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Homicide of an Adolescent Burglar by a Police Officer

Right and wrong police action, public reactions and possible consequences of the “Krems Merkur” case



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In August 2009, an adolescent supermarket burglar was fatally shot in the town of Krems an der Donau in Lower Austria by a police officer using a police firearm. The case has prompted heated public debate about the background, processes and consequences of adolescent and police action, and raises questions including what constitutes right police action, and how the public reacts to (specific) police action. Simone Jungwirth has addressed the case in question in a dissertation written at the University of Vienna’s Department of Sociology titled “Homicide of an adolescent supermarket burglar – the Krems Merkur case”. She looks into (specific) police action and public reactions to it by carrying out a qualitative-explorative study, which is a suitable method for examining “real-life events” such as the Krems Merkur case. She comes to the conclusion that police action per se cannot be right or wrong, and that there is no one public reaction to the Krems Merkur case. A uniform public reaction to other cases of police action is also unlikely, since the public is made up of stakeholder groups that have different expectations and opinions of the police. The definition of right police action is always dependent on the given situation and the stakeholder groups concerned. Their requirements overlap, however, in the “core area of appropriate police action”. The term “appropriate” is used instead of “right” because police action is solution-oriented and is based on the police officer’s mental representation of the given problem. That solution can be described as appropriate to a greater or lesser degree, but never as right or wrong.

WHY STUDY THE KREMS MERKUR CASE?

On the night of 5 August 2009 two adolescents, aged 14 and 17, broke into a shop of the Merkur supermarket chain in the town of Krems an der Donau. A silent alarm was triggered, resulting in a police response. While one male police officer and one female police officer were inspecting the site, they encountered the burglars inside the supermarket. The male police officer fatally shot the younger of the two adolescents using his police firearm. The officer

was given a suspended jail sentence of eight months for reckless homicide under circumstances of particular danger, and was then allowed to return to office duty in the police force.

Owing to her previous research activities, the author had a personal academic interest in the Krems Merkur case. Her interest was matched by the broad public and media attention that the incident attracted. Such public interest, which resulted in a heated, seemingly unending public and media debate about the Krems case, pro-

vides further motivation for academic study of the topic. The public stir has not yet completely died down, and could even be revived by the Austrian broadcaster ORF airing a production titled “We were there” about the Krems Merkur case on television this year (2015).

A further and more general reason for addressing the topic of police action is the fact that police officers are public servants, so the public has a right to (and an interest in) information concerning their actions, given also that use of force is part of police work and police action, which – as in this case – comes into the (public) spotlight as a result.

The police and the public are necessarily always related. The public serves as an important yardstick and touchstone for the police. However, the public’s everyday knowledge of the work of the police often only corresponds to a limited degree with the reality of the profession (cf. Feltes 1995). That presents a challenge and a further reason to study the work of the police from various perspectives by investigating a specific case of police action.

METHOD

This research is designed as a qualitative individual case study and is aimed at describing the characteristics of a “real-life event” (Yin 2009) in their entirety. The findings of the study are attained by combining qualitative and quantitative methods, and are placed in the tradition of empirical police research.

In addition to qualitative and quantitative interviews, conclusions are reached on the Krems Merkur case from participatory observation of the court case of the Krems police officer, as well as on the Krems-Lerchenfeld quarter, the area of the town that both the adolescent burglars were from and one of the focal points of the media debate. A sociological and social

historical local analysis enables conclusion to be drawn about Krems-Lerchenfeld as an environment for adolescents and police action. Further topics studied are the police and media, firearms (and training) in the Austrian police force and the victim in the Krems Merkur case.

Of the many topics that the case touches upon, a selection has been made of content to be looked at in detail. The selection chiefly revolves around the actions of the police officers and reactions to those actions. The study has two main points of focus: police action/social action of police officers (in general and in the specific Krems case) and public reactions (in general and in the specific Krems case).

THERE IS NO SUCH THING AS “RIGHT” POLICE ACTION

The question of the rightness or wrongness of police action¹ – one of the two focal points of the study – arose from the various (media) reports on the Krems Merkur case. Terms such as “right” and “wrong” were bandied about in the debate, in relation to both the actions of the police officer/s and the adolescent burglars. A divide seemed to open up between those sympathizing with and those criticising the police officers. In some cases, those fronts adopted extreme positions: “Anyone old enough to steal is old enough to die” (comment by Michael Jeanée, columnist in the Krone newspaper), versus “police officers as murderers”.

The finding of the author’s research is that there is no such thing as “right” police action. That becomes clear upon closer study of police action and its characteristics. Police action is not one-dimensional; it takes place in dynamic problem spaces and is subject to numerous influences. Police action is public; it involves making decisions and complying with the law. Police action involves (false) alarms; encounters with offenders (burglars), however, are rare.

If right or wrong is taken to be the result of an equation, then the individual components are undoubtedly variables, rather than constants. As an illustration: “ $X + Y + Z = \text{right police action}$ ”. Both the actors X and the situation Y (with all their differing and changeable components) and the reference or assessment group of action Z are variables, leading to a different result in each case. Depending on the definition of the situation and the actors involved, the same situation can be defined differently by different actors or the same action can be defined differently in different situations.

THE COMMON DENOMINATOR OF “RIGHT” POLICE ACTION

In her research, the author poses the question of whether a common denominator of right police action exists and distinguishes between two areas: first, authority measures and internal police measures for the purpose of defining right and wrong action and, second, ethical and moral criteria.

The state and the police organization define what is right or wrong by means of laws, codes of conduct and guiding principles.² They define what action police officers are permitted to take (what powers they have) and what they should strive for. Statutory powers are a stronger instrument of definition than guidelines on correct conduct. In other words, laws define what action a state deems may or may not be taken (in our case by officers of the executive when performing police work) and in what situations. Clearly defined sanctions are set out for those who violate the law. Codes of conduct and guiding principles on the other hand describe how one should behave, with sanctions being less clear or non-existent. Such instruments are not permitted to impose any further “mandatory provisions” with respect to police action.

Their value lies in the guidance they provide with respect to grey areas and practical usage (cf. Willi 2011).

Laws by their very nature cannot extend to every minute detail of the (action) situations referred to therein. Given the multitude of legal situations that a police officer may encounter, laws are by no means as exhaustive as they might seem on first impression.

Laws define more precisely than the code of conduct what right police action is (from an institutional perspective), and the code of conduct does so more precisely than the guiding principles. In other words, the less precise the regulations on police action are, the greater the likelihood of deviant, wrong conduct. That is also related to the possible sanctions and likelihood of being sanctioned. The greater the likelihood of being penalized for one’s actions, the more likely one is to comply with those regulations. In other words, in comparison to other fields, laws not only describe most accurately what is right or wrong, but also best ensure compliance through the threat of sanctions. Laws are therefore the most important institutional instrument of definition. Police action, however, can only be deemed right if all statutory provisions are complied with and observation of the code of conduct is combined with a correct professional attitude as per the guiding principles.

The other perspective involves consideration of whether police action is right or wrong in ethical and moral terms. That is important given that experts consider that laws are no longer sufficient as the sole set of instructions for police action (cf. e.g. Lorei 1999; N.N. 2010). Shifts in values and societal change have led to external change to the police profession, thereby also rendering internal change necessary (cf. Edelbacher 2008; Schnabl 2000).

Consideration of ethics and morality³ is, however, also justified by the fact that force (given the purpose of the police) is necessarily part of police culture. In such situations, ethical and moral criteria need to be examined. Police action⁴ must be ethical in order to be (socially/publicly) right (cf. Edelbacher 2009).

However, there is no “one” definition (here either). Social beliefs and values can become too diverse for a common public ethical denominator to be found. A specific provision would always have to be geared to the given group of stakeholders.

The lack of universally valid community values and the absence of a uniform instrument of definition makes it difficult or even impossible for the police to act in a way that is ethically and morally “universally right”. The current solution of the police in Austria is evidently to refer to human rights and other legislation (which must also be checked in terms of human rights in order to be valid) as a basis for its action and to ensure compliance with those to the greatest possible extent (Fekter 2009, 18). It follows that it is critical for ethically right police action that police officers themselves do not breach any laws. Moral/ethical consideration and intervention upon admission to the police service and subsequent training also appear to be important and, as research has shown, highly beneficial. Great importance is placed on a common professional police ethos, which should be incorporated into the ranks of the patrol police by means of instruments including the guiding principles described (cf. Brenner 2005). When considering those efforts, it is clear that ethically and morally right police action, however we define it exactly, must be ensured at all levels of action of the police⁵. While the macro-level involves efforts to reconcile internal police values with external public values, that output needs to be

turned into instruments at the meso-level, i.e. adjustments and revisions to police training, guiding principles etc. Implementation of that and direct, external action is then carried out by each individual police officer (cf. Edelbacher 2009). Although the work at the other levels is indispensable, it is the police officer that apparently bears ultimate responsibility, at least in the view of the public. Each police officer decides for himself/herself whether his/her action is moral or not (cf. *ibid*). Even the best concepts and possibilities for shaping police action will not prove successful if they are not (or cannot be) implemented at the external level of action. That poses an enormous challenge, and also places great responsibility on the individual police officers. It also likely means that the better the preparatory work at the higher levels and the better the individual officer is prepared/trained for such responsibility and monitored, the less likely it is that the errors will occur during the actions of the individual officer.

“RIGHT” ACTION MEANS APPROPRIATE POLICE ACTION

Furthermore, there is no such thing as “right” police action per se, because police action involves solving problems. The mental representation of the problem according to which the officer seeks a solution, i.e. the image in his/her head, is not identical with the external problem, i.e. the problem in reality. The solution to the problem and action geared to that solution can be appropriate to a greater or lesser degree, but never right or wrong (cf. Lorei 1999).

Right police action is therefore appropriate police action. Such action is in compliance with laws, guiding principles, codes of conduct and police training. It is important for officers to have the appropriate attitude and be alert during operations.

Source: Jungwirth

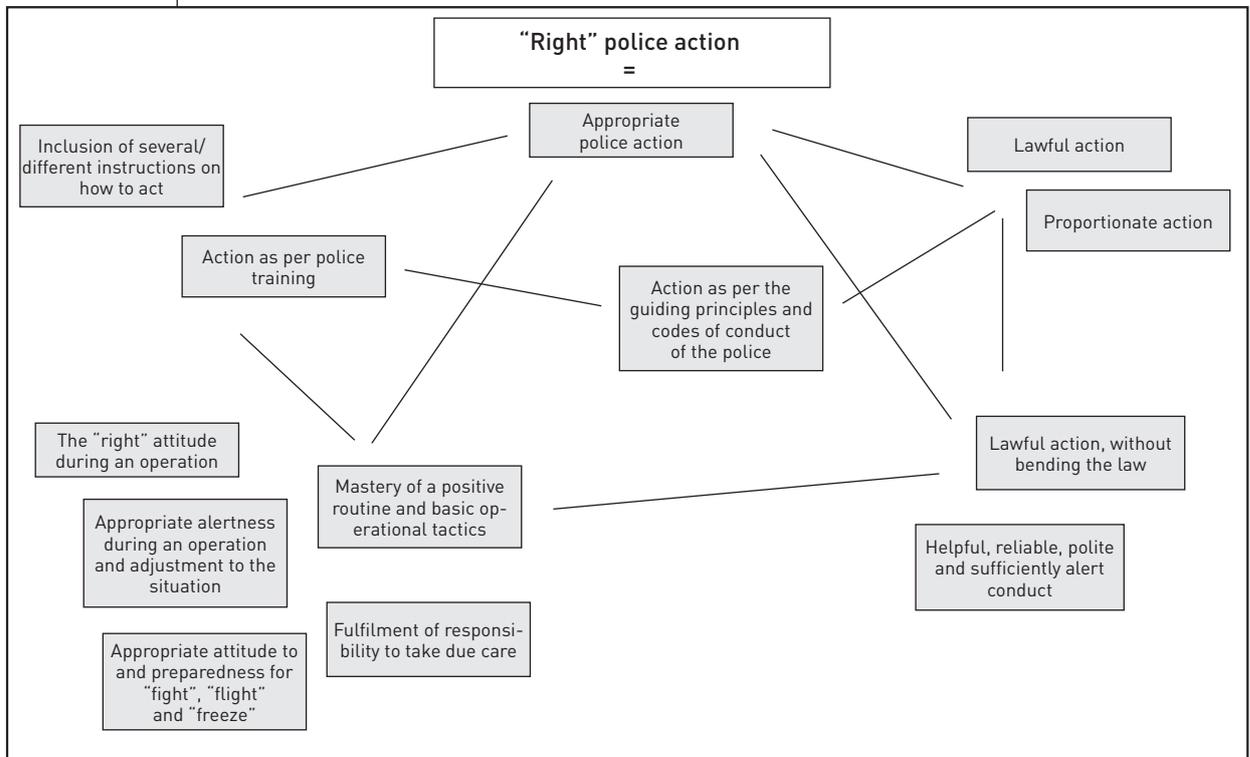


Figure 1: Characteristics of “right” police action

Police officers have a duty to act with due care and should be reliable, alert, polite and helpful.⁶ The public, police organization (both the police authority and the state) and police officers are a precondition for and bear responsibility for ensuring right action.

The police organization/authority or the state and the public alike are established as instruments of definition of right conduct. The police officer himself/herself is not an instrument of definition, but is irreplaceable in the sense of compliance with statutory and police requirements, the use of soft skills and experience, and personal preparedness for handling an action situation, thereby providing the possibility for right action.

THERE IS NO “ONE” PUBLIC REACTION

Besides police action and questions of rightness or wrongness, the second focal

point of the study is the public reaction to the Krems case in connection with the public opinion of the police.

It is evident that no uniform public opinion on the Krems case can be discerned (i.e. no uniform reaction to it).

That is evidently primarily due to the fact that there is no such thing as “the” public. Instead, it is composed of various different fields. In the author’s research, the population, the media and the judicial system are highlighted as examples.

When considered more closely, it is clear that these fields do not share a uniform opinion of events, including the Krems Merkur case, and differences of opinion can be identified even within the given fields. As explained earlier, in the case of the population that is because of its plurality of lifestyles and values, which naturally lead to different opinions and opinion leaders. Nevertheless, as the author’s study shows, the population shares a broad ma-

jority opinion. With regard to opinions on the Austrian police and the Krems case, it is difficult to compare the various fields of the public, since as opposed to a full survey of the population, only a descriptive analysis of the content of media reports has been performed. The author, however, has the impression, which is supported by academic literature and comments of police experts consulted, that the population in general has a higher opinion of the police and its actions – both in general and specifically in the Krems Merkur case – than the media does. The positive attitude of the public towards the police and its actions and the high degree of confidence in the police are nothing new. Surveys (most recently, e.g. GfK 2014; Sozialwissenschaftliche Studiengesellschaft 2013) regularly have such high positive findings. In this case, therefore, it was not surprising that over 90 percent of the Krems citizens surveyed⁷ reported that they had a positive opinion of the Austrian police. More surprising was the degree of uniformity of the positive opinion with respect to the Krems Merkur case. Almost three-quarters of the respondents considered the actions of the police officer to be right or fairly right. An even higher percentage of the respondents (80 percent) took that view with respect to the actions of his female colleague. Almost half of the Krems citizens surveyed deemed the ruling on the police officer fair, while over a third considered it too severe. Almost all the respondents reported that their opinion of the police had not changed as a result of the Krems Merkur case.

THE CORE AREA OF APPROPRIATE POLICE ACTION

It can be concluded, therefore, that there is no “right” police action per se. Nor is there any “one” public reaction, either generally or specifically, to police action, because there is no such thing as “the” public.

Source: Jungwirth

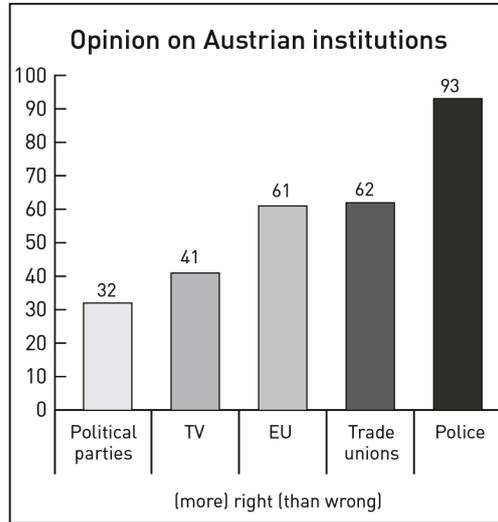


Figure 2: Krems citizens’ opinions of Austrian institutions (n=120, figures given as a percentage)

The research findings have prompted the author of the study to define a “core area of appropriate police action”. Different stakeholder groups overlap in their views of what (correct) police action should achieve and how it should be shaped etc. The core area referred to can be established and defined where those expectations overlap. Figure 5 (see page 36) illustrates that model of thought.

Source: Jungwirth

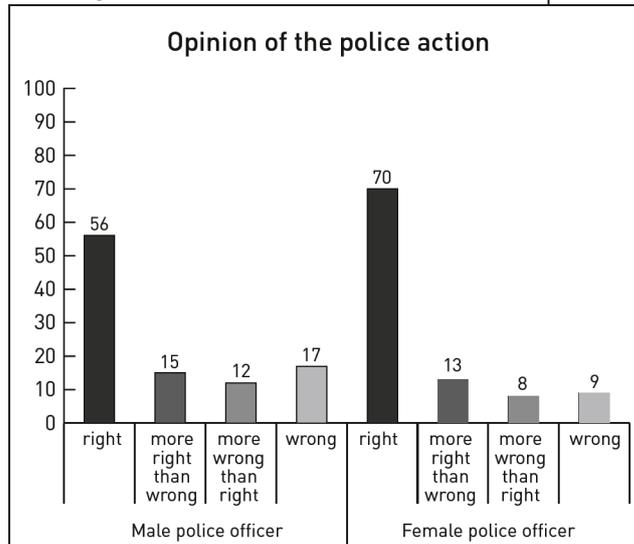


Figure 3: Krems citizens’ opinions of the police action in the Krems Merkur case (n=120, figures given as a percentage)

Source: Jungwirth

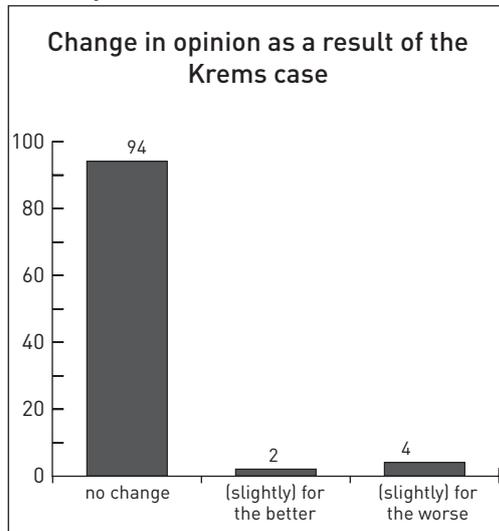


Figure 4: How have Krems citizens' opinions of the police changed as a result of the Krems Merkur case? (n=120, figures given as a percentage)

Examples of stakeholder groups are the police authority, the population, the media etc. Figure 5 shows a common field of expectations based on two groups selected by way of example – the population and police training⁸. Police action needs to comply with the law in order to be right according to both the population and police training. Lawful action therefore lies in the intersection between the expectations of the population and police training.

It is still unclear or varies from situation to situation how many and which stakeholder groups would need to be included in a core area discussion on police action and according to which premises such a core area could be defined. Although it is only

a schematic at present, or rather precisely for that reason, it is beneficial to deal more closely with this topic. It may assist in defining appropriate police action that suits the given situation and requirements more closely, as well as the maximum bounds of responsibility of each police officer. All reflection on appropriate or inappropriate action and the definitions thereof should serve to give police officers an additional tool in real-life situations for cases in the grey zone to be handled more easily and fairer ex-post assessment.

That includes the understanding (which should above all be conveyed to the public) that the more different perspectives are included when considering a given situation, the smaller the core area of appropriate police action will clearly become. Figure 5 shows that very clearly. The black arrows indicate the increasingly small overlapping intersection as the number of “requirement circles” – which can rise to a considerably greater number than four – increases. Looking more closely at the Krems Merkur case, how many perspectives could or would need to be combined in the ex-post examination? The (overall) set of requirements for each individual police officer increases with each new circle, and the overlapping area declines, meaning that the likelihood that the police officer does not meet expectations, even when he/she acts within the core area of appropriate police action, rises.

Source: Jungwirth

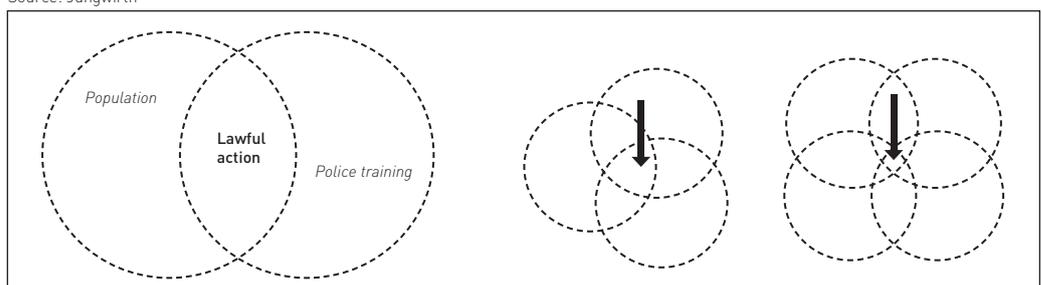


Figure 5: Core area of appropriate police action

SOME CLOSING THOUGHTS

The study found that (false) alarms are evidently everyday occurrences for the police, but that encounters with offenders (burglars) remain fairly rare.⁹

It is therefore understandable, and has been stated by members of the police, that essentially any police officer may find themselves in such a situation and may make such an “error”. In this case, error means the false assumption of the Krems police officers in question that there were no (longer) offenders at the scene (cf. e.g. statements from expert interviews).

If a police officer makes such an error, it potentially has more numerous and severe consequences than an error in another profession that does not involve situations in which people’s health, physical integrity and even lives can be on the line. Preventing errors through targeted training and minimizing the degree of their potential occurrence is therefore an express aim of the Austrian police force. It does so by means of operational training, which combines various elements of police action taken during operations, and has become the best instrument for preparing for police operations.¹⁰ There is already evidence that it works: a German study found that police officers who had received operational training performed better during operations than police officers who had not received such training (cf. Brenner 2010).

Readiness for acting appropriately in the event that an error has been made is just as important as strategies for error prevention. Since making errors is human, errors will never be able to be eradicated completely in fields involving human action, including the police. The Austrian police strives to eliminate errors by means of constant (mutual) development of theory and practice. However, “we”, i.e. the external observers, also have a part to play here. Ninety-four percent or more of the surveyed Krems

citizens agreed with the following statements (in the context of general conditions for right police action): “Society should show more understanding towards police officers” and “The public should be more open, unbiased and respectful towards police officers”. Although “society” and the “public” do not solely represent the individual citizen, he/she and his/her responsibility can undoubtedly be included under those terms.

The relationship between the police and the media is related to that. The media both adopts and forms opinions (cf. Erwand 2012). Experts believe that the current press landscape is increasingly biased and focused on scandals (cf. e.g. Edelbacher 2008). The fast pace of news today and “headline journalism” are additional factors. Based on her observations, analysis and reports received, the author even argues that there is a form of dissociation between the media reporting and the case itself. Those impressions seem partly to diverge from previous observations that the media controls the reputation and image of the police. Ultimately, the author’s findings and survey results show that the population has a very positive attitude towards the police and is evidently more positively inclined towards the police than towards the media. It would be of interest to conduct further studies to explore (negative) media criticism, its effects on reputation and image, and the population’s impressions of the police. Reputation and image are of enormous importance to the police. The police needs to convince the population of its legitimacy in a state system like ours. Besides personal experiences, citizens chiefly or solely gain their impression of the police and police action via the media.

Consideration of the key skills required for police action¹¹ shows what great importance is attached to the responsibility of the individual police officer and the degree

of responsibility he/she has to assume. Instructions that are set out in law, guiding principles and codes of conduct – the so-called police culture – are in part not applicable to cases such as those in Krems and leave gaps, which renders individual interpretation necessary. The individual police officer has to perform that task during an operation – often within split seconds – and, if required, bear responsibility for his/her actions.

“During their daily work, police officers hardly encounter the best side of society” (Feltes 1995, 308). In addition, police officers, and in particular the patrol police officers being discussed, have become so-called “remedy agents”¹² for society. They are, moreover, unspecific remedy agents, which means that they are put in charge of handling a wide range of problems and conflicts, and police officers are assigned a seemingly infinite number of individual conflicts and problems (cf. Hanak 1983). Patrol police officers cannot acquire the same degree of expertise in each of their fields of action as, say, members of a special police unit who are specifically trained for specific types of police action and encounters with offenders. Patrol police officers, according to statements from their own ranks, cannot spend more time in training than in the duty room or on the streets – their actual sphere of action. The weight of the standard equipment carried by a

police officer in the form of a duty belt (gun belt) is 2.5 kg on average¹³, not including special items of equipment used at demonstrations (body shield, helmet etc.). Police officers cannot carry an unlimited amount of equipment for both financial and practical reasons. That is one factor that needs to be taken into account when considering the question of whether a taser would have or could have changed the outcome of the Krems Merkur case.

All the above points, in connection with the findings of the study, show that there is more than just one answer to the question of “right” or “wrong” action, and more than one (correct) perspective on the Krems Merkur case, as well as the fact that there is a clear majority opinion among the population (which is positive concerning police action), but no uniform opinion shared by all the public. That is certainly to be welcomed, because divergence creates friction, which prompts debate. That in turn allows progress. It also means, however, that the end of the research does not and is not intended to mean the end of the debate on the Krems Merkur case. The Krems Merkur incident will continue “to have an impact in the future” (comment from an expert interview with Chief Lieutenant Matousovsky from the Krems police force), since the case is also of symbolic importance.

¹ “Right” and “wrong” in the sense of everyday language use: correct, appropriate, suitable vs. incorrect, inappropriate, unsuitable (cf. the definitions of “richtig” and “falsch” in German dictionary Duden).

² See the texts of various laws, in particular the Austrian Police Act, as well as the “Our Values. Our Methods” Code of Conduct of the Austrian Federal Ministry of the Interior and the “Safety through Training” guiding principles on police training.

³ Ethics is understood as referring to “general” principles of what is right; moral refers to current notions of e.g. right and wrong (cf. Vitek 2006).

⁴ Serious political resolve to create/maintain a high-quality executive; grounding in fundamental rights; assistance ahead of inspections; proximity to citizens; transparency of work; quality of police work; quality by means of motivation; good leadership means taking care of employees; good training; optimisation of technical conditions; positive working environment; compliance with a code of ethics (Edelbacher 2009, 31).

⁵ Three levels of police action: macro-level (ethical and moral principles of the given law enforcement policy); meso-level (level of the police leadership, value hierarchies, handling of criticism), micro-level (action of each individual police officer) (Edelbacher 2009, 23 ff).

⁶ Results of a telephone survey of 120 Krems citizens conducted for the purpose of this study.

⁷ See endnote 6.

⁸ “Police training” rather than the “authority”, since the latter consists of different perspectives with respect to requirements. “Population” refers to the average value in response to this question according to the author’s survey.

⁹ Cases where the offenders are present when the police arrives account for a low single-figure percentage of actual alarms triggered by burglars in Krems (interview with the Krems police force).

¹⁰ Actions in situations practiced in operations training that a police officer has already prepared for mentally can be retrieved more easily than if they were unfamiliar (cf. N.N. 2010, interview with CI Hollunder-Hollunder, Federal Operations Trainer of the Austrian police force).

¹¹ Operational skills (self protection, attention, self-assuredness...), professional and methodological skills, personal and social skills (cf. Brenner 2010).

¹² Problems/conflicts can be avoided, mutually negotiated or a third party (remedy agent) can be brought in to resolve the issue (cf. Hanak 1983, 11 f).

¹³ The gun belt of a patrol police officer was weighed with the permission of the Vienna Police Department.

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