

The Global Classroom Project:

Class Session: Police Activities & Excessive Force, Firearm Control, and Accused's Rights while in Police Custody

Required Reading Prior to Class Session:

- **Tennessee v. Garner, 471 U.S. 1 (1985).**
- **Gazioğlu and Others v. Turkey (2011)**
- **THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND POLICING**
https://www.echr.coe.int/documents/handbook_european_convention_police_eng.pdf
- **Factsheets of the Council of Europe about the violation of some human rights in police activities**

Class Session Segments and Group Discussion Questions:

**Segment 1: Excessive Force Exercise

ISSUES TO CONSIDER (when preparing for this session):

- *Why do human rights matter in law enforcement?*
- *Are human rights against police activities?*
- *Policing in the digital age. How it should be and why?*

UN Code of Conduct for Law Enforcement Officials:

<https://www.ohchr.org/sites/default/files/codeofconduct.pdf>

Police-citizen interactions under the Encounter Model have been described as having four steps:

- (1) Police officers identify problems
- (2) They impose provisional solutions on those problems, often with coercion or commands
- (3) Citizens react to those interventions
- (4) Officers respond to perceived noncompliance, sometimes with further coercion or force.

If we examine the facts in *Tennessee v. Garner* (1985), we would ask:

- (1) what problem did Officer Hymon identify?
- (2) What solution did he choose to solve it and with what legal authority?
- (3) How did Edward Garner react to the officer's provisional solution?
- (4) How did Officer Hymon respond to Garner's reaction, and what legal authority supported this response?

The U.S. Supreme Court rejected the use of deadly force against nondangerous or nonviolent suspects (suspects who pose no immediate threat to the officer and not threat to others) in *Tennessee v. Garner*. Thus, state laws and policies that permit using deadly force against nondangerous fleeing suspects are unconstitutional.

The *Garner* decision states that a suspect is dangerous if either he “threatens the officer with a weapon OR there is probable cause to believe that he has committed a crime, involving the infliction or threatened infliction of serious physical harm.”

The question we must then ask is:

What does it mean to pose a threat to an officer?

--A suspect poses an immediate threat to an officer when he demonstrates an ability, opportunity, and intent to cause harm.

What if an officer can avoid the threat by taking cover? Allowing the suspect to run away? What if the suspect is visibly armed but does not reach for his weapon? What if he shouts threats at an officer but is visibly unarmed?

GAZIOĞLU AND OTHERS v. TURKEY (2011)

The four applicants in this case complained of ill-treatment by police officers who had arrested them in 2003 during a demonstration in protest against the Turkish Government's proposals to send soldiers to take part in the invasion of Iraq. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention in respect of two of the applicants. It noted in particular that the injuries sustained by them, namely in the face and on the head, had attained the minimum level of severity to fall within the scope of Article 3 of the Convention. Further, having regard to the Turkish Government's admission that those injuries had been caused by police officers, the burden rested on the Government to demonstrate that the use of force had been rendered strictly necessary by the applicants' behaviour and that the force used had not been excessive. It was, however, apparent that no serious attempts had been made by the prosecutor to establish the circumstances of the use of force or the cause of the applicants' injuries. Therefore, having regard to the fact that no other justification had been given by the Government for the use of force than the allegedly "rowdy behaviour" of some of the demonstrators and of the fact that the applicants had not committed any offences – as was confirmed by their acquittal by the criminal court – the Court considered that the use of force by the police officers, resulting in the two applicants' injuries, had been disproportionate. See also the judgment delivered on the same date in the case of *Akgöl and Göl v. Turkey*, where the two applicants complained about the intervention of gendarmes in a demonstration in which they had participated as university students in 2002 to commemorate the killing of a fellow student. They were subsequently arrested, and criminal proceedings were brought against them for taking part in an unlawful demonstration.

*****GROUP DISCUSSION QUESTIONS:**

REVIEW THE FOLLOWING FACT PATTERNS AND DECIDE WHAT ANSWER CHOICE IS BEST UNDER THE CIRCUMSTANCES:

(if you choose "need more information, you must explain why and what difference that would make in your decision)

1. Police officers fired tear gas and rubber bullets to disperse peaceful protestors (15 people) in front of the White House so the president's advisor could walk down the sidewalk for a photo op.

Excessive Force

Appropriate Action

Need more information

2. A high-school teacher and a member of the Education and Science Workers' Union and of the Confederation of Public Workers' Unions participated in a demonstration against the NATO summit in Istanbul. The police beat him up and sprayed him with tear gas after arresting him during the demonstration.

Violation of Article 3

No violation

Need more information

3. Police Department officers found a 22 year old African American man they suspected of vandalizing cars, after he climbed a fence into a dark yard. Officers approached him with guns drawn, shouting, “show me your hands!” Within seconds, the officers shot and killed him. They believed he was holding a gun, although he had only a cell phone. The yard he had climbed into was his own.

Excessive Force

Appropriate Action

Need more information

4. Members of a CNN crew were arrested during a live broadcast in Minneapolis. This occurred despite the correspondent displaying his press pass and telling officers that he was willing to move locations.

Violation of Freedom of Expression

Not a violation

Need more information

GROUP EXERCISE: Create as a group a one sentence mission statement for a local police department reflecting the department’s desire to protect and serve better. Prepare to share your mission statement with the rest of the class.

****Segment 2: Firearm Controls and Regulations**

UN: <https://www.ohchr.org/sites/default/files/firearms.pdf>

<https://www.unodc.org/unodc/en/firearms-protocol/the-firearms-protocol.html> UN has the **Firearms Protocol** which Turkey is a part. On this page are the percentage of countries party to this Protocol. As of 22 June 2022, 122 countries ratified this Protocol.

CoE: European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No. 101) <https://rm.coe.int/1680077d97>

<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=101> (related documents are on this page including the full list of countries, addendum to this Convention, and etc. Turkey has signed this Convention but did not ratify.)

Turkey: The Law on Firearms, Knives and Other Tools, No. 6136, is the fundamental law in Turkey about the control of firearms. The main idea of this law is to control the sales and use of weapons. Basically, it requires citizens to have a license to carry and use firearms under the supervision of the General Directorate of Security, Ministry of Internal Affairs.

GROUP EXERCISE:

- **Prepare a survey for people around you. (Make sure they are not from one part of society. Ask questions of at least 2-3 people and try to record their reactions by the following class session.)**
- **Interview friends, family, law enforcement officers, etc.**

The preparation of the questions for an interview or survey will be up to the student groups. The goal of this exercise will be whether people are against or for the control of firearms. In this regard, it is important during this exercise to evaluate whether people are aware of their local firearm regulations or international treaties or conventions.

By the following class session, groups should be prepared to report on the results of their survey/interviews and share these results with the rest of the class.

****Segment 3: The Defendant's Rights While in Police Custody**

Police arrest and assistance of a lawyer: ÇARKÇI v. TURKEY (2015)

Serving a life sentence for participating in an armed robbery of a jewellery shop during which the shop owner was shot dead, the applicant complained in particular that the criminal proceedings against him had been unfair. Notably, he alleged that the statements taken from him without the assistance of a legal representative and not even bearing his signature had been used as evidence to convict him. The Court held that there had been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention, on account of the lack of legal assistance afforded to the applicant while in the custody of the gendarmerie.

Detention and mental health: ÇOŞELAV v. TURKEY (2013)

This case concerned a 16-year-old juvenile's suicide in an adult prison. His parents alleged that the Turkish authorities had been responsible for the suicide of their son and that the ensuing investigation into his death had been inadequate. The Court held that there had been a violation of Article 2 (right to life) of the Convention under both its substantive and procedural limbs. It found on the one hand that the Turkish authorities had not only been indifferent to the applicants' son's grave psychological problems, even threatening him with disciplinary sanctions for previous suicide attempts, but had been responsible for a deterioration of his state of mind by detaining him in a prison with adults without providing any medical or specialist care, thus leading to his suicide. On the other hand, the Turkish authorities had failed to carry out an effective investigation to establish who had been responsible for the applicants' son's death and how.

Inhuman and degrading treatment: X v. TURKEY (2012)

A homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over 8 months in total.

The right to liberty and security: KAVALA v. TURKEY (2019)

In this case, Mr Kavala, a businessman who has been involved in setting up numerous nongovernmental organisations ("NGOs") and civil-society movements which are active in promoting and protecting human rights, argued that his arrest and placement in pre-trial detention had been unjustified. Violation of Article 5 § 1 Violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention) Violation of Article 18 (limitation on use of restrictions on rights) taken together with Article 5 § 1 The Court also concluded that the respondent State was to take every measure to put an end to the applicant's detention and to secure his immediate release.

*****GROUP EXERCISE:**

As a group, create a visual depiction, graph or meme relaying the realities of an accused's situation while in police custody or display the rights an accused should be entitled to while in police custody. Or, as a group, choose a topic from above and create a visual aid, graph, or meme examining the topic and the frustrations towards achieving that right.

Additional Supplemental Reading for Segment 1 on Police Use of Force During Protests:

U.S.: [Racial Justice Protests: A Free Expression Timeline - National Coalition Against Censorship \(ncac.org\)](#) –Protest Timeline (an illustration of free expression and consequences).

CoE : Law Enforcement and Race in Europe

<https://human-rights-channel.coe.int/asset-law-enforcement-and-race-in-europe-en.html>