



# Country Overview on Police Stops



Map By Wolfgangus Mozart  
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## About this Report

This document gathers together initial summaries of the legal grounds for police stops in European states. They briefly outline the law governing stops (including identity checks and traffic stops) and the ways that the law can be used. It further details any system for recording and making public information about the use of these powers and the ways in which citizens can challenge the use of the powers.

We should note that this is an initial summary to enable us to begin our work as a COST Action and not a definitive statement. It is also a work in progress. For any corrections and suggestions, please contact us.

## About the Action CA17102

Police across the world have the power to stop citizens, to check their identity and, if they have reason, to conduct a search. These powers differ from one country to the next. They are more controversial and subject to greater scrutiny in some places than in others. And we know more about the outcomes and effects of the use of powers in some countries and almost nothing about the practice in others. To better understand the practice, we have established a European network, funded through EU COST, which brings together the different and contrasting perspectives of those who conduct stops, those who experience them and, finally, those who are involved in oversight and accountability.

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# 1) BELGIUM / België / Belgique / Belgien



## The **legislative powers** of the police to stop individuals

In Belgium, the identity checks are regulated by two pieces of legislation:

- Article 1 of the Royal Decree of 25 March, 2003, regarding identity cards (artikel één van het Koninklijk Besluit van 25 maart 2003 betreffende identiteitskaarten); and
- Article 34 of the Act on the Police Function (art. 34 van de Wet op het Politieambt (WPA)).

Article 1 of the Royal Decree states, among other things, that every Belgian citizen over the age of 15 should have his/her identity card with him/her at all times and submit it to the police when requested. However, the legal basis for such identity checks is in Article 34 of the WPA. This defines: who can be the subject of a check; for how long the identity documents may be retained; and for what time someone may be detained if they refuse to or cannot deliver proof of identity. The legislation allows the citizen who is being checked to prove his/her identity in any way. This means that, besides the identity card, other documents may also be shown. Anyone who is not in possession of a valid identification document can receive a fine and the police may draw up a report.

Section 1 of Article 34 of the WPA specifies that police officers may check someone's identity when that person has committed a crime or intends to enter a space where there are concerns about potential public disorder. These are known as reactive identity checks in that officers react to an event that has already taken place. The same section also mentions proactive police checks. These are permitted "if they, on the grounds of that person's behaviour, material clues or circumstances of place or time, have reasonable grounds to think that the person being searched has tried or is prepared to commit a crime or that he/she could disturb or has disturbed public order".

This phrase does not apply to police officers who have the status of a police inspector. They possess a more limited power. Police agents can only conduct identity checks "in the frame of the execution of their powers with regard to traffic, local police orders, the establishment of traffic accidents and their consequences, assistance to police officers, the surveillance of arrested citizens and catching someone in the act (flagrante delicto)" (De Raedt, et al., 2017, p. 64).

# 1) BELGIUM / België / Belgique / Belgien



## The **obligation** to register stops

There is no legal obligation to register identity checks. Neither the Royal Decree nor the WPA stipulates that identity checks should be recorded. An exception to this concerns the police district of Mechelen Willebroek. In June 2017, following allegations of racial profiling, they implemented a project to register each identity check. Ongoing research shows that, in practice, some data are being stored. However, this is only the case when a search is made of the General National Database (Algemene Nationale Gegevensbank (ANG)). As soon as a police officer looks for someone's identity in the ANG, this information is saved as a 'hit'. Subsequently, there are two different scenarios. If the check results in a judicial or administrative sanction, the police officer will draw up a report (proces-verbaal (PV)) which notes, amongst other things, the reason the person was convicted and his/her identity was checked. These reports are retained and can be consulted later if necessary. If the check does not lead to a conviction, the police officer can make a record of the check in the computer system. This notification is also retained, and each police officer employed in the same police district can access this information. However, there is no systematic approach to the way in which this is done. Some police officers specify, very accurately, the reason for the check, while others use more general descriptions, such as 'traffic' or 'suspect behaviour'. But not every police officer reports identity checks that have no penal result. Finally, there is no institution that systematically keeps track of, analyses or publishes recorded numbers.

## Legislation/ procedures which **protect** citizens from police offences

Police duties with regard to discrimination are covered in the Anti-Racism Act of 1981 and the Anti-Discrimination Act of 2007. They make any discriminatory use of identity checks illegal. Article 24 of the police code of ethics equally states that all forms of discrimination are prohibited. Should all this legislation not be sufficiently clear, there is the Circular (a guidance note) to the WPA of 2 February, 1993, which specifies that identity checks may not be done randomly and that an officer must have a well-founded police reason to check someone's identity.

Citizens may complain to the Internal Control service (a complaints department) of the specific police district. At the federal level, there is also an Internal Control service. It is also possible to file a complaint with the General Inspectorate of the Federal and Local Police. External scrutiny is provided by the Standing Committee of Surveillance of the police forces (Vast Comité van Toezicht op de politiediensten (Comité P)) to which citizens can complain. The Comité P, however, does not possess powers of sanction and cannot, therefore, impose independent penalties.

## 2) BOSNIA and HERZEGOVINA



### The **legislative powers** of the police to stop individuals

It is important to note that Bosnia and Herzegovina has a very fragmented political system which entails several levels of governance in the country. As a result, there is also a very complex and decentralised police system. There are 16 autonomous agencies at the state, entity, District, and cantonal levels. Despite this, police powers are generally prescribed in similar ways. When it comes to police powers to stop, check identity and search, laws and rules on police officers, police powers and internal affairs, prescribe the following:

Police officers are authorized to stop and check the identity of a person who:

- Represents a threat to another person or to public order
- Is under investigation
- Is in a place or vehicle being investigated
- Is in an area subject to temporary restrictions on freedom of movement
- Behaves in a suspicious manner
- In a restricted area where all identities can be checked

A police officer shall inform the person of the reasons for the identity check.

Furthermore, the police officer is authorized to search a person, their possessions and their means of transport in order to find prohibited items, such as weapons. A search of a person for these purposes may include a search of clothing and footwear, and of items in their possession or in the immediate vicinity. The search of a vehicle may include all contents, whether in public view or concealed. Searches are carried out by a person of the same sex, except in urgent cases, and may include a physical search, the use of equipment (mirrors, detectors, etc.) or the use of police dogs. As a general rule, an officer will separate the person from other persons and explain the reasons for the search. Any prohibited items found will be confiscated according to the provisions of the Criminal Procedure Code or the Misdemeanor Act.

## 2) BOSNIA and HERZEGOVINA



### The **obligation to register** stops

Police officers are under an obligation to record the use of police powers and they should be part of a written police record of daily activities.

### Legislation/ procedures which **protect citizens** from police offences

Citizens may report illegal police actions to the internal police control department and to the Independent Committees on Appeal of Citizens. These committees are responsible for: receiving, recording, evaluating and forwarding appeals against police officers; monitoring the progress of cases; initiating an appropriate procedure against complainants in the event of false or tendentious complaints; keeping records and databases of citizen appeals against police officers, investigation results and other elements on the basis of which disciplinary or criminal proceedings were initiated; and providing all information to the complainant in connection with their appeal.

### 3) BULGARIA / български



#### The **legislative powers** of the police to stop individuals

The power of the Bulgarian police to conduct stops and searches is codified in several legal texts:

- The Law on the Ministry of the Interior (Zakon za MVR - Law on MOI), adopted on 27 June 2014 and amended most recently in January 2019;
- The Rules for the Application of the Law on the Ministry of the Interior (Pravilnik za prilagane na zakona za MVR – Rules on the Application); and
- The Code of Criminal Procedure (Nakazatelno-procesualen kodeks - NPK).

Article 30 (Law on MOI) introduces powers to conduct checks of documents and on the spot checks, road inspection stops and checks, border inspection checks and other forms of control duties entrusted to the police. The authority to conduct identity checks is explicitly mentioned in Article 70 (Law on MOI). Subjects of identity checks are persons “for whom there is evidence of some criminal offence”. Identity checks consist of the inspection of personal documents that should be presented by the person checked. If identity cannot be established, the check might culminate in arrest (Article 72, line 2, point 4, Law on MOI). During the arrest, additional checks (bodily search) can be conducted to ensure the arrested person is not carrying dangerous objects. Application of force is also permitted if necessary. Same sex officers conduct bodily searches (Article 80, Law on MOI; Article 164, line 2, NPK).

The Law and the Rules on its application outline/distinguish checks of persons, personal documents, personal belongings, vehicles (transport inspection), premises and border checks. Procedural steps vary accordingly.



### 3) BULGARIA / български



#### The **obligation** to register stops

Any check and search of a premises, vehicle or personal belongings is recorded in a police record. The person subject to the check, the police officer and a witness sign the record. Inter alia, the document describes the reasons for the check (Articles 82-83 of the Law on MOI). Any of the signatories has the right to ask for amendments to the descriptions (Article 236, line 2, NPK). When part of an investigation, the check should also be reported to the prosecutor in charge. No data is generated from this record.

#### Legislation/ procedures which **protect** **citizens** from police offences

Personal inviolability is granted by the Constitution of the Republic of Bulgaria. Article 30 (line 2) states that no one should be subject to detention and search, except in cases strictly defined by the law. Within 24 hours of any detention, the police are obliged to notify the court, which in turn should adjudicate on the justification for the arrest. Searches of premises and confiscation of personal belongings (with some explicitly regulated exceptions) require previous court permission (Article 161, NPK). Following the prescriptions of the Law, identity checks and searches are to be conducted in a way that does not violate the dignity of the citizen (Article 82, line 3 of the Law on MOI). Only officers of the same sex as the person searched can perform bodily checks. Citizens have the right to ask for amendments in the text or may refuse to sign the police record. Records are subject to scrutiny by a judge if the search is part of a criminal investigation. The person affected or a member of his/her family must be present whenever a search of premises is conducted (Article 162, NPK).

If a search/check reveals details of intimate character, the police must protect the personal privacy of the person affected (Article 163, line 5, NPK). Within the Ministry of the Interior, there is a Permanent Committee for the Protection of Human Rights. To which citizens can complain, leading to disciplinary measures against police officers who have breached the procedures for checks and searches. When excessive force or other transgressions occur, the victim has the right to turn to the courts, including the European Court of Human Rights.

## 4) CROATIA / Hrvatska



### The **legislative powers** of the police to stop individuals

There are several different police powers that can be used, together or separately, as grounds for a stop. Each of these powers has its own provision and, depending on the fulfillment of the requirements, these can be connected to other actions.

The first police power in this area is called identity check, prescribed in Articles 30 to 32 of the Police Affairs and Powers Act (PAPA). It can consist of by the inspection of a photo identity document or similar. Legal conditions for identity checks are enumerated in 11 situations (Article 30, paragraph 1 PAPA). Most of them are obligatory (e.g. on the detention of a person at a crime scene). Discretionary grounds are listed in two cases: a person caught in flagranti, and when there are security reasons for the check. These situations depend on the assessment of the circumstances by a particular police officer. The police officer is obliged to inform the person about the reason for the identity check. If a person's identity can not be checked, the following police power is to establish identity. The person is taken to a police station and forensic actions are undertaken (Article 33). This action also represents the basis for limiting freedom of movement.

The second power relates to privacy (investigation of clothing or other objects). The power is officially called an inspection or a frisk. It is carried out by touching (patting down) the outer surfaces of clothing. The legal requirements are the protection of general security, or seeking evidence of a criminal offense. If an officer establishes a suspicious object by touching, s/he can ask for an explanation or that it be taken out. A police officer may not open the inner parts of the clothing (pockets, sleeves etc.) nor open a bag. If there is an object that suggests a criminal offense has been perpetrated, then the conditions for the next action, called the search of a person, are fulfilled. This power causes the most discussion in practice, in case-law and in academia. The problem is in defining which items of clothing a police officer can frisk. The highest courts have changed their judgements on borderline cases. The Criminal Procedure Act stipulates that, if a police officer has exceeded the limits of their powers, the evidence collected cannot be used. Other powers in this area do not attract such attention, there being no legal guidelines for interpretation.

The third power is called a search and is not prescribed in the police legislation but in Criminal Procedure legislation. A search means an a search of all clothes and bags. The legal aim is to find evidence that a person might destroy or weapons.

The fourth power is to collect information from citizens (Article 36 PAPA). The police can stop the person there is reason to believe has important information regarding police affairs. If other evidence indicates that a person is a suspect, then they may be questioned after being given a caution about their rights. The first interrogation must be video recorded, according to the legal provisions.

Above mentioned police powers can be taken in combination or separately. It depends on the circumstances of the case.

## 4) CROATIA / Hrvatska



### The **obligation** to **register** stops

After performing any of these powers, the police officer should write a report. In Article 52 of the Code on Performing Police Powers, it is stipulated that a written report must be written after the use of a police power. The collected reports are retained in special database. However, there are concerns about the accuracy and completeness of these records. In some cases, where someone's alibi was challenged, it was discovered that some stops of people had not been recorded, and vice versa.

### Legislation/ procedures which **protect** **citizens** from police offences

Anyone who considers that a violation of police law has occurred may file a report to the unit from which the police officer is based. After that, they may file a complaint under Article 5 of the Law on Police.

## 5) DENMARK / Danmark



### The **legislative powers** of the police to stop individuals

The function of the police, detailed in the Police Act (Politiloven) includes preventive responsibilities to ensure public order. Chapter 73 (§§793-800) of The Administration of Justice Act (Retsplejeloven) authorises them to stop and search citizens where they have a "reasonable reason for suspicion" that the citizen has violated a law which is subject to public prosecution. It is not specified "reasonable reason for suspicion", but it can include suspicious behaviour, possession of items associated with crime and stops of vehicles. There is a legal distinction between searching a vehicle, residence or other premises and bags and the search of a person and their clothing. According to the law, this is referred to as bodily intervention (Retsplejeloven, Chapter 72, §§792-792f). This chapter also distinguishes between the inspection of the body's exterior and the examination of the body's interior.

Furthermore, traffic legislation gives authority to stop and search a driver as well as a vehicle, to check the registration or to collect saliva samples if there is a suspicion of alcohol or drugs in the blood.

Since 2004, it has been possible for the police to establish visitation (or search) zones in certain areas for a specified period of time (see Politiloven §6 and the comments to Law no. 159, section 5.2.4.3, 2003-04). These zones are authorised by the chief of police, though for a reasonable purpose and, for example, to violent prevent crime. In these zones, the police have authority to make random searches without "reasonable reason for suspicion". They can search the body, people's belongings, vehicles and other objects in the search for weapons and explosives.

The principle of proportionality is an overarching legal concept governing the use of police powers to ensure the fundamental freedom of the individual (see Retssikkerhedsloven, Chapters 2 and 3). According to Retssikkerhedsloven §2, the principle is described as: "enforcement measures may be used only if less restrictive measures are insufficient and if the intervention is commensurate with the purpose of the intervention". There must be no discrepancy between, on the one hand, the interventions and the disadvantage to the citizen and, on the other hand, the considerations and objectives (for the investigation) that require the intervention.

## 5) DENMARK / Danmark



### The **obligation** to **register** stops

The police are obliged to record everything regarding general data capture and the processing of personal data in the Police Case Management System (Politiets Sagsstyringssystem, POLSAS). This also applies to stop and search occurrences. They record the time, place and circumstances in which the stop and search took place. POLSAS is a national database of police work and is an important digital tool for both the police and for citizens, if the citizens subsequently wishes to make a complaint about the stop and search.

### Legislation/ procedures which **protect** **citizens** from police offences

Police officers need to address a violation of the law, otherwise they do not have the legal authority to stop and search (except within visitation zones—see above). When stopped, the citizen is only obliged to state his/her full name, date of birth and address (Retsplejeloven, §750). If s/he refuses to do so, s/he may receive a fine. The police cannot demand an explanation during the stop. Also, §752 says that the citizen must be aware of the charges, so s/he can consider whether or not to make a statement. The citizen must be informed of their rights and this is noted in the police report. Thus, this creates a record in case of possible prosecution or complaint.

There are different ways to complain:

- about an arrest. This is defined as a dispositions complaint. The police will handle the case via either the National Police (Rigspolitiet) or the Public Prosecutor (Statsadvokaten);
- about an officer's behavior and unnecessary use of force. The Independent Police Prosecutor (Den uafhængige Politianklagemyndighed) will investigate it. The case can result in a warning or advice about the police officer's conduct, unless there is a basis for criminal proceedings, in which case it is passed to the Public Prosecutor. If the prosecutor will not plea for trial, it is possible to pass the case to the Attorney General.
- about police behavior in a traffic stop, this can be addressed to the Independent Police Prosecutor.

Retsplejeloven §§108-109 describes how the different agencies are organized in relation to complaints, while §§118-119 describes the authorities and powers of the Independent Public Prosecutor. Thus, in Denmark, in case of disposition complaints, the respective police district receives and processes the complainants while the remaining complaints are received and processed by an independent agency.

## 6) FINLAND / Suomen tasavalta



### The **legislative powers** of the police to stop individuals

Finnish legislation specifies measures, such as identity checks (Police Act), checks of foreign nationals (Aliens Act) and frisk/security check (Coercive Measures Act/Police Act), all of which can be conducted by the police without arresting a person. According to the Police Act (Chapter 2, Section 1), "to carry out an individual duty, police officers have the right to obtain from anyone their name, personal identity code or, if this does not exist, date of birth and nationality, and information concerning a place where they can be reached."

According to the Finnish Aliens Act (Section 130), "at the request of the police or other authorities processing a matter concerning an alien, the alien shall present his or her travel document or prove his or her identity in some other reliable manner." According to the Finnish Aliens Act (Section 129b) the police and the Finnish Border Guard have the right to make checks of foreign nationals, if it is necessary in order to ascertain the identity, nationality, right of residence or right to work of an alien to "obtain information from the supervised person and examine the necessary documents concerning his identity and nationality and his right to reside and work". Checks of foreign nationals are not a police investigation, only a supervisory act, and can be done without suspicion of a crime. The target of the inspection has a right to know the reason for the check.

According to the Coercive Measures Act (Section 31), "a frisk to find an object, property, document, data or other item may be carried out [...] on a person who is suspected of an offence for which the most severe punishment provided is imprisonment for at least six months." Also suspicions of minor crimes such as petty assault, petty theft or petty damage to property can be considered as grounds for a frisk.

A preventive frisk is called a "security check". The police can search a person in order to find dangerous objects or substances (Police Act, Chapter 2, Section 12). It can be done in connection with police duties if, for a justified reason, it is necessary to secure the officer's safety and to execute their duty.

Police officers also have the right to order a vehicle to be stopped if this is necessary to carry out their duty. Provisions on road traffic surveillance are laid down in the Road Traffic Act.

The Non-Discrimination Act prohibits discrimination, defining both direct and indirect discrimination. All Finnish authorities have a duty to promote equality (Chapter 2, Section 5). The Alien's Act includes a ban on ethnic profiling. Internal immigration controls "should not be motivated solely or mainly by virtue of a person's real or assumed ethnic origin" (Section 129). The police need to have (a) general knowledge and experience about illegal immigration, and (b) some intelligence, such as observation, in order to carry out the immigration check.

## 6) FINLAND / Suomen tasavalta



### The **obligation** to register stops

Police officers should register immigration checks and other police measures in an electronic database. Nevertheless, according to current research, not all cases in which the identity documents are checked are registered. Many police stops in which minority persons are found to be legally in the country do not get recorded at all. The police are not required to record the reasons as to why particular persons were stopped.

The police do not publish statistics related to internal immigration controls or identity checks. Further, it is not possible to tell from the statistics to which ethnic or racial group those being stopped belong.

### Legislation/ procedures which **protect** **citizens** from police offences

Legislation provides two separate and independent proceedings for individual complaints concerning incorrect or illegal acts of the police:

- police actions may be investigated in criminal proceedings if there are reasons to suspect that the police officer has committed an offence while on duty. In these cases, the criminal investigation of the case is led by the Office of the Prosecutor General.
- it is possible to make an administrative complaint to: (1) the police (a local police department or the National Police Board); (2) the Non-Discrimination Ombudsman; (3) the Parliamentary Ombudsman; (4) the Chancellor of Justice; or (5) the Non-Discrimination and Equality Tribunal. The tribunal is the only complaint mechanism that can actually prohibit continued or repeated discrimination and which can also impose a conditional fine to enforce compliance with its injunctions.

Finland does not have an independent body specialising in the investigation of misconduct by law enforcement officials.

## 7) FRANCE/ France



### The **legislative powers** of the police to stop individuals

In France, we rather speak of "identity checks", i.e.. the act of an agent of the public authority consisting of asking an individual, under conditions imposed by the law, to justify his or her identity.

Identity checks are mainly governed by the provisions of the Code of Criminal Procedure (CPP, *Code de procédure pénale*) headed "Identity inspections and identity checks" (Art. 78-1 to 78-6 CPP). These measures can be either repressive, targeting people suspected of having committed an offence, or preventive, when used to stop people who are suspected of planning to commit an offence.

Under Article 78-2, a prosecutor can authorise the police to conduct a time-limited search in a specific area (known for being vulnerable to crime). Under these conditions, the identity of any person can be checked.

### The **obligation to register** stops

There is no obligation to register stop and search.



## 7) FRANCE/ France



Legislation/  
procedures  
which **protect**  
**citizens** from  
police offences

There is a body of laws and regulations (criminal code, administrative law, internal regulations) which constrain *de jure* the activities of police officers. Since 2014, a code of ethics has been enacted.

Individuals can complain to:

- The Défenseur des droits (an independent institution created in 2008): individuals (victims or witnesses) may file a complaint by meeting a delegate of the *Défenseur des droits*, calling the institution or posting a report on a dedicated website (<https://formulaire.defenseurdesdroits.fr/code/afficher.php?ETAPE=accueil> 2016).
- The prosecutor: individuals (victims or witnesses) may file a complaint with the public prosecutor.
- The National inspectorates (*Inspection générale de la police nationale, inspection générale de la gendarmerie nationale*): individuals (victims or witnesses) may file a complaint by phone or mail or file a complaint at the police station. Since 2013, they may also post a report on a dedicated platform (3661 reports in 2017): <https://www.police-nationale.interieur.gouv.fr/Organisation/Inspection-Generale-de-la-Police-Nationale/Signalement-IGPN>.

## 8) HUNGARY / Magyarország



### The **legislative powers** of the police to stop individuals

Police powers to stop and search are detailed in Act XXXIV of 1994 on the Police (hereinafter Rtv) Art. 24. The stop and search should be justified for reasons of public order, public safety, crime prevention, law enforcement and traffic control. The police have the power to stop and search if it is necessary to help other bodies and persons who have legitimate reasons to ask the help of the police. The law enforcement officers of the National Tax and Customs Authority also have the right to stop and check the identity of citizens. This power is specified in Article 110 of Act CLI of 2017 on Tax Administration. The rights of other quasi-policing organisations to stop and search citizens are specified in Article 18 of Act CXX of 2012 on the activities of the other law enforcement bodies.

The police have the power to check the identity and address of a person. The police can check the body, clothing and bags of a person in order to arrest an criminal offender or in order to prevent events which threaten public security (Article 25 of Rtv).

### The **obligation to register stops**

The police is required to check the identity of a person in the Schengen Information System (SIS). Thus, the check is registered on the European database. This record is based on the European regulation of the SIS.

The police stop and search should be recorded by the officer in their daily report (Article 25 of the Decree of the Minister of Interior, No. 30/2011, published on 22nd September, on the service rules of the police). The report should contain the name and address of the person stopped. The report (and the personal data of the stopped person) should be preserved for 180 days.

If the stop is performed by municipal policing bodies (public safety surveillance – közterület-felügyelet), the stop should be reported by these municipal officers (Article 4 of the Decree of the Minister of Interior No. 43/1999, published on 26th November, on the measures of public safety surveillance).

## 8) HUNGARY / Magyarország



Legislation/  
procedures  
which **protect**  
**citizens** from  
police offences

The police stop and search, as a coercive act, can be challenged by a general remedy or by a complaint (panasz). There are two different types of complaint:

- The first complaint can be submitted to the police body which performed the stop. This complaint can be submitted within 30 days and it should be based on the infringement of the rights and legitimate interest of the person. The complaint is adjudicated by the oversight body of the organisation which conducted the stop. The procedure and the decision are administrative ones which can be sued in the administrative courts. If the oversight body is a local police body, it can be appealed. Judicial review is guaranteed because administrative decisions which cannot be appealed can be sued.
- The second type of complaint should be based on the infringement of fundamental rights. This complaint can be submitted within 20 days of the coercive act. The decision on this complaint is made by the national leader of the given police body (the High Commander, or High Captain [főkapitány] of the National Police, the Director of the Counter Terrorism Centre or the Director of the Internal Affairs Service). This decision is an administrative one, so it can be sued in the administrative courts. The difference in this type of complaint is that the decision of the national leader is based on the opinion of the Independent Law Enforcement Complaint Panel, which can be interpreted as an Ombudsman-type body, whose members are distinguished experts on the fundamental rights.
- These two types of complaint are regulated by Chapter IX (Articles 92-93/B) of the Rtv. The general procedural rules of the police bodies are regulated by the Act CL of 2016 on the Code of General Administrative Procedure.

Therefore, decisions on complaints are administrative ones which can be sued in the administrative courts. The procedure of the administrative courts is the procedure of the general administrative lawsuit. This judicial review is regulated by the Act I of 2017 on the Code of the Administrative Court Procedure. If the coercive act was done by a municipal policing body, there is a similar remedy. This is called a complaint (panasz). The complaint in the Act CXX of 2012, as a remedy against the coercive actions of officers of the public space surveillance, is an administrative proceeding. The complaint is decided by the leader of the general (and not the municipal) police authority. The decision on this complaint is a first tier administrative decision, that can be appealed to a second-tier administrative body, and these decisions can also be sued.

## 9) IRELAND / Éire



### The **legislative powers** of the police to stop individuals

Police officers in Ireland have a common law power to approach and speak to members of the public and to search them with their consent. Police also have statutory powers to require an individual to stop in certain circumstances. For example, where a police officer has reasonable cause to suspect that an individual has committed or is committing an offence under the Offences Against the State Act 1939 or the Criminal Justice (Public Order) Act 1994, they can stop the individual and demand that s/he provide their name and address. Police have the power to stop any vehicle to check if it is being driven in accordance with the law (the vehicle is taxed, insured, roadworthy and the driver is in possession of a valid driver's licence). If a police officer suspects that the vehicle is not being driven in accordance with the law, they can demand that the individual provide his/her name and address. Failure to comply with this demand is a criminal offence.

The police also have the power, under certain circumstances, to stop and search individuals. If a police officer has a reasonable suspicion that an individual has committed or is committing an offence, s/he has various powers that allow him/her to search the individual without the individual's consent and before the individual has been arrested. The power to stop and search is a statutory power set out in the legislation governing the particular offences to which the power applies. Some common examples include:

- Misuse of Drugs Act 1977 - a police officer can stop and search an individual if s/he has reasonable cause to suspect that the individual is in possession of a controlled drug;
- Firearms and Offensive Weapons Act 1990 - a police officer can stop and search an individual if s/he suspects, with reasonable cause, that a person has an offensive weapon or a realistic imitation firearm in their possession in a public place;
- Public Order Act 1994 – a police officer can stop and search an individual in a place that has been designated a restricted area by a Superintendent under the Public Order Act if the police officer has reasonable cause to suspect that the individual is in possession of alcohol, a disposable container or an article that could be used to injure someone; and
- Offences Against the State Act 1939 - a police officer can stop and search an individual if he/she suspects that the individual is committing or has committed an offence under the Offences Against the State Act (organised-crime and terrorism-related offences).

These are just some common examples. There are numerous other Acts which allow police officers to lawfully search a person.

## 9) IRELAND / Éire



### The **obligation** to **register** stops

There is currently no legal obligation on police officers in Ireland to register an identity check or a stop and search. It is, however, police policy for officers to keep records of these events in their own notebooks and to record all physical searches on PULSE (the police computer system). If a search is conducted in a police station, it will be processed through the member in charge of the station and subject to the Garda Custody Regulations.

### Legislation/ procedures which **protect** **citizens** from police offences

In order to comply with Article 8 of the ECHR, a stop and search must be necessary and proportionate in the pursuit of a legitimate aim. The Superior Courts in Ireland have also stated that, because the power to stop and search is a serious encroachment on the liberty of an individual, it should be subject to the appropriate formalities pertaining to an arrest, such as informing the suspect of the nature and description of the statutory power which is being invoked to stop and search him/her. It can be extrapolated from judgments of the Supreme Court that if a search is deliberately and consciously unlawful and in breach of a person's constitutional rights, then any evidence obtained from that search will likely be inadmissible in criminal proceeding. Furthermore, if a person believes that they have been subjected to an unlawful search or that the police have abused their power to stop and search, a complaint can be made to the Garda Síochána Ombudsman Commission (GSOC).

The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory body charged with investigating complaints concerning police conduct. If a member of the public makes a complaint to GSOC, and if the complaint is deemed admissible, GSOC will then decide whether it will investigate the complaint itself or whether it will 'lease' it back to An Garda Síochána (Ireland's Police Service) to investigate. If it is 'leased' back to An Garda Síochána, GSOC may still supervise the investigation, if it so wishes. Where a complaint is investigated by An Garda Síochána without supervision from GSOC and an individual is not satisfied with the outcome, a request can be made to GSOC to conduct a review of the investigation. If it appears that there may have been a breach of the Discipline Regulations by a police officer, GSOC may make recommendations to the Garda Commissioner concerning disciplinary proceedings. If it appears that the case may warrant criminal prosecution, GSOC may send a file to the Director of Public Prosecutions. If there is insufficient evidence to support one of the above, the case may be discontinued.

## 10) ITALY / Italia



### The **legislative powers** of the police to stop individuals

In Italy, police stops are regulated either:

- by the code of criminal procedure (hereinafter "CCP") in strict connection with the power to arrest individuals; or
- by other pieces of legislation concerning national security or public order issues (hereinafter the "administrative legal framework")

A) Within the framework of CCP, stopping, questioning and searching may be performed by police either:

- Following an order of the public prosecutor where the conditions listed in Articles 384 CCP (a person suspected of a serious crime is at risk of absconding);
- On their own initiative, and in particular:
  - to identify those accused of having committed a crime and other persons able to provide useful information on such crime. In this context, police may take fingerprints, pictures, details of height, weight etc, and even DNA. DNA samples, however, may be taken only with the consent of the person checked, or with the written authorization of the public prosecutor (Art. 349 CCP). In case of urgency, such authorization may be orally provided by the prosecutor, and confirmed in writings afterwards.
  - where an individual is caught near a scene or is evading the police, officers may carry out a personal or local area search when they have good reason to believe that the person has hidden things or evidence pertinent to the crime that can be destroyed or disposed of (Art. 352 (1) CCP).
  - when a person is detained, officers may also carry out a personal or local search if the conditions indicated in the above bullet point are met and there are particular grounds of urgency that do not allow the issue of a timely search order (Art. 352(3) CCP).
  - where there is a risk of absconding, before the before the Public Prosecutor takes over the investigation (Art. 384(2) CCP), or where the risk of absconding is such that it is not possible to wait for the warrant from the prosecutor (Art. 384(3) CCP).

In cases of search that leads to seizure, police shall transmit a report of the incident without delay, and in any case no later than forty-eight hours, to the local public prosecutor. If the conditions are met, the public prosecutor shall validate the search within 48 hours.

## 10) ITALY / Italia



### The **legislative powers** of the police to stop

B) Within the administrative legal framework:

- in cases of urgency, where it is not possible to wait for the intervention of the judicial authority, police may operate stops and searches in order to prevent or prosecute offences, such as drug trafficking (Art. 103, d.P.R. 9.10.1990, no 309), organized crime and money laundering, and illegal immigration (Art. 12(7), Legislative Decree 25.07.1998, no 286).
- stop and searches may also be performed by police in order to assess potential administrative violations (Art. 13, Law 24.11.1981, no 689).
- stop and searches may also be conducted to assess the possession of weapons or explosives (Art. 4, Law 22.05.1975, no 152).

In all these cases, reports of the operations carried out shall be drafted and sent to the Prosecutor for validation. In order to use the results of such operations (e.g. seizure) at trial, validation should occur within 48 hours from the notification.



## 10) ITALY / Italia

### The **obligation** to register stops

According to Article 357 CCP, police searches are documented in the form of a report, containing a reference to the place, year, month, day and, when necessary, time at which it began and ended, the details of the persons present, an indication of the causes, if known, of the absence of those who should have intervened, a description of what the auxiliary has done or ascertained or what has happened in her/his presence, as well as the statements received. The level of detail for such reporting may be chosen, by police, taking into account the nature of the investigation.

Reports shall be made available to the public prosecutor.

### Legislation/ procedures which **protect** **citizens** from police offences

The rights of an individual, in the case of arrest, are guaranteed by information rights, by the assistance of a defence lawyer and by the mechanism of judicial review.

In the case of identity checks, police shall warn the person of the consequences of refusing to identify him/herself, and shall ask the person to declare his/her domicile for future notifications (Articles 66 and 349 CCP and Art. 21 disp.att. CCP).

Where the police search led to a seizure, according to Article 355 CCP, the police shall give a copy of the search report explaining the reason behind the seizure to the person from whom the object(s) was seized. Also the validation decree issued by the Prosecutor shall be immediately delivered to the same person.

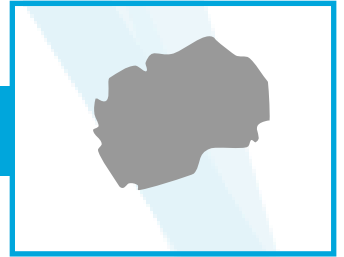
The person against whom the search is carried out has the right to be assisted by a defence lawyer during the search if the latter is promptly available. There is not, however, a duty to notify the lawyer in advance, nor to wait for his/her arrival.

Against the validation decree, the accused, his/her lawyer, the person from whom the object(s) was seized and the person that owns or legitimately possesses what has been seized, have the right to submit an appeal (*riesame* – Art. 324 CCP) to the Tribunal specializing in the review of precautionary measures (*Tribunale del riesame*).

In case the police stop and search does not lead to seizure of any object, no remedy is provided for by the code to complain against such police acts. Specific remedies are instead provided for in case the person gets arrested following such police activity (information rights, by the assis-



## 11) NORTH MACEDONIA / Република Северна Македонија



### The **legislative powers** of the police to stop individuals

The Macedonian national legislation allows police officers to stop citizens (whether walking or driving a vehicle) in order to check their identity. After being identified, and depending on the information and facts determined, further actions can be undertaken (a warning, an 'indication', an arrest etc.) if a misdemeanour or criminal act have been committed.

Based on the Law on Criminal Procedure (Article 276), in order to investigate offences, to detain a suspect, and to secure and preserve evidence, the police may stop, identify and conduct any required examination of persons, vehicles and luggage, if there are reasons for suspicion. They may not be detained for more than 6 hours. The police may use reasonable force only as a last resort if it proves necessary to conduct the examination. The Law on Criminal Procedure (Article 21) defines some key terms, including:

- Examination ("Pregled" or "Преглед") of persons, vehicles, luggage and facilities shall mean be limited to an external examination of the clothes, other items and luggage by using the sense of sight, hearing and smell, but excluding any actions that would make visible something that is not visible, by opening, unpacking etc.
- Search ("Pretres" or "Претрес") shall mean a detailed inspection and search of a person, transport vehicles or a home, according to conditions established by the law.

In addition, there are several articles dedicated to measures for locating and safeguarding persons and objects (Articles 181-204).

A search of a person may be conducted if it is likely to find traces or objects in their possession that are important to the criminal procedure. It should be authorised by a warrant, which can be issued following a verbal request. The search shall be conducted by a person of the same gender, unless that is not possible due to the circumstances. The circumstances due to which the search has been conducted by a person of another gender shall be written in the search records. A search that would include taking off parts of the clothing shall always be conducted by a person of the same gender. The search of the intimate parts of the body or body orifices shall always require an explicit approval by the court. The intimate searches shall be conducted by medical personnel.

It should be noted that provisions dedicated to the police authorization "Stop, inspection or search of persons, luggage and transport vehicles" are provided in the Law on Police, as well as in the Rule-book on the manner of conducting the police authorizations.

## 11) NORTH MACEDONIA / Република Северна Македонија



### The **obligation** to register stops

Records of these police authorizations are kept in the daily bulletins of the Ministry of Internal Affairs, as well as in the annual reports dedicated to certain issues.

The records are defined by the Law on Police and Rulebook on the content and the manner of keeping records of the police and the form and the content of the template of the police records. An identity check will require the recording data, including the time and place of the check, the name of the person, their date and place of birth, identification number and current address. It will also note the legal reason for the check and the details of the police officer involved.

### Legislation/ procedures which **protect** **citizens** from police offences

The Law on Criminal Procedure (Article 290) stipulates that a person who believes that his/her rights have been violated by any of the actions taken, within a period of 8 days after s/he learned about that action, may file an appeal with the judge of the pre-trial procedure, who shall rule on the legality of the action or measure. This does not limit the person's right to press criminal charges or the right to seek redress by other legal means. The decision of the judge of the pre-trial procedure shall be delivered to the public prosecutor and the applicant. An appeal shall be allowed against this decision with the Chamber (Article 25 Paragraph 5). The Chamber shall be bound to proceed in a period of 3 days.

The Law on Criminal Procedure (Article 276 Paragraph 4) stipulates that the public prosecutor has the right and duty to exercise control over the police with regard to identity checks.

Further, the person has a right to submit a complaint to the Sector of Internal Control (the website of the Ministry of Internal Affairs contains an application for reporting inappropriate behaviour of authorized officials, <https://mvr.gov.mk/prijavete-nesoodvetno-postapuvanje>). In essence, this is regulated by the Rulebook on the manner of officer conduct and professional standards.

Finally, police authorizations are overseen by the Macedonian Ombudsman (based on the Law on Ombudsman, Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

## 11) NORWAY / Norge



### The **legislative powers** of the police to stop individuals

There are several laws that allow the police to conduct an identity check. They have widely different purposes: traffic security; immigration administration; public order; and investigation. The terms of reference is also broad, from the principle of sufficient grounds to suspicion in criminal activity. They have different rules on who can authorise identity checks. Above the street-level, judicial representatives, police chiefs and courts can authorise 'random' checks related to concerns about, for example, knife crime. These checks are regulated by different rights for the people checked and different rules on follow-up and regulation. The main laws are found under the following Norwegian laws: Traffic Code §10; Criminal Procedure §§157, 171, 178, 195 and 203; Police Law §§7, 7a, 10(1), 10(2), 10(3), 12(5); Immigration Administration §§ 21, 103, 104, 106; and Criminal Procedure §162.

The grounds for a body search are detailed in Criminal Procedure §§157 and 195, and for a search for identity in Immigration Administration §37. Police Law §7a details the grounds for a search following an identity check and for weapons. The Director General of Public Prosecution (*Riksadvokaten*) has specified that grounds must be based on more than the person alone and must be tied to the time, place and context. The police chief should also ensure powers are used in relation to specific priorities and situations. In short, the use of the power to stop is frequently used by the police. For instance, stops can lead to searches and, in turn, lead to arrests. The stop of a person may also lead to searches in the police register.

### The **obligation to register stops**

Locally, within police districts, the police register their activities in the police log. However, there are different regulations on reporting, dependent on the type of control, from nothing (informal communication) to formal reporting. In the day-to-day activity, where a police officer stops and checks a person's identity, there is no formal reporting mechanisms. However, if a person is found to be connected to a criminal offence, there are formal reporting systems. The same procedure applies to immigration checks that reveal non-citizens staying illegally. Due to Frontex requirements, immigration controls with positive hits are to be registered, but not ID checks that reveal nothing. Ethnicity is not recorded because of data protection and privacy legislation. Through multi-agency investigation teams, the police are increasingly practicing third-party policing to control cross-jurisdictional crimes by the interchangeable use of criminal and administrative law. Such collaborations enable agencies to pool stop powers and undermine the protection afforded by sometimes conflicting aims and interests.

## 11) NORWAY / Norge



Legislation/  
procedures  
which **protect**  
**citizens** from  
police offences

There are several procedures for the oversight of the police. Where the sole purpose is to control the police, there are both internal and external control mechanisms, though internal mechanisms are largely in place only in the larger cities.

Internally in the police, there is a police complaint system (*Politiets klageordning*), the districts' arrest supervision (*politidistriktenes arresttilsyn*), the central arrest supervision (*det sentrale arresttilsyn*) and the disciplinary system (*displinærsystemet*). Complaints concerning police behaviour that does not constitute a criminal offence will be handled internally by the police. Externally, there is the Norwegian Bureau for the Investigation of Police Affairs (*Spesialenheten for politisaker*). This Bureau investigates complaints where employees of the police or prosecuting authority are accused or suspected of a criminal offence. The special unit was set up by the Norwegian Ministry of Justice and the Parliament in 2005. On a basic level, the police officers have identity number on their uniform that the person can note and make a complaint about mistreatment. Body-worn video has not been introduced in Norway.

An evaluation of the complaints systems noted an average of 700-800 complaints each year since the system was set up in 2006. Complaints mainly (60%) concern the handling of the interaction, and particularly police behaviour and communication. An average of 13-24 complaints each year concerned discrimination, of which 80% concerned discrimination on grounds of ethnicity.

For more broader accountability and democratic control of the police, where the police are one of several actors involved in checks, there are numerous procedures. Three of the most relevant authorities are:

- The Higher Prosecuting Authorities - The Director of Public Prosecutions and the Regional Public Prosecution Offices;
- Ombudsman - appointed by the Norwegian Parliament to safeguard the rights of individual citizens in their dealings with public administration
- the Equality and Anti-discrimination Ombudsman.

In addition, numerous NGOs and civil society organizations can be contacted.

## 12) POLAND / Polska



### The **legislative powers** of the police to stop individuals

An identity check is not perceived as a stop in Poland, although it involves deprivation of liberty for the moments identity is being checked. The police have broad powers to check identity – the statute simply provides that the police has such a power.

In Polish law, there is no distinction between stop and arrest. The term used is *zatrzymanie*. According to the Code of Criminal Procedure 1997 (CCP), a person may be arrested if they are suspected of offences and might abscond or if the act involves violence or firearms/weapons. Other provisions regulating Police powers to arrest (not for purpose of criminal proceedings) specify cases where someone has not returned to custody on a specified date, is a threat to the health of themselves or others or to property, or is drunk and either causing offence or posing a risk.

General powers to search a person are regulated broadly both in the CCP (Article 219-236) and in the Police Act (Article 15 para. 1 (4) and (5)). There is no direct provision that gives the police a power to search a person following an arrest. A search can be performed for the purposes of criminal proceedings (finding pieces of evidence) or for other purposes (e.g. preventive). The first one is regulated in CCP and is called *przeszukiwanie* and is conducted to find items that might constitute evidence in a case. Such searches can be conducted with a warrant issued by a prosecutor or without on the orders of a senior officer. However, the police must apply to the prosecutor for a decision that the search was legal.

The other types of search are regulated in the Police Act. These are:

- Personal control (*kontrola osobista*) – search of a person (may involve stripping and body cavity search, if necessary) and personal belongings where there is a reasonable suspicion that a criminal offence has been committed and in order to find weapons, illegal items or evidence.
- Checking of luggage and cargo in harbours, stations or on public transport (land, air and sea) where there is reasonable suspicion that a criminal offence has been committed and in order to find weapons, illegal items or evidence
- Preventive check (manually, by technical means of finding dangerous material and objects or those which possession is prohibited, biochemically or with the use of police dog) to prevent terrorism at designated places and events as well as public transport, or to seize items that might threaten the health of someone conducting an arrest.

## 12) POLAND / Polska



### The **obligation to register** stops

A search leading to the discovery of items is documented in the form of a report, stating the given name, surname and the role of the arresting officer, and the given name and surname of the detained person (if impossible his or her description), the time and location, legal reason for the search and the items found. If nothing is found, a note is enough.

In the case of arrests, a similar report should be made, specifying the grounds for the arrest. Any statements made by the arrestee must be included in the report. It should also indicate that the detained person has been informed about his or her rights. The report has to be signed by the detained person and copy of the report is given to him (Article 244 § 3 CCP). Also, any search must be documented in the report (Article 229 CCP).

Numerous legal acts and decisions regulate what kind of information can be recorded on databases and in what way. The most important is the Decision No. 165 of the Chief Police Officer of Poland (Komendant Główny Policji) of the 25 July 2017 on the functioning of the National System of Police Information (Krajowy System Informacji Policji) [KSIP Decision]. In the KSIP all arrests must be registered including, among others, information regarding who arrested a person and who registers the arrest in a database, how the identity of a person was determined, date and hour of arrest, who issued warrant of arrest or decided on the arrest, legal basis, grounds and place of arrest, place when a person was detained, data and hour of release (§ 20 para. 2 of the KSIP Decision).

### Legislation/ procedures which **protect citizens** from police offences

The rights of an arrested individual are guaranteed by the mechanism of a judicial review. Every arrestee has the right to lodge an interlocutory appeal with the court to request an examination of the grounds of the legitimacy, legality and correctness of his/her arrest (Article 246 § 1 CCP). A person who has been unlawfully detained for the purposes of criminal proceedings is entitled to seek compensation and redress from the State Treasury (in criminal proceedings). A regional court rules on the motion for compensation or redress on the basis of CCP provisions.

The rights of an individual in the case of search are also guaranteed by the mechanism of a judicial review regardless whether search has been conducted based on the prosecutor's warrant of search or by the police without a warrant (Article 236 CCP). A person who has been unlawfully searched is also entitled on the basis of Civil Code provisions to seek compensation and redress from the State Treasury (in civil proceedings) if he or she can prove that he or she suffered damages or harm as a result of the search.

## 13) PORTUGAL/ República Portuguesa



### The **legislative powers** of the police to stop individuals

Criminal police agents, and police officers in general, may identify any person that is in any public space, open to the public or subject to police surveillance, whenever there is serious grounds for suspecting that they have committed any criminal activity, as well as administrative offenses, are pending extradition or expulsion, have entered or remained irregularly in the national territory or in case there is a pending warrant of arrest against him/her. In exceptional circumstances, they may request the identification even of persons not suspected of having committed any crime (e.g. at airports and ports, stations, and in criminal prevention operations).

In the that identification cannot be established, or in the event of flagrante delicto, the police officer should conduct the suspect to the nearest police station and oblige him/her to remain there for the time strictly necessary to undergo identification and screening of criminal record. In any case, the suspect may not be kept in the police station in order to be identified for more than 6 hours. Exceptions exist when, concerning certain crimes, the person must be presented to a judge for the application of preventive measures. The citizen has given the right to contact a person.

Traffic stops are both random (for control purposes) or organized (with due suspicion). Officers may check the necessary documentation required for driving (ID, drivers license, mandatory car insurance, etc.), perform both alcohol and drug tests and check that the vehicle complies with safety requirements. However, unless the citizen voluntarily allows it, the police cannot search the interior of the vehicle itself without a court order. Exceptionally, if there is sufficient suspicion of criminal activity or serious or violent disruption of public order, the police may search the vehicle without prior judicial authorization in order to verify the presence of weapons, explosive or pyrotechnic devices, objects prohibited or likely to enable acts of violence, evidence of crime, and persons sought or in an irregular situation in the national territory or deprived of their liberty. And if weapons, ammunition, explosives or prohibited substances and objects are found, they can be seized. In such situations, the search must, in any case, be reported to the competent court as soon as possible.

## 13) PORTUGAL/ República Portuguesa



### The **obligation to register** stops

Regarding identification, there is no obligation to report on the stop unless evidence of a crime having been committed is found, in accordance with the code of Criminal procedure, articles 253 – 256.

As for traffic stops, information is registered and data is made available monthly.

There is no possibility to access statistical information on stop and search in Portugal in any other shape other than the traffic stops.

### Legislation/ procedures which **protect citizens** from police offences

Article 13 of the Portuguese Constitution foresees the principle of equality. Several anti-discrimination laws have also been enacted.

Complaints regarding the Criminal Police can be made electronically, in person, by phone or fax. The General Inspection of Justice Services (IGSJ) will inform the person who filed the complaint about the status of the case and, ultimately, the outcome of the case. As for complaints against PSP and GNR, the citizen ought to file a criminal law suit against the police officer/s in question. The type of procedure will depend on the nature of the crime. Such complaint may be filed in the police station and/or before a public attorney (MP). It is up to the MP and the instructing judge to conduct the investigation and decide if there are grounds for taking the claim to a criminal court. Where the police officer is "accused", an internal investigation regarding the performance of his/her duties is conducted. The order of this event does sometimes vary as several cases of police abuse become public. Upon having been informed of the eventual abuse by a police officer, the Police Department itself ought to start an internal investigation. The police officer is suspended from their functions during any criminal proceeding.



## 14) ROMANIA/ Romania



### The **legislative powers** of the police to stop individuals (1)

The main applicable norms in the matter regarding the police's powers are to be found in the Law no. 218/2002 regarding the Romanian Police. These norms regarding the police are accompanied by detailed dispositions from the Romanian Criminal Procedural Code. The relevant sections of Law no. 218/2002 are found in Chapter V, legal powers and obligations, articles 31 and 41.

Article 31 gives police officers powers to check the identity of those believed to be causing or about to cause a breach of the law. Where identity cannot be established, the person can be 'retained' (not arrested) for up to 24 hours to establish identity. Force may be used if the person resists. Article 31(f) also allows officers to stop and search vehicles suspected of being involved in a criminal offence. Article 31 expressly obliges officers to have regard to the Human Rights of the persons concerned. Article 41 specifies that officers must present their ID/badge.

In addition, Government Decision no. 1391/2006 regarding the approval of the Rules applicable to Government Emergency Ordinance no 195/2002 regarding the traffic circulation on public roads. Article 182 specifies that vehicle stops should be used following a breach of traffic rules or when there is reasonable evidence that an offence has been committed and the stop is necessary to identify those involved or find items.

Section 2 of the Criminal Procedure Code then details the ways in which searches, pursuant to the powers above, are to be conducted. Article 165 specifies a search can be made of the exterior of a person's body, oral cavity, nose, ears, hair, clothing and objects a person has with them or are under their control at the time of the search. Article 166 specifies that the person's human rights must be respected. The person should first be asked to hand over the item being searched for and, if they do so, then no search should be conducted. A search should be conducted by someone of the same gender. A report must then be completed, detailing the persons involved, the time and place, items searched for, circumstances etc. Each page must be signed by the officer and the person searched and a copy given to them. Article 167 then specifies that a vehicle search shall include the exterior and interior and be conducted in the same manner.

## 14) ROMANIA/ Romania



### The **obligation** to register stops

Beyond the individual records of a search, records are kept of identity checks. Information on the numbers of checks can be requested for the past year.

### Legislation/ procedures which **protect** **citizens** from police offences (1)

The Romanian Criminal Code provides three legal definitions for different offences that may be committed by public officers. Article 283, Unlawful Repression, concerns actions taken to investigate or detain a person when an officer knows them to be innocent.. Article 296, Abuse Conduct, concerns the use of abusive language or the threat or use of force in the course of carrying out a professional duty. Article 297, Abuse in Office, concerns the failure to carry out duties in an appropriate manner or discriminating against people on the grounds of gender, race, sexuality etc.. A complaint may be made by a third party who is aware of the incident. A magistrate, on being informed of a complaint, undertakes the investigation in the normal manner.

## 15) SLOVAKIA/ Slovenská republika



### The **legislative powers** of the police to stop individuals

Police stops are regulated by the Act 171/1993 Coll. on Police Force. Several paragraphs describe the circumstances in which the police can stop and search individuals (e.g.: Authority to Stop and Search Conveyances; Authority while Safeguarding Designated Persons; Authority to Close Places Open to Public etc.). Most often, stop and search is understood as a police officer's authority to ensure that the person with whom they conduct an official intervention is not carrying a weapon, and to disarm that person if they are armed. Since official intervention impacts on an important area of the Constitution-guaranteed rights and freedoms of the individual, a police officer cannot perform an official intervention whenever. The provision of § 9 par. 1 of the Act on the Police Force, clearly obliges an on-duty police officer to carry out an official intervention within the limits of this law if an offense or infringement is suspected of being committed. In no case can a police officer carry out a security search without carrying out an official intervention, that is, just for the sake of prevention and not for the purpose of searching for other things, e.g. narcotic and psychotropic substances. In this context, it is also necessary to emphasise the prohibition to force a person to contribute to their own accusation or conviction. This means not only a prohibition to force a suspected or accused person to confess, but also a prohibition to force such a person to cooperate in order to convict the person, such as a prohibition on forcing the suspect to "voluntarily" give items or empty things from pockets, even things that can link them to a crime.

Another frequent case for stopping a person by the police is requesting proof of identity. Every citizen who has reached the age of 15 and has a permanent residence in the Slovak Republic is obliged to have an ID card. However, no one is obliged to keep their ID on their person at all times. The legal basis for a police officer's right to request a person to prove their identity is in Section 18 of the Police Force Act. According to para. 1 of this provision, "a police officer shall be entitled to request a person to do so if it is necessary to fulfil their duties under this Act to prove their identity." In police practice, however, that authorisation appears to be somewhat wider than it really is. Many police officers interpret this as permitting them to request a person prove their identity, but the most important phrase is "if necessary to perform the tasks under this law" that can be described as a material presumption of enforcement identity.

Exercise of a police officer's authorisation under Section 18 of the Police Force Act is quite often in practice purely formalist, not respecting the material conditions of this provision, thereby abusing the authority of a public official. At the same time, a police officer's formal approach to exercising their authorisation is not exceptional in police practice. For most people, the obligation to prove their identity and the corresponding police authorisation is perceived as a common, everyday matter in the activities of the Police Force, which does not restrict them in any way. However, from the point of view of law, it should be borne in mind that by exercising their authority to request a person to prove their identity, a police officer is interfering with that person's fundamental rights and freedoms, i.e. it is an official intervention.

## 16) SLOVAKIA/ Slovenská republika



### The **obligation** to **register** stops

The police are obliged to register stop and search or identity checks in their internal database, which is not publicly available. There are no publicly available statistics on stop and search, though some data might be available on request. The rules for registration are not regulated by any law but by an internal directive which again cannot be accessed by members of the public.

### Legislation/ procedures which **protect** **citizens** from police offences (1)

Act no. 9/2010 Coll. on complaints states that all departments of the Ministry of the Interior of the Slovak Republic, organisations and facilities within their jurisdiction, regional directorates of the Police Force, district directorates of the Police Force, district departments of the Police Force, departments of the Immigration Police of the Police Force are obliged to receive complaints. The complaint is dealt with by the competent public authority responsible for the activity which the complainant considers to be infringing their rights or interests protected by law.

Complaints against the members of Police Force are registered and handled by the Department of Control and Inspection Service (DCIS) of the Ministry of Interior. The DCIS is a separate unit of the Ministry reporting directly to the Minister of the Interior. Individuals can complain by email, phone, on-line or in person.

## 17) SLOVENIA/ Republika Slovenija



### The **legislative powers** of the police to stop individuals

There are two main laws, adopted in 2013, regulating the Slovenian national police: Police Tasks and Powers Act; and Organisation and Work of the Police Act. Police stops are regulated by Article 40 of the Police Tasks and Powers Act and are referred to as one of the police powers: establishing identity). Below is the translation of the **Article 40**:

Police officers may establish the identity of a person who:

- must be produced or detained;
- enters an area, place, premises, building or their environs where free movement is prohibited or restricted or stays there;
- is in an area, place or building where measures are being undertaken for searching or tracing the perpetrator of a criminal or minor offence or objects and traces relevant for a criminal or minor offence procedure;
- by his behaviour, actions and loitering at a particular location or at a particular time gives reason to suspect that he will commit, is committing or has committed a criminal or minor offence;
- is similar in appearance to a person sought;
- by his behaviour, actions and loitering at a particular location or at a particular time gives reason to suspect that he is a child or a minor fleeing from home or an educational and social care institution, rehabilitation centre or health institution or that he is lost;
- is clearly helpless and establishing his identity is necessary in order to provide assistance;
- could provide data useful for the performance of police tasks.

Police officers may carry out a procedure to establish the identity of a person and communicate his data upon the justified request of officials and public authorisation holders if this is indispensable to the exercise of powers by these officials or the provision of their safety.

Police officers may also carry out a procedure to establish the identity of a person upon the justified request of another person who is able to demonstrate that he has suffered material or non-material damage or physical injury, who suspects that a criminal or minor offence has been committed, and in similar cases, and communicate data thus established to a person entitled who is able to demonstrate a legal interest in exercising his rights before judicial or state bodies.

## 17) SLOVENIA/ Republika Slovenija



### The **obligation** to register stops

The police are obliged to register identity checks in a national database. No statistical data is produced from these records.

### Legislation/ procedures which **protect** **citizens** from police offences (1)

Complaints against the police are resolved according to the rules on the resolution of complaints against the work of police officers (based on the Police Tasks and Powers Act). An appeal may be filed by anyone who considers that their human rights or fundamental freedoms have been violated. The complaint may be filed orally or in writing within 45 days to the Sector for Complaints against the Police (part of the Ministry of the Interior - Directorate for Police and other security tasks). The conciliation procedure begins in order to resolve the complaint. The first step in this procedure is the interview between the complainant and the head of the police unit – the superior of the police officer against whom the complaint is filed. The interview must enable the complainant to present the facts regarding the complaint and to present evidence. In the case that the conciliation procedure is unsuccessful, the proceeding continues to the Senate, whereby the decision of the Senate is final. The facts and evidence and additional complement to the event report are further examined in the Senate. In the Senate, both the complainant and the police officer have the opportunity to clarify the facts. The Senate is a three-member panel composed of a minister's authorized representative (appointed by a minister's decision) and two representatives of the public. A representative of the public shall be appointed by the Minister of the Interior on the proposal of local communities or civil society organizations, professional public and non-governmental organizations.

## 18) SPAIN/ España



### The **legislative powers** of the police to stop individuals (1)

In Spain, police powers to stop and search individuals are regulated by the Organic Law No 4/2015 of 30 March 2015, on the protection of urban security (LOPSC, for its initials in Spanish). Article 16 specifies powers to stop and check identities. Reactive stop and checks can be conducted on suspected perpetrators of an offence (including administrative offences) by the checked individual. Police officers should have reasonable and specific indications that the given individual has actually either perpetrated or contributed to the perpetration of the investigated offence. Proactive police stop and checks should be based on the prevention of an eventual criminal offence (i.e. not an administrative offence) when officers may reasonably consider that the identity check is needed for these crime prevention purposes. Therefore, these proactive stop and check practices cannot be based on a vague and general goal to protect urban security.

Police officers can carry out identity checks in public or private places by any means available (i.e. by searching electronic databases, by making phone calls, etc.). If the identification is not feasible, officers can forcefully bring the individual to the closest police unit, to carry out the identity check there. According to the Spanish legislation, this police intervention, which cannot be extended more than 6 hours, is not considered as an arrest. Resisting this police intervention is a criminal offence. By contrast, not collaborating with an identity check is an administrative offence (Article 36.6 LOPSC). Police officers should abide by the principles of proportionality and of equal treatment before the law.

Police officers may stop and search individuals in order to the unlawful carrying and use of weapons. Body searches can only be carried out when police officers may have motives to suspect that instruments and objects that are relevant for urban security prevention purposes are being carried by the searched individual. These interventions should only be as intrusive as necessary and minimise the harm to the dignity of the searched individual. They should be performed by a police officer of the same sex and, if needed for privacy motives, should be carried out in a place out of sight of other people.

Individuals are legally obliged to collaborate with the interventions carried out by police officers. They can be forcefully carried out against the will of the searched individual, in accordance with the legal principles of necessity, suitability and proportionally.

## 18) SPAIN/ España



### The **obligation to register** stops

Spanish legal provisions do not set any obligation to register stop and search interventions in any official database. Legally speaking, only police interventions that entail the forced transportation of the checked individual to a police unit (which are not legally considered as arrests) should be registered. These registered data shall be reported to competent prosecutors on a monthly basis.

A number of local police corps, which have taken part in the Programme for Effective Police Identity Checks (PIPE for their initials in Spanish), have decided to register all stop and check and stop and search interventions. Officers should register the measures taken to check the identity of the stopped individual, as well as the motives, circumstances and duration of these measures (Article 16.4 LOPSC). In addition, the checked individual should be given a ticket containing information on the duration and causes of the intervention, and on the identity of the intervening police officers (Article 16.5 LOPSC). This is in response to criticism of the use of racial profiling by the police in efforts to police immigration offences.

Stop and search interventions conducted on individuals and their belongings in public places are considered to directly affect a number of fundamental rights acknowledged by the Spanish Constitution, such as the right to honour, to personal and family privacy and to the own image (Article 18.1 SC), and the right to dignity (Article 10.1 SC). This has been recognised by the Spanish Constitutional Court in its ruling No 37/1989, of 15 February 1989, which states that bodily privacy is a part of the right to personal privacy. Nonetheless, the Spanish legal order does not regulate any specific procedure to ensure the protection of individuals in this regard.

### Legislation/ procedures which **protect citizens** from police offences

Individuals affected by stop and check and stop and search police interventions can only report these facts to the Spanish Ombudsperson, who should monitor the activities carried out by public bodies to safeguard individual rights and freedoms. The affected individuals can also report these facts to the police, either to the same police corps that carried out the given intervention or to a different one. Some police corps (e.g. the local police of Madrid) have set up specific police services to collect these complaints, but this is still highly uncommon. Some NGOs and human rights groups collect complaints on biased police interventions and launch public campaigns on this topic. In this regard, the NGO SOS Racismo (SOS Racism) and Rights International Spain should be specifically mentioned.



## 19) UNITED KINGDOM



### England & Wales

Stop and search is mainly conducted under Section 1 of the Police and Criminal Evidence Act 1984 (PACE) or Section 23 of the Misuse of Drugs Act 1971. Other powers (e.g. under the Terrorism Act 2000) exist but are less significant.

Officers can stop and search someone suspected of possession of drugs, weapons, stolen property or equipment associated with crime. They must have reasonable grounds for suspicion (seen something, intelligence received, behaviour etc.) and characteristics such as ethnicity, gender or age cannot be used as the basis for a stop and search. Officers must give the person searched key information (officer name/ID, grounds, rights etc.) and either a record of the search or a reference number so they can get access the record later. Stops should be recorded on body worn camera (BWC). Controversies include the disproportionate rate of stop searches for Black and Asian people, and whether the smell of cannabis alone constitutes sufficient grounds.

Section 60 Criminal Justice & Public Order Act 1994 allows for stop and search to be conducted for weapons or dangerous instruments in a specified area for a limited period of time (no more than 24 hours) without the need for grounds. This power is only authorised where a senior officer reasonably believes serious violence may occur.

Officers have no right to stop and question a citizen to check their identity, although an officer may stop any vehicle in order to check relevant documents (driving licence, insurance etc.) and the condition of the vehicle.

Powers allow officers to conduct a non-intimate search, removing only outer garments, at the scene. A more intimate search should be conducted at a police station.

Information from stop searches are retained by the police (age, gender, ethnicity, grounds, results) and scrutinised internally, locally by committees, community panels or advisory groups, and nationally by HMICFS and the Home Office. Anonymised data is published on the [data.police.uk/data/](https://data.police.uk/data/) website and on local police force websites, for example [here](#). BWC footage is sometimes made available for internal and external scrutiny. Complaints can be made to the police force concerned and will normally be resolved locally. Where evidence recovered during a search is used in a criminal case, the legality of the search may be subject to scrutiny as part of the case.

## 19) UNITED KINGDOM



### Scotland

In Scotland, it is unlawful for a police officer to carry out the search of a person out with a specific statutory power. The statutory power to carry out a stop and search of the person is provided through various legislative acts across a range of categories including: threats to public order; the misuse of drugs and other substances; stolen property; protection of wildlife; security at airports, football matches and other events; proceeds of crime; terrorism and specific weapons including knives, bladed articles, firearms and crossbows. The relevant legislation will make provisions on what information an officer can seek from the individual subject to the search.

A Code of Practice governs the police officer's use of powers of stop and search of the person. This includes most situations in which officers stop and search a person without first making an arrest. The code sets specific expectations, including the way in which the search is carried out, how the individual is treated, their right to information and how this is recorded. All recordable stop and searches in Scotland are recorded on the Police Scotland National Stop and Search Database. Any person who has been the subject of a recordable stop and search, can request access to a copy of the record held on the database.

Police Officers are not exempt from the law in Scotland and are bound by the Police Scotland Code of Ethics and the provisions of the Human Rights Act and the European Convention of Human Rights. An independent body, the Police Investigations and Review Commissioner (PIRC) issued statutory guidance to set the requirements of police complaint handling in Scotland. This is embedded in Police Scotland's approach, with the process subject to ongoing scrutiny by PIRC. Any member of the public can make a complaint about the police either in person, by telephone, in writing by email, letter or through an online form accessed through the Police Scotland website. Complaints against police officers and staff which are upheld can be disposed of through formal disciplinary action and, where the behaviour is criminal, through reporting to Crown Office and Procurator Fiscal service for appropriate action. Every officer who carries out a relevant search of a person under the code of practice is required to provide a receipt to the person which includes information about their rights and how to make a complaint. This information is also available on the Police Scotland web site.

## 19) UNITED KINGDOM



### Northern Ireland

Northern Ireland is governed by similar powers to England and Wales under the PACE (NI) Order 1989 and the Misuse of Drugs Act 1971. However, in addition to these 'everyday' stop and search powers, and linked to the ongoing 'severe' terrorist threat in the country as defined by MI5, the Police Service of Northern Ireland enjoy suspicionless stop and search powers under the Justice and Security (NI) Act 2007 (JSA). As a separate policing jurisdiction within the UK, PSNI currently use stop and search powers at a rate of 17 per 1000 of population with a 7% arrest rate, compared to approximately 5 per 1000 in England and Wales with a 17% arrest rate. 'Everyday' stop and search powers account for approximately 70% of stop and searches, while the remaining 30% are conducted under terrorist-related JSA powers (which only apply to NI) with an arrest rate of below 1%. Under 18s (children) comprise approximately 18% of PSNI stop and searches.

PSNI broadly follow UK policing standards from the College of Policing for conducting stop and search in terms of the need to provide grounds etc. for 'everyday' stop and search. Stops are meant to be recorded, with a receipt or reference number provided to the suspect. Body-worn cameras are gradually being rolled out by PSNI for officers, although the extent to which they are used for stop and search encounters is unclear.

PSNI is subject to performance monitoring by the Northern Ireland Policing Board (NIPB), while complaints about police actions are dealt with by the independent Office of the Police Ombudsman for Northern Ireland (OPONI). PSNI performance also comes under the scrutiny of the Criminal Justice Inspection NI (CJINI). It can also request inspections from HMIC, although it is not obliged to. Only limited public data on stop and search is released by PSNI, currently restricted to policing district, gender, age and the power used. Age-related data has only been publicly available since 2017. Religion is not recorded, and ethnicity may be recorded, but is not publicly available.