firearm] in practice seems to be wider than any other country. First and foremost, the American police are able to use a weapon when they see and feel the existence of danger. An additional guarantee is that this kind of situation or case can be easily investigated and investigations are to be [in the United States] completed in a short time.

A Police Officer's belief that danger exists and therefore reasonably justifying him to use force, gave rise to and the power [in the United States] for the police to

use weapons. Contrary to Turkish Police Powers, American police have more power in order to protect the public, maintain order and save lives. According to Article 16 of Law Number 2559 of the Turkish Police Power and Responsibility, Turkish police are literally ordered not to use weapons except “in case there is no other option”. This is not acceptable in the United States. In this sense, American police can use weapons e.g., when they confront a suspect attempting to put his/her hand in his/her back pocket. This kind of situation can be counted as imminent risk of someone’s life. Using a weapon in Turkish Law, is only possible “in case there is no other remedy”, which ties a police officer’s hands tightly and s/he starts to think “what if I use a weapon here, or should I look in the book?” in a given emergency situation. This means that the Turkish police officer is prohibited from the use of a weapon to maintain public order and eventually to reduce the fear of and incidence of a crime.

In Florida [US], for example, by law, if a person confronts a suspect breaking into his/her real property, s/he can use a firearm. This power has even been widened by stating that “if a police officer confronts a dangerous person in public, s/he can resort to the use of a weapon any time.” [6].

Turkish Case Histories: The Turkish Supreme Court has ruled (case number 262- 06.05.1974) that a person, who kills a perpetrator, who attempted to kidnap the elder sister of the assailant, could be punished for violating the principle of self-defence. The supreme court ruled that the assailant should be punished only if there is no other option for him/her. In this case, the assailant should not be punished according to the Supreme court. In Turkish Penal Law, in a self defense case, a person could use a gun if there is no other option. The courts in Turkey take this situation into consideration very carefully. The court ruled in this case, that to avoid danger it was possible for the assailant and the intended victim to flee from their attacker. Although the assailant in this case used a weapon to protect a third person’s life, the court disagreed.

In Turkey, according to case law, it is definite that a person or the police should wait until the danger is close and s/he can use a weapon when there is no other option (s/he should have exhausted all other means) to avoid the danger. For example, in Turkey, if a person can avoid a

perpetrator by fleeing, then s/he should do so, but then the self-defence issue becomes disputable. By Turkish tradition, if someone is attacking you, to flee from a perpetrator is perceived as a lack of self-respect. [7]. Interestingly, in Germany, for a citizen to use a weapon to protect a third person’s life, one must be a relative of the protector [7]. Additionally, a German police officer’s use of a weapon varies from state to state and is generally governed by one of the following terms: *Schusswaffengebrauch* [firing the gun], *Schusswaffen* [pointing the gun] and *Waffen* [exhibiting or displaying the gun] [8]. Conceptually, each term demands a different level of the use of deadly force. That is, exhibiting a weapon (gun) and the pointing of a weapon (gun) are to be interpreted as different actions and are viewed as escalating levels, thereby demanding the appropriate reactive response.

As a rule in Turkish law, officers are asked to give warnings before they use a weapon. Thus, the Turkish Supreme Court has ruled (case number 2196)¹ that the officers, who killed the suspects, fleeing in a car, after they gave the warning of “halt” and “fire” could not be punished. [9]. Conversely, in another case, the Turkish Supreme Court General Committee (case number dated 20.04.2004, decision 101) ruled that a Gendarmarie officer had no justification to kill the suspect, who violently fought with him, after he gave the necessary warnings. The Supreme Court’s rationale was that the Gendarmarie should have been more careful and proportionate to avoid danger [10]. In this case, the Court asserted, there was a public order issue and not the intent to punishment. For an officer wanting to ensure public order, then he should think in that way, in the immediate circumstance of an encounter.

Eleanor Bumpurs Case: Eleanor Bumpurs, an emotionally disturbed sixty-six year old black grandmother, was killed by a police officer during an eviction in a Bronx, New York, housing project on October 29, 1984.

After the Housing Authority Police and officials had been unsuccessful in trying to convince Mrs. Bumpurs to vacate her apartment for nonpayment of rent for four months, a team from the Police Emergency Service Unit were notified. When Mrs. Bumpurs continued to ignore police instructions, officers broke the door to her apartment in order to physically enforce the eviction order and to remove her from the premises. As they entered

¹First department criminal court decision dated 02.11.1993 and base 2053 decision: 2196

the apartment, Mrs. Bumpurs was brandishing a kitchen knife. Believing that she was threatening to attack one of his colleagues, one of the officers fired a shotgun at Mrs. Bumpurs. The blast blew away two fingers on the hand holding the knife. The officer said that Mrs. Bumpurs continued to grasp the knife in her injured hand and threatened to attack, so he fired again hitting her in the chest. She died twenty minutes later.

Prosecutors said that the officer used excessive force. The first shotgun blast, they argued, had disarmed the woman and the second and fatal blast was totally unnecessary. The wounded woman could have been restrained by the police and therefore, there was no need for her to die. Charges of criminally negligent homicide and second-degree manslaughter were filed against the police officer. The officer did not choose a jury trial and the case was heard by a judge who concluded that the prosecution had not proven that the second shot was “legally unjustifiable” beyond a reasonable doubt.

Afterwards, the New York City Police Department modified its procedures for dealing with emotionally disturbed persons. The new procedures emphasized nonviolent persuasion and negotiation, rather than the use of force. It is also now required that higher ranking officers take over direct supervision in incidents involving disturbed persons [1].

Jimmy Ashley Case: In the *Guardian* dated Wednesday May 23, 2001 there was the following news about English police misconduct [11]:

- It all began on the evening of Wednesday, January 1998, when a man called Paul Smith was drinking in Cherries Bar... A Scotsman accused him (wrongly) of being “a grass”. Smith left rapidly. The Scotsman followed him, pulled a knife and stabbed him three or four times in the groin... The Scotsman was known as “Tosh”; and he had been pulled off his victim with a friend who had then ran away with him. The friend was called Jimmy Ashley.

Apart from gathering wrong intelligence and accountability problems, the incident occurred like this: Twenty five armed officers, in five teams of five, were deployed to go and storm the house where Jimmy Ashley was living. The police officers, along with their superiors, had been authorized by Deputy Chief Constable, Mark Jordan, to use 25 armed officers to raid the Western Road flats [Hastings, East Sussex] of Jimmy Ashley. The

Officers claimed that they had three aims: To capture a kilo of cocaine, which had just been delivered to Ashley; seize a firearm hidden there; and to arrest Thomas “Tosh” McCrudden. However, it turned out that they were wrong on all accounts. In fact, there is no such reality. [11]. Sussex Police Constable, Chris Sherwood, was in the front of his team. The five-man-team was not conscious of where they were. When they reached Ashley’s flat he was asleep. His girlfriend [later publicly identified as Caroline Courtlandt-Smith] was awake and shocked by the shouting and crashing noise caused by the officers. She woke Ashley. Afterwards, being naked, Ashley went out from his bed. Constable Chris Sherwood opened Ashley’s unlocked door and after a momentary stare, fired his gun believing that Ashley was armed [with a gun]. After turning on the light in the flat, it was revealed that Ashley was unarmed [2].

The Ashley case is an example of how a police operation was carried out with poor planning, deficient intelligence and lacking thorough deliberation, that resulted with the death of an unarmed victim.

Since 1989, police officers in England and Wales have injured more than 40 people, who were without any guns. More than 15 of the victims were killed and none of the police officers were ever criminally sanctioned. Most of them were never a party to any legal action [11]. The tradition of unarmed British Policemen remain a notion of the past. The deployment of armed officers have increased rapidly. The Special Operation-19 officers in England and Wales used force 2,423 times in 1995 and 7,510 occasions in 1998 [12]. Admittedly, without the detailed reports on police incidents it is very difficult to comprehend the cases. In the instant case [Jimmy Ashley], the guilty person who should have been punished was Thomas “Tosh” McCrudden, not Jimmy Ashley. The *Guardian* obtained the secret reports of the Ashley shooting, in which the Kent and Hampshire Police Departments were charged with the investigation. Ultimately, the reports implicated several officers for their role in the case. It is interesting to note that the reports found evidence, that in the planning and handling of the incident, blamed had to be attributed to: the chief constable, an assistant chief constable, one deputy chief constable, a superintendent, a chief inspector, one inspector and three constables. Sadly, Jimmy Ashley’s death began with rumours that he was wanted for a shooting, that he was a drug dealer and that he and other suspects [McCrudden and two others] had a gun, although no gun was ever found in his flat.

Of special note in the reports obtained by The *Guardian* were the following points: that the operation [Bermuda] was carried out by Detective Chief Inspector, Kevin French, who was not trained for this specific task, that Detective Inspector Chris Siggs, who was responsible for the operation's intelligence, had no specialized training for his task and that Specialist Advisor-Police Constable Steve Crocker was warned against using "Bermuda" in the Ashley case, for that police tactic [rapid intervention or tactical swarm designed to create mass confusion] was considered very dangerous in such circumstances. Ultimately, Specialist Advisor, Police Constable Steve Crocker advised that they use operation "Bermuda" and sent 25 armed officers to the Ashley residence without a draft of the flat's layout. The Sussex Police Department had adopted the tactic in 1992; yet, they agreed on the fact that this tactic should only be used when there was a hostage situation, which was not present in the Ashley case.

DISCUSSION

During recent years in the United States and the United Kingdom, there has been increasing concern over the manner in which the police treat civilians. This criticism has been aimed at a number of police departments, mostly New York City, the City of Los Angeles and the Metropolitan Police Service [London], in the last decade. New York and Los Angeles have not only bad reputation for shooting to kill policies, but also police beatings. The Amadou Diallo shooting case in New York City (1999) and the beating of Rodney King in Los Angeles (1991), which was captured on a video camera by a bystander [George Holliday], were turning points in the United States' policing history [13].

In the United States, when the police are involved in fatal incidents, they must meet two separate standards of conduct: 1-Statutory standards of the criminal law, the violation of which can lead to imprisonment or death; 2-Administrative standards of the police department. These are almost universal standards with little differences in all democratic countries. In the United States, one of the Supreme Court's case which regulates the police use of excessive force is *Tennessee v. Garner* 471 U.S. 1 (1985). In this case, the Court ruled that the police may not use deadly force to prevent the escape of a suspected felon. The Court held that the use of deadly force against Garner was unreasonable, as there was an interest in life and the societal interest in the judicial determination of guilt and

punishment. On the otherhand, there was the government's interest in Garner's apprehension; therefore, the Court ruled that the government's interest in apprehending Garner overrode the other interests. The Court also argued that the interest in life would always prevail except where "it is necessary to prevent...escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others" [13].

Additionally, in *Tennessee v. Garner*, to kill someone means to seize someone's life. In this case, although the Memphis Police Department defended the officer's actions by appealing to a higher court, the District Court agreed with the Tennessee Statute that authorized the officer to use all necessary means to effect an arrest. However, the United States Supreme Court held that the police use of deadly force against Garner violated the Fourth Amendment's Constitutional guarantee against unreasonable seizure. The reasonableness requirement to use deadly force cannot, in short, be applied against a suspect who does not present a significant threat of death or serious physical injury.

Finally, further adjustment of the deadly force policy will continue to depend on state, local and departmental regulations in the United States, since the Supreme Court's decision settled the deadly force issue broadly; some of the issues still being addressed by state and local governments, for the purpose of liability or immunity therefrom, are as follows:

- what kind of weapons police should carry,
- what kind of training and certification will be required of its police agencies and the like questions that conforms with the Supreme Court's mandate.

It is almost a universal rule that if a police officer should use a weapon, s/he should use it as a last resort. Today, police officers have more sophisticated and technical equipments and methods to pursue a suspect. The question to be asked then, is whether police departments should be held accountable for not providing better guidelines or training? Or is it only the police officer who should be held accountable to the society?

Coming back to the cases in the United States, the United Kingdom and Turkey, one can see that persons who were killed were not a real threat to the police officers. For example, Eleanor Bumpurs was an emotionally disturbed person and not a danger to society or the police, nor was there probable cause to shoot her.

In fact, in the United States, the police may only use deadly force in their own self defence, or to preserve the lives of citizens and not if the felon is fleeing [13]. Though none of these safeguarding principles were applied to the instant case, what happened in the end is that no law enforcement officer was punished. However, for the Turkish Gendarmerie case we cannot evaluate the same thing.

There should be at least five ethical factors for the use of deadly force to be justified: *1-Intentions*: Police sometimes use force as a means of punishment; therefore the actions of police officers should be open to public scrutiny. *2-Seemliness*: Police behavior towards a civilian should be a proper one, perhaps they want to do their jobs, but they act callously. *3- Proportionality*: Force used to achieve legitimate police ends ought not to be disproportionate to the seriousness of the offence that is alleged and threatened. Shooting someone who is holding a knife (Mrs. Bumpurs in this case) is not proportionate. *4-Minimization*: The police ought to use those means that are least intrusive and least harmful. For example, if pepper sprays will do, there is no need to use guns. *5-Practicability*: Police need to be trained to distinguish between situations in which a forceful presence is necessary and those in which less hostile approach should be used. [13].

In the above given Turkish Gendarmerie case, the Turkish Supreme Court ruled that the officer killed a fleeing suspect even after giving the necessary warnings. The court also maintained that there was no justification to kill the suspect and that the officer should think first of the societal interest. However, it is difficult to think that way in a very short time. As a matter of fact, he should not have been held responsible, because if there was no intention to kill, then there was no crime and therefore, there should be no punishment. As a result of this, the officer should be acquitted [14]. The lack of evidence to convict should have been asserted for the officer as in the Bumper's case.

As to the use of deadly force, Turkish police are allowed to use deadly force in two situations: a) self defence, b) absolute necessity; whereas, in the United States, the police may use deadly force when officers feel the danger and imminent risk of someone's life.

CONCLUSION

If a police officer is guilty of misconduct, there is no reason to believe that this misconduct occurs only in instances in which civilians are killed.

If the system is too slow to punish the police officer's wrongdoing, it is to encourage any officer to carry on any wrong behavior, which may also cause a lack of discipline and negligence and then, this kind of misconduct may result in death.

There are also police beatings where excessive force and the use of deadly force is a common problem; therefore, the police should be trained accordingly [13]. In such cases, when the police resort to alternative solutions to stop so-called offenders by other means, such as CS gas, pepper spray and the like and are reasonable to avoid other dangers, then, there may not be serious problems on the officers' part. If this procedure is followed, the problem of the use of excessive force would be eliminated in the United States, the United Kingdom, Turkey and other concerned countries as stated in this article. However, one should not exclude unavoidable use of excessive force. This should certainly be based on the principle of "proportionality" and "last resort".

Just as every individual has responsibility in a given society, so too should a police officer have accountability to the community. However, it is not only police officers who should be held accountable. Higher level officers should also do their best to better serve the community and the politicians should enact proper and proportionate laws and regulations, too. Since they are also part of the community; therefore, they should be part of the accountability process.

From an ethical point of view, responsible citizens should ask the question; why should a suspect's life be targeted or made the subject of indecision by the police? One should also look into whether the officer has the intention to punish someone or to prevent a crime. If the officer has done his/her best to prevent a crime and cannot manage to stop a criminal, he/she could apply force as a last resort. In emergency cases, the police may apply deadly force if his/her life or someone's life is in imminent danger. Whenever the accountability question arises, the guilt is always on or attributed to the police officer or constable. In fact, as some scholars maintain in their "Gemini Solution" (the pyramid), the golden share of accountability should rest on the chief constable or the police commissioner. They name it Golden, Silver and Bronze accountability: The strategic, tactical and implementation levels respectively; therefore, one can easily see that "leadership is an essential element in embracing accountability" [15]. On the other hand, the empowerment-implementation of any plan should lie in the lower echelons, from inspectors down to police officers or constables.

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