

Fatal police shootings in Sweden

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1. Introduction

Something has happened. Over the past six years, a total of 17 men have been shot dead by Swedish police. This is a dramatic increase of cases with a deadly outcome. Previously, the number of fatal shootings in Sweden had been on average one per year. In total, there have been 44 cases of fatal shootings by police between 1990 and 2021.

Public trust in the police stems from legitimacy.¹ On the whole, most Swedish citizens trust the police and accept that Swedish police officers have been granted the mandate to use *the ultimate means of deadly force* – firearms.² Nevertheless, any use of firearms can erode the public's trust. The right of the police to use deadly force is strictly limited, and the force must be kept within the permissible bounds. There are good reasons for this position. Shootings resulting in serious injuries or death are dreadful events, not only for those who have been shot, but also for their kin and for the police officers who discharged their weapons.³

There are three types of situations where Swedish police officers have the right to use firearms while on duty: in *lawful authority*, in *self-defense*, and in an *emergency*. The lawful authority for the police to use force, including by means of firearms, is stated in the Police Act of 1984. The specific regulation for firearms is given in the Government's decree on Use of Firearms in the Police Service from 1969, and in the Police Authority's Instructions and Common Advices on the Use of Firearms from 2016. Rules for self-defense are given in the Penal Code.

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¹ Tyler and Yuen, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russel Sage Foundation, 2002).

² Between 2017 and 2020, confidence in the police in Sweden has increased from 42 to 58 percent. See Brottsförebyggande rådet, *Nationella trygghetsundersökningen 2021. Om utsatthet, otrygghet och förtroende* (Brottsförebyggande rådet, 2021) p. 186.

³ Knutsson, Police Use of Firearms in Sweden, in *Police Use of Force, Guns and Non-Lethal Weapons: A Global Perspective*, eds. Kuhns and Knutsson (Santa Barbara, California: Praeger, 2010) pp. 105–114.

Regard must also be had to the international conventions that Sweden have signed. Of greatest practical influence is the European Convention on Human Rights (ECHR) which is part of Swedish law. Of greatest importance are the rules which protect *everyone's right to life* (Article 2). Compliance to the convention may in last instance be tried by the European Court of Human Rights (ECtHR). The Court has ruled that states have three main duties under Article 2:

1. a duty to refrain from unlawful killing,
2. a duty to investigate suspicious deaths, and
3. in certain circumstances, a positive duty to prevent foreseeable loss of life.⁴

A case of fatal shooting that made the headlines in Sweden took place in Stockholm in August 2018. A 20-year-old man with Down's Syndrome was carrying a toy gun that was reportedly mistaken by the police for a real gun.⁵ Three police officers fired twenty-five shots at the man, three of which hit him. Two of the shots, including the fatal shot, hit him in the back. The entire incident lasted between three and ten seconds. One of the police officers was charged with causing another's death, while another police officer and the police taskforce leader were charged with breach of duty. The third police officer was considered to have acted while the man still represented a threat and was not charged.

The police officers maintained that they fired in self-defense to protect themselves. One thing was certain: the police officers opened fire in *imagined* self-defense. They had no right to shoot. The core question was: Did they shoot within the scope of imagined self-defense?⁶ The case concerned only the two shots that hit the man in the back. The remaining twenty-three shots were not questioned. The court found that neither the medical nor the technical investigation established the order of the shots or the man's precise movements and body position when he was hit. The court also found that the police officers acted in imagined self-defense during the whole shooting. The police officers and task force leader were acquitted.⁷

⁴ Bernadette, McCormick and Ovey, *Jacobs, White, and Ovey. The European Convention on Human Rights*, 8th ed. (Oxford: Oxford Press, 2020).

⁵ People with untreated mental illnesses are 16 times more likely to be killed during a police encounter than other civilians approached or stopped by law enforcement, according to Fuller et al, *Overlooked in the Undercounted. The Role of Mental Illness, in Fatal Law Enforcement Encounters*, Arlington, Virginia: The Treatment Advocacy Center, December 2015. www.treatmentadvocacycenter.org/overlooked-in-the-undercounted. Last accessed 16 December 2021.

⁶ I wrote a legal opinion in favour of the defense in this case. Hence, my answer to the question is yes.

⁷ Stockholms tingsrätt 2019-10-03, mål B 10655-18. One member of the jury disagreed with the verdict, believing the two police officers who fired the lethal shots should be found guilty. None of the parties lodged an appeal against the verdict.

This article aims to shed light on the reasons behind fatal police shootings and their increase, and to suggest solutions to minimise the risk of someone falling victim to police bullets.⁸ The question to be answered is: *What does the law say and how can it help to prevent fatal police shootings?*

2. Mostly in self-defense

The trend of increasing fatal police shootings is alarming. Prosecutors have generally concluded that the police officers responsible for the shootings fired in *self-defense* to save themselves or someone else from a dangerous situation. Of the 44 fatal shootings, 33 cases were classified as *actual* situations of self-defense. Three of them also concerned *lawful authority* – the right of the police to use force to carry out an official duty, namely a fatal shooting in 2004, a fatal shooting in 2013 and a fatal shooting in 2018.⁹

The remaining 11 cases were about *imagined* situations of self-defense or *putative* self-defense. What the police officer took for a lethal weapon was sometimes in fact a harmless dummy. On some occasions the man who was shot dead – the victims have all been men – was unarmed. Two of the cases concerned shots accidentally fired by police.¹⁰

In the few cases which have resulted in a prosecution, the courts have almost exclusively sided with the defense and concluded that the police officers acted in self-defense. Nine of the deadly shootings led to prosecution and a verdict. Seven police officers were found not guilty, two were convicted.¹¹ One officer in 2001 was sentenced to prison.¹² This was the first time in modern times in Sweden that a police officer was

⁸ This article is based on a chronicle published in Karnov's News, Norée, Annika, Dödande polisskott – vad kan lagstiftaren göra för att minska riskerna?, Karnov Group, 19 January 2015. www.mynewsdesk.com/se/karnovgroup/news/doedande-polisskott-vad-kan-lagstiftaren-goera-foer-att-minska-riskerna-103315. Last accessed 16 December 2021.

⁹ The fatal shootings in Katrineholm 2004, in Södertälje 2013 and in Luleå 2018. Åklagarkammaren i Jönköping, diariern C-9-215-04, Åklagarmyndigheten, Riksenheten för polismål, Malmö, diariern AM 3179-13, and Åklagarmyndigheten, Särskilda åklagarkammaren diariern AM-41314-18.

¹⁰ The fatal shootings in Karlstad 1990 and in Kalmar 2000. Karlstads tingsrätt 1990-06-21, mål B 142-90 and Kalmar tingsrätt 2000-10-12, mål B 843-00.

¹¹ *Not guilty verdicts*: Hovrätten för Nedre Norrland 1990-09-28, mål B 404-89, Hovrätten över Skåne och Blekinge 1993-04-29, mål B 1158-92, Kalmar tingsrätt 2000-10-12, mål B 843-00, Jönköpings tingsrätt 2001-11-12, mål B 458-01, Göta hovrätt 2007-02-23, mål B 949-06, Varbergs tingsrätt 2013-10-03, mål B 2304-13 and Stockholms tingsrätt 2019-10-03, mål B 10655-18. *Guilty verdicts*: Karlstads tingsrätt 1990-06-21, mål B 142-90 and Göta hovrätt 2001-06-20, mål B 1281-00.

¹² Göta hovrätt 2001-06-20, mål B 1281-00.

sentenced to prison for a fatal shooting. exhaustive overview on the regulatory actions taken against serious violent crime.

3. When is force justified?

Swedish police officers have the right to use force to carry out an official duty ‘if other means are inadequate and if it is defensible in view of the circumstances’, according to Section 10 of the 1984 Police Act.¹³ Such force is based on what is known in Sweden as *lawful authority*. It is an authority that includes the use of firearms in the most severe cases.¹⁴ A commentary to the Police Act states firearms should be used with “extraordinary restrictiveness”.¹⁵

According to lawful authority, the police may, for some specified very serious crimes and if an intervention is immediately necessary, shoot in order to arrest suspects, to stop them from escaping, or to apprehend escaped criminals who have committed such crimes. Furthermore, the police may use firearms to arrest persons who manifest an apparent danger to the lives and health of others, pursuant to Section 2 of the Government’s Decree on Use of Firearms in the Police Service from 1969.

The authority of the police to use force is restricted by a set of common principles. These include requirements of *legality* (statutory support), *necessity* and *proportionality*.¹⁶ The necessity principle entails that force may only be used when other means are inadequate to carry out an official duty. The requirement of proportionality further mandates that it must be reasonable that a measure be carried out with force.

Attention must also be paid to the ECHR which states that the killings must have been “absolutely necessary” for defending oneself or others, arresting a suspect or fugitive,

¹³ Polislagen 1984:387.

¹⁴ An in-depth discussion about Swedish police officer’s right to shoot is given in Norée, *Polisers rätt att skjuta* (Stockholm: Norstedts Juridik, 2004). What concerning their right to use other forms of violence against a person is referred to Norée, *Laga befogenhet. Polisens rätt att använda våld* (Stockholm: Jure, 2000); and Boucht, *Polisiär våldsanvändning. En straff- och offentlighetsundersökning* (Uppsala: Iustus förlag, 2011).

¹⁵ Berggren and Munck, *Polislagen: En kommentar*, 14 uppl. (Stockholm: Norstedts Juridik, 2021) the comment to Section 10.

¹⁶ The principle of legality is set forth in the very first paragraph of the Swedish Instrument of Government. The requirement of legality is also provided in Section 8 of the Police Act. The necessity and proportionality principles are also found there.

or suppressing riots or insurrections (Article 2:1). Use of firearms shall be “the last resort”, as the ECtHR has clarified.¹⁷

There are many principles developed by the ECtHR in an extensive case law, according to which important elements are: Protection of life in law; authorization, education and training of personnel when it comes to use of lethal force; planning of and instruction in the specific operation; investigation by an independent body, etcetera.¹⁸

Moreover, police officers have the same right as everyone else to use force in *self-defense*, for instance to defend themselves and to defend others, per Chapter 24, Section 1 of the 1962 Penal Code.¹⁹ There is also justification for the police, in some extraordinary *emergency situations*, to use firearms, per Chapter 24, Section 4 of the Penal Code. An example is when an officer has to shoot in order to protect himself or someone else from an attacking dog.

A person has the right in self-defense to use more force than called for by the situation, as long as it is not “clearly unjustifiable”.²⁰ Consequently, the right to self-defense extends beyond lawful authority. The term *clearly unjustifiable* entails that a *broad margin* must be given to the victim of the attack in determining whether they have kept within the bounds of the right of self-defense.²¹

It has not been established whether this broad margin is also applicable to police officers invoking the right of self-defense. But there is no statutory support for a distinction between police officers and other individuals. In my view, *the assessment of defensibility* should be the same regardless of who pleads self-defense.²² However, there may be reasons to place higher demands on a police officer when assessing whether he or she has acted in excess.

The right of the police officers to protect their own and another person’s life with force including deadly force through use of firearms is guaranteed by Section 1 of the Government’s Decree on Use of Firearms in the Police Service.

¹⁷ See for instance the case of *McCann and Others v. United Kingdom* (1995), *Kaplan and Others v. Turkey* (2005), and *Guerdner and Others v. France* (2014). When it comes to *unintentional killings*, see *Andronicou and Constantinou v. Cyprus* (1997), *Bubbins v. The United Kingdom* (2005), *Perk and Others v. Turkey* (2006), *Sultan Karabulut v. Turkey* (2006), *Huohvanainen v. Finland* (2007), *Ramsahai and Others v. The Netherlands* (2007), *Evrin Öktem v. Turkey* (2008), and *Giuliano and Gaggio v. Italy* (2011).

¹⁸ See www.echr.coe.int/hudoc.

¹⁹ Brottsbalken 1962:700.

²⁰ See NJA 2009 p. 234.

²¹ See for instance prop. 1993/94:130 p. 30.

²² Compare Boucht 2011 pp. 339–349. Because it is reasonable to have higher expectations of professionally trained police agents, the question is debatable.

A police officer must react to avert an honestly perceived danger to their life or the lives of others.²³ The officer who shoots under such circumstances does not commit a crime. Lawful authority is a so-called general ground for exemption from criminal liability, just like self-defense. For those who have used more violence than allowed, there is a further possibility to get exonerated with support of the special *excess* rules, per Chapter 24, Section 6 of the Penal Code.

It is important to know that the assessment of defensibility must be made from the viewpoint of *how the police officer perceived the situation*.²⁴ Mistakes may also be a ground for exemption from criminal liability.²⁵ When it comes to police-shootings in *imagined self-defense* the ECtHR has been clear:

The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others.²⁶

Unlike self-defense, lawful authority entails that the police officer is generally exempted from liability even if they have been mistaken only with regard to the scope of the lawful authority.

When prosecutors and courts evaluate a course of events where a police officer has used firearms, they must look at the whole situation and sometimes accept certain errors of judgment on the officer's part.²⁷ In such instances, it is primarily the force or threat of force which the police officer encounters that must determine what amount of force the officer themselves is entitled to use. In my opinion, it would have been valuable if the lawmaker had expressed this clearly in the wording of the law.

That it is a police officer who is suspected of a crime has no impact on the legal assessment or the legal investigation.²⁸ Accordingly, it is incumbent upon the public court to try the act and, in the event of a conviction, to determine the sanction. On the other hand, the police officer occupies a special position in relation to the majority of other criminal suspects inasmuch as the investigation takes place under the aegis of their

²³ See the ECtHR in the case of *Huohvanainen v. Finland* (2007).

²⁴ See Högsta domstolen 1994-05-09, nr SÖ 119-94. See further Norée 2004 pp. 71–75. See also NJA 2012 s. 45 which did not concern police officers but is still of interest.

²⁵ Norée 2000 pp. 212–217.

²⁶ *Huohvanainen v. Finland* (2007), para 96.

²⁷ Justitieombudsmannen 1974 p. 48. See further Norée, Polishunden (Juridisk Tidskrift vid Stockholms universitet, 2017/2018) pp. 85–107.

²⁸ See further Norée 2000 pp. 301–319.

own office, although with *immediate entrance of the prosecutor*. This is a debated procedure, which I believe should be maintained as it seems best from the point of view of efficiency and justice. The handling of the investigations is carefully regulated in an ordinance from 2014. The requirements correspond to what applies according to ECHR (Article 2).²⁹

To initiate a prosecution, it is not enough that a crime has been committed. The prosecutor must also assess that the evidence is sufficiently strong to secure a conviction. If a police officer has used fatal force with the support of lawful authority or in self-defense they may not be prosecuted. That the public opinion may wish to have a case tried in court is juridically irrelevant.

4. The police officer's assessment is crucial

The fatal shooting in Stockholm in August 2018 stands out. It is the only case besides a fatal shooting in 2013, a fatal shooting in 2016 and a fatal shooting in 2020 which concerned an imagined situation of self-defense since 2002. The remaining 28 cases in the last 19 years have been situations of actual self-defense. Limitation of space does not allow me to detail each of these cases. However, three general observations may be in order.³⁰

Firstly, a police officer who has fired in self-defense or with lawful authority should not be convicted. Nor should the police officer be held responsible if the police officer believed that the circumstances were such that they had the right to fire and the mistake is acceptable. In cases where a police officer has a right to fire in self-defense or with lawful authority everyone who helps that police officer enjoys the same right, per Chapter 24, Section 5 of the Penal Code. Hence, whoever fires the fatal shot or shots is not important.

Secondly, lawful authority never allows the shooting of a person in the back. The police officers must aim for the legs in such situations. But even illegitimate means may be allowed in self-defense. Where the assailant has been shot in the back, this may still be a case of self-defense. Earlier, this had only been shown in United States research on police.³¹ According to it, it is practically impossible for a police officer to put down his weapon in an ongoing situation of self-defense, once they have made the

²⁹ See for instance *Atiman v. Turkey* (2014).

³⁰ Several of the killings have been scrutinised, see Westerlund, Hagstedt and Wahlund, *Polisens vapen användning* (Stockholm: Bruun juridik, 2018); Norée 2004.

³¹ Lewinsky and Grossi, *The Suspect is Shot in the Back: Is your Shooting Clean? Understanding the Limits of Survival Psychology* (The Police Marksman, September/October 1999) pp. 23–25.

decision to shoot. This has since also been shown in a Swedish study.³² The conclusions of this research raise the question: *What may we demand of a police officer?*³³

One thing is clear. If the police officer does not fire themselves, there is a risk that they, or someone else, will be killed. This is their choice. However, it may be hard to shoot. This also applies to attacks by knife which are the most common dangerous situation that a Swedish police officer may encounter. Police officers are injured in over 15 per cent of these attacks.³⁴

Thirdly, these cases show how differently judgments may fall when it comes to police shootings. I do not question the fact that the police officers who were found not guilty did have the right to shoot. However, the police officers who were convicted of fatal shootings also had the right to shoot, or at least this is how they interpreted the situation. Considering how they actually perceived the situation; the courts should have acquitted them.³⁵

The cases also show that even seemingly trivial events may result in a fatal outcome. This is not acceptable. Suspects are not outlaws only because they are running from the police. In other words: it is better to let go of a fleeing person than to risk someone being harmed. This may be illustrated by one of the fatal shootings which tragically started with a routine traffic control.³⁶

5. Large responsibility at leadership level

It is unusual that a police officer shoots to save someone else without the officers themselves being under attack – indeed all life is protected by law. Sometimes police officers need to force a person to the ground, but they rarely have to shoot. This has only occurred in one of the cases which ended in a fatal shooting.³⁷

Several of the fatal police shootings could have been avoided if the police officers had been offered a functional alternative to the baton and the service gun. One alternative

³² Fredriksson, *Från tanke till handling i en nödvärnssituation* (Solna: Polishögskolan 2002). Essay at the Training for Qualified Criminal Police Activities.

³³ See further Bertilsson, *Human motor control, autonomic and decision progresses under physical and psychological stress – instinctive, reflexive and adaptive aspects* (Lund: Lund University, 2019).

³⁴ Knutsson and Strype, *Polisens bruk av skjutvapen* (Solna: Polishögskolan, 2002).

³⁵ Norée 2004 p. 55.

³⁶ See Jönköpings tingsrätt 2001-11-12, mål B 458-01.

³⁷ The fatal shooting in Ulricehamn 2015. Åklagarmyndigheten, Särskilda åklagarkammaren, diariern AM-1489-15.

is taser which Swedish police are now trying out.³⁸ One may also question whether the police management acted appropriately in some of the cases.³⁹ It may have unnecessarily put police officers in situations where they had no choice but to use their weapons. These are situations where the police management had both the time and the opportunity to carry out the interventions in a much more thoughtful way. This considered it may be advisable to transfer the responsibility of the fatal shootings onto the police management.⁴⁰

The question of the right of the police to shoot and who should bear the responsibility – the state in its capacity as chief of the police or the police officer who shoot – has suddenly become important, as the state may be liable for damages for reasons that it has not previously had reason to take into account. The simplest way is to pursue the claim for damages in a Swedish court, and then also invoke the ECHR. Thereafter it is possible to turn to the ECtHR, which can force the state to pay damages of the shooting was not in accordance with the ECHR.

In addition to damages, legislation may be a necessary consequence of the court's rulings. The individual police officer thus does not risk ending up before the ECtHR, where the state is held accountable. In a tort case, the responsibility is also placed on the police management.

6. Attacks by knife contribute to the rise in fatal police shootings

Why has the number of fatal shootings increased? One explanation is that more guns are in circulation and that the number of persons carrying a knife has risen.⁴¹ Importantly, many of the assailants are intoxicated and suffer from a mental disorder. Another explanation may be that the police force consists of younger – and thus less experienced – officers than it used to be who, in turn, are more often involved in dangerous situations. The fact that 75 per cent of the cases have been qualified as situations of actual self-defense support this explanation, especially since most of the shootings (30 cases) have occurred during the last 20 years.

³⁸ The Ethics Council of the Police Authority has approved the trial, after the conclusions of the report, *Polisens användning av skjutvapen och eventuella behov av åtgärder* (Stockholm: Polismyndigheten, 2016) https://polisen.se/siteassets/dokument/ovriga_rapporter/polisens-anv-skjutvapen-behov-atgarder.pdf. Last accessed 16 December 2021.

³⁹ See for instance the fatal shootings in Bräkne Hoby 2003 and at Möja 1995. Åklagarmyndigheten i Malmö, ärendenr 300-421-03 and RH 1997:73. See further Norée 2004 p. 57.

⁴⁰ See for instance the case of *McCann and Others v. United Kingdom* (1995) and the case of *Finogenov and Others v. Russia* (2011).

⁴¹ See further Polismyndigheten 2016 pp. 19–22. Polismyndigheten, *Hur ofta använder polisen skjutvapen?* 21 juni 2021, <https://polisen.se/om-polisen/polisens-arbete/polisens-befogenheter/hur-ofta-anvander-polisen-skjutvapen/>. Last accessed 16 December 2021.

However, it is hard to talk about a breaking trend in these cases, as the number of fatal shootings is still low. Such case also differ too much from one another to allow for general explanations. But it is possible that an increasing number of attacks by knife has resulted in an increasing use of weapons by the police. In more than one third of the cases (15 cases out of 44) the victims carried knives (in one case it was a pair of scissors), among them seven of the latest 17 men killed.

7. A Nordic comparison of firearms use

The cases show that Swedish police rarely use arms within the frame of lawful authority. Here we can compare the different use of weapons by police across the Nordic countries.⁴²

The general grounds for exemption from liability is with some exceptions similar in all Nordic countries, where Finland shows the most recent rules on police use of forcible means, enacted in the Police Act from 2011.⁴³ The Danish Police Act is from 2004 and the Norwegian Police Act is from 1995.⁴⁴ Rules for self-defense are given in the Penal Code in each country.⁴⁵

In Sweden and Denmark police officers typically wait until a situation may be qualified as self-defense, and then both the police officers and the assailant are under more stress.⁴⁶ This presumably increases the risk for more severe injuries than when the police use their guns within the frame of lawful authority, as the police in Norway usually do.⁴⁷ The saying 'scared police officers shoot first, ask questions later' is true, but it ought to be the other way around. In this respect, Finland stands out. Finish police officers consider it a failure to shoot in self-defense.⁴⁸ The most common reason for them is lawful authority, followed by self-defense and a combination of these reasons.

⁴² When I speak of the Nordic countries I refer to all the countries apart from Iceland, which is not included here.

⁴³ The similarities are valid even if the legal terminology partly differs.

⁴⁴ Lov nr 444 af 09/06/2004 om politiets virksomhed (politiloven) in Denmark, polislag 872/2011 (polislagen) in Finland, and lov 1995-08-04-53 om politiet (politiloven) in Norway. See further Henricson, *Politiret 6. udgave* (København: Jurist- og Økonomforbundets forlag, 2016); Helminen, Salminen, Kuusimäki, *Polisrätt* (Helsingfors: Juristförbundets förlag, 2000), Myhrer, *Som siste utvei. Rettslige rammer for politiets bruk av skytevåpen* (Oslo: Universitetsforlaget, 2005); and Auglend and Mæland, *Politirett 3. utgave* (Oslo: Gyldendal juridisk, 2016).

⁴⁵ *Straffeloven* from 1930 in Denmark, *strafflagen* from 1889 in Finland, and *straffeloven* from 2005 in Norway.

⁴⁶ Holmberg, *Politiets brug af skydevåben i Danmark 1985–2002* (København: Københavns universitet, 2004).

⁴⁷ Knutsson and Strype, *Polisens bruk av skjutvapen* (Solna: Polishögskolan, 2002) paras 84–85.

⁴⁸ Knutsson and Norée, *Polisers bruk av skjutvapen i Norden – en jämförelse*, in *Politiets bruk av skytevåpen i Norden*, ed. Knutsson (Oslo: Politihøgskolen, 2005) pp. 160.

This highlights the importance of clear rules to guide the police. Unfortunately, the information about justification for use is not directly comparable between the countries. It is, however, possible to establish points of comparison.⁴⁹

8. Inadequate rules

In view of the many different situations in which a police officer might feel called upon to use firearms, it is not possible to identify any single appropriate course of action that is always appropriate. The Swedish Police Authority has therefore chosen to refrain from detailed instructions. The 1969 Government's Decree on Use of Firearms in the Police Service provides some instructions. Yet, these are both difficult to understand and not well thought-out.⁵⁰

It is much easier for an officer in a rapidly occurring event to determine if a situation warrants self-defense than to establish whether there are the necessary preconditions to shoot according to lawful authority as it is defined in the decree. Especially problematic is the requirement that deadly force must be immediately necessary and to ascertain that the crime in question is stated in the list of potential crimes. However, the decree is outdated and does not, for instance include acts of terrorism. Therefore, to make this judgment in an acute situation is extremely difficult.⁵¹

The Supreme Court has stated that it has a strict view on self-defense by the use of lethal weapons. Yet, there is no precedent concerning police officers' right to shoot. However, it does make clear that defense by use of lethal weapons may be defensible 'only under extreme circumstances'.⁵²

This also follows from the ECHR (Article 2), as mentioned above in Chapter 3 under the title When is force justified? The legislature can be expected to keep the grounds for exemptions from criminal liability for killing (lawful authority, self-defense etcetera) within narrow limits. ECtHR has established this.⁵³

However, the cases of fatal shootings that have been studied thus far illustrate that police officers benefit from a certain amount of freedom to ward off highly dangerous violence by using their service weapon. The question is where to draw the line. As in

⁴⁹ Knutsson and Norée, *Police Use of Firearms in the Nordic Countries: A Comparison*, in *Police Use of Force, Guns and Non-Lethal Weapons: A Global Perspective*, eds. Kuhns and Knutsson (Santa Barbara, California: Praeger, 2010) pp. 122–123.

⁵⁰ Kungörelse (1969:84) om polisens användning av skjutvapen.

⁵¹ Knutsson and Norée 2010 p. 107.

⁵² This is clearly evident from several convictions, which, in fact, did not concern police officers, but which are still of interest. See for instance NJA 1994 s. 48, NJA 2005 s. 237 and NJA 2009 s. 234. See also NJA 2003 s. 670 (putative self-defense).

⁵³ See *Kasap and Others v. Turkey* (2014).

many other circumstances the decision to decide what is suitable in each case has to a large extent been referred to the individual police officer. This brings about the risk that, in hindsight, the police officer's decision to use their service weapon turns out not to have been well thought through.

The individual police officer suffers from the lack of concrete guidelines, as does the person who is victim to the bullets of the police.⁵⁴ It is extremely hard for a Swedish police officer to determine whether the conditions for lawful authority are met. This means that what ought to be an exception – self-defense – has become the major reason for police officers discharging their weapons.⁵⁵

9. Problems and possible solutions

Every police officer who uses a firearm must themselves answer for the consequences if the use of such a weapon is found to be indefensible. This is not satisfactory since the regulation is vague and the Instructions and Common Advices on the Police's Firearms issued by the Swedish Police Authority in 2016 provide insufficient guidance.⁵⁶

There are examples where the lack of clear instructions may lead to more lenient assessments than what would otherwise have resulted.⁵⁷ In some cases, police officers have even avoided being held responsible partly because of the lack of instructions.⁵⁸

However, some examples have shown the opposite result, namely that the lack of clear instructions may lead to harsher assessments than what would otherwise have been. In these cases, the fact that the police officers were lacking in adequate training has not

⁵⁴ Police officers who end up in situations where they have fired against and killed persons have deep going and hard experiences to handle, see Klinger, *Into the Killing Zone: A Cop's Eye View of Deadly Force* (San Francisco: Jossey-Bass, 2004). See also Klinger, The Consequences of Using Deadly Force, in *Police Use of Force, Guns and Non-Lethal Weapons: A Global Perspective*, eds. Kuhns and Knutsson (Santa Barbara, California: Praeger, 2010) pp. 152–161.

⁵⁵ The inadequate regulation means that Swedish police officers unnecessarily face “split second syndrome” situations, something that should be avoided. See Fyfe, The Split-Second Syndrome and Other Determinants of Police Violence, in *Critical Issues in Policing: Contemporary Readings*, eds. Dunham and Alpert (Long Grove, Illinois: Waveland Press, 1993) pp. 465–479.

⁵⁶ Polismyndighetens föreskrifter och allmänna råd om polisens skjutvapen m.m., PMFS 2016:5, FAP 104-2.

⁵⁷ See for instance Hovrätten över Skåne och Blekinge 1993-04-29, mål B 1158-92 and Kalmar tingsrätt 2000-10-12, mål B 843-00.

⁵⁸ See for instance Göta hovrätt 2001-06-20, mål B 1281-00.

played in their favour.⁵⁹ This is what several experienced police officers have encountered, not least the police officer sentenced to prison after a fatal shooting.

A drastic way of solving the problem would be to disarm the Swedish police. In Norway, as a comparison, police are unarmed as a rule, and the number of fatal shootings there is very low. Furthermore, Nordic research raises the question of whether unarming police officers, paradoxically, helps to protect the officers.⁶⁰ But as long as the police management puts police officers in situations where they may be forced to shoot, unarming them is risky. I believe that many police officers may thank their service weapon for being alive today. The dangerous situations must be minimised.

Stress can affect police officers during interventions and training. The stress responses should be considered when designing tactics, training and equipment so that tasks can be carried out well when stress is heightened.⁶¹

10. Regulate by law the right to shoot

In my opinion, the question of a police officer's right to use fire arms ought to be regulated by law.⁶² The legislator could simply add a rule to the Police Act which – just like the legal right to use cuffs – may work in combination with lawful authority.⁶³ The limit set by the principles of necessity and proportionality for the right of the police to shoot should be clarified. The Swedish Police Authority, the Parliamentary Ombudsmen and courts must all contribute to a more precise definition of these principles.

Statutory support does not constitute any guarantee against the occurrence of fatal shootings, but the law at least could be applied by the courts and be of guidance to the police officers. This would be an improvement from the current unclear instructions. There lies a heavy responsibility on the legislator and the police management. They must never accept that a police officer fire a shot in situations than those in which it is legally defensible. This is a challenge that must be tackled head on in the Swedish criminal law.

⁵⁹ When it comes to the lack of training, see Holgersson, "Sätta hårt mot hårt" – *en studie av polisens användning av våld och förmåga att hantera konflikter* (Linköping: Linköpings universitet, 2018) <https://liu.diva-portal.org/smash/get/diva2:1269617/FULLTEXT01.pdf>. Last accessed 16 December 2021.

⁶⁰ Knutsson and Strype, *Polisens bruk av skjutvapen* (Solna: Polishögskolan, 2002).

⁶¹ See Bertilsson 2019 p. 57.

⁶² See my proposal in Norée, *Dödligt våld möjligt mot befarade självmordsbombare*, in *Argumentation i nordisk straffrätt*, eds. Nordlöf (Stockholm: Norstedts Juridik, 2012) pp. 129–152, 148–149.

⁶³ The right to use cuffs is laid down in Section 10 a of the Police Act.