Filming Police in Europe

The start of an answer to police violence, or a distraction from deeper questions?

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The prevalence of smartphones in Europe means that a large proportion of society now have a video recorder with them most of the time. The television news crews and the CCTV cameras that would have been relied upon for video footage thirty years ago were in the hands of powerful people and institutions, but smartphones have put the power to record into the hands of everyone.

Why would this matter, on a continent with human rights law and public services that work on behalf of all of our co-citizens? It matters because we do not all have the same access to human rights and public services in practice. In other words, because marginalisation is real.

The powerful testimony of Dr. Pierrette Herzberger-Fofana shook the June 2020 European Parliament session discussing the anti-racism protests following the death of George Floyd. The Black German MEP explained how she stopped to record a concerning encounter between nine white police officers and two young black men on 16 June. She then explained how police responded to her filming by pushing her up against a wall and aggressively wrenching her phone and handbag from her.

Three years earlier, the humanitarian organisation Medecins du Monde produced an in-depth report documenting the experience of people in and around the Brussels North railway station – the same location where Dr. Herzberger-Fofana sought to record the police conduct. Twenty-five percent of the 440 people Medecins du Monde interviewed alleged mistreatment by the police – including unjustified or disproportionate use of force. The findings were reported to the Standing Policing Monitoring Committee (SPMC) of Belgium's Federal Parliament.

In many parts of Europe, often out of public gaze, some people experience interactions with the police that challenge the prevailing wisdom that it is predominately the US that has a police problem and that Europe does not.

The particular histories, legal frameworks and politics of individual European countries mean that the foundation of police-public interaction is different in different parts of the continent. For the most part, the right of good Samaritans like Dr. Herzberger-Fofana to film the police is not enshrined explicitly in national laws. However, as we see below a European court ruling has made clear that all of us can make use of exceptions designed for journalists to record and publish videos of the police.

The reality is that police officers will often stop bystanders from filming, especially in the types of encounter Dr. Herzberger-Fofana witnessed in Belgium. We are aware of cases where police officers have even forced people to delete inconsequential footage on their cameras and mobile phones, seemingly to ensure compliance with their incorrect belief in a police officer's right not to be recorded.

Law and Practice

European countries have a variety of legal frameworks governing the video recording of police activities. The following examples of the laws and practices of filming the police in eight countries show the impact video footage can have, and the difference between laws about recording police and the ability to do so in practice. Here we also see attempts to place new restrictions to prevent recording of police.

In **France** many episodes of police violence have been recorded and disseminated online. In 2008, the Ministry of Interior issued a circular affirming that police acting in public (with the exception of counter terrorism and intelligence units) can be filmed and photographed by any citizen. Video footage cannot be seized or forcibly deleted, and can be freely disseminated.

In spite of this, it is still common for police officers in France to prevent people from filming them. In recent years several French examples have demonstrated the impact that footage can have. For example, in the case of police officers who were prosecuted for violence against a British aid worker in Calais in July 2018, but only after video emerged.

The issue remains politically contested. French parliamentarian Eric Ciotti recently proposed legislation that would prohibit the dissemination of video portraying police officers on duty and for the introduction of a 15,000 euros fine and up to one year imprisonment for transgressors.

In **Croatia**, the Police Act does not prohibit the recording of police activity and the Penal Code clearly states that there is no criminal offence if the recording is made in the public interest. The Municipal State Attorney's Office has in several cases opposed prosecuting citizens who have filmed the police without authorisation. However, it is a commonly held belief that recording breaches data protection legislation. Like France, the issue is also politically contested with some police representatives requesting the issue of a new law to protect their privacy.

In **Belgium and the Czech Republic** police officers are treated as public officials and in principle they are subject to public scrutiny. Under the case law of the Czech Supreme Administrative Court and the ruling of the Ghent Court of Appeal people have long been entitled to film police while on duty. There are, however, some exceptions: citizens cannot interfere with police activities while recording nor publish material that might impair the dignity of police officers. This position has been recently confirmed in Belgium by a 2019 judgment delivered by the Brussels Court of First Instance concerning an incident at an Extinction Rebellion protest.

In **Italy and Germany** there are no specific laws that prohibit the recording of police officers while on duty, but the publication and spreading of footage is subject to privacy laws that usually requires the individual's explicit consent (as stated by the Italian Data Protection Authority and sections 22, 23 of the German Copyright Act). Video can be published and distributed if in the public interest to do so. The publication of video footage led to an investigation into police violence toward a Black man in Hamburg in 2019. Despite the law, in practice police officers often prevent recording by challenging and intimidating the recorder, often through identity checks and searches.

An important legal judgement affects countries within the European Union. Ruling on the Buivids case on 14 February 2019, the Court of Justice of the European Union (CJEU) affirmed that citizens who record and publish videos intended to disclose information, opinions or ideas can rely on the derogation for journalistic purposes foreseen by Article 9 of Directive 95/46 (now article 85 of the more recent GDPR).

Beyond the EU, several recent laws concerning freedom of expression could impact recording of police activity. In **Albania**, the 2008 protection of personal data law does not formally prohibit the record of police activity. However, in practice there have been cases in which content portraying the police has been seized and the person arrested. One example is the June 2019 attack on the journalist Enver Doçi while filming the arrest of demonstrators in Dibrain. Another example is police trying to prevent protesters from recording them during a demonstration in Tirana in May 2020. In addition to that, the newly approved set of media laws known as the 'anti-defamation package' is bound to significantly increase state regulation of online media outlets and hinder free reporting.

Following the 'Justice for David' protest of December 2018 in Banja Luka, **Bosnia-Herzgovina**, the National Assembly of Republika Srpska passed an amendment to the Law on Public Order and Peace. Article 24, which prescribes sanctions for unauthorized photographing of officials in the performance of their duties, was met with criticism by NGOs and journalists who consider it as an attempt to undermine freedom of expression.

The Ministry of Internal Affairs stated that the law does not prohibit photographing or filming officials in the public space if done from a certain distance, without physical contact and without insulting officials. However, such conditions are not described in the legal text suggesting that no such compromise will be made in practice.

The law and practice of filming police-public interactions is an under researched area. We know that both levels of public confidence in European police services and levels of democracy in the same territories (measured by a range of indexes; Roché, S. 2019) correspond closely with police use of rubber bullets and tear gas in those territories. Equivalent research has not yet been undertaken to determine if a relationship exists between public confidence in policing or democratic accountability in policing corresponds to police attitudes to being filmed whilst conducting public activities.

Video recording by police

In places where a right to video record police activity is more established, police are generally accustomed to this reality of their work environment. In some parts of Europe many police officers have themselves been recording their interactions with the public, particularly where they expect to use the recording as part of a prosecution of a person in court. Police leadership explain their use as protecting officers from false accusations and increasing their accountability in cases of violence and misconduct.

With the distribution of 10,400 body cameras across the whole country and their generalisation from July 2021, France has been one of the most active, despite the adversity of national police unions. In Belgium the same technology is still undergoing a limited trial in part of the territory, whereas in Italy, their deployment is regulated at the local and national levels.

The theory is that video recording better holds both police and public to account for their actions, and therefore deters violence. Proponents of police body cameras have often argued that they increase police accountability as they know their actions are recorded. Police officers have been encouraged to wear the cameras by being told that they provide useful evidence in court and will deter rude and violent conduct toward them.

Police body cameras have not however improved the confidence of many people in the police service. Police body cameras are owned and controlled by the police themselves. They can be turned off, selectively submitted after the event and are open to manipulation and misuse. Some anti-racism activists reject police body cameras as an additional tool for the police which ultimately the police will use to gather evidence for prosecution of low level offences in marginalised communities.

Filming in the context of different policing traditions in Europe

Policing traditions in Europe vary, as does public confidence in the police. The European Social Survey has found stark differences between the percentage of different European publics that believe their police rarely or never make fair or impartial decisions. The percentage that hold this level of distrust of police accountability is within a range of 9 – 16 percent in Denmark, Germany, Finland, Ireland, Norway, Spain and Sweden. Another set of European countries are found within a quite different band of 34 – 37 percent believing their police rarely or never make fair decisions, Czech Republic, France, Hungary and Poland.

Some may be surprised to see France grouped with Eastern European countries that have newer democratic traditions. One factor that distinguishes France is the development of policing in the context of its colonial history, and in particular the widespread police practice of stopping people to check their identity. This practice has a strong racial dimension as it was developed during the identity checks and round-ups of 'Muslim French' in the context of the Algerian resistance to colonial domination (Blanchard, E. 2020: 45). The practice was codified in the French Security and Liberties Law of 1981 that permits 'administrative' and 'preventative' stop checks. No offence or suspicion is required, providing police with what Fabian Jobard and Jacques de Maillard have described as "monumental discretionary power".

In recent years litigation by the Open Justice Initiative has sought to clarify the law on widespread stop checks in France. One of the conclusions of this work has been that, the absence of 'neutral, impartial third party witnesses' particularly in 'neighbourhoods where few non-residents transit' means that there is very little chance of an incident reaching court. Video evidence is therefore a critical tool for targeted communities to seek protection from discrimination. Filming of police stop check would therefore be perceived as a threat by police officers engaged in racial profiling or otherwise targeting communities through stop checks.

Why laws and standards on filming police are not enough

In 2001, the Committee of Ministers of the Council of Europe adopted the European Code of Police Ethics. It contains a number of principles designed to influence police practice, including using force only when strictly necessary to achieve and legitimate objective, and, acting with respect to the public, especially toward vulnerable groups.

In 2005, ruling on a case of police violence in Bulgaria, the European Court of Human Rights ruled that national legislation regulating police services must include adequate and effective safeguards against arbitrary or abusive force.

In the account by Dr. Herzberger-Fofana, there was not a legitimate objective for the police, and the way police the four officers engaged the Black 71 year-old woman was not respectful, but in her words, 'humiliating'.

Learning about Dr. Herzberger-Fofana's case and many others that we have seen in the course of surveying the recording of police activity across Europe has led us to ask some bigger questions and offer some deeper reflections. In the same week as George Floyd was killed, a video recording was made of a white police officer kneeling on the neck of a Black man, Amara Touré, in Paris.

Universal human rights laws exist to ensure that, wherever we find ourselves, by the very fact of being human, we can seek protection and justice. European countries agreed this form of international law soon after the horrific events of the Holocaust and World War II. However, their development during the colonial period undermines notions of true universality.

Inseparable from racism

During the recent resurgence of the Black Lives Matter movement other videos of police violence have been widely circulated. The deaths of other people following police contact in Europe were recalled, some where there was video footage and many without; Suleiman Jamili, Semira Adamu, Lamine Moise Bangoura, Mehdi Bouda, Mawda Shawri, and many more.

It is clear from our survey of the law and practice of video recording of police in Europe that it is inseparable from wider and deeper issues of racial prejudice and discrimination. In reality, a more established right to video police will not on its own prevent police violence. The structures of European societies continue to shape different levels of access to the benefits of human rights law and practice.

However, there has been a longstanding problem that people without experience of police violence or racist aggression have not responded in solidarity to the complaints of targeted communities. The fact that video evidence has been needed before a majority of citizens can believe there is a serious problem, points to the deep seated ideas about race that continue to be passed from generation to generation of white Europeans.

Several of the videos of George Floyd being killed have been watched more than 20 million times on YouTube. The videos were widely shared across social media in outrage and as a call for change. However, these videos are horrific and traumatic. They are particularly traumatic for racialised people represented in the images. That these videos are so easily shared without much thought for the impact on Black viewers is another manifestation of deeply embedded attitudes. Attempting to address such a long-standing social problem would need a government wide approach, but with a particular emphasis on culture and education policy.

Filming the police is an attempt to get the protection that is not afforded- the questions we ask are to prompt not only reflection but action for a world where people will not have to protect themselves from the protectors.

Questions for urgent reflection

- Why are we having to find ways to improve accountability of the police, a public service which claims to protect us all?
- Why do some of us need to see video footage of suffering to have compassion or sympathy?
- How many more people need to be brutalised and killed, and with what frequency, before a majority recognise that the racism and police violence is significant, widespread and intertwined with structural racism?
- How did we end up here, and what difficult conversations have we been avoiding?