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Police Stops and Searches – The case of Bulgaria

Summary

The article presents the results of a study on police stops and searches in the Republic of Bulgaria. Initially, the authors reflect on the relevance of the subject of police stops and searches. Despite the fact that this police practice attracts significant public interest both at the national and international levels, it has not been subject to constant research attention in Bulgaria. Existing studies are occasional and date back more than ten years ago. Further, the text takes a comprehensive snapshot of the phenomenon: it summarizes the historical context created by the development of the national police, traces the legal framework regulating police stops and searches in the country, and gives an analysis of the practical implications in the implementation of the formal rules. The application of gender and ethnic profiles by police officers when stopping and searching citizens is also discussed. In conclusion, some perspectives regarding the development of the stop and search practice in the authors' country are also outlined.

The research is based on in-depth interviews with experts on the subject and document analysis. In-depth interviews involved police officers (current and former), investigators, attorneys-at-law, and university lecturers. The analysis included public documents, among them relevant Bulgarian legislation, instructions and rules related to the work of the Ministry of the Interior of the Republic of Bulgaria, NGOs and media publications.

The research has practical value in terms of understanding police stops and searches, as well as in designing knowledge-based public policies. Its results are suitable for constructing a comparative perspective along with the research conducted in other countries. They also have the potential for further dissemination as a part of an academic curriculum.

Keywords: *Bulgaria, national police, police stops, police searches, ethnic profiles.*

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1. INTRODUCTION

Police stops and, if necessary, subsequent searches of the clothing and luggage of citizens in public places are common police practice around the world (Bowling, Weber, 2011). Police officers are authorized to stop a person for document and identity checks, restrict their passage through a particular area, etc. The reasons for the police stop vary: suspicious behaviour of the stopped, protection of public order, prevention and deterrence of possible socially dangerous actions etc. Police stops and searches are undoubtedly very important instruments in the inventory of the police service globally, particularly in the context of preventing terrorism and general crime¹. Many authors (Bowling, Phillips, 2007; Quinton, 2011; Tyler, Fagan, Geller, 2014) also pay attention to the potential negative effects related to the practical implications of stop and search actions. Indeed, entering the individual's personal space could be a controversial act that must be performed with ultimate care and responsibility, respecting the balance between the protection of personal rights and the defence of the public interest. A feminist critique of police stops (Ross, 2020) draws parallels with sexual harassment and exposes harms from stops and searches that infringe constitutional rights. Ethnic profiling in police stops and searches is a particularly debated and sensitive issue (CSD, 2006; Sollund, 2006). Similar concerns relate to the possible abuse of power by police officers and the control and oversight which police leadership exercises over street patrols, them being the units empowered to carry out the stops and searches.

Police stops and searches in the Republic of Bulgaria are no exception to the described picture. Despite the undoubted topicality of the topic, it has not been systematically studied in the country. Single publications found on the topic are more than a decade old (e.g., CSD, 2006). The article attempts to fill this gap and present research results that, although unrepresentative, allow some comparisons with other countries and the formation of public policies based on the available knowledge. The study was motivated by the authors' participation in the EU COST-funded Action on Police Stops (Police Stops, 2022), which recently spawned a special issue on police encounters (O'Neill, Rowe, Kimpe, Karas, 2022). The following text has been prepared in the form of a semi-structured questionnaire on the basis of 14 in-depth interviews with experts (current and former police officers, investigators, attorneys-at-law, and university lecturers) conducted by the authors of the article in the period of November 2021 to February 2022 and written public sources – relevant Bulgarian laws; instructions and rules relating to the activity of the Ministry of the Interior of the Republic of Bulgaria; NGOs and media publications. The study focuses only on the stop and search of pedestrians and does not cover vehicle stops by the police.

Police stops and searches in Bulgaria are no exception to the described picture. Despite the undoubted importance of the topic, it has not been systematically studied in the country. Single publications exist, but they date more than a decade back (e.g., CSD, 2006). The article is an attempt to begin filling this gap and share research results that, although unrepresentative, allow comparisons with other countries and are beneficial for the formation of public policies based on available knowledge. The study was motivated by the authors' participation in the EU COST-funded Action on Police Stops (Police Stops, 2022), which recently gave momentum for a special issue on police encounters (O'Neill, Rowe, Kimpe, Karas, 2022).

¹ Some authors (Murray, 2018) argue that stops and searches are not a particularly efficient tool to fight criminal activity.

The following text has been prepared on the basis of 14 in-depth interviews with experts (current and former police officers, investigators, attorneys-at-law, and university lecturers) using a semi-structured questionnaire. The authors conducted the interviews in the period from November 2021 to February 2022. They also used written sources with public access: relevant Bulgarian laws, instructions and rules relating to the activity of the Ministry of the Interior of the Republic of Bulgaria, NGOs and media publications. The study focuses on the stop and search of pedestrians, leaving vehicle checks by traffic police beyond its scope.

Summarizing the practice of “police stops and searches” in Bulgaria, a brief clarification on the “police” in a national context is needed. The Police was initiated as a cornerstone institution of the newly established independent state back in 1878 when the commissioner of the victorious Russian army in the war against the Ottoman empire published the Provisional Rules on the Structure of the Police in the liberated territory. With his decree Number 1 from April 16, 1879, the first monarch of modern Bulgaria, count Alexander I, created the Ministry of the Interior, which incorporated the existing police force. Since then, the Police underwent a long series of transformations, including a radical structural and terminological shift in 1944-1991, when the word was used only as a reference to the oppressive apparatus of the “bourgeois regime”. Rehabilitated in 1989, nowadays, the term “Police” in Bulgaria usually refers to the General Directorate National Police within the structure of the Ministry of the Interior. Legally the operational frames of the National Police are distinguished from border policing, military policing, firefighting, and the fight against organized crime and terrorism. To avoid technical inaccuracies, we will use “Police” and “Ministry of the Interior” (MOI) as synonyms. Moreover, the existing legislation on stops and searches is focused on the institution of the Ministry and its “police functions” without getting into further details related to the organizational structure or the broader spectrum of meanings hidden behind the commonly used word “police”.

2. LEGAL FRAMEWORK REGULATING STOPS AND SEARCHES IN BULGARIA

Bulgarian laws describe the “Control Activity” as one of the core functions of the Ministry of Interior. Inter alia, it performs the “control” by applying/implementing various checks (for example “border checks”, etc.). Among these, the “check on the spot and document check” is explicitly mentioned (Law on the Ministry of Interior², Art. 30 (1) 2).

In these partly procedural, partly theoretical algorithms, the mission to control is at the foundation of the right to stop (a citizen or a vehicle). In order to control, the state needs to check – papers (the administrative description of a person) and bodies (the biometrical data). Eventually, bodies might be physically searched (under some conditions). The check could finally culminate in detention. The ultima ratio of the control and the application of its tools is the “public good”.

Identity check. When using the term “check”, the Law on the Ministry of the Interior often refers to “checking the identity” (Art. 70). Identity check is described as an element of the general police prerogatives (Rules for the Implementation of the Law on the Ministry

² Further abbreviated as LMI.

of the Interior, Art. 56). There is a reciprocal obligation for every citizen to identify himself before the “competent officials” (Law on the Bulgarian Personal Documents, Art. 5 and 6).

Checking vehicles and persons is at the core of the “patrol and sentry activity” of the police. Therefore, the logical, procedural steps “stop” – “check” – (optional) “search” are essential for its mission to guard the society: “to safeguard public order”, “to forestall, prevent and interrupt anti-social behaviour and crimes”, “to protect citizens’ rights and liberties”, “their lives, health and property” (Instruction on the Patrol and Sentry Activity, Art. 2).

Some of the hypotheses for identity checks include cases when there is data that a person has committed a crime or violated public order. Preventing or investigating a crime is another reason for a check within the frame of the law. The identity check might also be part of the routine “to control the validity of the personal identification documents” (IDs). It could happen at the border, at a checkpoint, set by the police, upon request by other public bodies or during regular patrol duty.

If the police officer is not able to perform the identity check by means of an ID, he is then allowed to proceed with recording and cross-referencing to biometrical databases (fingerprints, photographs, DNA samples).

Check, Search, Detention and Citizen’s Rights. When the check does not produce enough information to establish a person’s identity, it might provide a reason for detention (LMI, Art. 72 (1) 4). This type of detention (not part of an investigative procedure) cannot last longer than 24 hours. During the process, the detained is subject to a search for “hazardous items”, and the police officer could apply “warnings and force”, including armed force. Police officers can also search personal belongings while doing the document check or “when enough data is available, that items related to a crime or a breach of the law, are being hidden” (LMI, Art. 81). One of the police duties related to the search is preventing the disposal of incriminating items and belongings. Another guiding principle is to take the necessary precautions for the officers’ safety (Rules for the Implementation of the Law on the Ministry of the Interior, Art. 64).

The law explicitly states that citizens’ “dignity and honour” should be protected during checks and searches. The protocols, which are obligatory for such searches, could be regarded as a safeguard against possible abuse of power. Three parties should sign them as proof of neutrality – the officer, the searched and a witness. Another “shield” in this respect is the requirement for searches to be performed by same-sex officers. The established procedure suggests accountability of the checks conducted during the police patrols: data about persons and vehicles is collected in special reports, their templates publicly available as annexes to the Instruction on the Patrol and Sentry Activity (Annexes 5, 7, 8). The description criteria of these reports and statistical tables include standard requisites of the checked: name, personal ID, date, hour, and address. Additionally, police officers are supposed to structure their reports using the following questions: “When?”, “Where?”, “Who?”, “How?” and “Why?”.

Formally the design of the control functions of the police and its patrol duties suggests stops and searches should follow a strict procedure, respect fundamental human rights and be meticulously recorded as a condition for accountability. From the point of view of the attorney engaged in protecting the citizens’ rights, the law does not raise a serious issue:

“It is difficult to answer [whether the rules have flaws that allow abuse of power]. I have not thought over the quality of the law” (Interview with an attorney-at-law, 15/12/2021).

“I cannot give a categorical opinion whether there are any gaps [in the instructions and rules for stops and searches], but my impression is that the legal and non-legal texts they use in their work are quite detailed and exhaustive, and if there would be a problem it will not lay in the legal basis [for stop and search]” (Interview with an attorney-at-law, university lecturer, 20/12/2021).

On the other hand, if we shift the observation from the general legal descriptions to particular cases, evidence shows that it is the practical application of the rules and steps that causes ambiguity in the otherwise coherent algorithm. These real-life situations question the neat conception behind “stop and search” as a tool of police control aimed at securing the public good.

3. PRACTICAL IMPLICATIONS OF POLICE STOPS AND SEARCHES IN BULGARIA

Police stops and searches in Bulgaria pose several distinctive types of challenges. These challenges might be:

- a) Topical – related to the place and time stop and search is conducted (where and when).
- b) Personal – related to the individual characteristics of the person stopped (who).
- c) Procedural – related to legal credibility and accountability (how).

The place (where). Space and time play a significant role in Bulgaria’s stop and search practice. There is a substantial difference in whether a citizen is stopped in the zone of a regular patrol or the area adjacent to a sports, musical or political event. Similar situations, e.g. stops for a document check, could be handled differently. In the case of the regular patrol, the document check proceeds its course to the identification of the person stopped. If the stop happens during the time and in the zone of an event, it is not necessary to establish the identity but rather to keep people who do not comply with certain requirements off the area (Interview with a former police officer, investigator, 24/01/2022). If you do not possess an ID, if you carry forbidden items, then your freedom of movement will be limited – you are banned from accessing certain areas in the city (halls, stadiums, streets, public buildings), which represents a sanction in itself and is imposed on the spot.

At first glance, the distinction between spatial and temporal zones where different rules apply seems simple and clear, but in reality, it is hard to trace the “5-meter security zone” during a public event, like protests, rallies etc. People move actively in and out; emotions prevail, and cool judgment is rarely possible. Space thus turns into a flexible category, and the conditionality of the rules is difficult to observe. It becomes hard to separate the pedestrian zone in front of a public building and the street next to it. From the perspective of the written rule, they could be clearly distinguished, but from the angle of the riot policeman, the “border” is vague.

As a general rule, stops and document checks need a substantial motive (Interview with a former senior police officer, 27/01/2022). Among others, formal reasons can include spatial and temporal factors. These might be the vicinity of a recent crime scene, neighbourhoods and periods where and when crimes are often registered (e.g. “In this district during the last

month frequent attacks on young women by a group of youths are reported”), spots (streets, parks) where drug dealers do business, and so on. Such places, marked by intensive risk factors, should be indicated during the preparatory instruction of the patrols (ibid.).

The proximity of critical infrastructure could also serve as an adequate reason for stop and search. Seaports, railway stations, airports, power stations, telecommunication hubs, telecom antennas, public buildings and other important facilities create a broad network on the map of the city, putting a new layer on it, making it harder to distinguish between the stops on the “regular” patrol and the “special regime” zone.

To add even more complexity, it is noted that the practice of stop and search in the city centre and the suburbs, although abiding by the same rules, differs on terrain. There is a higher probability of being randomly stopped in the outskirts of the ghetto than in the representative areas of the city, and you will be given considerably fewer explanations why you are stopped (Interview with a former senior police officer, 27/01/2022). The last observation clearly refers to the ethnic or social profile of the stopped, while written rules do not make any such discrimination. That is how we come to the question, “Who is stopped?”

The person (who). Formally stops and searches in Bulgaria do not follow a pattern based on ethnicity or social background. At the beginning of the 2000s, the Bulgarian police took part in a joint survey to explore and compare existing stop and search practices with colleagues from the UK. Some of the questions were on a formal basis deemed as irrelevant to the local context: “Neither the law nor the instructions here discuss risks related to the ethnic profile. But the statistical information shows a different picture: about 30% of the stops are in Roma neighbourhoods” (Interview with a former senior police officer, 27/01/2022). A poll commissioned in 2006 by the Centre for the Study of Democracy indicates that the Bulgarians are checked with similar and even greater intensity than the Roma (1,40 checks per Bulgarian, compared to 1,36 per Roma) (CSD, 2006: 26). The authors of the report recognize the picture might be twisted, because of the types of the stops recorded (e.g. more Bulgarians drive cars and are subject to stops) (ibid.) The same source outlines that 25.2% of the Roma are stopped in their neighbourhoods, compared to 4.2% of the Bulgarians. The CSD conclusions point at the Roma stops and checks related to their location in the slums. The ghetto thus appears as a place combining spatial, ethnic and social criteria. The patrols apply these unwritten societal criteria (“belonging to the ghetto”, “dwelling in the ghetto”) as a “risk” filter when making a random stop and check. Several years later, in 2010, Deutsche Welle quoted the results of a European Agency for Fundamental Rights survey. According to it, only 5% of the Bulgarian Roma have the impression they are stopped and checked because of their ethnic characteristics. Compared with other EU countries (Greece, Germany), this is the lowest percentage of people who feel to be an object of ethnic profiling (Deutsche Welle, 2010). Still, this 5% gives an instructive indicator for the tacit profiling in a system where ethnicity officially is not regarded as a risk factor.

Similar is the situation with other marginalized, outcast groups, such as drug addicts and prostitutes³. They are localized, known for their habits, and could be frequently targeted for identity checks and eventually detained for personality verification. In such cases, the lawyer is suspicious about the alleged abuse of power on behalf of the police officer:

³ Further concerning the prostitutes could be read in Petrunov, 2019.

“I work with such types of vulnerable groups, which are very easy to be abused with. The policemen can use the powers granted by the Law of the Ministry of the Interior to intimidate them, to ‘remind’ them who they are, and to exercise control of them. I speak specifically about drug addicts I work with, low-level drug addicts who are homeless and sleep on the streets. And, yes, the police try to control them in this way. They stop and check people known for not having IDs.” (Interview with an attorney-at-law, 15/12/2021).

Another example of a target group marked by specific criteria is football fans, as people belonging to a particular type of subculture (Interview with an attorney-at-law, 15/12/2021; Interview with a former senior police officer, 27/01/2022). They are distinguished by their clothes, organizational structures and activities, provocative behaviour, stigmatized by presumption as being aggressive, “hooligans”, and “risky elements”.

Gender is also an important marker. Despite that no instruction has such a recommendation, predominantly men are being stopped and checked since both stereotypes and statistics portray them as potential trouble-makers. A pilot data gathering and analysis from police stops in the city of Haskovo showed that one officer, contrary to the general tendency, used to stop more women than men. Little is known about the possible explanations for such a preference – it might be due to their sex. Still, other factors might also be involved (Interview with a former senior police officer, 27/01/2022).

The scarcity of available information to analyse similar cases indicates the need to collect more data and dig deeper into it to mitigate potential risks for society. Such monitoring of trends is irreplaceable at the managerial level to identify flaws and find remedies for the practice and written procedures of stop and search. We see how the terrain creates numerous situations where the existing guidance is insufficient to provide an adequate prescription for action. Such most interesting situations arise in the thin node where stop and search can transform into a pre-trial investigation, leaving the territory of control and entering the one of justice.

Reason and Procedure (why and how). Some of the difficult questions to explain the reason for stop and search are “Why is a person stopped?”, “Should she/he be searched?” and “Is there a need for detention?” The law is clear about such actions whenever there is evidence of a crime committed. But it is not so decisive if the “stop-check-search” is a part of the mundane control duty of the police. In one semi-fictitious situation, a police officer is helping a person with a medical condition. During the process, the police officer finds a gun or a package of drugs in the citizen’s pocket. What is the right course of action in this case? In another situation, the local police inspector passes by a citizen who presumably smokes hashish (it constitutes a crime under Bulgarian law). Should the police officer undertake an action, and what should this action be? Multiple factors complicate those decisions.

First, there is a strict description of the functions of officers belonging to different departments of the police force. It means not just every officer is authorized to stop you on the street. For example, a traffic police officer cannot stop or detain you if you are a pedestrian and your offence is not related to breaching road traffic rules. Street stops are to be performed by security (patrol) police, and searches (in the strict sense of the procedure) – by investigative police officers.

Second, if the check is going to develop further into an investigation, and in order to produce valid evidence, a thorough procedural path must be followed: A protocol should be signed for any search conducted, the circumstances described must be coherent in time and factuality, witnesses need to verify it, etc. We shall distinguish here the simple “search of

pockets”, with the consent of the checked, performed during a routine stop, and the mandatory search, done at the police station following the prescription of the pre-trial proceedings.

Third, to avoid complaints about abuse of power on behalf of the stopped, the officers need a sound motive for their actions, e.g. “she/he carried a suspicious package”, “there was an incident reported in the vicinity”, etc. This solid motivation is also required for the efficiency of the policing itself. Checks are based on feedback from the station (“the room on duty”). Therefore, spending its valuable and limited resources on redundant stops is not recommended.

We see the procedural details as a vital factor for the efficiency and accountability of the police stop and search function. Despite that importance, in Bulgaria, many grey zones remain only partially covered by the existing rules. As the most sensitive spot in this respect, we should outline this set of procedural steps that could transform the routine stop/check into the first phase of a full-fledged investigation. It is an important aspect since most drug trade cases, for instance, are launched right on the street (Interview with an attorney-at-law, university lecturer, 20/12/2021). It remains simultaneously a neglected area because patrol police are neither sufficiently prepared nor empowered to act in a first-stage investigation. Their paperwork cannot be used in the trial phase of a case (ibid.), they often lack the skills to gather valid evidence (Interview with a former police officer, investigator, 24/01/2022), or they simply might not possess the official powers to collect this evidence.

In a paradoxical way, the procedures reveal a lack and excess of powers at the same time. In some situations, the patrol police might look insufficiently empowered and dependent on their colleagues with investigative prerogatives. In others, they could perform arbitrary stops and checks, abusing the weak provisions for accountability. What are the possible remedies for this weakness?

4. CONCLUSION

This brief overview of “stops and searches” in Bulgaria reveals a routine that is sufficiently regulated in the general legal frame pertaining to the powers of the police. Although the country possesses a legislative framework complemented by special instructions and rules regulating the work of the police, a broad scope of opportunities for police officers to judge when and whom to stop and search remains available in practice. The ability of the police authorities at the managerial level to control and directly supervise the stop and search activities on the field remains, in practice, significantly limited.

What remains rudimentary and deficient is the elaboration of operational rules (manuals) guiding the officers through various terrain situations: filtering by risk factors of the environment, risk behaviour of the stopped, and discrimination between marginal and criminal social profiles. There is also a recognizable lack of adequate IT equipment, enabling the police force to conduct ID checks immediately on the spot (e.g. via biometric scanning). Technological tools, software solutions and interconnected databases will allow for avoiding redundant detentions, will lead to an economy of efforts and will supply the command/managerial positions with valuable statistics to adapt policies and operations to the dynamics of the city. Such qualitative upgrades in the stop and search routine can potentially increase accountability, providing a full record of stops conducted and means for feedback on behalf of citizens. A clear procedural picture is essential for broader public awareness

of the rights and obligations during stops and searches. It shall come hand in hand with the increased capacity of the ombudsperson, the NGO organizations and the lawyers to protect fundamental civil rights while respecting the vital tasks of the police to control and prevent in the name of the public good.

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Sažetak

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Police Stops and Searches – primjer primjene u Bugarskoj

Članak predstavlja rezultate studije o primjeni policijske ovlasti za „police stops and searches” u Republici Bugarskoj. Autori započinju s promišljanjem relevantnosti teme „police stops and searches”. Unatoč činjenici da je ovo postupanje policije u samom središtu interesa javnosti i na nacionalnoj i međunarodnoj razini, u Bugarskoj nije bilo predmet stalnog istraživanja. Postojeće studije su rijetke i sežu više od desetljeća unatrag. Povrh toga, tekst na sveobuhvatan način daje snimku stanja ovog fenomena: sažima povijesni kontekst prateći razvoj nacionalne policije, istražuje pravni okvir koji regulira pitanje „police stops and searches” u zemlji, i analizira praktične implikacije u provedbi formalnih pravila. Također se razmatra profiliranje na osnovi spola i etničkog podrijetla koje policijski službenici provode prilikom primjene ovlasti „stop and search” nad građanima. Zaključno, ističu se naznake budućeg razvoja prakse primjene ovlasti „stop and search” u zemlji autora.

Istraživanje se temelji na detaljnim intervjuima stručnjaka o toj temi i analizi dokumenata. U detaljnim su intervjuima sudjelovali policijski službenici (sadašnji i bivši), istražitelji, odvjetnici i sveučilišno nastavno osoblje. Analizirani su javno dostupni dokumenti, među njima relevantno bugarsko zakonodavstvo, upute i pravila vezani uz rad Ministarstva unutarnjih poslova Republike Bugarske, nevladinih organizacija i objava medija.

Praktičnu vrijednost istraživanja nalazimo u boljem razumijevanju ovlasti „police stops and searches”, i kao pomoć u izradi javnih politika utemeljenih na znanju. Rezultati istraživanja prikladni su za stjecanje komparativnih uvida uzimajući u obzir rezultate istraživanja provedene u drugim zemljama. Jednako tako, ti rezultati mogu pridonijeti struči širenjem spoznaja putem akademskih kurikuluma.

Ključne riječi: Bugarska, nacionalna policija, „police stops”, „police searches”, profili na temelju etničkog podrijetla.