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**OPERATIONAL POLICE
INTERVENTION. THE LAWFUL AND
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Abstract: Operational police intervention, which sometimes requires the use of physical coercion, is based on general rules, and there is a need for a more exhaustive regulation of police operations; in relation to actions that cause typical results, especially those related to physical integrity, it would be possible to define with greater precision the specific concepts that are used for the application of the causes of justification that distort the unlawfulness of these police actions.

The Courts base their motivations in relation to the use of force, mainly on the necessity of its application, understanding by necessity that it is rationally indispensable. That it is chosen from the legal means foreseen and available, the one that is most suitable and best adapted to the situation produced. As well as the adequacy of the intensity of the use of that force, without under any circumstances exceeding what is strictly necessary.

In Operational Police Intervention, an intrinsic relationship is established between the legal use of force and its progressiveness, defining a series of staggered actions to respond with a level of force appropriate to the situation produced, delimited by the level of aggressiveness and violence of the opponent.

Resumen: La Intervención operativa policial en ocasiones requiere el uso de la coacción física, cuestión que se fundamenta en normas generalistas, existiendo la necesidad de una regulación más exhaustiva de la operativa policial. En relación con las actuaciones que causan resultados típicos, especialmente relacionados con la integridad física, se podría definir con mayor precisión los conceptos concretos que se dirimen para la aplicación de las causas de justificación que desvirtúan la antijuricidad de estas actuaciones policiales.

Los Tribunales basan sus motivaciones en relación con el uso de la fuerza, principalmente en la necesidad de la aplicación de esta, entendiéndose por necesidad que sea racionalmente imprescindible. Que se elija de los medios legales previstos y disponibles, el que sea más idóneo y que mejor se adapte a la situación producida. Así como la adecuación de la intensidad del empleo de esa fuerza, sin que bajo ningún concepto pueda sobrepasar lo estrictamente necesario.

En la Intervención Operativa Policial se establece una relación intrínseca entre el uso legal de la fuerza y su progresividad, definiendo una serie de acciones escalonadas para responder con un nivel de fuerza adecuado a la situación producida, delimitada por el nivel de agresividad y violencia del oponente.

Palabras clave: agentes policiales, oportunidad, congruencia, proporcionalidad, armas de fuego.

Keywords: police officers, opportunity, congruency, proportionality, firearms.

1. INTRODUCTION

There is increasing concern in some areas of society about crime rates, and in many cases given their violence nature, fear of new modus operandi that coexist with previously known MOs, which are often related to the evolution and expansion of new technologies, which together pose a threat to the tranquillity and peaceful coexistence of society. The subjective feeling of citizen security is as important as security itself, and the media and social networks have a decisive influence on this perception, sometimes creating an impression among citizens, who believe that there is an increase in the possibility of being victims of criminal offences. An objective view of the sense of personal insecurity and fear of crime is needed, as well as the combination of the wide range of variables that affect this perception. Fear of crime is the *"emotional response of nervousness or anxiety to crime or symbols that the person associates with crime"* and *"therefore the importance of the police should be emphasised, which in addition to its own vigilance should promote mechanisms for informal control"* (K.F. Ferraro)¹.

Within this new reality, we are moving towards a society in which there is a dichotomy between security and freedom; it is true that sometimes these factors collide and there are certain contradictions, but there are also doctrinal positions that see them as being compatible rather than opposing one other. The signs would seem to suggest that the higher the freedom, the higher the levels of security. There is a need to achieve harmony between freedom and security by setting appropriate limits that are proportionate to the pursued objectives. There are no comprehensive solutions given the multiple different realities that can be encountered when dealing with such values. There is no such thing as comprehensive security, but we must strive for the highest values enjoy freedom and other fundamental rights and to protect our community and socio-political system.

Sometimes, as can be seen in different forums and social networks, certain groups share the antagonistic approach stated above and believe that police institutions in certain situations do not use force correctly. Generally speaking, nothing could be further from the truth. However, the use of force by police forces could be considered as a matter that should be more precisely regulated in our rule of law. Police actions could be subject to more exhaustive regulation, with better defined and more concrete concepts. It must also be recognised that this would not be easy, given the number and complexity of the endless different circumstances that can arise during police interventions.

2. ASSAULTS ON POLICE OFFICERS

Assaults on police officers are on the rise, crime is becoming increasingly violent and any hint of respect for the principle of authority has been lost. One of the factors that may have an influence is the lack of criminal prosecutions in relation to the assaults suffered by these public servants, as reported in the media by various professional police associations.

¹Ferraro, Kenneth. "Fear of Crime", 1995, quoted by Medina, Juanjo. "Inseguridad ciudadana, miedo al delito y policía en España", Revista Electrónica de Ciencia Penal y Criminología.

This situation gives rise to considering whether performing a study to evaluate reforming our Criminal Law is advisable and considering an increase in penalties for these types of unjust acts. The right to punish must respond to criteria of effectiveness, in terms of the preventive theories of punishment, the application of a punishment is legitimised depending on whether it prevents a greater evil "*It is not merely about punishing the offender.. On the contrary, the aim is to prevent new crimes*" (Londoño Jiménez)². General prevention in criminal law should ensure that third parties do not commit offences, to which end increasing sanctions could play a fundamental role. It seems obvious that, if the harm caused to the offender by the punishment is considerable, the offender will consider again before repeating the offence. As Seneca indicated³, no prudent person hands out punishments because a crime has been committed, rather so that the crime is not committed again "*nemo prudens punit quia peccatum est, sed ne peccetur*".

The principle of authority is suffering. It is not possible to create a climate in which criminals feel they can attack public officials with a certain degree of impunity, which, in addition to collaterally affecting levels of public safety, is unacceptable because behind those uniforms are people and families who deserve the utmost respect and protection. Most concerning is that these are not isolated events, there is a clear rise in the number of injuries and incidents that our public servants are subject to in the course of their police interventions. A social commitment has to be made to protect those who are tasked with protecting us.

Within the regulatory sphere, there is legislation and instructions that may at least attract attention and could negatively affect the aforementioned principle of authority, for example Instruction 13/2018, of October 17, of the Secretary of State for Security, on the practice of external body searches, the interpretation of certain infractions and procedural issues in Organic Law 4/2015, of March 30, on the protection of citizen security, in relation to point two of section three on disobedience or resistance to authority or its agents, indicates that: "*The concepts of disobedience and resistance to authority or its agents in the exercise of their duties, when they do not constitute a crime, must be interpreted in line with the existing case law to this end, which, in summary, defines them as an action or omission that constitutes an implicit or express refusal to comply with an order*" *Therefore, it must be understood that a slight or initial refusal to comply with the orders or instructions given by the officers cannot constitute an infringement of Article 36.6, if this does not constitute conduct that finally breaks the action or omission ordered by the acting officers or prevents them from carrying out their duties*". According to this Instruction issued by the Secretary of State for Security, if the disobedience of the unruly citizen does not breach the ordered action or omission, using bodily opposition or physical force in the development of the powers, there would be no breach of the provisions of the aforementioned Organic Law 4/2015, on the Protection of Citizen Security: "*Disobedience or resistance to the authority or its agents in the exercise of their duties, when they do not constitute a crime, as well as the refusal to identify oneself at the request of the authority or its agents or the allegation of false or inaccurate information*

²Londoño Jiménez, H. (1984). La prevención especial en la teoría de la pena.

³Lucius Annaeus Seneca (Corduba 4 B.C.-Rome 65 A.D.), philosopher, politician, orator and writer known for his moral works.

in the identification processes". It could be interpreted that this Instruction from the Secretary of State has tacitly reduced the interpretation of the content of the administrative offence, textually indicating that a slight or initial refusal does not constitute an offence and for this to constitute an offence, the orders of the agents must be breached using bodily opposition or physical force; according to case law, the difference with the definition of criminal offence is by no means great, the latter indicating that for the police action to be considered justified and considered an offence of serious disobedience, in addition to the circumstances indicated in the Instruction above, a serious rebellious attitude is required, as well as a stubborn and profuse refusal to comply with the order (Supreme Court Ruling 27/2013, of 21 January).

In short, it could be considered that it is not appropriate for some types of disobedience to not constitute anything, even if they are minor; this does not help to maintain the principle of authority and it should also be considered that there is perhaps too fine a line between administrative infractions and offences, as we have seen. Although this has been subject to considerable controversy and appeals have been filed by some police associations, it should also be noted that the Spanish High Court has considered that this is an Instruction that is not regulatory in nature and does not go beyond the limits of the interpretation of the standard, beyond the organisational and internal hierarchical sphere.

In the Preamble of the Organic Law 1/2015, in the *wording of 23rd paragraph of the Preamble of Organic Law 1/2015, according to which a new definition of assault is introduced including all cases of assault, aggression, use of violence or serious threats of violence against the officer, but which does not equate the use of violence against the agent to the action of merely passive resistance, which continues to be punished with the penalty corresponding to cases of serious disobedience. **Minor disobedience is no longer punishable as a criminal offence and will be corrected administratively.***

Recommendation Rec (2001)10 of 19 September 2001 of the Committee of Ministers of the Council of Europe to Member States on the European Code of Police Ethics included, among the rights of police officers, the provision of specific health and safety measures in consideration of the particular nature of police work (paragraph 32 of the Annex).

We must not lose sight of the spectrum of a holistic vision of this problem, in which a multitude of different variables converge as part of a homeostatic system and one of these is the legislation and regulations that must protect these public servants.

3. POLICE INTERVENTION. PRINCIPLE OF LEGALITY AND COMPLIANCE WITH THE LEGAL SYSTEM

Operational Police Intervention sometimes requires the use of physical coercion to fulfil its mission, employed pursuant to the provisions of the legal system and the principle of legality, which are basic pillars of any democratic, social and legal society. This requires an appropriate weighting and its use must be made in cases where it is indispensable to ensure citizens are protected. However, it is based on rules that are too general and there is a need for a more detailed regulation of police operations, both in the field of law and in the field of police science.

On 17 December 1979, the United Nations General Assembly adopted Resolution 169/34, entitled "Code of Conduct for Law Enforcement Officials. The text is made up of 8 carefully worded articles, which call on police officers from different countries to adhere to the following professional conduct:

- Fulfil their duties under the law and protect people against unlawful acts.*
- Respect and protect human dignity and uphold the human rights of individuals.*
- Use coercive force only when necessary in the performance of their duties and to the minimum extent necessary for that purpose.*
- Maintain professional secrecy with regard to all matters that come to their knowledge concerning persons in the exercise of their profession, unless the performance of their duty or the needs of justice require otherwise.*
- Abstain absolutely from any kind of acts involving torture, cruel, inhuman or degrading treatment or punishment, with no pretexts such as orders from superiors or states of emergency or war being invoked.*
- Act as guarantors of the health of persons in their custody and take immediate steps to provide them with medical assistance when necessary.*
- Refrain from, oppose and combat all acts of corruption within police forces.*
- Respect the content of the code of conduct, and oppose and denounce breaches thereof.*

As can be seen in Organic Law 2/1986, of 13 March 1986, on the Security Forces⁴, the preamble of which refers to Article 149.1.29 of the Spanish Constitution, in accordance with Article 104.1, stating that the maintenance of Public Security is the exclusive responsibility of the state, with its maintenance corresponding to the National Government and other Public Administrations, autonomous communities and local authorities. Considering the basic principles of action of the Security Forces as the fundamental pillars around which the development of police functions revolves, arising in turn from more general constitutional principles, such as legality or adaptation to the legal system or the principles of hierarchy, subordination and responsibility. The Spanish Constitution establishes that the mission of the Security Forces, under the Government, is to protect the free exercise of rights and freedoms and to guarantee public security. The Council of Europe, in its "Declaration on the Police"⁵, and the United Nations General Assembly, in the "Code of Conduct for Law Enforcement Officials"⁶, set out the basic

⁴ Organic Law 2/1986, of 13 March, on the Security Forces. Head of State "Official Royal Gazette" No. 63, 14 March 1986 Reference: BOE-A-1986-6859.

⁵ Resolution 690 of 1979 of the Parliamentary Assembly of the Council of Europe, Declaration on the Police.

⁶ General Assembly of the United Nations in its resolution 34/169 of 17 December 1979.

principles for action as a veritable Code of Ethics. The basic principles of action, among others, of the members of the Security Forces, established in the aforementioned Organic Law 2/1986 on Security Forces are based on the following principles:

a) Prevent, in the exercise of their professional duties, any abusive, arbitrary or discriminatory practice involving physical or moral violence.

b) At all times, they shall approach their relations with citizens correctly and carefully, and shall endeavour to assist and protect them whenever circumstances make so advisable or they are required to do so. In all their interventions, they shall provide as complete and comprehensive information as possible on the causes and purpose of their interventions.

c) In the exercise of their duties, they shall act with the necessary decisiveness and without delay when this is necessary to avoid serious, immediate and irreparable harm; in doing so, they shall be guided by the principles of consistency, timeliness and proportionality in the use of the means at their disposal.

d) They shall only use weapons in situations where there is a reasonably serious risk to their life, their physical integrity or that of third parties, or in circumstances that may pose a serious risk to public safety and in accordance with the principles referred to above.

Pursuant to the principles outlined above, Article 43 on the Use of Force in the recent Code of Conduct for Civil Guard officers⁷, includes the following statement:

1. Persuasion and moral force will be their first weapons, restricting the use of force to those cases in which there is no less harmful way to protect the free exercise of rights and freedoms or to guarantee public safety. In such cases, they shall be used gradually, employing the prudence and firmness necessary to achieve the legitimate aim pursued and in accordance with the principles of congruence, opportunity and proportionality in the use of the means at their disposal.

2. They may only use firearms in situations where there is a reasonably serious risk to their life, their physical integrity or that of third parties, or in circumstances that may pose a serious risk to public safety and in accordance with the principles referred to in the previous paragraph.

To highlight the legal obligation of the members of the State Law Enforcement Forces and Agencies to intervene, Organic Law 2/1986, on the Law Enforcement Forces,

⁷Royal Decree 176/2022, of 4 March, approving the Code of Conduct for Civil Guard officers. "Official State Gazette" No. 55 of 5 March 2022. Ministry of the Presidency, Relations with Parliament and Democratic Memory. BOE-A-2022-3477.

establishes, as regards their professional dedication, that *"they must carry out their duties with total dedication, and must always intervene, at any time and in any place, whether or not they are on duty in defence of the Law and public safety"*. It is also established in our procedural law, when defining the obligation to *"investigate the crime and discover who the offender is and secure their apprehension"* as general duties of the judicial police. On the other hand, Article 408 of the Spanish Criminal Code establishes that *"Any authority or civil servant who, failing in the obligation of their office, intentionally fails to promote the prosecution of crimes of which they become aware or of those responsible for them, shall incur the penalty of special disqualification from public employment or office for a period of six months to two years"*, thus establishing their legal obligation to intervene.

The obligation of members of the Security Forces to act in defence of the law is defined by the legislator as a legal and ethical obligation, with reference to the fundamental aspects of the exercise of their profession. It should be noted that it is a relatively common practice for off-duty officers to intervene urgently in defence of the law and public safety, demonstrating their responsibility, dedication and professionalism as defenders of public safety.

Public servants exercising police functions have to demonstrate ongoing training, motivation, commitment and a certain physical condition: they must be true public security professionals in every sense of the term. While their presence alone is important, especially in the area of crime prevention, this alone is not enough; a certain level of proactivity is required to ensure optimal security standards. It could be considered that a by no means insignificant number of crimes are thwarted by the sole presence of police patrols. Obviously this fact cannot be quantified, but it can be observed using statistical methods that the greater the police presence, the lower the number of crimes that occur, mainly against property. The importance of the preventive operations on public roads and their benefits should be explained to the public. The importance of police presence was already as far back as in the 19th century, with Duke of Ahumada, Don Francisco Javier Girón y Ezpeleta⁸, founder and first Director General of the Guardia Civil, in the *Cartilla del Guardia Civil* stating⁹ *"... upon his presentation, he who thought he was surrounded by assassins, will be free of them;"*. The mere presence of a police patrol always serves as peace of mind law-abiding citizens. Patrols and their presence give citizens confidence and are important components when it comes to the perception of security. The administration has an obligation to implement the necessary measures and policies to achieve adequate indicators of citizen security, which will be difficult to achieve without appropriate levels of police presence.

As part of their actions, as we have mentioned, there are times when they must use force, although this is obviously not desirable. *"Clever combatants achieve their victory*

⁸Francisco Javier Girón y Ezpeleta de las Casas y Enrile, II Duke of Ahumada and V Marquis of Las Amarillas (Pamplona, 11 March 1803-Madrid, 18 December 1869), was an aristocrat, nobleman and Spanish militaryman, the founder and first Director General of the Guardia Civil.

⁹ On 20 December 1845, by Royal Order, the *"Cartilla del Guardia Civil"* was approved, which aimed to provide civil guards with a code of conduct.

without resorting to force" (Sun Tzu¹⁰, 5th century BC), but this is not always possible. Once this use of force has been employed, there can be wide-ranging implications for criminal, civil and disciplinary law. Situations occur in which civil servants have to assess, in a matter of tenths of a second, the appropriate and correct action, which will subsequently have to be validated by the Courts, basing their sentences on the different laws that allude to their regularisation and the existing jurisprudence. The most general and frequently mentioned principles are congruence, timeliness and proportionality. Interpreting opportunity as a situation in which the use of such force is necessary, where necessary means rationally indispensable. Congruence, by which the police officer must choose the most suitable and best adapted legal means foreseen and available in relation to the situation produced, and finally proportionality, which would assess the intensity of the use of this force, having to adapt its intensity, which under no circumstances may exceed the level that is strictly necessary.

When using force, certain typical conduct may be employed, which does not necessarily have to be unlawful, as the principle of guilt may be undermined by the existence of any of the grounds for justification provided for in our criminal law.

The Supreme Court, in ruling 949/2013, of 19 December¹¹, establishes that the complete exoneration of compliance with a duty or legitimate exercise of a right, office or position is not applicable when the use of force is not rationally necessary for the defence of public interests. The issue raised in the plea is the non-application of the complete defence provided for in Article 20(7) of the Criminal Code. The doctrine of this Chamber in relation to the application of this cause of justification in cases of the use of force by members of the security forces in the exercise of their functions, considers the following requirements to be necessary:

- 1) *that the officers are acting in the performance of their duties,*
- 2) *that the use of force has been rationally necessary for the protection of the public or private interests which they are legally entrusted to protect,*
- 3) *that the measure of force used is proportionate, i.e. appropriate in relation to the means available and the seriousness of the offence that the officer intends on preventing through its use, acting without any excesses,*
- 4) *that there is a certain degree of resistance or a dangerous attitude on the part of the passive subject, which justifies the act of force being applied to him or her.*

When law enforcement officers have decided to use force, they must cause the least amount of injury, gradually increasing the force employed and directed at non-vital body

¹⁰Sun Tzu, Ancient Chinese general, military strategist and philosopher, is credited with authoring "The Art of War", an influential treatise on military strategy.

¹¹Criminal Ruling No. 949/2013, Supreme Court, Criminal Division, Section 1. Appeal 728/2013 of 19 December 2013. Rapporteur Candido Conde-Pumpido Touron.

parts, responding accordingly in each situation. There is a wide range of problems in apprehending and immobilising offenders who are sometimes under the influence of different substances, or are extremely violent, with a certain degree of physical preparation or knowledge of martial arts. The problem can be as far-reaching as the huge volume of requests usually handled by our Security Forces.

4. PROGRESSIVE USE OF FORCE

Operational Police Intervention and the diversity of the different situations in which the use of force in police actions occurs, establishes an intrinsic relationship between gradual intervention and the lawful use of force. The progressive use of force, non-lethal means and their evolution in recent times is worth particular note, especially when it comes to the use of police batons and electric shock weapons.

The different national and international police forces reflect the importance of the progressive use of means, "Pyramid of Force"¹², "Arc of Gradual Intervention"¹³, "Use of force continuum"¹⁴, etc.



PROGRESSIVE USE OF FORCE/USE OF FORCE CONTINUUM

These regulations define a series of step-by-step actions that officers must take to resolve a situation. This continuum consists of several levels and the response must entail

¹² Pyramid of the different and proportionate use of force by the Colombian National Police. Resolution 02903 of 23/06/2017 Regulations for the Use of Force and Use of Weapons, Ammunition, Less Lethal Items and Devices by the National Police.

¹³ Arc of Gradual Intervention. The General Order of the Civil Guard No. 3 of 10 July 2012 Integrated Operating System (SIO). The application of the most appropriate response and the use of force proportionate to the threat, with ongoing and continuous training, on which this system is based.

<https://www.guardiacivil.es/documentos/revista/2014/838.pdf>

¹⁴ U.S. Department of Justice: Law enforcement officials should only use the amount of force necessary to mitigate an incident, complete an arrest or protect themselves or others from harm. Levels, or continua, of police use of force include basic verbal and physical restraint, less lethal force and lethal force.

a level of force appropriate to the situation at hand, usually marked by the level of aggressiveness and violence of the detainee.

4.1. POLICE PRESENCE

At the first level or step of this pyramid of force is a mere police presence, which is sometimes enough to cause a psychological impact on the person involved, provoking a change of attitude and return to a rational state of mind. The presence of officers should be professional and the situation should be de-escalated or defused. Although it is true that, at this level, there is a latent danger, meaning the acting force must bear self-protection measures in mind. It is important to keep control of the surroundings and the hands of the aggressor, in the case of an aggression.

Police tactics in this first step also requires special consideration. As part of this initial contact, it is important to relay information about the professionalism of officers using non-verbal language with the person with whom we are going to interact. This can have repercussions on their behaviour, as they can observe the way that the officer works, see how they get out of their vehicle, position themselves, move around, etc. Another factor that relays information is the police officer's uniform and equipment; these are variables that, although could be considered minor, affect the psychological impact that a police presence produces, in addition to the fact that wearing them correctly and being correctly equipped brings prestige to the institutions that they represent.

4.2. TECHNICAL POLICE DIALOGUE

The second level is police dialogue, which is one of the main tools employed during these actions. The principle of active listening should be encouraged, asking open-ended questions to obtain information and, if there is a certain amount of hostility, diffusing this reaction. One of the main skills is assertiveness: it is important to express oneself appropriately, firmly but without being rude, so that the person with whom you are interacting perceives some level of empathy, giving rise to the right circumstances to confront the situation and have the desired effect on the individual. Emotional intelligence and communication skills play a key role in policing. *“That is why strengthening psychosocial skills, including assertive communication, emotional intelligence and other types of intelligence, such as conflict resolution and empathy, should be differentiating elements in police training”* (Nubia Edith Céspedes Prieto, Luisa Fernanda Pabón Monsalve, Diana Carolina Tafur Díaz, Natalia Lizeth Palomino López, Luis Carlos Cervantes Estrada, Ernesto Fajardo Pascagaza. *Strengthening psychosocial skills to improve policing and increase trust and confidence amongst society 2020*¹⁵).

In short, the verbalisation or use of technical police language, as indicated, should mean it is possible to resolve the situation without having to use physical force: this

¹⁵Strengthening psychosocial skills to improve policing and increase trust and confidence amongst society. Nubia Edith Céspedes Prieto, Luisa Fernanda Pabón Monsalve, Diana Carolina Tafur Díaz, Natalia Lizeth Palomino López, Luis Carlos Cervantes Estrada, Ernesto Fajardo Pascagaza. *Boletín Redipe*, ISSN-e 2256-1536, Vol. 9, No. 5, 2020.

should be the last resort. Patience is needed, trying to empathise with the other person, the aim is to make the individual feel understood: this is often comes in handy when getting the situation under control. Officers should be properly trained and familiar with technical police language techniques and resources, active listening, partial agreement, assertive agreement etc.

4.3. CONTROL TECHNIQUES/POLICE SELF-DEFENCE

At the third level or rung are empty-handed policing techniques. Having exhausted all previous remedies and having no other alternative, officers would have to employ physical force to gain control of the situation. Officers must have knowledge of Police Self Defence in order to be able to immobilise the individual without causing injury, as well as to reducing the risk of harm to themselves. These types of techniques are usually divided into soft and hard techniques, depending on the violence used by the opponent and the violence needed to immobilise him. The different police force doctrines and manuals often distinguish between different body parts that can or cannot be worked on, one way or another. Depending on the area on which the techniques are to be applied, the intensity of the techniques must be adapted, always in line with the principle of moderation.

To have some knowledge of Police Self-Defence, as in the case of any other martial art, the individual must receive regular and constant training, as well as boasting factors such as dedication, innate interpersonal skills and a good physical condition.

This practice brings us all the benefits that sport offers to physical and mental health, as well as confidence and personal development. Although this could be considered of great interest for police work, the reality is that the different institutions show minimum concern and involvement in its practice. Practice and training lead to knowledge and perfection. "*I fear not the man who has practised 10,000 kicks once, but I fear the man who has practised one kick 10,000 times*" (Bruce Lee¹⁶).

4.4. USE OF NON-LETHAL MEANS

At the next level or step we would find the use of non-lethal means; at present, this concept is wide ranging, although it must be pointed out that *members of the State Law Enforcement Forces and Agencies are prohibited from using weapons during arrest or in any other police service that are not included in the official equipment of the State Law Enforcement Forces and Agencies or whose use has not been expressly authorised* (Instruction 12/2007, of the Secretary of State for Security, of 14 September¹⁷). The list of non-lethal means includes a wide variety of approaches, including defence sprays, gel or gas, whose use is recommended depending on the context, indoors, outdoors, immobilisation, repelling aggression, etc. Semi-rigid defences, used in a similar way to a

¹⁶ Bruce Lee: Maximum exponent of martial arts, dedicating his life to the discipline, searching for perfection and truth, creating his own combat method and philosophy of life, the *Jun Fan Gung-Fu*.

¹⁷ Instruction 12/2007, of the Secretary of State for Security, on the behaviour required from members of the State Law Enforcement Forces and Agencies to guarantee the rights of persons detained or under police custody. Issued in Madrid on 14 September 2007.

whip, made from elastic, it does not cause trauma, but does cause pain and itching due to impact and friction. Police batons or extendable defences, there are currently numerous options on the market with a range of different characteristics, materials and polymers. Their main purpose is to confront a stronger adversary, facilitating the use of control techniques that allow their immobilisation, although impacts can also be directed at non-vital areas. "Non-lethal" electro-shock weapons, which, as in the case of police batons, require specific training and knowledge for them to be used. Their main function is to result in incapacitation by paralysing muscular mechanisms by their contraction. They come in several forms, some have electric wires that are launched with harpoons and upon contact with the person, discharge the shock, while others work by contact or a mixture of both. They are used by all police forces worldwide and are becoming increasingly more common.

Instruction 1/2024 of 16 January of the Secretary of State for Security, approving the "comprehensive procedure for police detention" in the INSTRUCTIONS. FIFTH PUBLICATION AND EFFECTS section states:

The following documents of the Secretary of State for Security are hereby repealed:

Instruction 12/2007, of the Secretary of State for Security, on the behaviour required from members of the State Law Enforcement Forces and Agencies to guarantee the rights of persons detained or under police custody

To this end, the aforementioned Instruction 1/2024 of 16 January of the Secretary of State for Security, approving the "comprehensive procedure for police detention" will be applicable, APPENDIX, section 3.7 of which textually states:

"3.7. The use, during arrest or any other police service, of weapons and ammunition that are not included in the official equipment of the State Law Enforcement Forces and Agencies or whose use has not been expressly authorised is strictly forbidden".

Lately, there has been much debate about electroshock weapons, with significant criticism in forums and the media. It is interesting, to say the least, that many times this criticism is made by people who lack any kind of training in police science and who make a series of considerations without any scientific rigour whatsoever.

The use and possession of these weapons is regulated in Royal Decree 137/1993 of 29 January 1993¹⁸. Article 5 states that, "*Their advertising, sale, purchase, possession and use is prohibited, except by specially authorised officers, pursuant to the provisions of the corresponding regulations*". In addition, the International Electrotechnical Commission issued IEC 479, explaining the effects of electricity on the human body. This regulation has been transposed into the Spanish standards UNE 20-572-80 and UNE 20-572-92 and is included in the Technical Prevention Notes NTP-400 and NTP-437 issued

¹⁸ Royal Decree 137/1993 of 29 January 1993, approving the Weapons Regulations. "Official State Gazette" No. 55 of 05/03/1993. 05 May 1993. Ministry of the Interior.

Official State Gazette A-1993-6202. <https://www.boe.es/eli/es/rd/1993/01/29/137/com>

by the Ministry of Labour, considering the consequences of the discharge of current into the human body and the injuries it can cause, such as tetanisation, asphyxia, burns and ventricular fibrillation.

This is a non-lethal weapon that, by discharging an appropriate electric shock to a person with no previous health conditions, would initially have no more than minor consequences, and is clearly less dangerous and harmful than firearms. However, as in all areas, there may be exceptions, with the president of the Asociación Ritmo Cardíaco at the Sociedad Española de Cardiología, David Calvo¹⁹, reminding us that "*these types of guns are, after all, a weapon and as such can potentially cause serious health injuries*".

He also indicates that the increase in the subject's heart rate is not attributable directly to the electric current, but by the stressful situation caused by a painful stimulus.

In turn, Dr Martínez Sellés²⁰ spoke about individuals who died after being arrested in the use of force at the European Cardiology Conference, stating that "*at the time of arrest, individuals suffer a moment of extreme stress in which their body starts to generate adrenaline and similar substances that are responsible for the arrhythmia that causes their death*".

Martínez Sellés draws a parallel with the syndrome suffered by wild animals that die suddenly after being captured.

Psychosis or "excited delirium" caused by cocaine and other drugs is also identified as a cause of "sudden death syndrome" that can occur shortly after a police encounter (Bill DeVane²¹).

It is stated that symptoms of this psychosis can include bizarre and aggressive behaviour, high body temperature, profuse sweating, irrational screaming, unexpected physical strength, violent behaviour, paranoia and panic. In the case of drug psychosis, which causes an increase in heartbeat, combined with an intense struggle with police officers, breathing can be restricted to the point of asphyxiation.

However, in the use of this type of weapon, it has been expressed from a forensic medical perspective that the cause of death in this type of situation is very controversial,

¹⁹Dr. David Calvo Cuervo, President of the Asociación Ritmo Cardíaco at the Sociedad Española de Cardiología (SEC).

<https://www.20minutos.es/noticia/5137816/0/asi-funciona-pistola-taser-dos-dardos-clavan-transmiten-22-pulsos-electricos-segundo-inmovilizar-agresor/>

²⁰Manuel Martínez-Sellés d'Oliveira Soares (Lisbon, 1971) Spanish physician, cardiologist, writer and university professor. President of the Association of Doctors of Madrid.

<https://www.intramed.net/contenidover.asp?contenidoid=55548>

²¹Bill DeVane from RIPP RestraintsInc. Official website of the United States government, Department of Justice. Sudden Custody Death Syndrome: Today's Killer Calamity of Law Enforcement. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/sudden-custody-death-syndrome-todays-killer-calamity-law>

and that it is necessary to study the associated risk factors to confirm or rule out the cause-effect relationship. As we have mentioned, the subject may have risk factors, such as heart problems or being under the effect of alcoholic beverages, toxic drugs, narcotics or psychotropic substances that could go unnoticed by the agents acting at the time of use of these energy-conducting devices, so it seems logical not to carry out repetitive or prolonged discharges. It would also be advisable to equip the police vehicles of the units assigned with this type of weapon with a defibrillator and adequate training so that in the event of ventricular fibrillation, they can respond.

Among the Conductive Energy Devices (CED)²², most commonly used by the Security Forces in Spain, are TASER pistols, and more specifically the T7 model. This gun fires two electrodes (positive and negative), which are connected to the gun by means of a cable. Once these small darts reach the individual in question, the discharge of low-intensity but high-voltage electrical pulses begins.

Its use is simple: after drawing the weapon, removing the safety catch and activating the gun, the gun is connected via Bluetooth to the agent's personal camera, which starts recording automatically, although it normally has a system in place to capture events up to a couple of minutes before the gun is drawn.



Energy Conductive Device TASER 7

The police officer, having given warnings, can use the weapon effectively at a distance of around seven metres; when the shot is fired, 22 pulses of electricity are transmitted per second, during a time lapse of 5 seconds, at which point the individual will be incapacitated and the officers will be able to immobilise and handcuff them.

The device features an energising switch that reactivates the discharge for a further five seconds if necessary, as well as a sight glass, safety catch, loudspeaker, torch and laser pointer.

²²Conductive Energy Devices (CEDs) produce the electrical discharge at a distance, whereas Contact Discharge Devices (CDDs) require direct contact with the individual.

Axon España²³ states that, *“its use is completely safe, it is the most effective and safest non-lethal device in existence as well as being the most widely used”*. *“The TASER 7 is the most modern device of its kind available, so it is excellent news that its use is becoming more widespread in different countries, including Spain”*.

However, consideration must be given to the fact that there are also a series of factors that may make their use inadvisable, with a more suitable alternative sought, such as proximity to flammable substances, in water bodies due to its conductivity or other parameters such as the need to assess the effects of the individual’s fall. Nor is it advisable to use the device on the elderly, minors or pregnant women.

It is undoubtedly an excellent tool for police work for several reasons: firstly, it has the capacity of intimidation and can therefore discourage the individual from persisting with their aggressive attitude. Secondly, it represents a non-lethal means of immobilising a violent individual that cannot be achieved by other means. In addition, in situations with large numbers of people, it poses a lower risk than the use of firearms and can solve complicated situations without the use of more lethal means, offering an alternative response.

4.5. USE OF FIREARMS

At the highest level is lethal force, which represents the last step of the pyramid. This is an extreme measure, which can only be used in particular serious cases, given the existence of a rationally serious risk to the lives of people under international humanitarian law. One of the most specific guidelines in this respect was the Instruction of 14 April 1983, issued by the State Security Directorate, stating that members of the State Law Enforcement Forces and Agencies may use their firearms in the event of an unlawful aggression against an officer or third parties, provided that the following circumstances are met:

“The aggression is of such intensity and violence that it endangers the life or bodily integrity of the person or persons attacked.

The Agent considers the use of a firearm necessary to impede or repel the aggression, as long as other means cannot rationally be used, in other words, there must be due adequacy and proportionality between the means used by the aggressor and the means used by the defence.

²³Axon Enterprise, Inc. A US company based in Scottsdale, Arizona, that develops weapons technology and products for military, law enforcement and civilians. Its initial product and former namesake is Taser, a line of electric shock weapons.

The use of the firearm must be preceded, if the circumstances permit, by warnings addressed to the aggressor to change their attitude and a warning that they are in the presence of a police officer, when the attacker was unaware of this.

If the aggressor continues or increases this aggressive attitude, in spite of warnings, shots should be fired into the air or towards the ground for them to desist.

As a last resort, when the previous means have failed, or when, given the speed, violence and risk involved, it has not been possible to use said means, the officer should target non-vital parts of the aggressor's body, always considering the principle that the use of the weapon should cause the least possible harm".

Although each specific situation would have to be subject to study, it is by no means unusual for there to be questions at a practical level, bearing in mind that the different variables that underlie situations involving the exercise of lethal force having to be investigated in each instance, on the grounds that these different situations may endanger the integrity of persons or of the officers themselves.

5. EDUCATION AND TRAINING.

Education and training are important to the success of the actions referred to above, offering the chance to acquire the knowledge, agility and cognitive memory that allows us to perform adequately in a stressful situation. Without such education and training, there is a risk that officers who, having detected a serious threat, may have a negative psychophysiological response, paralysing them or causing them to go into a state of shock.

The human body responds to stressors in a stereotypical way, and there are several stages depending on the situation. When we perceive the stimulus, we respond, although we may experience different physiological reactions, tachycardia, increased breathing rate, sweating, etc. If the stressor persists, we cannot remain over-activated indefinitely, so we stabilise, although having gone beyond what can be normal. When the situation is prolonged over time, we enter a phase of burnout, affecting, among other abilities, our ability to discern reality, to think, to decide and to act (Hans Selye²⁴).

It is important to bear in mind that each person is affected in a different way. There are different studies that suggest that when we feel threatened, our reptilian brain only allows us to concentrate on the perceived threat, losing peripheral vision, reducing our angle of vision to only what is in front of us, as if we were in a tunnel, even if we were in an open space, losing hearing and motor skills (tunnel effect). These circumstances can be counteracted to some extent with training.

Police officers are not machines, rather they are human beings with a nervous system that has the same characteristics and responses as other mortals. Members of institutions or organisations that have to deal with this type of situation must be able to

²⁴Hans Selye. Director of the Institute of Experimental Medicine and Surgery, [University of Montreal](#). He developed the theory about the influence of stress and its symptoms. He called this collection of symptoms "Stress Syndrome", or "General Adjustment Syndrome" (GAS).

rely on trained professionals who have received training about stress in order to successfully handle this problem.

6. CONCLUSIONS

Nowadays, there are a variety of different necessary means associated with progressive systems for the use of force. When it comes to Operational Police Intervention, first of all, worth note is the passive or protective means for officers, such as bulletproof vests, ballistic helmets for the most extreme situations or armoured vehicles, which is useful in the event of aggression or as protection for the officers themselves. One thing is clear: regardless of the vital importance of the physical integrity of police officers, if they are neutralised, they will not be able to carry out their mission, which can sometimes be essential for the life and integrity of citizens.

Within the non-lethal means of intervention, as we have seen, there is currently a wide range of non-lethal means of intervention, such as sprays, defences, police batons or electro-shock weapons. Lastly, are lethal means, short and long firearms, both of which are necessary depending on the context and scenario: short distance, interiors, need for firepower, etc. However, it must be stressed that the cornerstone here is education and training: this provides us with knowledge and skills, not only does our physical integrity depend on it, but also our life, the life of our partner or the life of third parties. It takes time, as continuous training is needed to increase knowledge and skills over the course of an officer's professional life, and consideration must be given to the constant evolution of police sciences.

While it is true that all professions require a certain calling, it could be considered that policing is more so because it requires more dedication and perseverance than most, bearing in mind that a wide range of skills must be mastered. One of the most obvious is to maintain a minimum level of physical fitness and to this end, all police forces subject their candidates to physical access tests, although subsequent training plans are a different matter, as they are often scarce or non-existent.

It would be inappropriate to not give the necessary importance to training, or to think that it would be preferable for the existing human resources to work longer hours, to the detriment of the time dedicated to training, which would undoubtedly have an impact on the quality of police actions. This is by no means a trivial issue, as we are dealing with professionals who in tenths of a second may have to decide how to apply force from an operational and legal perspective. From a theoretical perspective, it should be essential for officers who perform interventions to protect public safety to have the appropriate legal, technical, tactical and physical training required for the proper performance of their activity. Some institutions now require periodic aptitude tests to certify the continued suitability for the performance of the duties entrusted to them.

It would appear logical that, if crime is becoming increasingly tougher and more specialised, it is necessary for the agents who deal with it on the front line to be increasingly qualified to face these challenges, thus minimising the risks that may be caused by interventions for people and for agents themselves, thus improving the image of public institutions.

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INDEX OF ABBREVIATIONS

TS	Supreme Court
BOE	Official State Gazette
BOGC.	Official Gazette of the Civil Guard
CE	Spanish Constitution
CP	Criminal Code
FF.CC.SS.EE.	State Law Enforcement Forces and Agencies
SIO	Operational intervention system
OG	General Order
UN	United Nations
TS	Supreme Court
STS	Supreme Court Ruling

