

# Citizens and the Police

Handbook on your rights and obligations  
in relation to the work of the Police



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# **Citizens and the Police**

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Podgorica,  
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\*Expressions used in this Handbook in the grammatical masculine gender imply the feminine gender of the persons to whom they refer. The word "policeman" shall also mean "policewoman", "officer" shall also mean male and female officer, etc.

# 1. Who can I complain to if the Police insult or abuse me?

You should complain about improper police work to the following organizational units in the Ministry of Interior (Mol) and/or state authorities:

1. **Police Directorate** – within the Mol, by calling: **19821** or **+382 67 449 000** or by sending an email to: **gradjanin.prituzbe@mup.gov.me**;

2. **To the Department for Internal Control of the Police** – within the Mol, by calling: **+382 20 247 588** or by sending an email to: **unutrasnjakontrola@mup.gov.me**.

3. **To the Ethics Committee** – of the Mol, by sending an email to:

**eticki.odbor@mup.gov.me**.

You can submit a complaint to these organizational units within 30 days from the day when you believe that a police officer has caused you damage or violated your rights while performing police duties.<sup>1</sup>

It is advisable to remember the last name or identification number of the police officer (from the badge on the uniform or from the official identification card), and be sure to specify the time, place, action or omission as precisely as possible in the complaint. The complaint can be anonymous only if it raises suspicions about the existence of a criminal offense (e.g. abuse, corruption), otherwise it will not be processed.<sup>2</sup> You should receive an answer within 30 days from the date of receipt of your complaint.<sup>3</sup>

If you are not satisfied with the answer, or if you do not receive it within that period, you can submit a complaint to the Minister of the Interior within 15 days from the day of receiving the answer, i.e. the deadline for the response has expired.<sup>4</sup> You will receive the Minister's decision within 30 days from the day the ministry receives your complaint.<sup>5</sup>

Email for submitting a complaint to the Minister of Interior Affairs:

**kabinet@mup.gov.me**

4. You can submit a petition **to the Council for Civilian Control of Police Work** – an independent body based in the Parliament of Montenegro, which evaluates the application of police powers for protection of human rights and freedoms within six months from the date of the disputed event to the e-mail address:

**support@kontrolapolicije.me**.<sup>6</sup>

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1 Law on Interior Affairs, *Official Gazette of Montenegro*, no. 070/21, 123/21 and 003/23, Article 32, paragraph 1

2 Rulebook on the Procedure for Handling Complaints about the Work of a Police Officer, *Official Gazette of Montenegro*, no. 44/22, Article 4

3 Law on Interior Affairs, *op. cit.*, Article 32, paragraph 2

4 *Ibid.*, Article 32, paragraph 5

5 *Ibid.*, Article 32, paragraph 6

6 *Ibid.*, Article 191 and the Rules of Procedure of the Council for Civilian Control of Police Work, 9/1-12, dated

**5. To the Protector of Human Rights and Freedoms of Montenegro (Ombudsperson)** – you can file a complaint about the work of police officers<sup>7</sup> due to a violation of human rights and freedoms, within six months of becoming aware of the violation, and no later than one year from the date of the violation.<sup>8</sup> You can do this by filling out a simple form on the website <https://www.ombudsman.co.me>, or by calling: **+382 20 241 642** or by sending an email to: **ombudsman@t-com.me**.

**6. To the State Prosecutor's Office** – in one of the Basic State Prosecutor's Offices in Montenegro, you can file a criminal complaint if you believe that a criminal offense has been committed against you or someone else (e.g. abuse, torture, extortion of testimony, infliction of minor or serious bodily injury, corruption).<sup>9</sup>

**7. To the Basic Court** – you file a claim for compensation for damage caused to you by officers of the Police Directorate.<sup>10</sup>

## **2. What should I do if a person claiming to be from the police demands something from me?**

If he is not wearing a police uniform, the police officer must present himself to you with an official ID card before applying police powers.<sup>11</sup> Uniformed police officer, as a rule, wears a police badge with an identification number on his uniform, and will show his official ID card only if you ask for it.<sup>12</sup> (For more details, see under 6).

The police officer must clearly communicate the reason for addressing you. For example, if he asks you to show him an identification card or other document, you have the right to ask for the reason for identification. And when you are required to do something else during the performance of a police task, you have the right to an explanation, you can say what you think is important about it and ask for the presence of a person you trust. However, all this is valid if the circumstances allow it and if it does not endanger or delay the execution of the police task.<sup>13</sup>

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2. 3. 2012, Article 10

7 Law on the Protector of the Human Rights and Freedoms of Montenegro, *Official Gazette of Montenegro*, no. 42/11, 32/14 and 21/17, Article 31, paragraph 1: "The complaint shall contain the name of the body whose work it refers to, a description of the violation of human rights and freedoms, facts and evidence that support the complaint, data on which legal remedies were used, personal name and address of the complainant and an indication of whether the complainant consents that their name can be revealed in the proceedings." See also the Law on Internal Affairs, *op. cit.*, Article 202

8 *Ibid*, Article 32

9 Law on Criminal Proceedings, *Official Gazette of Montenegro*, no. 57/2009, 49/2010, 47/2014, 2/2015, 35/2015, 58/2015, 28/2018, 116/2020 and 145/21, Article 256, paragraph 1

10 Law and Contracts and Torts, *Official Gazette of Montenegro*, no. 47/08, 4/11, 22/17, Article 148 and 207 and Law on Interior Affairs, *op. cit.*, Article 33

11 Law on Interior Affairs, *op. cit.*, Article 52

12 *Ibid*, Article 52, paragraph 1

13 *Ibid*, Article 52, paragraph 3



Police officers are obliged, in all cases, and especially in cases defined by law, to apply special caution when exercising police powers regarding persons under 14 years of age, apparently sick, elderly, and vulnerable persons, persons with disabilities, persons with significantly reduced mobility, as well as towards women whose pregnancy is visible.<sup>14</sup>

### 3. Do I have to obey a Police order or warning?

In principle, you are obliged to act in accordance with the order or warning of the police officer, and you can subsequently complain if you believe that your rights have been violated (see section 14). You are not obliged to carry out an order that is clearly illegal and constitutes a criminal offence, e.g. to injure yourself or someone else, to destroy your own property or someone else's property without justifiable reason, to give a statement under duress, etc.

If you resist, behave violently, or otherwise prevent the execution of a police task, you will bear the prescribed consequences, which may also lead to criminal liability for preventing an official from performing an official act.<sup>15</sup> If you do not respond to a warning or order, the police officer can use coercion against you<sup>16</sup> (see section 4). Certainly, he must not abuse you, cause you unnecessary bodily harm, i.e. may not apply excessive force, which is not proportionate to what is necessary in those circumstances.<sup>17</sup>

### 4. What kind of coercion can the Police use?

Police officers are authorized to use prescribed means of coercion in certain situations (see section 5),<sup>18</sup> which can be:

- **physical strength**;
- **hand spray and electric stun gun (electro shocker)** – these means, for example, a policeman may not use when offering passive resistance is being given<sup>19</sup> (e.g. protest by sitting on a street);
- **official baton** – can be used if physical force and hand spray cannot help,<sup>20</sup> even in the case of passive resistance that is not possible to overcome in any other way the baton

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14 Law on Interior Affairs, *op. cit.*, Article 53

15 Criminal Code of Montenegro, *Official Gazette of the Republic of Montenegro*, no. 70/2003, 13/2004, 49/2018, 3/2020, 026/21, 144/21 and 145/21, Article 375.

16 Law on Interior Affairs, *op. cit.* Article 94, paragraphs 2 and 5

17 *Ibid*, Article 94, paragraphs 4 and 7

18 *Ibid*, Article 94, paragraph 1, Article 94, paragraph 1

19 *Ibid*, Article 99, paragraph 1 and Article 100, paragraph 1

20 *Ibid*, Article 101, paragraph 1

shall not be used to hit on the head, neck and genital area, except as a last resort, and shall not be used against vulnerable groups (pregnant women, children, the sick, the elderly, disabled persons), unless they use firearms or other a dangerous object with which they endanger their life, the life of a police officer or someone else;<sup>21</sup>

– **restraints** (handcuffs, plastic straps),<sup>22</sup> are also generally not used against vulnerable groups; they can be used when people are disturbing public order and peace, when you offer passive resistance, try to attack a police officer, but also to prevent escape, self-harm or harm to another;<sup>23</sup> it is important to warn the police officer if he excessively tightens the handcuffs, in order to prevent the occurrence of unnecessary physical injuries;

– **service dog**, which with a protective basket on the muzzle the policeman can release towards you if you are running away and you have committed a criminal offense (e.g. robbery).<sup>24</sup> He can use a dog without a muzzle if, for example, disturbed public order and peace on a larger scale or if it protects life,<sup>25</sup> which also allows him to use a pistol or other firearm, if he cannot achieve the goal of the police task by other means.<sup>26</sup>

If a group of three or more people does not disperse after the order has been issued, and behaves illegally, if it causes violence or violence has already occurred, e.g. at a public assembly or sports event,<sup>27</sup> the police can also use a **water cannon**,<sup>28</sup> while special-purpose devices such as **shock bombs, flash bombs, bullets made of rubber, wood or plastic**<sup>29</sup> etc.,<sup>30</sup> as well as can use **special vehicles or chemical agents**<sup>31</sup> only with the approval of the Director of the Police Directorate.<sup>32</sup>

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21 Law on Interior Affairs, *op. cit.*, Article 101, paragraphs 3 and 4

22 Ibid, Article 102, paragraph 5

23 Ibid, Article 102, paragraph 1, point 1

24 Ibid, Article 104, paragraph 2, point 1

25 Ibid, Article 104, paragraph 3, points 2 and 3

26 Ibid, Article 113, paragraph 1

27 Ibid, Article 95, paragraphs 3 and 4

28 Ibid, Article 110

29 The use of kinetic impact missiles, i.e. bullets made of rubber, wood or plastic are not recommended at public assembly, because it is difficult to isolate them only to individuals and there is a significant risk of injuring bystanders (*Resource book on the use of force and firearms in law enforcement, United Nations, New York, 2017, p. 94–95*). The Police Directorate of Montenegro claims that it does not acquire or use rubber bullets ("Gorović: Veljović called on the police to take off their uniforms", portal Vijesti, 7. 9. 2021).

30 Law on Interior Affairs, *op. cit.*, Article 95 and Article 112

31 Ibid, Article 95, paragraph 4 and Article 111

32 Ibid, Article 95, paragraph 4

## 5. When the Police have the right to use force?

Force means the use of means of coercion (see under 4), which the police can use if necessary to: protecting people's safety, repelling attacks or preventing escape and when they cannot perform their task by warning or issuing an order.<sup>33</sup>

As a rule, the police shall apply the mildest means of coercion that achieves the goal.<sup>34</sup> Before using force, they are obliged to issue a warning about using force.<sup>35</sup> The warning will not occur only if it could jeopardize the achievement of the goal of police work.<sup>36</sup>

In case of use of force, police officers shall be obliged to:

- protect life;
- cause as few injuries and material damage as possible;
- provide first aid or provide emergency medical care;
- inform the family and relatives of the injured or endangered person as soon as possible.<sup>37</sup>

## 6. Does a police officer have to show an official ID?

When a police officer approaches you in civilian clothes, they are obliged to introduce themselves by showing their official identification.<sup>38</sup>

When they approach you in uniform, they will show their official badge or identification only if you ask for it.<sup>39</sup> Exceptionally, they are not obliged to show their identification when it may jeopardize the achievement of the goal of police work, e.g. suspects that you will offer violent resistance or destroy evidence.<sup>40</sup> In that case, they should warn you with the word "police (policija)", unless that would also jeopardize the achievement of the goal of police work.<sup>41</sup>

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33 Law on Interior Affairs, *op. cit.*, Article 94, paragraph 2

34 Ibid, Article 94, paragraph 4

35 Ibid, Article 94, paragraph 5

36 Ibid, Article 94, paragraph 6

37 Ibid, Article 94, paragraph 7

38 Ibid, Article 52, paragraph 1

39 Ibid, Article 52, paragraph 2

40 Ibid, Article 52, paragraph 3

41 Ibid, Article 52, paragraphs 4 and 5



When police officers operate under special equipment (masked), such uniforms must have a visible mark of letters and numbers that enables their identification.<sup>42</sup>

Police officers and communal police officers have some identical powers, e.g. both can establish identity, inspect objects, use means of coercion (physical force, hand spray with irritating effect, official baton and instruments of restraints).<sup>43</sup>

The Police Directorate should be distinguished from the Communal police.

The **Police Directorate** is an organizational unit of the Ministry of Internal Affairs, which deals with protection of the safety of citizens and their rights and freedoms, protection of property, prevention of the commission of, detection and investigation of crimes and misdemeanours, finding the perpetrators of crimes and misdemeanours, etc.

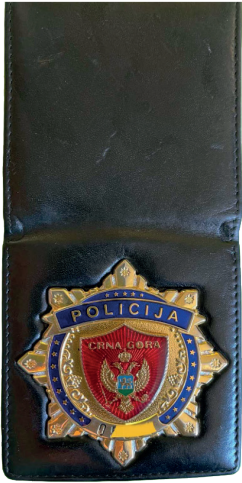
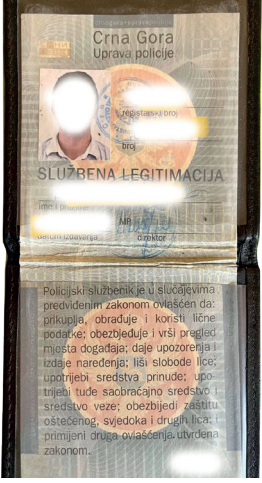
The **Communal police** is a municipal service that performs communal supervision in order to preserve the city's assets – streets, public lighting, public parking lots, parks, green areas, etc. and ensures communal order by acting on reports, requests or suggestions from citizens when they complain about noise in catering facilities, non-respect of house rules, improper parking, improper keeping of pets, etc.


See below what the official badges and identification cards of police officers and communal police officers look like.

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42 Ibid, Article 52, paragraph 6

43 Law on Interior Affairs, *op. cit.*, Article 41, Article 41 and Law on Communal Police, *op. cit.*, Article 9

<b>POLICE OFFICER</b>	<b>POLICE BADGE LAYOUT</b>	<b>APPEARANCE OF EXTERNAL SIDE OF OFFICIAL IDENTIFICATION DOCUMENT</b>	<b>APPEARANCE OF INTERNAL SIDE OF OFFICIAL IDENTIFICATION DOCUMENT</b>
			

<b>COMMUNAL POLICE OFFICER</b>	<b>LAYOUT OF THE COVER OF OFFICIAL IDENTIFICATION</b>	<b>LEFT AND RIGHT SIDE OF OFFICIAL IDENTIFICATION</b>	
	<p>MUNICIPALITY OF PODGORICA</p>  <p>COMMUNAL POLICE OFFICIAL IDENTIFICATION</p>	<p>MUNICIPALITY _____ COMMUNAL POLICE</p> <p>Reg. number _____ Registration no. _____</p> <p>Serial no _____ (title of communal police officer)</p> <p>_____ S. P. _____ (date of issue) (signature)</p>	<p style="text-align: center;"><b>POWERS</b></p> <p>Communal police officer, that is, chief communal police authorized is that, in accordance with the Law on the communal police, alert the ears, issue an order, establish identity, deprive the offender of his liberty, stop and temporarily turn off the vehicle from traffic, perform an inspection of the case, temporarily confiscate items, apply video surveillance and use means of coercion – physical strength, hand spray with irritant in effect, official baton and binding means.<sup>[44]</sup></p>

[44] Rulebook on the appearance and content of the municipal police officer's official identity card, *Official Gazette of Montenegro*, no. 54/19.

## 7. For what reasons can the police ask to check an identity card?

A police officer can ask to see your identity card for a number of reasons, some of which are:

- when you enter a facility or premises that are secured;
- when you should be deprived of liberty, brought, detained or referred to competent authorities;
- if an inspection or a search is performed on you by order of the court (when there is a suspicion that a criminal offense or some misdemeanour has been committed) or if you find yourself in someone else's apartment, other premises or a means of transport in which an inspection or search is being carried out;
- if you are found in a place or facility where movement is temporarily restricted (prohibited);
- if you pose a danger to other persons or property or if there is a suspicion that you represent a danger to security and public order and peace;
- if you can provide information that is useful for carrying out police tasks, e.g. when information is collected from you about a committed criminal offense or misdemeanour;
- if you are helpless, and it is necessary to establish your identity in order to provide you with help;
- if your behaviour gives reason to suspect that you are a minor run away from home or educational institution or that you are lost;
- if it is necessary to establish your identity for security reasons, etc.<sup>45</sup>

## 8. Can the police fine me if I do not have an identity card with me?

If you are 18 years old, you are obliged to always carry an ID card or passport with you.<sup>46</sup>

If you do not bring it or refuse to show it when a police officer demands it, you can be fined in the amount of 60 to 180 €. <sup>47</sup> You will be issued a misdemeanour warrant and, as a rule, a minimum prescribed fine of 60 €. <sup>48</sup>

**Instructions regarding the misdemeanour procedure:** If you accept responsibility, sign the violation warrant in the appropriate place and pay the fine.<sup>49</sup>

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45 Law on Interior Affairs, *op. cit.*, Article 70

46 Law on Identity Card, *Official Gazette of Montenegro*, no. 12/2007, 73/2010, 28/2011, 50/2012, 10/2014 and 18/2019, Article 2

47 *Ibid*, Article 29

48 Law on Misdemeanour, *Official Gazette of Montenegro*, no. 1/2011, 6/2011, 39/2011, 32/2014, 43/2017 and 51/2017, Article 144

49 *Ibid*, Article 145, paragraph 4

If you do not accept responsibility, then put your signature on the order where it says that you demand a court decision and deliver the signed order with all available evidence to the court yourself within eight days.<sup>50</sup>

If you do not submit a request within the deadline for a court decision, it will be considered that you have accepted responsibility, and the misdemeanour order will become final and enforceable.<sup>51</sup>



## 9. Can I be taken to the police station if I do not have an identity card with me?

If you do not have an identity card with you, the police officer is authorized to take you to the police station for identity verification for the same reasons that the police officer can check your identity card (see under 7).<sup>52</sup>

Instead of an identity card, in order to establish your identity, you can show your driver's license, travel document or other public document with a photograph.<sup>53</sup> Your identity can also be verified based on the statement of another person whose identity has been previously established.<sup>54</sup> This means that, if you are in the company of someone who has an identity card with them, the police officer can check your identity with that person. The same thing applies when the communal police officer ask to verify your identity.<sup>55</sup>

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50 Ibid, Article 150

51 Law on Misdemeanours, *op. cit.*, Article 148

52 Law on Interior Affairs, *op. cit.*, Article 77

53 Ibid, Article 71, paragraph 1

54 Ibid, Article 71, paragraph 2

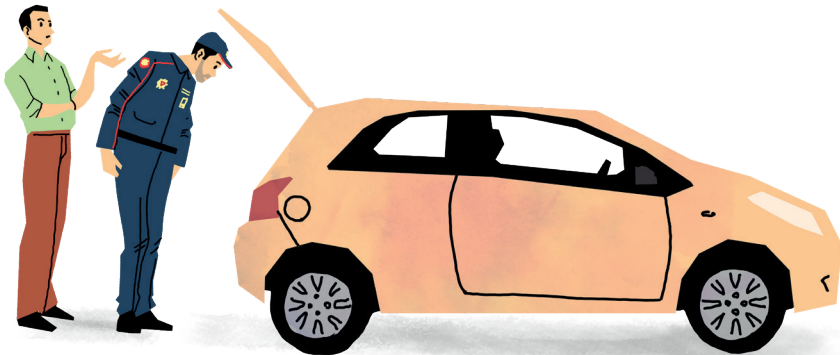
55 Rulebook on the closer way of performing tasks and applying the powers of the municipal police, *Official Gazette of Montenegro*, no. 054/19, Article 19

When your identity cannot be verified, or there are doubts about the authenticity of the document, the police officer can check your identity using data from the records of the Ministry, that is, the Police Directorate.<sup>56</sup>

## 10. When are the police authorized to inspect the contents of a bag or vehicle?

A police officer can inspect a means of transport, passengers or luggage visually, by touch, using a mirror, detector, service dog, and without a warrant or order from a superior and without a court order, when necessary, for purpose of: protection of safety of people or property; preventing commission of a criminal offense; preventing escape of a perpetrator of a criminal act; finding e.g. weapons or implements; protection of persons, facilities, space; performing border control, i.e. when, based on the available data, there is a suspicion that the means of transport of a certain type, i.e. with passengers or in luggage, there are wanted persons, objects or traces of a criminal offense or misdemeanour, etc.<sup>57</sup>

Inspection shall mean inspecting all open and closed areas of a vehicle or objects you are transporting, i.e. a police officer may ask you to open a trunk or bag in order to carry out both an external and an internal search.<sup>58</sup> If you refuse, a police officer may seek a court order to search or access it without one. Read below when the police have the right to search your bag or vehicle without a warrant..



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<sup>56</sup> Law on Interior Affairs, *op. cit.*, Article 72

<sup>57</sup> Law on Interior Affairs, *op. cit.*, Article 911

<sup>58</sup> *Ibid*, Article 91, paragraph 5



## 11. Can the police search a bag or vehicle without a court order?

If, during the inspection, a police officer discovers or suspects that a criminal offense has been committed which is prosecuted *ex officio* (murder, theft, robbery, unauthorized production, possession and distribution of narcotic drugs...), he can search your vehicle or bag without a court order.<sup>59</sup> This means that he will not only look at the vehicle from the outside and inside, but will also search it by taking its individual parts apart, that is, he will not only feel or look in the bag, but also put his hand in it, take out everything from it and examine them individually.<sup>60</sup> When conducting a search without a warrant, the police officer is obliged to immediately submit a report to the investigating judge. In the event that a mobile phone, computer, USB flash drive and similar devices are found in your bag or car, keep in mind that a court order is necessary to search them.<sup>61</sup>

In addition, without a court order, the police can search any person whom, when executing an order to bring or deprive them of liberty, they suspect of possessing a weapon or an instrument of attack, or that that person will hide or destroy items that should be confiscated and serve as evidence in criminal proceedings.<sup>62</sup>

## 12. What should I do if the police ask to enter my apartment?

The police can ask to enter your apartment when there is a suspicion that they will find a person accused of a criminal offense or traces or objects related to a criminal offense.<sup>63</sup> If they have a search warrant, they will give it to you and invite you to willingly hand over the wanted items or the suspect you are hiding.<sup>64</sup> You have the right to call a lawyer, so the search will be postponed until they arrives, for two hours at the most.<sup>65</sup> Read below, under 13, when the police have the right to enter your apartment without a warrant search order issued by the court.

The police will ask you to open locked rooms, furniture or other things, and if you refuse, they will force them open, trying to do as little damage as possible.<sup>66</sup> You will

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59 Criminal Procedure Code, *op. cit.*, Article 83, paragraph 6

60 Law on Border Control, *Official Gazette of Montenegro*, no. 72/2009, 20/2011, 40/2011, 39/2013, 17/2019, 146/21, 125/23, Article 32

61 Criminal Procedure Code, *op. cit.*, Article 75, paragraph 2 and Article 83, paragraph 6

62 *Ibid.*, Article 83

63 *Ibid.*, Article 75, paragraph 1

64 *Ibid.*, Article 80, paragraph 1

65 *Ibid.*

66 *Ibid.*, Article 81, paragraph 2

sign the record of the search, and if any items or documents were taken from you, you will receive an official note about it.<sup>67</sup>

### **13. Can the police search my apartment without a court order?**

The rule is that no one can enter your apartment against your will and conduct a search without a court decision and without the presence of two witnesses.<sup>68</sup> However, there are exceptions to this rule.

Even without a court order, the police can enter an apartment and conduct a search if it is necessary to react urgently to prevent commission of a criminal offense, catch a perpetrator of a criminal offense, save people or property (e.g. in the event of a fire, flood, threat of activating a bomb or other dangerous substances, when there is a person in the apartment who can be potentially dangerous for others, etc.), if the owner of the apartment requests it, if someone from the apartment calls for help, if it is necessary to execute a decision on custody, on bringing the accused or of another person (e.g. the defendant or a witness avoids a summons for trial), when the perpetrator of a criminal offense who is on the run needs to be detained or a warrant has been issued for him.<sup>69</sup> The police can search the apartment even without the presence of two witnesses, if this would expose the witnesses to risk from physical injuries or if it is not possible to ensure their presence immediately, and there is a risk of delay, and the specific reasons for this must be indicated in the minutes of the search.<sup>70</sup>

When the police enter the apartment without a warrant, they will issue you a certificate stating the reason for entering the apartment, and you can make comments that will be entered in the certificate of entry into the apartment, that is, in the record of the search of the apartment.<sup>71</sup>

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67 Criminal Procedure Code, *op. cit.*, Article 81, paragraphs 8 and 9

68 Constitution of Montenegro, *Official Gazette of Montenegro*, no. 1/2007 and 38/2013, Article 41

69 Criminal Procedure Code, *op. cit.*, Article 83, paragraph 1

70 *Ibid*, Article 83

71 *Ibid*, Article 83, paragraphs 2 and 3

## 14. When can the police arrest me?

Arrest is an informal term for a situation in which the police deprives someone of their liberty.<sup>72</sup>

The police can independently, or by order of the state prosecutor or the court, detain a person who is suspected of having committed a criminal offense<sup>73</sup> or a misdemeanour<sup>74</sup>, in the following cases:

- 1) if that person is hiding or his identity cannot be ascertained or there are circumstances that indicate a danger that he will flee;
- 2) if there are circumstances that indicate that they will destroy, alter, hide or falsify evidence or traces of a criminal offense or misdemeanour or obstruct the proceedings by influencing witnesses, accomplices or concealers;
- 3) if there are circumstances that indicate that he will repeat the criminal offense or misdemeanour, or that he will complete the attempted offense or commit the offense he threatens to commit;
- 4) if a person is suspected of a criminal offense for which a prison sentence of at least 10 years can be imposed, which is particularly serious due to the manner of execution or consequences, and it is estimated that deprivation of liberty is necessary for the smooth conduct of criminal proceedings;
- 5) if the duly summoned accused person avoids coming to the trial.

The right to physical freedom is a human right, which is protected by the Constitution of Montenegro, international treaties on human rights and laws. This means that the police may not arrest anyone arbitrarily, but only if there are objective circumstances that lead to reasonable suspicion that the person has committed a criminal offense or a misdemeanour, as well as at least some of the above-mentioned circumstances (1–5) that justify deprivation of liberty.<sup>75</sup>

Even the shortest unjustified deprivation of liberty is a violation of rights,<sup>76</sup> which entails the responsibility of a state authority for compensation for damages due to the violation of rights of a person.<sup>77</sup>

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72 Criminal Procedure Code, *op. cit.*, Article 264

73 *Ibid*, Article 264, Article 175

74 Law on Misdemeanour, *Official Gazette of Montenegro*, no. 1/2011, 6/2011 – corr., 39/2011, 32/2014, 43/2017 – Decision of the Constitutional Court and 51/2017, Article 166

75 See, for example, judgment of the European Court of Human Rights in case *Asanović vs. Montenegro*, no. 52415/18, 2021, paragraph 97

76 The European Court of Human Rights found that even just 45 minutes of unjustified detention in the police station constituted a violation of the right to freedom (*judgment Shimovolos vs. Russia*, no. 30194/09, paragraph 50, 2011), that is, in another case, about an hour and a half of detention in a police vehicle (*judgment Zelčs vs. Latvia*, no 65367/16, paragraphs 40–41).

77 Law on Contracts and Torts, *op. cit.*, Article 148, 207, 210a

## 15. What are my rights when arrested?



The police are obliged to inform the person they are depriving of their liberty about:

- a) the reasons for deprivation of liberty in their language or in another language they understand;<sup>78</sup>
- b) the right not to declare anything or answer questions;<sup>79</sup>
- c) the right to be immediately notified of the deprivation of liberty to a person of their choice (as well as the diplomatic-consular representative of the country of which they are citizen, i.e. a representative of an international organization, e.g. UN, if it is a stateless person or a refugee);<sup>80</sup>
- d) on the right to a defence (lawyer) of their choice;<sup>81</sup>
- e) on the right to a medical examination in the police by a medical doctor of their choice,<sup>82</sup> and when a person is brought to the state prosecutor, the examination can also be requested by their defence attorney, family member or common-law partner.<sup>83</sup>

If the person who is being deprived of liberty independently took care of a child or another family member who needs to be taken care of, the police will inform the competent social welfare authority about the deprivation of liberty.<sup>84</sup>

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78 Law on Criminal Procedure, Article 5, paragraph 1

79 Ibid, Article 5, paragraph 1, Article 261, paragraph 2

80 Ibid, Article 5 and Article 180

81 Ibid, Article 5, paragraph 1, Article 261, paragraph 3

82 Law on Interior *op. cit.*, Article 79, paragraph 1

83 Criminal Procedure Code, *op. cit.*, Article 268, paragraph 6

84 Ibid, Article 5, paragraph 1, Article 180, paragraph 2

The police must immediately notify the state prosecutor of the deprivation of liberty, make an official note containing the time and place of deprivation of liberty, and escort the person deprived of liberty to the state prosecutor *without delay*, and within 24 hours at the latest.<sup>85</sup> If this exceeds the deadline, the police are obliged to release the arrested person immediately.<sup>86</sup> The police will also take a person arrested for a misdemeanour to the misdemeanour court immediately, and no later than 12 hours.<sup>87</sup>

As compliance with these deadlines is mandatory, it is very important to precisely determine the time of deprivation of liberty. No separate appeal is foreseen for the content of the police note in relation to that circumstance, but it can still be disputed before the court with a *habeas corpus* appeal<sup>88</sup> or a lawsuit for unjustified deprivation of liberty.

The police officer warns the arrested person that he will use a firearm if they try to escape or attack him.<sup>89</sup>

When a person is deprived of their liberty, it means that they are suspected or already accused of having committed a criminal offense or a misdemeanour.<sup>90</sup> As a suspect or accused, they are interrogated by the state prosecutor, and they can also be interrogated by the police, when authorized by the state prosecutor. Any statement made in this capacity is considered evidence in criminal proceedings, on which the decision on criminal liability often depends. That is why it is recommended that a lawyer is always present at such hearings.

If the police interrogates a person deprived of liberty, a defence attorney (lawyer) must be present at that hearing.<sup>91</sup> However, a citizen is more often called to the police

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85 Criminal Procedure Code, *op. cit.*, Article 264, paragraph 1

86 *Ibid*, Article 264, paragraph 3

87 Law on Misdemeanours, *op. cit.*, Article 166

88 Anyone deprived of liberty has the right to this appeal based on the International Covenant on Civil and Political Rights, Article 9, paragraph 4 and the European Convention on Human Rights, Article 5, paragraph 4

89 Law on Interior Affairs, *op. cit.*, Article 94 and 113

90 A **suspect** is a person against whom the competent state authority has taken some action due to the existence of grounds for suspicion that they have committed a criminal offense, and in relation to whom an order to conduct an investigation has not yet been issued, nor has an immediate indictment been filed; the **defendant** is a person against whom an order to conduct an investigation has been made or against whom an indictment, indictment proposal or private lawsuit has been brought or a person against whom a special procedure has been initiated for the application of a security measure, mandatory psychiatric treatment and custody in a health facility, and mandatory psychiatric treatment at liberty; the term defendant can be used in criminal proceedings as a general name for the defendant, the accused and the convicted (Criminal Procedure Code, *op. cit.*, Article 22). The defendant is also the person against whom misdemeanour proceedings are being conducted (Law on Misdemeanour, *op. cit.*, Article 112, paragraph 1).

91 Criminal Procedure Code, *op. cit.*, Article 69, paragraph 5 and Article 261, paragraph 5

for an information interview (where the presence of a lawyer is not mandatory) in connection with an event, and during the interview the police assesses that he should be a suspect. That is why it is important to know that *you can come to the police* for an information gathering conversation *with a lawyer* and that his presence at the information interview must be enabled.<sup>92</sup> The presence of a lawyer reduces the risk of forcing a statement and contributes to the feeling of security.

The moment when police officers during the information gathering conversation assess that the person being interviewed could be a suspect, they are obliged to immediately inform the state prosecutor, who, if the interview is necessary before starting the investigation, will ask the police to bring her to the prosecutor's office.<sup>93</sup>



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92 Criminal Procedure Code, *op. cit.*, Article 259, paragraph 1 and 4

93 *Ibid*, Article 261, paragraph 1

When you go to the state prosecutor, and you are deprived of your liberty, he will inform you that you have the right to a defence attorney (lawyer). You can call a defence attorney yourself or establish contact with him through a family member or another person whose identity must be disclosed to the prosecutor, and if necessary, the prosecutor can help you engage him.<sup>94</sup>

Should you decide not to hire a defence attorney within 12 hours of being notified that you can do so, or if you state that you do not need one (and this is not a mandatory defence), the prosecutor will conduct hearing without a defence attorney, at the latest in the following 12 hours.<sup>95</sup>

If the defence at the hearing with the state prosecutor is mandatory (for persons with disabilities whose disability makes it difficult to successfully defend themselves and for persons who are being prosecuted for a criminal offense for which the longest prison sentence can be imposed<sup>96</sup>), and you do not want to hire a lawyer, he will be assigned to you *ex officio* according to the alphabetical order of surnames from the list of the Bar Association.<sup>97</sup>

Minutes are drawn up on the hearing, on which comments can be made.<sup>98</sup>

After the hearing, the prosecutor will release you, unless he assesses that there are reasons for detention<sup>99</sup> – danger of destruction of evidence, escape, repetition of the criminal offense or if detention is necessary for the unimpeded conduct of the proceedings, and it is a criminal offense for which can impose a prison sentence of ten years or a heavier sentence, etc.<sup>100</sup> – when he can make a decision on detention for a maximum of 72 hours from the time of deprivation of liberty.<sup>101</sup> Every detained person must have a defence attorney after the decision on detention is made.<sup>102</sup> Against a decision on detention there is a right to appeal. The investigative judge shall decide on the appeal urgently, within four hours.<sup>103</sup>

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94 Ibid, Article 266, paragraph 1

95 Criminal Procedure Code, *op. cit.*, Article 266, paragraph 2

96 Ibid, Article 69, paragraph 1

97 Ibid, Article 266, paragraph 3

98 Ibid, Article 261, paragraph 8

99 Ibid, Article 266, paragraph 4

100 Ibid, Article 175, paragraph 1

101 Ibid, Article 267

102 Ibid, Article 69, paragraph 6

103 Ibid, Article 267

## 16. Can the police restrict my movement without arresting me?

The police have the right to temporarily restrict movement in an area – for a maximum of 12 hours<sup>104</sup> – or access to or exit from a facility – for a maximum of six hours<sup>105</sup> – when:

- eliminating the danger to people or property (e.g. in the case of building blasting, rock falls, landslides, reports of bomb planting, etc.);
- preventing the commission of a criminal offense or misdemeanour;<sup>106</sup>
- trying to find or apprehend the perpetrator of a criminal offense or misdemeanour;<sup>107</sup>
- searching for evidence that a criminal offense has been committed for which the offense is prosecuted *ex officio* – such as theft, robbery, violent behaviour, etc. – or a misdemeanour for which a prison sentence is prescribed<sup>108</sup> (e.g. insulting and insolent behaviour, inciting or provoking a fight, using a firearm without a permit in a public place, etc.);<sup>109</sup>
- providing close protection of a protected person, or in a protected space;<sup>110</sup>
- blocking streets, carrying out raids, ambushes, etc. for the needs of police operations;<sup>111</sup>
- it is necessary to establish someone's identity or to carry out border control.<sup>112</sup>

A police officer can detain a person found at the scene of a criminal offense until the arrival of the state prosecutor, if they assess that the person could provide information important for the criminal proceedings.<sup>113</sup> This detention cannot last more than six hours.<sup>114</sup>

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104 Law on Interior Affairs, *op. cit.*, Article 80, paragraph 2

105 *Ibid.*, Article 80, paragraph 3

106 *Ibid.*, Article 80, paragraph 1

107 *Ibid.*

108 *Ibid.*

109 Law on Public Peace and Order, *Official Gazette of Montenegro*, no. 64/11 and 56/20, Article 7, Article 10 and Article 13

110 Law on Interior Affairs, *op. cit.*, Article 80

111 *Ibid.*, Article 81

112 Law on Border Control, *op. cit.*, Article 31

113 Criminal Procedure Code, *op. cit.*, Article 258, paragraph 1

114 *Ibid.*



## **17. If the police call me for an information gathering conversation, do I have to go with them immediately?**

You can be forcibly brought to an information gathering conversation only if you did not respond to the summons, and only if you were warned about it in the summons.<sup>115</sup> The summons specifies the day and time when you should come to the police premises in order for them to obtain necessary information. However, instead, sometimes it may be written that you must respond to the summons "immediately". The position of the European Court of Human Rights in the case of *Asanović v. Montenegro* was that such an expression should not be used, because it denies you the possibility to decide for yourself about the received summons and agree to it of your own free will, contrary to the Criminal Procedure Code and the right to freedom and security.<sup>116</sup>

## **18. Do I have to give information immediately when the police call me for an information gathering conversation?**

The information gathering conversation can last as long as it is necessary to obtain necessary information from a citizen, and a maximum of six hours.<sup>117</sup> If you do not want to provide information or do not have one, this deadline does not apply to you and you must be immediately released from the police premises.<sup>118</sup>

During the interview, the police may not interrogate you in the capacity of the accused, a witness or an expert witness.<sup>119</sup> However, if a well-founded suspicion arises about you during the interview, the police may also deprive you of your liberty. The police are obliged to immediately inform the state prosecutor about this, make an official note that will contain the exact time and place of deprivation of liberty, and escort you to the prosecutor without delay, and within 24 hours at the latest (for more details see the answer under 14).

It is important to know that you have the right to come to the premises of the police with a lawyer and the police are obliged to allow him to attend the interview when obtaining information from you<sup>120</sup>

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115 Criminal Procedure Code, *op. cit.*, Article 259, paragraph 1

116 *Asanović vs. Montenegro* (application no. 52415/18)

117 Criminal Procedure Code, *op. cit.*, Article 259, paragraph 2

118 *Ibid*, Article 259, paragraph 3

119 *Ibid*, Article 259, paragraph 7

120 *Ibid*, Article 259, paragraph 4

## 19. Do the police have to give a reason for calling me for an information gathering conversation?

In the summons, the police must indicate the reason for inviting you for an information gathering conversation.<sup>121</sup> As a rule, it is about obtaining information about the committed criminal act or a perpetrator. Keep in mind that, if you have already been interviewed on the same occasion, you can be summoned to another interview only with the consent of the state prosecutor.<sup>122</sup>

## 20. When a public protest must be registered?

When planning a protest of more than 20 people it must be registered.<sup>123</sup> If you invite media representatives to the assembly, they should be included in the number of persons planned to take part in the event.

The written application for the assembly shall be submitted no later than five days before the assembly.<sup>124</sup>



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121 Criminal Procedure Code, *op. cit.*, Article 259, paragraph 1

122 *Ibid*, Article 259, paragraph 6

123 Law on Public Assembly and Public Events, *Official Gazette of Montenegro*, no. 52/2016, Article 2

124 *Ibid*, Article 10

A request is submitted to the police in the place where you plan to hold the assembly.<sup>125</sup> It should contain information about the organizer, space, date and time of the assembly, the program and goal of the assembly, as well as an estimate of the number of participants.<sup>126</sup>

Keep in mind that only the right to peaceful assembly is protected, that is, to assemble without the use of violence.<sup>127</sup> When there is a danger that the assembly will not be peaceful, the police can film it.<sup>128</sup> They are obliged to inform the public about this intention no later than 24 hours before the start of filming.<sup>129</sup>

## 21. Do we have the right to spontaneous assembly?

Yes, you do. A spontaneous assembly consists of a group of more than 20 people, who spontaneously react to an event that could not be foreseen, so it is accepted that it could not be registered in time, in accordance with the law. According to the standards of the European Court of Human Rights, the state is, in principle, obliged to facilitate spontaneous assemblies, i.e. not to interrupt them at least until the assembled persons have expressed the message for which they assembled, provided that the assembly is peaceful.<sup>130</sup> According to the Law on Public Assemblies, a police officer is authorized to point out to the participants of a spontaneous assembly that the assembly is not organized in accordance with the law and to warn that they are obliged to respect the law.<sup>131</sup> Bearing in mind European standards, the police should be tolerant towards spontaneous assemblies.

## 22. What if the police find me driving without a driver's license?

A police officer will temporarily exclude you from traffic:

- if you do not have a driver's license with you;<sup>132</sup>
- if you operate a certain category of vehicle and do not have a driver's license with

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125 Security Department (SD) Podgorica, SD Danilovgrad, SD Cetinje, SD Nikšić, SD Pljevlja, SD Tuzi, SD Bijelo Polje, SD Berane, SD Mojkovac, SD Kolašin, SD Plav, SD Rožaje, SD Bar, SD Ulcinj, SD Budva, SD Herceg Novi, SD Kotor, SD Tivat, Police Station (PS) Andrijevića, PS Petnjica, PS Gusinje, PS Žabljak, PS Šavnik, PS Plužine

126 Law on Public Assembly and Public Events, *op. cit.*, Article 11

127 See the manual "Freedom of peaceful assembly in the practice of the European Court of Human Rights", Human Rights Action and Alternative Institute, Podgorica, April 2020.

<https://www.hraction.org/2020/06/23/sloboda-mirnog-okupljanja-u-praksi-evropskog-suda-za-ljudska-prava/>

128 Law on Interior Affairs, *op. cit.*, Article 93

129 Ibid.

130 *Oya Ataman vs. Turske*, application no. 74552/01, dated 5 February 2006

131 Law on Public Assembly and Public Events, *op. cit.*, Article 13

132 Law on Road Traffic Safety, *op. cit.*, Article 33/2012, 58/2014, 14/2017, 66/2019, Article 290, paragraph 1, point 6

you that gives you the right to operate that vehicle;<sup>133</sup>

- if your driver's license has expired;<sup>134</sup>
- if you have a driver's license with you that is damaged, so it cannot be established from its contents whether you have the right to operate that vehicle.<sup>135</sup>

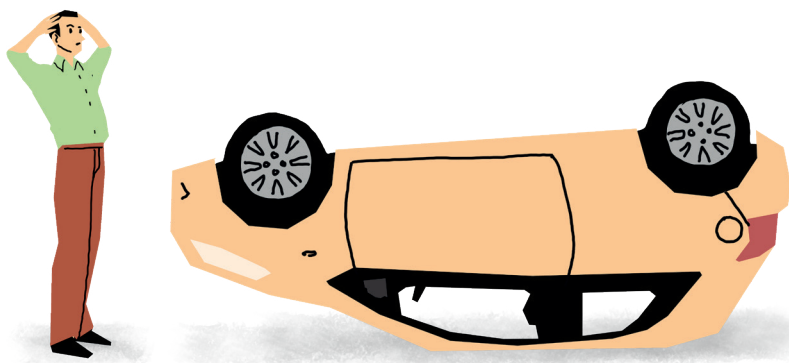
You will be fined for a misdemeanour with a fine of 60 to 200 € if you do not have a valid driver's license with you or you do not show it to a police officer.<sup>136</sup> You will immediately be issued a misdemeanour order which will impose a minimum prescribed fine of 60 €<sup>137</sup> (more details see under 3).

If you drive without passing a driving test, you will be fined between 300 and 600 €. <sup>138</sup>

## 23. What should I do in case of an accident?

"A traffic accident is an event that occurs on the road or started on the road, in which at least one moving vehicle was involved and in which one or more persons were injured or killed or died within 30 days as a result of that traffic accident, or material damage has occurred."<sup>139</sup>

If you are involved in an accident or you just come across the scene of a traffic accident in which there are injured people, you are obliged to immediately notify the police and the emergency medical service to provide assistance to the injured in accordance



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133 Law on the Road Traffic Safety, *op. cit.*, Article 290, paragraph 1, point 6

134 *Ibid.*

135 *Ibid.*

136 *Ibid.*, Article 323, paragraph 1, point 28

137 Law on Misdemeanours, *op. cit.*, Article 144

138 Law on the Road Traffic Safety, *op. cit.*, Article 319, paragraph 5

139 *Ibid.*, Article 7

with your abilities and, if necessary, to transport them to the nearest health facility.<sup>140</sup>

If you are a participant in a traffic accident *in which only material damage occurred*, you are obliged to:

- remove obstacles on the road, and if you fail to do so, then you should warn other drivers about them;
- remove your vehicle and put it aside if it obstructs the flow of traffic;
- warn everyone to get off the road so as not to disrupt traffic;
- leave information about yourself and your vehicle to the driver of the damaged vehicle, i.e. to the police. If the driver is absent (for example, it is a parked vehicle), you should inform the police about the accident and provide your personal information and information about the damaged vehicle;
- if the police officer does not perform traffic investigation, fill in the European traffic accident report that you can obtain by the insurance company.<sup>141</sup>

The police are obliged to go to the scene of such a traffic accident and conduct an investigation if one of its participants or a person who suffered material damage requests it.<sup>142</sup> If you have requested an investigation, you will bear costs in the amount of 50€. <sup>143</sup> If a final decision has established that you are not responsible for the accident, but another participant, you have the right to ask them for reimbursement of those costs.<sup>144</sup>

The police officer will subject you to an examination using a breathalyser, drug test, etc.<sup>145</sup> If the presence of prohibited substances is determined in this way, and you deny it or refuse to sign the record of the alcohol test or other type of examination, the police officer will order to have your blood or urine taken for analysis.<sup>146</sup>

If you are a participant in an accident in which someone is injured or killed or there is more material damage, then your obligations are also greater: stop the vehicle, turn off the engine, turn on all four turn signals, place the safety triangle, notify the police and emergency services, provide first aid to the injured in accordance with your knowledge and capabilities, warn everyone to take cover so that the traces of the accident are not destroyed or tampered with, wait for the police and stay there until the end of the investigation.<sup>147</sup>

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140 Law in Road Traffic Safety, *op. cit.*, Article 165

141 *Ibid.*, Article 170. (See also the criminal offense of Failure to provide assistance referred to in Article 157 of the Criminal Code of Montenegro).

142 *Ibid.*, Article 169, paragraph 1

143 *Ibid.*, Article 169, paragraph 2

144 Article 169, paragraph 3

145 *Ibid.*, Article 172, paragraph 3

146 *Ibid.*, Article 172, paragraph 4

147 *Ibid.*, Article 166

Upon arrival, the police will conduct an investigation and draw up a report.<sup>148</sup> The police officer will order that all participants in the accident, not just the drivers, shall be tested for blood and urine.<sup>149</sup> A person who refuses to give blood and/or urine for testing can be taken, by force, by the police officer to a health facility, where they are obliged to undergo such sampling, unless it would harm their health.<sup>150</sup> In this case, medical procedures will be performed with a previously obtained court order.<sup>151</sup> A court order is not always necessary, but only when you object to provide samples for analysis. The police will supervise the taking of the sample. In the case when a full examination cannot be performed due to the health condition, only possible analysis will be done.<sup>152</sup> The health institution gives an opinion and findings, and hands the blood and urine to the police officer who takes it to the nearest laboratory for the analysis.<sup>153</sup> The laboratory provides a written report within three days.<sup>154</sup> The person in whom the presence of alcohol is found shall cover the costs of the testing and analysis.<sup>155</sup>

## 24. Am I allowed to refuse alcohol and drug test?

No. As a traffic participant, you are obliged to act without delay on the order of the police officer and allow him to be tested for alcohol, drugs and other psychoactive substances.<sup>156</sup> Otherwise, the police officer will exclude you from traffic, deprive you of your liberty<sup>157</sup> and you may be fined for a misdemeanour, a prison sentence of 15 to 60 days, and in addition to the sentence, you will also be given three penalty points and a protective measure prohibiting driving a motor vehicle for four to six months will be imposed.<sup>158</sup>

A driver under the influence of narcotic drugs, other psychoactive substances or alcohol may not operate a vehicle in road traffic. The same applies to those who are so tired or sick or in such a psychophysical state that they are incapable of operating a vehicle safely.<sup>159</sup>

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148 Law in Road Traffic Safety, *op. cit.*, Article 168

149 Ibid, Article 172

150 Criminal Procedure Code, *op. cit.*, Article 154

151 Ibid.

152 Law in Road Traffic Safety, *op. cit.*, Article 292, paragraph 2

153 Ibid, Article 292, paragraph 3

154 Ibid, Article 292, paragraph 4

155 Ibid, Article 291, paragraph 5

156 Ibid, Article 291

157 Ibid, Article 296, paragraph 1, point 3

158 Ibid, Article 317a, paragraph 1, point 7 and paragraphs 2 and 4

159 Ibid, Article 182

Drivers under the age of 24 and with less than 12 months of driving experience may not operate a motor vehicle if they have any amount of alcohol in their system.<sup>160</sup>

Prescribed penalties for driving under the influence of alcohol:

If you have:

- 0.1 to 0.3 g/kg of alcohol in the blood (about 2 dcl of beer or 1 dcl of wine), and you are a driver under the age of 24 or a novice driver (you have up to 12 months of driving experience), you will be fined from 60 to 200 €,<sup>161</sup> and if you are not a younger driver or a novice driver, this amount of alcohol in the blood is allowed.<sup>162</sup>
- from 0.3 to 0.5 g/kg (about 3.5 dcl of beer or 1.5 dcl of wine or 0.45 dcl of spirits) you will be fined from 80 to 250 €,<sup>163</sup>
- 0.5 to 1 g/kg (about 6 dcl of beer or 2.5 dcl of wine or 0.8 dcl of spirits), you will be fined from 150 to 400 € and two penalty points with the protective measure of banning operating a motor vehicle in duration of 60 days. If, in addition to the above, you also caused an immediate danger to another road user or caused a traffic accident, you will be given an additional two penalty points and a protective measure prohibiting operating a motor vehicle for a period of three months;<sup>164</sup>
- from 1 to 2 g/kg (about 1.5 l of beer or 0.8 l of wine or 2.5 dcl of spirits), i.e. if you are unfit to operate a vehicle due to the effects of alcohol, which was determined by a professional examination, you will be fined from 300 to 1,000 € or a prison sentence of up to 60 days and you will also be given three penalty points, as well as a ban on operating a motor vehicle for three months<sup>165</sup>. If you have caused an immediate danger to another traffic participant or caused a traffic accident with a misdemeanour, you will be given two more penalty points, and you will be banned from operating a motor vehicle for three to six months;<sup>166</sup>
- 2 or more g/kg (about 2 l of wine or 4 to 5 dcl of spirits), you will be punished with a prison sentence of 15 to 60 days and with three penalty points, with a protective measure of ban to operate a motor vehicle for four to six months.<sup>167</sup> If under these circumstances you caused a traffic accident or caused an immediate danger to other road users, you will be given two more penalty points and a ban on operating a motor vehicle for six months.<sup>168</sup>

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160 Ibid, Article 7, paragraph 1, point 98a and 98b, Article 182a

161 Law on road traffic safety, *op. cit.*, Article 323, paragraph 1, point 1

162 Ibid, Article 182, paragraph 4

163 Ibid, Article 322, paragraph 1, point 35

164 Ibid, Article 319, paragraph 1, point 19 and paragraphs 3, 4 and 6

165 Ibid, Article 318, paragraph 1, point 14 and paragraphs 2 and 5

166 Ibid, Article 318, paragraphs 4 and 6

167 Ibid, Article 317a, paragraph 1, point 4 and paragraphs 2 and 4

168 168 Ibid. Article 317a

The prescribed punishment and other consequences for driving under the influence of drugs and other psychoactive substances are the same as those described in the previous paragraph for the case of driving under the influence of alcohol in a concentration of 2 g/kg or more.

## 25. Am I allowed to refuse a polygraph testing?

Yes, you are. Polygraph testing is performed only with voluntary consent.<sup>169</sup> The polygraph is an instrument for trying to discover the truth, more precisely stress, created at the beginning of the 20th century (1921) based on the research of J. A. Larson, a medical student at the University of California, who installed various instruments for measuring breathing, blood pressure and pulse in one portable device that registered all these physiological processes simultaneously. The instrument commonly used for polygraph examinations consists of a "recorder" that assesses three fundamental indicators: heart rate, blood pressure and skin conductivity (electro dermal activity).<sup>170</sup>

You have the right to be informed with the operation of the polygraph test device.<sup>171</sup> If you decide to undergo it, you have to give written consent. For minors, consent is given by the parent, i.e. legal representative, and if the legal representative is a possible perpetrator of a crime, the competent institution for social and child protection will give consent.<sup>172</sup> If you withdraw consent, the testing will be terminated.<sup>173</sup> The test result cannot be used as evidence in criminal proceedings. The person performing the polygraph examination is obliged to warn you that you must not be subjected to such an examination:

- if you are under the influence of alcohol, narcotic drugs or sedatives;
- if you have serious heart disease or respiratory problems;
- if you are stressed;
- if you show signs of mental illness (e.g. schizophrenia, paranoia...) or temporary mental disorder (exhaustion, drowsiness, pathological conditions caused by strong emotions or intoxication...);
- if you feel intense physical pain;
- if you are pregnant or have recently given birth;
- if you are under 14 years of age.<sup>174</sup>

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169 Law on Internal Affairs, *op. cit.*, Article 119

170 "Social and technical research: Polygraph – polygraph testing", Professional paper, Tomica Starčević (Ministry of the Interior of Croatia) and M.Sc. Sc. Ines Jambreč Petrak (doctoral student of postgraduate doctoral studies in Criminal Law Sciences, Faculty of Law in Zagreb), p. 29

171 Law on Internal Affairs, *op. cit.*, Article 119

172 *Ibid.*

173 *Ibid.*

174 *Ibid.*



## 26. Am I allowed to refuse DNA testing and fingerprinting?

You cannot refuse DNA testing (body examination – saliva sampling) when it is necessary to determine whether there are traces of a criminal offense or its consequences on your body,<sup>175</sup> as well as when you are a suspect or defendant, and it is necessary to determine facts important for criminal proceedings.<sup>176</sup> While you can refuse to take blood if it could harm your health (e.g. you have cardiovascular disease, cancer, diabetes, glaucoma, anaemia...),<sup>177</sup> you cannot refuse to take a saliva sample because it is not considered dangerous to health in any case.<sup>178</sup> The same thing is with taking fingerprints. They can be taken without your consent during the deprivation of liberty and when there is a probability that they can be found on items that are excluded during the investigation for a criminal offense for which it is prosecuted *ex officio*, such as, for example, murder, or theft.

## 27. Who do I report a threat received online to?

If it is a text with threatening content that you received via mobile phone (*Viber*, *Whats App*, *Facebook messenger*, etc.) or via e-mail, or in the form of a comment on an Internet forum or social network, you can report to the police or the state prosecutor's office, verbally or in writing.<sup>179</sup>

The police are obliged to receive your criminal report and immediately deliver it to the competent state prosecutor.<sup>180</sup> The state prosecutor will investigate whether an offense has been committed that is prosecuted *ex officio*, e.g. jeopardizing security by threatening that someone will attack you or a person close to you.<sup>181</sup> The decision on criminal charges should be made within one month, exceptionally two months.<sup>182</sup>

If the state prosecutor determines that it is a misdemeanour, e.g. insults or insolent behaviour, they will submit a request to initiate misdemeanour proceedings to the competent misdemeanour court.<sup>183</sup> This will be done immediately upon learning of the misdemeanour and the perpetrator, and within 60 days at the latest.<sup>184</sup>

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175 Criminal Procedure Code, *op. cit.*, Article 154

176 *Ibid.*

177 *Ibid.*, Article 154, paragraph 2

178 *Ibid.*, Article 154, paragraph 3

179 *Ibid.*, Article 204

180 Law on Interior Affairs, *op. cit.*, Article 26 Criminal Procedure Code, *op. cit.*, Article 256, paragraph 3

181 Criminal Code, *op. cit.*, Article 168

182 Criminal Procedure Code, *op. cit.*, Article 256a, paragraphs 3 and 4

183 Public Order and Peace, *op. cit.*, Article 7

184 Law on Misdemeanours, *op. cit.*, Article 153



If the perpetrator is not known, within the Police Administration, the High-tech Crime Suppression Group shall reveal identity of the perpetrator.<sup>185</sup>

## 28. Who should I report a crime to?

A criminal report is submitted to the competent state prosecutor.<sup>186</sup> However, if you also submit it to the police, a court or a non-competent prosecutor's office, they are obliged to receive it and immediately deliver it to the state prosecutor's office, which is competent for prosecuting the criminal offense you are reporting.<sup>187</sup>

If you report a criminal offense in person to the state prosecutor's office, you will be received by the prosecutor on duty, who will make a record of the report.<sup>188</sup> You can write a criminal report, and submit it in handwritten or typed form. You can submit it in person or send it by e-mail,<sup>189</sup> handwritten or typed form. You can

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185 Rulebook on internal organization and systematization of the Ministry of Interior dated 25 February 2022 and the Rulebook on Amendments to the Rulebook on Internal Organization and Systematization of the Ministry of Interior dated 2 February 2023

186 Criminal Procedure Code, *op. cit.*, Article 256, paragraph 1

187 *Ibid*, Article 256, paragraph 3; Rulebook on the internal operations of the State Prosecutor's Office, Article 85. *Official Gazette of Montenegro*, no. 06/16, 29/17 and 68/22.

188 See more about the method of filing a criminal complaint in the video presentation of the State Prosecutor's Office of Montenegro: <https://www.youtube.com/watch?v=aiZkSANhmok>

189 E-mail addresses of state prosecution offices in Montenegro: <https://www.tuzilastvo.me/drtz/sadrzaj/oWwC>

submit it in person or send it by e-mail, fax or post, and you can also record it in audio or audio-visual format. You can also report a criminal offense to the police by phone – by calling the number 122 – and then an official report will be made.

You can do this at any time, because the police work 24 hours a day.<sup>190</sup> If you submit the report in person, a record of the receipt of the criminal report will be drawn up in your presence, which you can read or request that it be read to you. You can make remarks on the text of that report, which the police officer is obliged to enter, before you sign the report.

Keep in mind that false reporting is a criminal offense, punishable by a prison sentence of three months to three years (if you report another person), and a fine or imprisonment of up to one year if you report yourself.<sup>191</sup> This means that you can be criminally liable if you report that you or another person committed a criminal offense, and you know that it was not the case. A fine or a prison sentence of up to one year will also be imposed on anyone who only reports that a criminal offense has been committed, but knows that it has not been committed.<sup>192</sup>



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190 Law on Interior Affairs, *op. cit.*, Article 181

191 Criminal Code, *op. cit.*, Article 388

192 *Ibid.*

## 29. Can I report a crime anonymously?

The criminal report can be anonymous or under a pseudonym. The form of the criminal report is not prescribed, because its content is more important. That is why it is important to provide as much information as possible about the event you are reporting, with evidence to confirm your statements. If you have submitted an application anonymously, then you will not be informed about its outcome and the rights you would have in the further procedure, but this does not mean that the application will not be considered.<sup>193</sup>



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<sup>193</sup> See the video on the website of the State Prosecutor's Office of Montenegro: : <https://www.youtube.com/watch?v=aiZkSANhmok>

## 30. Can the police take away my mobile phone or other belongings, and if they do take it, when are they obliged to return it to me?

During the search of an apartment, belongings and persons, police officers can confiscate movable property (including computers and similar devices for automatic data processing, e.g. USB, disk drive, etc.), for which they will issue you a certificate of temporary confiscation of items.<sup>194</sup> The police can also confiscate your mobile phone and other personal belongings, for which you must sign a certificate of confiscation or a record<sup>195</sup> (see under 11, 12 and 13). The police can confiscate items in criminal proceedings based on a court decision, which you have the right to appeal to a higher court.<sup>196</sup> Temporarily confiscated items (e.g. mobile phone) will be returned to you immediately if no criminal or misdemeanour proceedings are initiated, or if the police within does not file a criminal complaint for 3 months.<sup>197</sup> If the items are not returned to you when the reasons for which they were taken from you cease to exist, you have the right to file a complaint with the police, i.e. file a lawsuit in court for the return of the items.<sup>198</sup>



194 Criminal Procedure Code, *op. cit.*, Article 81, paragraph 9, Article 82, paragraph 1, Article 85, paragraph 10

195 Law on Interior Affairs, *op. cit.*, Article 88

196 Criminal Procedure Code, *op. cit.*, Article 85 paragraphs 1 and 9

197 *Ibid.*, Article 263

198 Law on Interior Affairs, *op. cit.*, Article 32; Law on Property Legal Relations, *Official Gazette of Montenegro*, no. 19/2009, Article 112, 12319/2009, čl. 112, 123

## 31. When are the police obliged to help me?

The basic standard of police behaviour is the duty to serve people in order to ensure respect for human rights and protection of legality.<sup>199</sup> This includes providing assistance to vulnerable people and others who need it.<sup>200</sup> Even when not on duty, a police officer is obliged to comply with standards and provide assistance to anyone who find themselves in danger, to prevent the commission of criminal acts, etc.<sup>201</sup>

Police officers shall, for example:

- help a participant in traffic (e.g. when their vehicle stops on the road) for the sake of greater traffic safety and its impeded operation;
- ensure the provision of medical assistance when there is a need for it (e.g. injured people are found at the scene of a crime),<sup>202</sup>
- receive the found item from the finder (e.g. personal documents, money or other valuables) and take all necessary measures to preserve that item, to find the person who lost it and to return the item to them.<sup>203</sup>

Police officers shall be obliged to undertake necessary actions in order to protect people's lives, even when their lives are threatened in the performance of these police duties.<sup>204</sup>



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199 Law on Interior Affairs, *op. cit.*, Article 20, paragraph 2

200 Ibid. See Article 18 (Police duties) and 19 (Principles and goal of performing police duties)

201 Ibid. Article 22. See Police Ethics Code, *Official Gazette of Montenegro*, no. 87/21, Article 7

202 Ibid, Article 122

203 Ibid, Article 27

204 Ibid, Article 23

## 32. Can the police punish me if I disturb or insult a police officer while performing his official duty?

If you obstruct, belittle, attack, or otherwise try to prevent police officers from lawfully performing their official duties, you are subject to misdemeanour or criminal liability.

As a *misdemeanour*, you can be fined from 500 to 1,500 € or imprisoned for up to 60 days for obstructing or belittling an official.<sup>205</sup> The prison sentence is the same if you commit this offense as a member of a group, while the fine ranges from 500 to 2,000 €. <sup>206</sup>

You can be held *criminally* liable if you prevent or attempt to prevent a police officer from performing an official act by force or by threatening to use force directly.<sup>207</sup> The same applies if you force or attempt to force him to perform an action. In these cases, you can be sentenced to imprisonment from six months to five years.<sup>208</sup>

You will also be held criminally liable if you attack or attempt to attack a police officer performing official duty or if you threaten him with an attack.<sup>209</sup> The penalty for such a case is six months to five years in prison.

However, you may be exempted from liability if you were provoked by the illegal or rude behaviour of a police officer.<sup>210</sup>

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205 Law on Public Order and Peace, *op. cit.*, Article 11, paragraph 1

206 *Ibid.*, Article 11, paragraph 2

207 Criminal Code, *op. cit.*, Articles 375

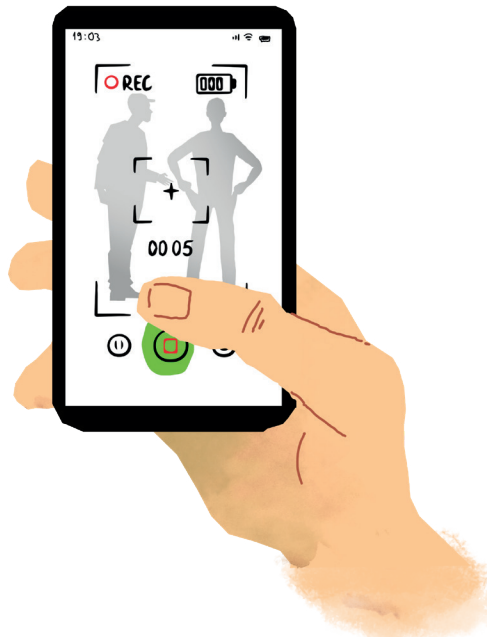
208 *Ibid.*, Article 375, paragraph 3

209 *Ibid.*, Article 376, paragraphs 1 and 3

210 *Ibid.*, Article 375, paragraphs 5 and 376. Law on Public Order and Peace, Article 11, paragraph 1

### 33. Do I have the rights to film police officers on my phone?

In principle, you can film police officers in a public place, because they are public officers and their work is public.<sup>211</sup> If a police officer warns you that by filming you are disturbing him in the performance of his work, move away, and you can continue filming so that you no longer disturb him.<sup>212</sup>



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211 Conclusion of the Council for Civil Control of Police Work no. 53/14-18, 7. 2. 2020, page 2

212 Ibid.









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