

Háskólinn á Akureyri
Hug-og félagsvísindadeild
Lögfræði
Vor 2009
Lagadeild



Taser as a Enforcement Tool

Árni Sigurgeirsson

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Lokaverkefni til 90 eininga B.A. prófs í Hug-og félagsvísindadeild

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Yfirlýsingar:

Ég lýsi því hér með yfir að ég einn er höfundur þessa verkefnis og að það er ágóði eigin rannsókna.

Undirskrift

Það staðfestist hér með að lokaverkefni þetta fullnægir að mínum dómi kröfum til B.A-prófs í félagsvísinda- og lagadeild.

Undirskrift

ÚTDRÁTTUR

Lögreglumenn í Bandaríkjunum, Bretlandi, Frakklandi og Kanada hafa leyfi til að bera og nota valdbeitingartækið Taser sem er rafbyssa og gefur frá sér 50 þúsund volta rafmagnsstraum. Samkvæmt rannsókn á ofbeldi gegn lögreglumönnum á Íslandi sem birt var árið 2007, þá hefur ofbeldi gagnvart lögreglunni aukist og tekið á sig mjög alvarlega mynd og því hefur Landssamband lögreglumanna samþykkt beiðni um að íslenskir lögreglumenn fái leyfi til að bera og nota Taser þegar þeir eru við skyldustörf. Viðtal við Sigríði Björk Guðjónsdóttur, aðstoðarmaður Ríkis lögreglustjóri, staðfestir að lögreglustarfið er nú orðið mun fjandsamlegra fyrir lögreglumenn en áður. Beiðnin var tekin fyrir af Ríkislögreglustjóra og Dóm-og kirkjumálaráðuneytinu. Hingað til hefur engin opinber yfirlýsing hefur verið birt um beiðnina. Amnesty International, mannréttindasamtök sem berjast gegn mannréttindabrotum um allan heim, er gegn því að lögreglumenn fái að nota Taser sem valdbeitingartæki en samtökin telja að Taser veldur sársauka sem jafnast á við pyntingu. Einnig telur Amnesty að sú notkun á Taser sem valdbeitingartæki, brýtur í bága við lög sem snúa að mannréttindum. Mannréttindanefnd Evrópu gegn Pyntingum er á þeirri skoðunar að það sé óæskilegt að leyfa íslenskum lögreglumönnum að bera og nota Taser við skyldustörf.

ABSTRACT

The enforcement tool Taser is used by police officers in United States, United Kingdom, France and Canada. The Icelandic Police Union has approved a request for police officers to carry and use Taser when they are on duty. Increasing violence against police officers is the main reason behind the request but according to the National Commissioner of the Police Assistant, Mrs. Sigríður Björk Guðjónsdóttir, police work is becoming more hostile for officers. The request has been taken under consideration by the National Commissioner of the Police and the Minister of Justice but no statement about the request has been published yet. Amnesty International, an organization that improves human rights through campaigning and international solidarity, is against Taser as an enforcement tool because it basically causes pain that could be equal to torture. Amnesty argues also that the use of Taser by officers violates international law that protects human rights. The Human Rights Committee against Torture considers Taser not a preferable enforcement tool.

Contents

CHAPTER 1

INTRODUCTION.....	3
I. Iceland without Common Executive or Centralized Power.....	4
II. About Taser.....	5
III. The Function of the Icelandic Police	6
IV. The Code of Conduct for Law Enforcement Officials.....	7
V. The Concept “Use of Force”.....	8
VI. The Criticism on the Icelandic Police.....	9
VII. About Amnesty International.....	9
VIII. Protection of Human Rights.....	11

CHAPTER 2

VIOLENCE AGAINST ICELANDIC POLICE OFFICERS.....	13
2.1 The Report of Violence against Icelandic Police officers 2000-2005.....	13
a. Violence that caused minor pain:.....	13
b. Violence that caused serious pain:.....	13
c. Violence that caused serious injuries:.....	14
d. Violence that caused physical disability like invalidism:.....	14
e. The time of those attacks	14
f. The condition of the offenders when they attacked the Police officers	15
2.2 Police officers work a in hostile situations.....	15

CHAPTER 3

AMNESTY INTERNATIONAL AND TASER.....	17
3.1 Amnesty International’s view on Taser.....	17
3.1.1 Deaths related to Use of Taser	19
3.1.2 Taser placed well below the deadly force level.....	20
3.2. The Icelandic Police Union’s request for Taser	22
3.2.1 Taser International	22

3.2.2 About Taser shock effects on the heart and breathing..... 23

CHAPTER 4

HUMAN RIGHTS ARTICLES AND TASER 25

4.1 The Right to Life 25

4.1.1 Taser constituted in a form of Torture 26

4.1.2 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Taser 28

4.1.3 The Report from Iceland about Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 30

CHAPTER 10

CONCLUSION 31

REFERENCES 33

CHAPTER 1

INTRODUCTION

It is not widely known in Iceland that Icelandic civic police officers are carrying and using firearms or electronic control devices like Taser as an enforcement tool when they are on duty. Only the Special Force of the Police has a permission to use firearms as a last resort on offenders. There must be a good reason why Icelandic Police officers are requesting for a permission to carry and use Taser on duty in order to protect themselves and others. Chapter 2 will set out statistics from Icelandic research on violence against police officers that will indicate which kind of work environment they are in.

Many organizations and committees that protest against all acts and operations that are considered violation of human rights, have expressed their concerns about Taser as an enforcement tool. Amnesty International is one of those organizations that have been the main opponent to Taser. Chapter 3 will discuss reasoning's from Amnesty International about Taser as an enforcement tool and answer the questions whether use of Taser can cause pain that could equal to torture and whether the use of Taser can cause the death of a person.

Chapter 4 will mainly focus on torture and Taser. The concept torture will be taken under consideration and how it is interpreted by the Human Rights Committee and the European Court of Human Rights. Articles that clarify rights against torture and right to life will also be discussed and how they are invoked with if an officer is suspected for using excessive force or committing torture.

The principal aim of this dissertation is to discuss the pros and cons of Taser as an enforcement tool. Many questions and issues must be considered when it comes to deciding whether police officers should have that permission to carry and use Taser on duty. However, the main question of this thesis is; should Icelandic police officers be allowed to use Taser on duty? Before the main discussion begins, we must set out the function of the Icelandic Police, the technology of the Taser and the function of Amnesty International. But first, let us see how the Icelanders solved their issues during the Age of the Vikings (800-1050) and part of the Icelandic Commonwealth period (930-1262).

I. Iceland without Common Executive or Centralized Power

In the Age of the Vikings (800-1050) and part of the Icelandic Commonwealth period (930-1262), the society was without a common executive or centralized power. In the earliest Icelandic law code, *Grágás*, there is no provision that was made for corporal punishment according to a court judgment. According to *Grágás*, most punishments took the form of fines but the most severe penalty was outlawry. A person who was expelled from the society was an outlaw. Citizens could kill an outlaw without being punished and therefore it was legal to kill an outlaw if he was found in a place where his presence was not accepted.¹ The interesting thing about this time was that the citizens were expected to resolve their disputes by themselves. “Duty of vengeance” is when relatives of the victim go after the outlaw to kill him. Then the relatives of the outlaw could revenge his death. When it comes to duty of vengeance, the citizens were allowed to use weapon like sword, spear, fire and other things. Criminal cases were not prosecuted by an official authority like we know today but the society was without a common executive and centralized power. At the time of the Commonwealth period, it was not a custom to write laws on paper or enact written codes like *Jónsbók* and *Járnsíða*. The society had no police as we know today.²

In 1262-64 Iceland made agreement to the Norwegian King and this agreement were bound in the Old Covenant (*Gamli Sáttmáli*). According to the Old Covenant, the Norwegian King was responsible for maintaining law and order in Iceland with the condition that Icelanders would admit the domination of the king and pay taxes to him. Two other codes were introduced; first the code *Járnsíða* came in place that was given out by Magnús Hákonarsonar law mender and was presented to Iceland in 1280, the Second code was called *Jónsbók*; it met with a cool reception at first but was approved at the Alþingi in 1281 without substantial modifications. With *Járnsíða* and *Jónsbók*, the legal system was developed up to the next step but the executive power passed into the hands of royal officials, criminal cases were prosecuted by the Crown and the duty of vengeance was abolished. Provision about corporal and capital punishment were enacted. The main function of corporal and capital punishment was discouraging citizens in breaking laws and thereby to minimize criminal

¹ Sólborg Una Pálsdóttir. 2003. „Ágrip af sögu lögreglunnar.” *Löggæsla fyrri alda*, eds. Guðmundur Guðjónsson. Ríkislögreglustjórnin, Reykjavík: P. 3

² *ibid* P. 4

offences. These punishments had also the function to restore the honour of the victim and keep his family from to take revenge themselves.³

II. About Taser

Taser is an electronic control device (ECDs) for use in the law enforcement but e.g. officers in USA, Canada and recently in UK have a permission to carry and use Taser when they are on duty. The Taser fires two small dart-like electrodes, which stay connected to the main unit by conductive wire as they are propelled by small compressed nitrogen charges similar to some air gun or paintball marker propellants. The air cartridge contains a pair of electrodes and propellant for a single shot and is replaced after each use.⁴

Many opponents of the Taser gun maintain that the Taser actually gives 50.000 voltages into a person's body but in fact for example the Taser X26 gives an average of 400 voltages into the body for a short limited of time or 100 milliseconds per pulse. The strength of the electricity in Taser is 0.0021 ampere but is for example 16 ampere in a normal 100 volt interface in people's homes. Thus a person who has been struck by a Taser does not get 50.000 volt through his body because the electric falls down to 400 volt when the electricity flows through the body.⁵

The usage of a Taser must be made with full wariness. The two darts must be stuck to the offender's clothes or body in order to carry the electricity to his body but the electric shock potentially works on the whole body. Normally, those darts range from 4-6 meters but the longest range is 10 meters. It is possible that arrows from Taser can cause a body injury if they hit the offender's eye but there is a minimum risk for a small injury if they hit the body. In order to prevent Taser from causing a body injury, there exist special procedural rules for officers about Taser that explain its usage and also in order to prevent any misuse of the weapon.⁶

³ Sólborg Una Pálsdóttir. 2003. „Ágrip af sögu lögreglunnar.” *Löggæsla fyrri alda*, editor Guðmundur Guðjónsson. Ríkislögreglustjórnin, Reykjavík: P . 4

⁴ Taser Rafbyssa: valdbeitingartæki lögreglu, Lögreglumaðurinn [2 March 2007]. P. 14

⁵ *Supra 4*

⁶ *Supra 4*

Taser is mainly used against hostile offenders that e.g. threaten others peoples lives with weapons and to prevent people from committing suicide. Taser also gives officers more possibilities to protect themselves against offenders that are likely to cause them serious injuries. According to Taser International that produces and is a vendor for Taser, the consequences from using the electrical device are considered minor but human rights organizations such as Amnesty International consider the device a very dangerous enforcement tool that can cause many wrongful deaths.

III. The Function of the Icelandic Police

The main function of the Icelandic Police is to ensure public safety and guarantee the security of citizens under the law, to prevent and investigate crimes, to assist the public and to maintain peace and public order. A large part of police daily duties involves the service and assistance role mostly for the public. Police officers must be well aware of their duties and responsibilities and they are required to show vigilance in their work. They must show impartiality, fairness and moderation. They have authority to use force if necessary e.g. to deprive a person's freedom for a limited time like when a person is arrested and therefore in the custody of the Police. But they must take particular care not to use greater force than is necessary to overcome the resistance of a person suspected of having committed an offence.⁷

To become a policeman in Iceland, you must be educated and graduated from the National Police Academy which is an independent institution under the Minister of Justice. The applicants must be aged between 20 and 35 and in good mental and physical health to become a trainee in the National Police College. The applicant must also have completed two years of post-compulsory education or the equivalent, have good language skills, a driving licence, be able to swim, and have a clean criminal record. The study in the National Police College is divided into three terms of training. Trainees must study criminal law, police skills and Icelandic. Special subjects including psychology and ethics are the basic ground of the study. Also, trainees are called in to reinforce other officers if it is needed but generally, trainees undergo practical training with the Force between terms.⁸

⁷ Afmælisnefnd ríkislögreglustjórans. 2003. „Ágrip af sögu lögreglunnar.” *Lögregla nútímans*, eds. Guðmundur Guðjónsson. Ríkislögreglustjórin, Reykjavík. P. 31

⁸ *ibid* P. 35

Iceland is a democratic society where the Police have the obligation to protect human rights and the civilians of the community. For example, corrupted police is more known in communities where monarchy is dominated and police violence is common and often appeared with torture and inhuman treatment. In communities where monarchy is dominated, it is common that the dictator use the police only to put through his demands which often appears with police violence.⁹ However, the Police violence does also appear in democratic societies but in the different way. For example, the problem starts when a high level certain parties justify police violence on the ground that the police are just taken on issues that are displeasing and unwelcome to protect the public. In other words, a police act that could be considered in form of torture is admitted by certain parties like political groups.¹⁰

As mentioned in the introduction of this dissertation, the people during the Icelandic Commonwealth period basically resolved their problem by themselves but when their arguments started become more complicated, there was no legal authority to take on those issues. In the end, the Icelanders approached to the Norwegian King with the Old Covenant (*Gamli Sáttmáli*) for assistance to maintain law and order in Iceland.

The police system is supposed to protect all citizens and insure that everyone is equal under the law. Generally, the police operate under certain law that mostly refers to the United Nations Code of Conduct for Law Enforcement Officials. In 2001, the Committee of Ministers of the Council of Europe recommended that Iceland should adopt the European Code of Police Ethics and therefore considering the principles in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police. The Icelandic National Police Code of Ethics was brought in force by the National Commissioner of the Police 26 of June 2003.¹¹

IV. The Code of Conduct for Law Enforcement Officials

The fundamental principle in the International standards on the Use of Force Code is that the police should only use force when strictly necessary for law enforcement and to maintain

⁹ Bjarki Eliasson, *Mannréttindi og Lögreglan*, Lögregluskóli Ríkisins, 1993. P. 13

¹⁰ *Supra* 9

¹¹ Siðferðisög lögreglunnar. Ríkislögreglustjóri, Reykjavík, 26 June 2003. (accessed 20 April 2009): http://www.logreglan.is/displayer.asp?cat_id=896

public order. The General Assembly adopted the Code of Conduct for Law Enforcement Officials in December 1979 (hereinafter the *Code*), which applies to the civilian police and others who exercise police powers, especially the powers of arrest and detention. Article 3 in the Code clarifies that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”. Further, law enforcement officials have authority to use force as is reasonably necessary under the circumstance for the prevention of crime or in effecting or assisting the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.¹²

In 1990, United Nations adopted the Basic Principles on the Use of Force and Firearms by Law Enforcement officials (Basic Principles). The purpose of the Basic Principles is to ensure that firearms only used in appropriate circumstances and in the manner likely to decrease the risk of unnecessary harm. Law enforcement officials should not use firearms that cause unwarranted injury or present an unwarranted risk.¹³ Strictly, law enforcement officials should use firearms only when an offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the offender.¹⁴ It is important to know that Taser is considered a firearm under Firearms Act both in United Kingdom and Canada but not in the United States. In Iceland, Taser would presumptively be considered as an enforcement tool because civilians are not allowed to carry any electrical device like stun guns.¹⁵

V. The Concept “Use of Force”

With an authority to use force follows great responsibility but law enforcement officials like Police officers in Iceland, must be aware that they are state actors. The concept *force* does not appear as a good or bad act only. For example, officers that use force to protect the public are considered executing a good act. However, officers that use force intentionally to harm

¹² The United Nation’s Code of Conduct for Law Enforcement Officials. 17 Dec. 1979, G.A. Res.34/169, Art. (accessed 20 April 2009): http://www.unhchr.ch/html/menu3/b/h_comp42.htm

¹³ Human rights and law enforcement : a trainer's guide on human rights for the police / Office of the United Nations High Commissioner for Human Rights, New York, United Nations, 2002. P. 178

¹⁴ *ibid.* P. 176

¹⁵ The Canadian Broadcasting Corporation, CBCNews.ca, “Taser FAQs”, 31 March 2009(Accessed 16th April 2009): <http://www.cbc.ca/canada/story/2009/03/18/f-taser-faq.html>

individuals are considered executing a bad act. It is a high risk for officers to use force because it can lead to serious consequences and create more issues. For example, an officer could face charges for using Taser in an unaccountable way that leads to an offender's death. An officer must ask himself whether there is necessity for the use of force and there is, he must value the environment and circumstances when deciding which kind of use of force should be applied and how much. Police officers should not use force to torture or cause individuals serious injuries but rather to protect the public and offenders from hurting others or themselves. The officers should use force carefully and not more than is needed regarding to circumstances. The use of force by police officers must be practiced within the frame of law to be considered a lawful and rightful act. The police are a profession with a certain authority that has symptom of forces, is recognised by citizens in the community¹⁶

VI. The Criticism on the Icelandic Police

The police are a neutral institution and that has the obligation to solve issues objectively as possible but high expectations are made of the Icelandic Police. The Icelandic Police are often criticised by certain parties' or organisations for how they take on certain issues and tasks even though the police is only enforcing the law and trying to prevent actions prohibited by Icelandic law. The Police have also been criticised for standing by and do nothing. The criticism on the Police are more common today rather in the past but citizens have become more aware about human rights and what its stands for. The criticism is mostly about officer's behaviour and how they work but the United Nations (UN) and the European Congress has made a resolution about supervision on behaviour among Police officers. The officer's behaviour must comprehend sense of human dignity. The basic purpose of the supervision amongst Police officers on duty is to secure that they work regarding to the United Nations Code of Conduct for Law Enforcement Officials and they respect the Code.¹⁷

VII. About Amnesty International

Amnesty International (hereinafter *Amnesty*) is an international movement that focuses on improving human rights through campaigning and international solidarity. Amnesty protest

¹⁶ Bjarki Eliasson, Mannréttindi og Lögreglan, Lögregluskóli Ríkisins, 1993. P. 14-15

¹⁷ *ibid* P.17

against all acts and operations that are considered violations of human rights.¹⁸ It works with and for individuals from all around the world. Amnesty demand that every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights. Amnesty wants to end all abuses of human rights and claim that all governments and other powerful entities respect the rule of law. Amnesty work against violation of human rights is globally and locally.¹⁹ For example, Amnesty takes action to:

- “Stop violence against women
- Defend the rights and dignity of those trapped in poverty
- Abolish the death penalty
- Oppose torture and combat terror with justice
- Free prisoners of conscience
- Protect the rights of refugees and migrants
- Regulate the global arms trade”²⁰

The work of Amnesty is important because campaigning can change people’s lives i.e. survivors of human rights abuses, activists and defenders and even of the abusers. The work is successful but campaigns against violation on human rights have put some pressure on governments to enact laws that should absolutely protect human rights legally and do everything to counteract violation on those rights. Today, the members of Amnesty are counted in thousands and they works are very active.²¹ Amnesty’s worldwide first Campaign for the abolition of torture took place in 1972. In 1973 the discussion of torture was brought before the General Assembly, in draft resolution under an agenda item concerning the twenty-fifth anniversary of the Universal Declaration of Human Rights. Torture as a concept became more common and important and further interpretation on the concept was about to come.²²

¹⁸ Amnesty International UK, “About Amnesty International”, (accessed 16.april 2009):
<http://www.amnesty.org/en/who-we-are/about-amnesty-international>

¹⁹ *ibid*

²⁰ *ibid*

²¹Amnesty International Iceland “Algengar spurningar um Amnesty International”, 8th May 2008(accessed 4th March 2009):
http://www.amnesty.is/hverviderum/algengarspurningar/#Skilar_starf_Amnesty_International_arangri

Amnesty is independent and democratic organization, it has a number of safeguards in place to protect our autonomy but it is independent of any government, political ideology, economic interest or religion. Democratic and self-governing and financially self-sufficient, thanks to the generous support of donations provided by individual members and supporters. It does not support or oppose any government or political system.

VIII. Protection of Human Rights

Every person should have the right to be independent, live without sovereignty and enjoy civil rights. When the General Assembly adopted the Universal Declaration of Human Rights on December 10 in 1948, the United Nations took a very important step in order to protect human rights and prevent human rights violations. With the Declaration, nations began to consider the concept "human rights" more closely and the discussion about the meaning of the concept became more open to the world. However, the Declaration was not legally binding even though it had a strong moral force. For example, many national courts have employed the Declaration either as an interpretative tool or as customary law. The Constitution of Iceland includes provisions that refer to the Declaration. The Declaration is often practiced as a point of reference for constitutional questions.²³

In 1950 the European Convention of Human Rights was established but it kept a similar meaning as the France Declaration of Human Rights from 1789. In 1215, the covenant *Magna Carta* was established.²⁴ The Article 39 of the *Magna Carta* explains:

“No freemen shall be taken or imprisoned or diseased or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”²⁵

²² Ann-Marie Bolin Pennegård, “Article 5”, Asbjørn Eide and Guðmundur Alfredsson eds., *The European Convention of Human Rights: A common standard of achievement*. (The Hague Boston/London: Kluwer Law International, 1999) P. 129

²³ Rhona K.M. Smith, *Textbook on International Human Rights*, Oxford University Press, 2007. P. 35-37

²⁴ Bjarki Elíasson, *Mannréttindi og Lögreglan*, Lögregluskóli Ríkisins, 1993. P. 6

²⁵ Bjarki Elíasson, *Mannréttindi og Lögreglan*, Lögregluskóli Ríkisins, 1993. P. 6

Law enforcement official means an officer or employee of any agency or authority of a State, a territory, a political subdivision of a State or territory, or even a tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law;
- or,
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.²⁶

It is important that all law enforcement officials understand and respect the desire of individual to enjoy Human Rights.

A Taser is an electroshock weapon that uses electrical current to disrupt voluntary control of muscles. As we shall see, articles about prohibition on torture and right to life are important provisions into the discussion about Taser as an enforcement tool used by law enforcement officials.

²⁶ HHS Regulations: Definitions – Law Enforcement Official:
<http://www.bricker.com/legalservices/practice/hcare/hipaa/164.501m.asp>

CHAPTER 2

VIOLENCE AGAINST ICELANDIC POLICE OFFICERS

2.1 The Report of Violence against Icelandic Police officers 1998-2005

In 2005, the Report of violence against Icelandic Police officers (hereinafter Report) was published. About 650 officers, graduated from the National Police Academy, were invited to participate in the research of violence against Police officers on the period 1998-2005. About 397 officers responded to the invitation. The Report confirms that a large part of those 397 officers had experience some kind of violence, physically or mentally. Also, the Report confirmed that officers had been suffering injuries from minor pain or broken bones after attacks from offenders.²⁷ Set out below are outcomes from the Report that indicates the numbers of those 397 Icelandic police officers who has suffered physical violence on duty from offenders in their work that cause them minor soreness up to serious injuries.

a. Violence that caused minor pain:

About 40% of the officers had been suffering physical violence on duty that caused them minor soreness like scratches and bruises. Officers who are 34 years old and younger sustained more often violence than the older officers who had gained more experience in the Police work.²⁸ In the case of *Prosecution v Ágústi Fannar Ágústsson*, the accused was convicted guilty for violation on Article 106(1) of the Icelandic Penal Code after he attacked an officer and caused him minor face injuries. The incident happened in a cell at a small police station situated in the town of Akureyri, in northern Iceland.²⁹

b. Violence that caused serious pain:

About 15% of the officers had suffered physical violence on duty that caused them serious soreness like big bruises. Those who had worked as an officer for 5 to 14 years

²⁷ Ólafur Örn Bragason, Guðbjörg S. Bergsdóttir, Rannveig Þórisdóttir & Jón Óttar Ólafsson. „Ofbeldi gegn lögreglumönnum: Rannsókn á reynslu lögreglumanna og tilkynntum brotum.” Ríkislögreglustjórnin, 2007. P. 21

²⁸ *ibid* P. 32

²⁹ Héraðsdómur Norðurlands eystra í máli nr. S-1/2009 frá 29. Janúar 2009 (Ákærvaldið gegn Ágústi Fannari Ágústssyni).

were more likely to undergo violence that cause them serious soreness, rather than those who had worked for a shorter or longer time.³⁰

c. Violence that caused serious injuries:

About 4% of the officers had suffered physical violence on duty that caused them serious injuries like broken bones and serious head injuries.³¹ In the case of *Prosecution v Nikolajs Smorodinovs*, the accused hit an officer with his fist at the Police Station in Reykjavík. The Officer received a broken left jaw after the attack. Nikolajs Smorodinovs was convicted guilty.³²

d. Violence that caused physical disability like invalidism:

Over the last 5 years, five officers had undergone violence on duty that caused to their physical disability. One officer had undergone such violence twice.³³

Over the period 1998-2005, it appears that large part of those 397 officers had suffered physical violence from offenders. It also appears that officers of young age are more likely to be threatened and attacked. It seems that long experience the police work is important when it comes to officers to dealing with hard situations. Offenders' intention to attack an officer with physical violence can take place. However, the intention does not always appear when officers is injured by offenders. For example, an officer can be injured accidentally like when he tries to stop a fight between two individuals.³⁴ The violence against police officers does not occur on certain places but rather on certain time. The Report establishes the time of those attacks and also the condition of the offenders when they attacked the officers.

e. The time of those attacks

Over the period 1998-2005, there were 685 violent offenses against Police officers reported. The Report indicates that violent offenses against officers were more

³⁰ Ólafur Örn Bragason, Guðbjörg S. Bergsdóttir, Rannveig Þórisdóttir & Jón Óttar Ólafsson. „Ofbeldi gegn lögreglumönnum: *Rannsókn á reynslu lögreglumanna og tilkynntum brotum.*” Ríkislögreglustjórinn, 2007. P. 34

³¹ Ibid P. 36

³² Héraðsdóms Reykjavíkur í máli nr. S-8/2008 frá 18. janúar 2008 (Ákærvaldið gegn Nikolajs Smorodinovs)

³³ Ólafur Örn Bragason, Guðbjörg S. Bergsdóttir, Rannveig Þórisdóttir & Jón Óttar Ólafsson. „Ofbeldi gegn lögreglumönnum: *Rannsókn á reynslu lögreglumanna og tilkynntum brotum.*” Ríkislögreglustjórinn, 2007. P. 37

³⁴ ibid P. 51

common at nights. The offenses took place between 12am – 8am at weekends, mainly on Sunday's eve.³⁵ The number of offenders who carried weapon increased during the period 1998-2005 from 23 cases and up to 28, but altogether those cases counted about 98 of 685. Truncheons, sharp tools and pistols were among the weapons that offenders carried but in 40% of those cases, the offender attacked officers with a sharp weapon.³⁶

f. The condition of the offenders when they attacked the Police officers

In 501 of 685 cases the offender was intoxicated with alcohol but in 81 police reports, the condition of the offenders has not been mentioned and therefore put its mark on the outcome. However, offenders who were under the influence of drugs when they attacked the police officers, were 6% of 212 reported offenses against officers 1998-1999 but 10% of 147 offenses 2004-2005. This indicates that offenders who use drug, are more likely to become hostile and dangerous to officers.³⁷

2.2 Police officers work in hostile situations

Police officers experience violence mainly where disorder takes place in public. It is common in an Icelandic society that individuals gather in a group to disturb officer's work thus resulting in the officers' difficulty to work, especially in an environment where disorder takes place. Tension between the officers and those who are disturbing their work does in most cases take place and therefore one issue can create many other issues.³⁸

The violations on Article 106 and 107 of the Icelandic Penal Code was counting about 68 offenses in 2005, 96 offenses in 2006 and 120 in 2007.³⁹ This outcome confirms that violence against Icelandic police officers seems to be increasing and therefore the Icelandic Police Union submitted a request to the National Commissioner of the Icelandic Police about allowing Icelandic officers to carry and use Taser on duty. The request was taken under

³⁵ Ólafur Örn Bragason, Guðbjörg S. Bergsdóttir, Rannveig Þórisdóttir & Jón Óttar Ólafsson. „Ofbeldi gegn lögreglumönnum: *Rannsókn á reynslu lögreglumanna og tilkynntum brotum.*” Ríkislögreglustjórin, 2007. P. 62

³⁶ *ibid* P. 73-74

³⁷ *ibid* P. 78

³⁸ *ibid* P. 96

³⁹ Guðbjörg S. Bergsdóttir. Afbrotatölfræði gegn lögreglumönnum 2006. Ríkislögreglustjórin, 2007. P. 38

consideration by the Commissioner and then sent forward to Mr. Björn Bjarnason, former Minister of Justice. According to Mr. Björn Bjarnason, there are certain issues in the Report of Taser, which must be considered by the Ministry before they can be expressed openly. The Icelandic Police Union was unanimous that offenders were becoming more hostile to officers and some of them did not show any hesitation when it came to attacking a police officer.⁴⁰

The National Commissioner of the Police Assistant, Mrs. Sigríður Björk Guðjónsdóttir, expressed in an interview which was published on May 24 2008 in an Icelandic newspaper, that Police work was becoming more hostile to officers. Foreign crime circles had been growing within Icelandic community with a support from local criminals. One of those reasons mentioned why violence against officers was growing, is because that foreign criminals are coming from countries where the violence is more serious and common and violence against the police is more serious than here in Iceland. Basically, the Icelandic criminals are learning “new methods” from foreign criminals that often appears with serious violence. However, there is always a tension between foreign and Icelandic criminals. Struggle between them and internal conflicts often end with serious consequences. This means that the hardness and violence are increasing within “the Icelandic criminal world” and that makes the police work more hostile and difficult for officers.⁴¹

⁴⁰ Mbl, Andri Karl Elínars. Ásgeirsson, Morgunblaðið, “Afstaða RLS liggur fyrir”, 20 January 2009 (accessed 20 April 2009): http://www.mbl.is/mm/gagnasafn/grein.html?grein_id=1265312

⁴¹ JSS, “Starf lögreglu mun hættulegra en áður,” Fréttablaðið, [24 May. 2008]

CHAPTER 3

AMNESTY INTERNATIONAL AND TASER

3.1 Amnesty's International view on Taser

The discussion about whether Icelandic officers should carry and use Taser when they are on duty is relatively new. Taser devices are used by over 7,000 of the 18,000 law enforcement agencies in the USA and are also used by police officers in Canada and England.⁴² In December 2008, the Home Security Ministry ordered 10.000 Taser devices for officers in England and Wales. In 6 January 2009, the British government decided to take in 5000 Taser devices but it has been on trial with officers in the UK.⁴³

Amnesty international is against Taser because it is a powerful electrical device that can cause a dangerous pain that could be equal to torture. Basically, Article 5 in the Code clarifies that "law enforcement official may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment".⁴⁴ This prohibition derives from *the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* adopted by General Assembly 1975⁴⁵ and defines torture as follows:

“. . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having

⁴² Amnesty International UK "Document - USA: Renewed call for suspension as taser-related deaths pass 150 mark ", 8th May 2008(accessed 4th March 2009): <http://www.amnesty.org/en/library/asset/AMR51/039/2006/en/3fdf8c2e-d450-11dd-8743-d305bea2b2c7/amr510392006en.html>

⁴³ Vísir. "Breskir lögreglumenn frá 5000 Taser byssur," Fréttablaðið, 24 May. 2008(accessed 20 April 2009): <http://www.visir.is/article/20090106/FRETTIR02/840120796/-1>

⁴⁴ The United Nations Code of Conduct for Law Enforcement Officials, 17 Dec. 1979, G.A. Res.34/169, Art. (accessed 20 April 2009): http://www.unhchr.ch/html/menu3/b/h_comp42.htm

⁴⁵ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 Dec. 1975 Res 34.(Accessed 20 April 2009): http://www.unhchr.ch/html/menu3/b/h_comp38.htm

committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”⁴⁶

Since June 2001, more than 290 people in the US and Canada have died after being stunned by Taser and the numbers are rising. In 2005, 61 people were reported to have died after being stunned by Taser. The organization is not arguing that all those 290 deaths can be connected straight to the shock itself but it is rather concerned that those 290 people died after being stunned by Taser. Taser pulses induce skeletal muscle spasms that immobilize and incapacitate the individual, causing them to fall to the ground.⁴⁷

In 2001 there was three deaths reported, 13 in 2002, 17 in 2003 and 48 in 2004. In 2005 there were 61 Taser-related deaths, and the mid February 2006 there have already been 10 deaths. Amnesty is concerned that Taser is used as “routine enforcement tool” by police officers. Amnesty has autopsy and police reports and statements from coroner’s examiners’ offices which prove abuse of Taser by officers. Of those 152 Taser-related deaths documented by Amnesty International⁴⁸:

- “Most of those who died in custody were unarmed and were not posing a serious threat to police officers, members of the public, or themselves
- Those who died were generally subjected to repeated or prolonged shocks
- Use of the Taser was often accompanied by the use of restraints and/or chemical incapacitated sprays

⁴⁶ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 Dec. 1975 Res 34.(Accessed 20 April 2009): http://www.unhchr.ch/html/menu3/b/h_comp38.htm

⁴⁷ Amnesty International UK “Document - USA: Renewed call for suspension as taser-related deaths pass 150 mark ”, 8th May 2008(accessed 4th March 2009): <http://www.amnesty.org/en/library/asset/AMR51/039/2006/en/3fd8c2e-d450-11dd-8743-d305bea2b2c7/amr510392006en.html>

⁴⁸ Amnesty International USA “ Amnesty International's continuing concerns about Taser use ”, 8th May 2008(accessed 4th March 2009): <http://www.amnestyusa.org/document.php?id=engamr510302006>

- Many of those who died had underlying health problems, such as heart conditions or mental illness, or were under the influence of drugs
- Most of those who died went into cardiac or respiratory arrest at the scene”⁴⁹

Amnesty International considers that the use of the Taser can amount to cruel, inhuman or degrading treatment and would like to show the international community that Taser is used as a “routine tool”.⁵⁰

3.1.1 Deaths related to Use of Taser

Most of those people died after being subjected to multiple or prolonged shocks but, in some cases, deaths have continued to be attributed to factors other than the Taser, such as "excited delirium" associated with drug intoxication or violent struggle. In the case of Robert Clark Heston, the officers from the Salinas Police Department California stunned him with Taser 10 times and he died on 20 February 2005. Robert had been using methamphetamine but it took three autopsies to conclude that Taser had been a contributory factor in his death and the last autopsy cited "excited delirium". Taser has been listed as a primary cause of death and has classified the death as a homicide in seven cases.⁵¹

In the Case of Ronald Hasse, the police stunned him twice, with one of the shocks lasting 57 seconds. The police express that Hasse was stunned with Taser because he was attempting to bite and kick them. The Medical report declared that Hasse died from electrocution, with methamphetamine being a contributing factor.⁵²

In the case of Maurice Cunningham, two Lancaster County Jail deputies stunned him repeatedly after he attempted to attack them in order to escape from his cell. The deputies did also use pepper spray on Maurice. “The medical examiner ruled that he died of cardiac

⁴⁹ Amnesty International USA “ Amnesty International's continuing concerns about Taser use ”, 8th May 2008(accessed 4th March 2009): <http://www.amnestyusa.org/document.php?id=engamr510302006>

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² *ibid*

arrhythmia provoked by the application of six Taser cycles, one of which lasted 2 minutes and 49 seconds". Maurice had not use any drugs according to the toxicology report.⁵³

On 7 February 2005, the officers from the Chicago Police Departments stunned a 14 year old boy with Taser who then went into cardiac arrest. A ward of the state living at a residential treatment centre in Chicago, the boy had reportedly calmed down when the police arrived in response to a report that he had become violent, threatening staff and breaking windows. When police officers arrived, the boy stood up from a couch where he had been sitting and assumed "an aggressive stance". Police stunned the boy and handcuffed him on the ground. When they realised that he was unresponsive, paramedics were called to resuscitate him. He was taken to hospital in a critical condition and regained consciousness from a medically induced coma three days later.⁵⁴

3.1.2 Taser is placed well below the deadly force level

Amnesty International is not only concerned about the physical consequences of Taser but also how it is used by police officers. Taser should be used in circumstances which the suspect does not pose a serious threat to officers or the public because this is not considered as a low or intermediate force option⁵⁵. Amnesty is pointing out that officers who use Taser as a routine enforcement tool are likely to cause unwarranted injury or present an unwarranted risk but researches made by Amnesty indicate that most of those who have died, after being stunned by Taser, were unarmed men who did not appear to pose a threat of serious injury or death. Most police departments still place them well below the deadly force level but others instruct officers to use Taser if a person does not comply with an officer's demands. Lack of strict guidelines governing Taser use in the US for Police officers brings out the risk of Taser abuse. It appears that too many US police officers choose Taser as an ordinary enforcement tool but not as a choice of last resort. According to Article 4 of the United Nations Code of Conduct for Law Enforcement Officials:

⁵³ Amnesty International USA "Amnesty International's continuing concerns about Taser use", 8th May 2008(accessed 4th March 2009): <http://www.amnestyusa.org/document.php?id=engamr510302006>

⁵⁴ *ibid*

⁵⁵ Amnesty International Iceland, "Rafbyssur: Afstaða Amnesty International", 8th May 2008(accessed 4th March 2009): <http://www.amnesty.is/frettir/nr/1471>

”Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. “⁵⁶

Amnesty is against officers using Taser on groups such as children, the disabled, pregnant women and people with mental illnesses. Amnesty has evidence where officers the use Taser on vulnerable groups like people who are mentally ill. Amnesty is aware of the fact that the use of Taser can be justified when it is used to protect the public. However, it is an inherently excessive use of force if Taser is used on juveniles, pregnant women, the elderly and especially children. Amnesty has information that a 12 year old boy was stunned with Taser by Orange County deputies after he had been placed in handcuffs. A similar incident took place when a 14 year old girl was stunned three times with Taser after fighting with her classmate.⁵⁷

Amnesty has evidence that officers and warders who work in prison are using Taser mostly on intoxicated or mentally disturbed individuals in order to gain compliance. According to Amnesty, in many situations Taser is used on individuals who are already in a calm and controlled environment, unarmed and not posing a serious threat to themselves or officers. In the case of Patricia Skelly, who had mental disorder, the correctional officers stunned her with Taser nine and fifteen times while she was in their custody at Okaloosa County Jail in Florida on 27 March 2005. Skelly was first stunned after she tried to attack the officers.⁵⁸

Amnesty has encouraged all US departments and authorities to suspend their use of Taser and a similar request was also made to the Canadian authorities. Both authorities did not respond to Amnesty’s request.⁵⁹

⁵⁶ The United Nations Code of Conduct for Law Enforcement Officials, 17 Dec. 1979, G.A. Res.34/169, Art.4 (accessed 20 April 2009): http://www.unhchr.ch/html/menu3/b/h_comp42.htm

⁵⁷ Amnesty International USA “ Amnesty International's continuing concerns about Taser use ”, 8th May 2008(accessed 4th March 2009): <http://www.amnestyusa.org/document.php?id=engamr510302006>

⁵⁸ *ibid*

⁵⁹ *ibid*

3.2. The Icelandic Police Union's request for Taser

In 30 April, 2008, the Icelandic Police Union (hereinafter the Union) approved a request for Taser. Óskar Þór Guðmundsson, a police officer and a member of the Icelandic Police Union administration, has admitted that many questions must be answered before a decision will be taken on whether Icelandic officers should use Taser as an enforcement tool. The Taser that possibly will be taken into use by Icelandic police officers includes a recorder which is attached to the Taser and records the course of events. This recorder reveals how the police officer used the Taser and the course of events up to 10 seconds before the offender is stunned by the Taser. Those recorded images thus include important details which makes the investigation easier if the officer is accused for abusing the offender with Taser. The Union has recommended that all Icelandic Police officers should have permission to carry Taser with the small hardwired camera that will start to record after the device is ready to be used. All Icelandic Police officers must go through a special training before they get a permission to carry and use Taser on duty. In this training, the officers themselves are stunned with Taser. In countries where Taser is used as enforcement tool, the accidents on officers had decreased and accidents on offenders that had been arrested had also decreased about 80%.⁶⁰

It is a fact that Taser has saved many lives and for example the equipment has prevented individuals from committing suicide, however in Tampa Bay in Florida, an officer stunned a man as he stood at the side of the Howard Franklin Bridge and was likely to commit suicide. The officer tried to talk him into coming down but that conversation ended with an argument and therefore the officer stunned him with the Taser and grabbed him before he could fall over the edge.⁶¹ Even though a life was saved, this event is an object lesson in how the Taser should *not* be used.

3.2.1 Taser International

Taser International (Taser Int.) is the company that produces and sells Taser to Police institutions. Taser Int. is aware that Taser can cause injuries if not handled correctly but according to experts in the field of medicine and recent researches on Taser in Canada, the

⁶⁰ Óskar Þór Guðmundsson, Sannleikurinn um Taser valdbeitingartækið, Morgunblaðið, [11 May, 2003]

⁶¹ Visir.is, "Lögreglan kom í veg fyrir sjálfsvíg, Fréttablaðið," 11 Mars, 2009, (accessed 4 May, 2009): <http://www.visir.is/article/2009835070038>

UK and the USA, Taser is the most secure enforcement tool used in order to overcome violent individuals that could cause harm to officers, innocent civilians or themselves. It is stated by Taser Int. that Amnesty chooses to ignore those 120 research findings which disclose that Taser creates high tension but a low electrical power that cannot cause death of person. Amnesty states that the outcome of those researches which Taser Int. is referring to is not in a neutral form but Taser Int. does not accept that kind of a statement. About 80% of those 120 researches could not be connected straight to Taser Int. In other words, Taser Int. was not involved in making these researches or when those researches were made. A big part of those researches was financed by the US Department of Justice. Amnesty's concern on Taser is mostly built on unscientific discussion, which gives the public wrong ideas about the electrical device.⁶²

According to recent research on Taser, made by scientists on medical area in Wake Forest University in USA, Taser is secured enforcement tool but in some incidents, it could cause mild injuries. Around 962 individuals were stunned by Taser during the period 2005-2007 but only three had to pursue for treatment from a doctor because of fall injuries after the shock.⁶³

3.2.2 About Taser shocks effects on the heart and breathing

It is known that cocaine is a dangerous drug but it has a strong effect on individuals and significantly increases the risk of a heart attack. Taser Int. maintains on its webpage that cocaine does not have any effect on Taser safety but someone would assume otherwise, claiming that use of cocaine can make electrocution easier. That is wrong according to Taser Int. where most scientific studies have shown that cocaine makes electrocution more difficult. Cocaine does not increase the already low risk of fibrillation according to America's most famous Heart Hospital, the Cleveland Clinic. Taser does not have any cardiac effect if the device is used on the back of the offender. This does not mean that there is a risk from using the Taser on the front of individuals.⁶⁴ Taser has been tested on humans where the volunteers

⁶² Vísir. Taser International harmar óhróður og dylgjur Amnesty á Íslandi, Fréttablaðið, 8 May 2008(accessed 20 April 2009): <http://www.visir.is/article/20080508/FRETTIR01/634343154>

⁶³ *ibid*

⁶⁴ Taser, Taser International, "Breathing and Excited Delirium", 25 March 2007(accessed 20 April 2009): <http://www.taser.com/research/Science/Pages/BreathingandExcitedDelirium.aspx>

were instrumented with a breathing monitoring device which showed that the Taser did not interfere with breathing. Taser Int. also maintains that Taser does not interfere with breathing but the device was tested on animals. Only one animal study suggested that Taser discharge might interfere with breathing. The test was not designed to look for breathing effects.⁶⁵

⁶⁵ Taser, Taser International, “Cardiac Safety”, 25 March 2007(accessed 20 April 2009): <http://www.taser.com/research/Science/Pages/CardiacSafety.aspx>

CHAPTER 4

HUMAN RIGHTS ARTICLES AND TASER

4.1 Right to Life

Right to life is a basic right for every human being. A person who is deprived of the right to life would also be deprived the right to be free. The right to life is protected in the Article 2(1) of the European Convention of Human Rights and Fundamental Freedoms (ECHR): “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”.⁶⁶ However, the Article 2(2) clarifies also the exemptions on the right to life;

“Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

in defence of any person from unlawful violence;

in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

in action lawfully taken for the purpose of quelling a riot or insurrection.”⁶⁷

The use of force by law enforcement officials is not mentioned in details in the United Nations Declaration of Human Rights. According to the Article 2(2) of the ECHR, a person who takes another person’s life with self-defence, an execution of lawful arrest, prevention of lawfully detained person from absconding or a lawful action to fight against riots, are considered not to have infringed the right to life or against Article 2(1).⁶⁸

⁶⁶ J. Alderson, *Human Rights and the Police*, Council of Europe Strassbourg 1984. P: 148

⁶⁷ *Ibid* P: 148

⁶⁸ Hjördís Björk Hákonardóttir, “Réttur til lífs”, Björg Thorarensen, Davíð Þór Björgvinsson & Guðrún Gauksdóttir eds., *Mannréttindasáttmáli Evrópu: Meginreglur, framkvæmd og áhrif á íslenskan rétt*. (Reykjavík: Mannréttindastofnun Háskóla Íslands og Lagadeild Háskólans í Reykjavík: 2005). P: 101

In some situations, police officers must be quick to estimate the circumstances and decide whether minimum or maximum force is needed. There are instances where Article 2(b and c) apply if a firearm is used for self-defence. An officer that uses firearm to kill a person cannot refer to Article 2 if his act does not measure up to one of those three exceptions mentioned above.⁶⁹

In the case of *Wolfgram v Deutschland* the decision of the police for shooting one of the offenders when he had earlier threatened the police officers with a hand grenade, was considered a lawful act within Article 2(a and b). The officers in this case considered their lives were at danger and therefore they used firearms in self-defence that killed one offender. In the case of *Gülec v Turkey*, Article 2(c) was under consideration by the Human Rights Commission. The Commission held that Article 2(c) had been violated after a young boy died after being shot by a security squad. The incident happened when the security squad was trying to dissolve a riot. With regard to the circumstances of the case the Commission was unanimous that the force used by the squad to fight against the riot was a lawful action. However, the Commission believed that the use of firearms by the squad was an unconscionable force⁷⁰

An officer that deprives the life of a person with force is not infringing Article 2(1) if his act can be justified by Article 2(2). However, if an officer cannot justify his act by referring to Article 2(2), the officers would likely be charged for using excessive force or be accused of causing wrongful death of a person.

4.1.1 Taser constituted in a form of Torture

The United Nations Committee has expressed deep concern about Taser because it appears that these electronic guns violate Articles 1 and 16 of the Convention against Torture. The Committee against Torture (hereinafter the Committee) took Taser under consideration when the Portuguese police acquired Taser. On November 23 of 2007, the Committee concluded its 39th session and issued its concluding observations and recommendations on reports from

⁶⁹ Hjördís Björk Hákonardóttir, “Réttur til lífs”, Björg Thorarensen, Davíð Þór Björgvinsson & Guðrún Gauksdóttir eds., *Mannréttindasáttmáli Evrópu: Meginreglur, framkvæmd og áhrif á íslenskan rétt*. (Reykjavík: Mannréttindastofnun Háskóla Íslands og Lagadeild Háskólans í Reykjavík: 2005) P: 99

⁷⁰ *ibid* P: 101

many countries and one of them was Portugal.⁷¹ The Committee against Torture has expressed its worries that the use of Taser X26 weapons provoked extreme pain which might be constituted as a form of torture, and that in certain cases it could also cause deaths, as shown by several reliable studies and by certain cases that had happened after practical use. Therefore, the government of Portugal was recommended by the Committee not to use Taser as an enforcement tool.⁷² After the Committee expressed their consideration on Taser, a Northern Ireland Human Rights Commission and ACAT-France (*Action des Chrétiens pour l'abolition de la torture*) and FIACAT (*International Federation of ACAT against Torture*) also express similar view on Taser.

In the “*Shadow Report on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*” which was a submission to United Nations, the Northern Ireland Human Rights Commission recommended that the Police Service of Northern Ireland (PSNI) would reassess its request for Taser. The Northern Ireland Human Rights Commission believed that the request was not in accordance with international human rights laws and obligations, nor sufficient to ensure that the weapon is used only as an alternative to more lethal force. The Northern Ireland Human Rights Commission demands that the Committee requested a further explanation from United Kingdom authority’s about how the use of Taser compatible with Article 7 of the International Covenant on Civil and Political Rights that clarifies:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”⁷³

⁷¹The United Nations office at Geneva, “Committee against Torture concludes Thirty Ninth Session”, 23th November 2007 (Accessed 16th April 2009): [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument)

⁷²The United Nations office at Geneva, “Committee against Torture concludes Thirty Ninth Session”, 23th November 2007 (Accessed 16th April 2009): [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument)

⁷³ The International Covenant on Civil and Political Rights, 16 Dec. 1966, G.A. Res 2200A. (Accessed 20 April 2009): http://www.unhcr.ch/html/menu3/b/a_ccpr.htm

On April 2008, the government of France allowed 17,000 municipal police officers to carry and use Taser. In the Alternative Report by ACAT-France and FIACAT which was presented at the 93rd session of the Human Rights Committee, ACAT-France and FIACAT expressed their concern about Taser and referred to Article 7 of the International Covenant on Civil and Political Rights. The ACAT-France and FIACAT stated that the use of electric shock weapons should be banned in France and not used as an enforcement tool by officers.

4.1.2 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedom and Taser

Amnesty and the Committee against Torture agreed that Taser constituted a form of torture. However, in the case of Greece from 1969 and *Ireland v UK*, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) was interpreted very closely by the European Court of Human Rights and the Human Rights Commission. In the case of *Ireland v UK*, the Court interpreted these concepts: Torture, Inhuman treatment or punishment and undignified treatment. The Court came to the conclusion in the case that:

- Torture is an intentional inhuman treatment that causes a serious and cruel severe pain and suffering.
- Inhuman treatment or punishment is when individual suffered from severe physical pain.
- Undignified treatment is a cruel treatment which aims to cause the individual fear, anguish and vulnerability that should humiliate, humble and break him down physically and mentally.⁷⁴

Article 3 of the ECHR is violated if treatment of persons can be categorised as to one of those three concepts above. The seriousness of the violation depends on how much pain the individual suffered from the treatment. It is expected that Taser causes pain to offenders but it

⁷⁴ Guðrún Gauksdóttir, “Bann við Pyndingum”, Björg Thorarensen, Davíð Þór Björgvinsson & Hjördís Björk Hákonardóttir eds., *Mannréttindasáttmáli Evrópu: Meginreglur, framkvæmd og áhrif á íslenskan rétt*. (Reykjavík: Mannréttindastofnun Háskóla Íslands og Lagadeild Háskólans í Reykjavík, 2005) P: 114-115

is important to consider whether officers use Taser to protect the public or just in order to cause pain?

The European Court of Human Rights must consider many questions when it comes to determining whether an officer has with his use of Taser violated Article 2 and 3 of the ECHR and below are a few questions that are likely to be into considered in this context:

1. Was it necessary to use force?
2. Was Taser the right choice for the officer to use?
3. Did the officer cause inhuman treatment or punishment with the Taser?
4. How much pain did the person suffer from the treatment?
5. Did the officers intentionally cause a serious and cruel severe pain?

If there was no necessary need for the officer to use force with Taser that can be equal to inhuman treatment or punishment of person, it must be taken into consideration whether the officer just had the intention to cause intentional inhuman treatment that can be equal to torture. Generally, an officer that causes inhuman treatment or punishment to a person is likely to be charged with use of excessive force. Intention does not always apply when an officer causes inhuman treatment or punishment to a person. For example, if an officer uses Taser in wrong situations where it was unnecessary, the treatment or punishment will be considered to be unlawful act. However, if an officer uses Taser intentionally to cause a serious and cruel severe pain to person, his act is likely to be considered as a form of torture. Again, it depends on how much pain the person suffered from the treatment.⁷⁵

The consideration of whether officers cause offenders inhuman treatment with Taser can apply to the *Andrew Johnson case* but he was stunned with Taser 17 times in a three-minute period by the police on September 16, 2004. It was no doubt that the use of force was needed but Andrew was running away from the police after crashing into a parked car. The main considerations here are whether it was necessary to stun him 17 times. Andrew Johnson died in the hospital shortly after being stunned. Later the medical examiner revealed that he did not have enough medical information about the effects of Taser to rule them in or out as a

⁷⁵ Guðrún Gauksdóttir, “Bann við Pyndingum”, Björg Thorarensen, Davíð Þór Björgvinsson & Hjördís Björk Hákonardóttir eds., *Mannréttindasáttmáli Evrópu: Meginreglur, framkvæmd og áhrif á íslenskan rétt.* (Reykjavík: Mannréttindastofnun Háskóla Íslands og Lagadeild Háskólans í Reykjavík, 2005) P: 115

cause of death. This supports the words of the Icelandic Human Rights Centre that it can be hard to prove whether Taser is abused because it may not leave any identifiable trace.⁷⁶ If Andrew Johnson would not have died, the officers would presumptively be charged with excessive use of force and inhuman treatment and punishment because it is unlikely that the officers could justify their act on the ground of self-defence and referring to Article 2 of the ECHR. Andrew was running away from them and therefore not threatening them with violence but merely disobeying their demands. It is a great difference between whether the offender is coming menacing towards the officers and therefore a possible threat or running away from them. There is a question whether officer's decision to use Taser on the offender, for example 17 times, can be form of torture. There are high odds that a man who is stunned 17 times suffers from serious and cruel severe pain. It appears that inhuman treatment or punishment caused with intention is equalled to torture and therefore absolute violation of Article 3 of the ECHR.

4.1.3 The Report from Iceland about Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

On May 8 in 2008, the United Nations Committee against Torture took under consideration, the third report from Iceland about Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the report, the Icelandic Human Rights Centre also submitted to the Committee notes for the list of issues concerning Iceland and the implementation of Convention of Torture. In these notes, the Icelandic Human Rights Centre expressed its concern about Taser but the Amnesty report made in March 2006, points out that Taser had caused more than 150 deaths in the United States since June 2001. Taser are not non-lethal weapons but rather belong to the group less-lethal weapons. The Icelandic Human Rights Centre is worried that it would be hard to prove whether use of Taser is abused because it may not leave any identifiable trace. The Committee considers the use of Taser by the Icelandic police officers not preferable.⁷⁷

⁷⁶ LexisNexis Academic, Elizabeth Sealz, "The Truth is Shocking", (Accessed 16. April 2009): http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?docLinkInd=true&risb=21_T6329227448&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T6329227455&cisb=22_T6329227454&treeMax=true&treeWidth=0&csi=138617&docNo=1

⁷⁷ Notes for the list of issues concerning Iceland and the implementation of the Convention against Torture , Submitted to the Committee against Torture, Prepared by the Icelandic Human Rights Centre, 15 August 2007. P: 4

CHAPTER 10

CONCLUSION

It is a fact that officers can use Taser to protect themselves and other individuals against offenders who are considered a threat. However, it is also a fact that officers are able to cause serious injuries with Taser that could equal to torture. Therefore it is hard to answer the question whether Icelandic officers should be allowed to carry and use Taser on duty. Taser like other enforcement tools can be used in a good and in a bad way. It can be said that those arguments presented in this dissertation about Taser have been divided into two side – argument for Taser and against Taser. The evidence about Taser from both sides must be revealed shortly before the question whether Icelandic police should be allowed to carry and use Taser, is answered.

Arguments for Taser: After the discussion about the Icelandic Police request for Taser, it appears that officers are in a need for more security under a hostile work environment. The interview with the National Commissioner of the Police Assistant, Mrs. Sigríður Björk Guðjónsdóttir, confirms that police work is becoming more hostile. A Large number of those 397 officers, who participated in the research of violence against Police officers during the period 2000-2005, had suffered physical violence relating to the actions of the offenders. For example, the violations on Article 106 and 107 of the Icelandic Penal Code are increasing each every year. The main reason for the Taser request is; the violence against Icelandic officers is increasing and therefore the police work is becoming more hostile.

Arguments against Taser: After collecting information about Taser and how it is used by officers, Amnesty International and the Human Rights Committee against Torture have expressed a deep concern about Taser because it is a powerful electrical device that can cause a dangerous pain that could be equal to torture. Evidence from Amnesty confirms that more research on Taser is needed. We cannot overlook the fact that there must be something wrong if more than 290 people in the US and Canada have died after being stunned by Taser. However, Taser international has maintained that Taser is the most secure enforcement tool that is used to overcome violent individuals. It is a concern if officers are using Taser on persons that are not imposing any threat to them. It is also a concern that officers are using

Taser on children, pregnant women and other vulnerable persons. The *Andrew Johnson case* confirms that officers use Taser in an unaccountable way, Andrew was stunned 17 times. The Committee against Torture considers use of Taser by Icelandic police officers not preferable because Taser simply constituted in a form of torture and could cause death of a person. The Icelandic Human Rights Centre is also against Taser as an enforcement tool.

But should Icelandic officers be allowed to carry and use Taser when they are on duty? I agree with the Icelandic Police Union that Icelandic police officers need more security in hostile situations but according to Taser International, it seems that Taser had decreased violence and injuries on officers. I also agree with human rights organizations that more research on Taser is needed but it is a great concern if people are dying in large number after being stunned by Taser even though the manufacturer has claimed that Taser creates high tension but a low electrical power that cannot cause death of person. It can be hard to conclude Taser as a contributory factor in death of person like in the *Robert Clark Heston case*. It appears that a person cannot only die after many shocks from Taser but also after one shock. This is a serious problem because officers who use Taser only once on the offender to protect other individuals cannot be sure whether this one shock can cause the death of the offender. However it is more likely that an officer can cause serious harm to an individual or even causing its death if the shocks are several. It must be expressed that Icelandic police officers cannot be compared to the US officer because most of those cases that are mentioned in the dissertation took place in USA.

According to the evidence, researches and reasoning's from both sides, Icelandic police officers should not be allowed to use Taser until further research on Taser have been made.

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