

PUBLIC RIGHT TO RECORD POLICE ACTIONS

Lenka Scheu, Anželika Banevičienė

Abstract: This article examines the legal and societal dimensions of citizens recording police activities across various countries, emphasising the crucial role of such recordings in promoting transparency, accountability, and social justice. It explores how technological advancements, such as smartphones and drones, have democratised journalism, enabling ordinary individuals to document misconduct and influence police behaviour. The paper analyses diverse legal frameworks, highlighting the recognition of the right to record in jurisdictions such as the US, Germany, Lithuania, and the Czech Republic, while also addressing restrictions rooted in privacy, safety, and operational concerns. It underscores the importance of clear legislation and balanced regulations to protect citizens' rights without compromising public safety or privacy. Ultimately, the article advocates for consistent legal protections and training to ensure that citizen recordings serve as effective tools for oversight, justice, and democratic accountability.

Resumé: Článek analyzuje právní a společenské aspekty nahrávání policejních zásahů občany v různých zemích a zdůrazňuje klíčovou roli těchto nahrávek při prosazování transparentnosti, odpovědnosti a sociální spravedlnosti. Zabývá se tím, jak technologický pokrok, například v podobě chytrých telefonů a dronů, demokratizoval žurnalistiku a umožnil běžným občanům dokumentovat protiprávní jednání a ovlivňovat chování policie. Článek analyzuje různé právní rámce a zdůrazňuje uznání práva na nahrávání v jurisdikcích, jako jsou USA, Německo, Litva a Česká republika, přičemž se zabývá také omezeními vyplývajícími z ochrany soukromí, bezpečnosti a operačních záležitostí. Podtrhuje význam jednoznačné legislativy a vyváženosti předpisů pro ochranu práv občanů, aniž by byla ohrožena veřejná bezpečnost nebo soukromí. Článek nakonec vyzývá k jednotné právní ochraně a vzdělávání, aby nahrávky občanů sloužily jako účinné nástroje pro dohled, spravedlnost a demokratickou odpovědnost.

Keywords: Recording of police, police actions, right to privacy, fundamental freedoms

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Introduction

Everyone agrees that police and other law enforcement officers should be treated as public officials with public powers, enabling them to maintain public safety. However, exercising such powers can interfere with individuals' fundamental rights and freedoms. Therefore, law enforcement officers should not misuse their powers when performing their duties. It raises a question: What happens when the police or other law enforcement officers misuse their authority? Does society have the right to monitor and share information about such malpractice?

In recent years, police have increased their use of visual surveillance in public spaces, while also facing greater scrutiny from citizens who record their actions, a phenomenon known as "sousveillance."¹ On social media and other online platforms, such as YouTube, TikTok, or Instagram, everyone can find ex-post records exposing police misconduct. High-profile incidents such as the killings of Eric Garner,² Walter Scott,³ and George Floyd⁴ were all exposed to the public mainly due to citizen recordings, which directly contradicted official reports and brought attention to cases of police brutality. The widespread use of handheld cameras not only exposes police misconduct but also provides valuable evidence in criminal investigations.⁵ Almost everyone has a smartphone that allows them to share videos online. It is also important to remember that people can use not only phone cameras but also drones to film. "This technological shift has democratized the role of journalism. Ordinary citizens now serve as "citizen-journalists," capturing moments of public interest that might otherwise go unnoticed or unreported."⁶ Online, everyone can find not only ex-post records but also indirectly witness the misconduct. A live stream can be broadcast directly from any public place at any time, and the content can quickly go viral, reaching a global audience. This globally spreading phenomenon suggests that informing society is no longer the exclusive domain of public and state-controlled broadcasters; instead, each private individual can play a role.⁷ Society members who believe that recording the police can strengthen social justice and view it as acceptable in various situations are more likely to support such

¹ NEWELL, B. (2014), Crossing lenses: Policing's new visibility and the role of 'smartphone journalism' as a form of freedom-preserving reciprocal surveillance, *Journal of Law, Technology & Policy*, <https://illinoisjltp.com/file/60/Newell.pdf>.

² HUTCHINSON, B. (5 June 2020), From Eric Garner to George Floyd, 12 black lives lost in police encounters that stoked mass protests, ABC News, <https://abcnews.go.com/US/eric-garner-george-floyd-12-black-lives-lost/story?id=70999321>.

³ BERNSTON, D. (2 August 2020), Officer pleads guilty to federal civil rights charge in 2015 shooting of Walter Scott, PBS NewsHour, <https://www.pbs.org/newshour/nation/officer-pleads-guilty-federal-civil-rights-charge-2015-shooting-walter-scott>.

⁴ HILL, E., TIEFENTHÄLER, A., TRIEBERT, C., JORDAN, D., WILLIS, H., & STEIN, R. (31 May 2020), How George Floyd was killed in police custody, *The New York Times*, <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

⁵ NEWELL, B. (2014), Crossing lenses: Policing's new visibility and the role of 'smartphone journalism' as a form of freedom-preserving reciprocal surveillance. *Journal of Law, Technology & Policy*, <https://illinoisjltp.com/file/60/Newell.pdf>.

⁶ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13.

⁷ FIETKIEWICZ, K. J. (2020), The law of live streaming: A systematic literature review and analysis of German legal framework, In G. Meiselwitz (Ed.), *Social computing and social media: Design, ethics, user behavior, and social network analysis* (Vol. 12194, pp. 1–16), Springer, https://doi.org/10.1007/978-3-030-49570-1_16.

action.⁸ This indicates that the traditional media environment is transformed into ‘a new notion of media ... and new understandings of the evolving media ecosystem.’⁹ Such content sharing raises various issues, including whether it infringes on fundamental rights related to protecting privacy, personal data, and the right to one’s image, as well as whether such video recording and sharing otherwise violate laws. Online video footage shows that police officers often demand that people stop recording. Research shows that police officers’ reactions to being recorded are influenced by their past encounters with disrespectful or disobedient citizens. Factors such as cultural values within police forces, strong loyalty among officers, feelings of social isolation from the public, and the belief that civilians do not understand the risks officers face all play significant roles in shaping these reactions. Officers’ perceptions and behaviours can vary based on the neighbourhood they are in. In low-income, high-disorder areas, they often exercise more coercive authority. In these environments, officers may expect less respectful treatment and anticipate antagonistic interactions. This expectation can affect their responses to civilians, including those who are filming them. Officers may feel resentment or try to avoid being recorded, particularly in situations where they have discretion over their actions.¹⁰

Various contradictory messages in the media suggest that countries’ approaches toward filming the police are not uniform. Differences raise questions about whether EU citizens’ fundamental rights are comparatively lower than those of the US. Should the right of individuals to record police actions be equal and clearly established in all EU countries? How and to what extent should private individuals be allowed or restricted from sharing such videos? Should the implementation of this right be left to each EU Member State’s jurisdiction, or should it be regulated at the EU level?

Thus, the article examines the differences in legal regulations regarding video recordings of police actions in the US, the Czech Republic, Germany, and Lithuania, as well as options for unification. The article begins by explaining the importance of the public being aware of police actions, the legal justification for society’s right to know, and the transparency requirements for law enforcement. It then addresses the legal requirements surrounding the recording of police actions, as well as the restrictions on the publication and dissemination of recorded information. Finally, the article analyses the findings and offers recommendations for both the EU and its member states concerning the video recording of police actions.

The public needs to know about police actions

Police officers, as representatives of the state, are tasked with protecting public safety and are authorised to use force, including deadly force if necessary, to fulfil that mission.¹¹ To effectively carry out their assigned functions, the police have broad discretion to act. Such broad freedom of action poses a risk of power abuse. So, the public must have the opportunity

⁸ FARMER, A. K., SUN, I. Y., & STARKS, B. C. (2015), Willingness to record police-public encounters: The impact of race and social and legal consciousness, *Race and Justice*, 5(4), 356–377.

⁹ European Council, Committee of Ministers (13 April 2016), Recommendation CM/Rec (2016)4 on the protection of journalism and safety of journalists and other media actors.

¹⁰ KOPAK, A. (2014), Lights, cameras, action: A mixed methods analysis of police perceptions of citizens who video record officers in the line of duty in the United States, *International Journal of Criminal Justice Sciences*, 9(2).

¹¹ COLEMAN, A. J., & JANES, K. M. (2021), Caught on tape: Establishing the right of third-party bystanders to secretly record the police, *Virginia Law Review Online*, 107, 166–192.

to verify whether the police do not misuse their powers. Recordings of the police by citizens ‘can play a critical role in ... democratic process by broadening the scope of perspectives that inform the public’s understanding of the police.’¹² The public’s need to record police actions and share them on social platforms can be divided into several groups.

Firstly, recording and sharing police actions help expose officers’ misuse of power and aid in the collection of evidence. Recording and sharing videos of police interactions allows citizens to participate in public discourse actively, enabling society to confront issues such as police brutality, discrimination, and abuse of power.¹³ Citizen bystanders act as journalists, *per se*, when they press record on such a vile incident as police brutality, and then post the recording online.¹⁴ They ‘can play a pivotal role in the public square and shine a light on police misconduct that might otherwise go unnoticed.’¹⁵ Pepper spraying the faces of non-violent protesters at UC Davis,¹⁶ the shooting of Oscar Grant¹⁷ on a San Francisco subway platform by Bay Area Rail Transit officers, generating significant protests among online and offline communities, and the death of Ian Tomlinson¹⁸ during the London Riots are incidents captured by *citizen-journalists* that have become widely known due to viral sharing on platforms like YouTube and social media and were eventually used as evidence in the court trials. High-profile cases, such as the deaths of Eric Garner and George Floyd, were brought to light essentially because bystanders recorded these tragic events.¹⁹ These recordings contradicted official police accounts, raised public awareness and sparked widespread outrage and debates about police accountability, leading to protests, calls for reform, and sometimes legal action against the involved officers.²⁰ Without the ability to record police interactions, many incidents may have gone unreported or misrepresented, and justice might not have been pursued.²¹ Such evidence “generally provides more reliable information than witness testimony, is less affected by memory errors, and spares the court from the challenging task of evaluating the credibility of both officers and civilians”.²² Simply describing such an interaction is often not enough as an alternative.²³ Video of the mentioned incidents depicts

¹² Ibid.

¹³ CHAUDHARY, N. (2024), The concept and review of right to record police. *Nyaayshastra Law Review*, 4(2), 1–13.

¹⁴ BOYER, M. (2023), “I can’t breathe”: How recording the police can save life and the justice system, *Widener Law Review*, 29(2), 241–262.

¹⁵ COLEMAN, A. J., & JANES, K. M. (2021), Caught on tape: Establishing the right of third-party bystanders to secretly record the police, *Virginia Law Review Online*, 107, 166–192.

¹⁶ UC Davis News and Media Relations (2021, November 18), Chancellor May’s statement on 10-year anniversary of campus pepper spray incident, <https://www.ucdavis.edu/news/chancellor-mays-statement-10-year-anniversary-campus-pepper-spray-incident>.

¹⁷ ANTONY, M. G., & THOMAS, R. J. (2010), ‘This is citizen journalism at its finest’: YouTube and the public sphere in the Oscar Grant shooting incident, *New Media & Society*, 12, 1280–1281.

¹⁸ BBC News (5 August 2013), Timeline: Ian Tomlinson’s death, <https://www.bbc.com/news/uk-10728685>.

¹⁹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13.

²⁰ Ibid.

²¹ Ibid.

²² McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–566.

²³ MULLEN, J. (2020), Information gathering or speech creation: How to think about First Amendment right to record, *William & Mary Bill of Rights Journal*, 28(3), 803–830.

‘altercations that would be difficult or impossible to describe in words alone and which would be unlikely to achieve credibility, let alone the level of national notoriety and importance that they did.’²⁴

Secondly, recording and sharing police actions can ensure the accountability of police officers for misconduct. The ability of ordinary citizens to document police interactions makes it much harder for police misconduct to go unnoticed or unchallenged.²⁵ The right to record gives the public ‘tremendous power to participate in holding government officials accountable for their bad actions’ and for abusing their power.²⁶ Such upholding of civic oversight protects individual rights.²⁷ This serves essential democratic functions. It creates a record of government action, making them subject to criticism²⁸ and contributing to the public’s ability to hold the police accountable,²⁹ ensuring they face appropriate consequences for their misconduct.³⁰ This form of documentation is particularly important in cases where ‘conflicting narratives exist between police officers and citizens.’³¹ Videos recorded by bystanders often serve as objective evidence that can either corroborate or dispute official reports, helping to ensure that justice is served.³²

Thirdly, the recording of police actions can change police behaviour. The recording can enhance public respect for police effectiveness and change how police do their jobs.³³ When photos and videos go viral, they often serve as a strong and effective foundation for advocating change where it is needed.³⁴ *We are watching* alone can keep the police from abusing their power, even beyond the fear that any video will later be distributed.³⁵ Officers use various techniques in public interactions, such as negotiation, persuasion, commands, or threats, often relying on past experiences. Their understanding that civilians record their actions can change the way they interact with the public. Furthermore, the presence of recording devices often deters criminal activity, ‘which reduces the likelihood of violence associated with crime and potentially dangerous interactions between police and individuals committing crimes.’³⁶ The results of the Roche survey indicate that viral video exposure has

²⁴ Ibid.

²⁵ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13.

²⁶ MANION, C. S. (2022), The right to record police must be clearly established, *Kentucky Law Journal*, 111(4), 755–772.

²⁷ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13.

²⁸ SKINNER-THOMPSON, S. (2019), Recording as heckling, *Georgetown Law Journal*, 108(1), 125–174.

²⁹ MANION, C. S. (2022), The right to record police must be clearly established, *Kentucky Law Journal*, 111(4), 755–772., p. 767.

³⁰ MANION, C. S. (2022), The right to record police must be clearly established, *Kentucky Law Journal*, 111(4), 755–772, p. 757.

³¹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13., p. 2.

³² Ibid.

³³ FARMER, A. K., SUN, I. Y., & STARKS, B. C. (2015), Willingness to record police-public encounters: The impact of race and social and legal consciousness, *Race and Justice*, 5(4), 356–377, p. 358.

³⁴ KREIMER, F. (2011), Pervasive image capture and the First Amendment: Memory, discourse, and the right to record, *University of Pennsylvania Law Review*, 159, 335–351.

³⁵ SACHAROFF, L. (2016), Cell phone buffer zones, *University of St. Thomas Journal of Law and Public Policy*, 10(2), 94–113, p. 98.

³⁶ McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide

a positive relationship with perceived likelihood of sousveillance and sousveillance worry. Moreover, viral video exposure has an indirect effect on worry through perceived likelihood.³⁷

Finally, the recording of police actions can ensure transparency in police actions and increase society's trust in the police. Police officers are public officials tasked with protecting the community, and their actions should be subject to public scrutiny. Recording their activities provides a crucial layer of oversight, allowing the public to monitor police behaviour and ensure that officers are acting within the law.³⁸ The practice of recording police is essential for ensuring government transparency, as it enables citizens to observe, document, and challenge official actions.³⁹ In summary, the need to expose officers' misuse of power, collect evidence, and positively change police behaviour, as well as ensure transparency in police actions and accountability of police officers for misconduct, underscores the importance of allowing civilians to record police actions.

Legal framework for ensuring the society's right to know about police actions

International frameworks provide a robust foundation for recognising and protecting the right to record police activities.⁴⁰ Each country is obligated to guarantee to everyone the freedom of opinion and expression, which encompasses the right to collect and disseminate information about public officials,⁴¹ as stipulated in Article 19 of the Universal Declaration of Human Rights.⁴² Article 19 of the International Covenant on Civil and Political Rights stipulates that freedom of expression encompasses the right to seek, receive, and impart information and ideas of all kinds.⁴³ This provision indicates that freedom of expression should be extended to internet communication.⁴⁴

In Europe, Article 10 of the European Convention on Human Rights, similar to UN documents, also guarantees freedom of expression.⁴⁵ This right includes the freedom to receive

implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–[ii], p. 552.

³⁷ ROCHE, S. P. (2024), *Cops and cells: Theorizing and assessing the implications of smartphone surveillance for policing* (Legacy Theses & Dissertations), University at Albany, State University of New York, p. 71.

³⁸ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaaysbastra Law Review*, 4(2), 1–13. p. 5.

³⁹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaaysbastra Law Review*, 4(2), 1–13. p. 5.

⁴⁰ United Nations Human Rights Council (17 July 2018), The promotion, protection and enjoyment of human rights on the internet (A/HRC/RES/38/7), <https://digitallibrary.un.org/record/1639840?v=pdf>.

⁴¹ Ibid.

⁴² United Nations (n.d.), Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁴³ Office of the United Nations High Commissioner for Human Rights. (n.d.), International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁴⁴ United Nations Human Rights Council (5 July 2018), Resolution adopted by the Human Rights Council on 5 July 2018: The promotion and protection of human rights in the context of peaceful protests (A/HRC/RES/38/7), United Nations Digital Library, https://digitallibrary.un.org/record/1639840/files/A_HRC_RES_38_7-EN.pdf.

⁴⁵ Council of Europe. (n.d.), European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_ENG.

and impart information without interference by public authority. In addition, the Committee of Ministers adopted a recommendation on the European Code of Police Ethics, stating that the police must ‘be accountable to the state, the citizens and their representatives.’⁴⁶ The right to receive and impart information and ideas without interference by public authority is also guaranteed in Article 11 of the EU Charter of Fundamental Rights.⁴⁷ The Council of the EU has noted in the EU Human Rights Guidelines on Freedom of Expression Online and Offline, that the freedom of expression ‘include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media.’⁴⁸ Considering the guarantees of freedom of speech and the right to record police actions outlined in international and EU documents, it is necessary to determine how these guarantees are incorporated into national constitutions and other national legal instruments.

Article 25 of the Lithuanian Constitution⁴⁹ specifies that no one can be restricted from seeking, receiving, or sharing information and ideas. This right can be limited by law when necessary to protect human health, honour, dignity, private life, and morals, or to defend the constitutional order. The Police Law emphasises that police actions in Lithuania are based on the principles of respect for human rights, public morality, and the balance between publicity and confidentiality of activities, among others.⁵⁰ The principle of transparency of the Internal Service, enshrined in the Statute of the Internal Service, confirms that any activity of a police officer in the performance of their duties must be public, except in cases established by law.⁵¹ The Code of Ethics and Anti-Corruption Conduct for Police Employees stipulates that the activities of police employees must comply with the principles of respect for the individual and the state, as well as publicity and transparency.⁵² In addition, the Public Information Act establishes freedom of information, which guarantees that every person has the right to express their thoughts and beliefs freely and to collect, receive, and disseminate information and ideas without restriction. The freedom to collect, receive, and disseminate information may not be restricted except by law if it is necessary to protect the constitutional order, human health, honour and dignity, private life, and morality.⁵³ The law specifies that every person has the right to take notes, photographs, film, use audio and video equipment,

⁴⁶ Council of Europe, Committee of Ministers. (19 September 2001), Recommendation Rec(2001)10 on the European Code of Police Ethics, <https://rm.coe.int/the-european-code-of-police-ethics-pdf/1680b003e0>.

⁴⁷ European Union (n.d.), Charter of Fundamental Rights of the European Union, https://eur-lex.europa.eu/eli/treaty/char_2012/oj/eng.

⁴⁸ Council of the European Union (12 May 2014), EU human rights guidelines on freedom of expression online and offline, para 11.

⁴⁹ Republic of Lithuania. (1992), Constitution of the Republic of Lithuania, <https://lrkt.lt/en/about-the-court/legal-information/the-constitution/192>.

⁵⁰ Lithuania, Seimas (2000), Police Law (Policijos įstatymas), No. VIII-2048, 17 October 2000, last amendment No. XIV-3136, 12 November 2024, Article 4(2).

⁵¹ Lithuania, Seimas (2003), Law on the Approval of the Statute of the Internal Service (Vidaus tarnybos statuto patvirtinimo įstatymas), No. IX-1538, 29 April 2003, last amendment No. XIV-2404, 19 December 2023, Article 3(1)(4).

⁵² Lithuania, Police Commissioner General (2023), Order on the approval of The Code of Ethics and Anti-Corruption Conduct for Lithuanian Police Employees (Dėl Lietuvos policijos darbuotojų etikos ir antikorupcinio elgesio kodekso patvirtinimo), No. 5-V-411, 16 May 2023, Article 5.

⁵³ Lithuania, Seimas (1996), Public Information Act (Visuomenės informavimo įstatymas), No. I-1418, 2 July 1996, last amendment No. XIV-3120, 12 November 2024, Article 4(1).

and record information in any place except at the individual's place of residence.⁵⁴ Every person has the right not only to collect information but also to publish it in any media.⁵⁵ An exception to this freedom is the filming or audio and video recording of individuals who are in a helpless state due to a health condition or of children. Filming and recording are prohibited without the consent of a helpless adult or a child's parents or guardians.⁵⁶ Analysis of the Lithuanian legal framework reveals that every individual has the right to video record police actions, as confirmed by court practices. In case No. eA-171-556/2025 courts noted that a police officer had unlawfully prevented filming his misconduct and demanded to erase the record immediately.⁵⁷

Article 5 of the German Basic Law⁵⁸ states that every individual has the right to freely express and share their opinions through speech, writing, and images, as well as to seek information without obstruction from publicly accessible sources. Censorship is prohibited. However, these rights are not absolute. Article 5(2) establishes limits to freedom of expression and information in the provisions of general laws, as well as in provisions for the protection of young persons and the right to personal honour. Freedom of expression must be balanced with societal interests by implementing legal frameworks that protect free speech while allowing for restrictions to address harms such as violence, hate speech, or misinformation. It is essential to understand the context and nature of the expression in determining appropriate limits, advocating for a nuanced approach that safeguards fundamental rights without compromising societal well-being. The public is generally allowed to record police officers in their actions, as it is considered a form of protected free expression and a means of holding authorities accountable. However, certain restrictions may apply depending on the context or location. Some authors support the idea that recording police is a protected activity under principles of freedom of expression.⁵⁹

Freedom of expression and the right to obtain information are constitutionally guaranteed in the Czech Republic in Article 17 of the Charter of Fundamental Rights and Freedoms⁶⁰ (Charter), which is an integral part of the constitutional order of the Czech Republic. This article sets out several fundamental rights and principles. Firstly, everyone has the right to freely express their thoughts and opinions in words, writing, pictures or in any other manner. In addition, according to paragraph 2, everyone has the right to seek, receive, and impart information and ideas regardless of national borders. Further, the Charter prohibits censorship in paragraph 3, which means that no prior restraint on expression is permissible. Section 17(4) of the Charter provides that freedom of expression and the right to obtain

⁵⁴ Lithuania, Seimas (1996), Public Information Act (Visuomenės informavimo įstatymas), No. I-1418, 2 July 1996, last amendment No. XIV-3120, 12 November 2024, Article 5(1)(3).

⁵⁵ Lithuania, Seimas (1996), Public Information Act (Visuomenės informavimo įstatymas), No. I-1418, 2 July 1996, last amendment No. XIV-3120, 12 November 2024, Article 5(1)(1).

⁵⁶ Lithuania, Seimas (1996), Public Information Act (Visuomenės informavimo įstatymas), No. I-1418, 2 July 1996, last amendment No. XIV-3120, 12 November 2024, Article 5(1)(3).

⁵⁷ Supreme Administrative Court of Lithuania, Decision in administrative case No. eA-171-556/2025, 7 May 2025.

⁵⁸ Federal Republic of Germany (2025), Basic Law for the Federal Republic of Germany (as amended 22 March 2025).

⁵⁹ JOUANJAN, O. (2009), Freedom of expression in the Federal Republic of Germany, *Indiana Law Journal*, 84(3), <https://www.repository.law.indiana.edu/ilj/vol84/iss3/5>.

⁶⁰ Czech National Council. (1992), Resolution on the proclamation of the Charter of Fundamental Rights and Freedoms, Constitutional Act No. 2/1993 Sb.

information may be restricted by law in respect of measures necessary in a democratic society, for example, to protect the rights and freedoms of others, public safety, health or morals.

The Constitutional Court of the Czech Republic confirmed⁶¹ the importance of freedom of expression and the right to information as fundamental democratic values, but at the same time emphasised that these rights are not absolute and may be restricted by law. The Constitutional Court emphasised that freedom of expression encompasses the right to express opinions in various ways, while simultaneously highlighting the need to respect the rights of others, particularly the right to personal protection, thereby affirming that freedom of expression is not unlimited. In this judgment, the Court emphasises that the dissemination of information, ideas, and opinions —both laudatory and critical —is vital to democracy, understood as the rule of the people. This dissemination is intended to ensure that the public has access to all available facts necessary for a good public debate on matters of public interest and for forming individual opinions or reaching consensus on the management of those matters.

The First Amendment to the U.S. Constitution, which enshrines freedom of speech, forms the basis for the right to record police activities in the U.S. By its terms, the First Amendment's proscription says nothing about the gathering or dissemination of information by the public.⁶² However, the U.S. Supreme Court has long established that the First Amendment extends beyond the protection of the press and the self-expression of individuals.⁶³ Freedom of speech is deeply intertwined with freedom of expression and the right to access information, both of which are central to safeguarding the public's ability to scrutinise government actions.⁶⁴ 'These freedoms ensure that individuals can communicate and gather information about governmental conduct, which is essential for promoting transparency and accountability.'⁶⁵ The U.S. Court decisions *Glik v. Cunniffe*,⁶⁶ *Fields v. City of Philadelphia*,⁶⁷ and others have affirmed that the First Amendment protects the public's right to record police officers in public spaces. The *Glik*⁶⁸ case involved Simon Glik, who recorded police officers arresting a friend on his cell phone. After being arrested for violating a state wiretap law, Glik sued the officers for violating his constitutional rights. The court held that the right to record public officials, including police officers, is a fundamental aspect of free speech protected by the First Amendment. In *Fields*,⁶⁹ the court emphasised that the First Amendment protects the act of recording police officers in public, regardless of the individual's intent to express criticism. Recording police officers has been recognised as a form of free expression and 'a critical component of gathering and disseminating information about government actions.'⁷⁰ Therefore, public recordings 'fall

⁶¹ Constitutional Court of the Czech Republic (15 March 2005), Ruling I.ÚS 367/03.

⁶² LIPEZ, K. V. (2016), The First Amendment and the police in the digital age, *Journal of Appellate Practice and Process*, 17(2), 193–216.

⁶³ *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

⁶⁴ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 1.

⁶⁵ *Ibid.*

⁶⁶ *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

⁶⁷ Columbia Global Freedom of Expression (2022), *Fields v. City of Philadelphia*. Global Freedom of Expression, Columbia University, <https://globalfreedomofexpression.columbia.edu/cases/fields-v-city-philadelphia/>.

⁶⁸ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011), 82–83, of *Appellate Practice and Process*, 17(2), 193–216.

⁶⁹ *Fields v. City of Philadelphia*, No. 17-2729 (3d Cir. 2017), <https://globalfreedomofexpression.columbia.edu/cases/fields-v-city-philadelphia/>.

⁷⁰ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 4.

under the First Amendment protection umbrella.⁷¹ These rulings underscore the notion that ‘recording is not merely a passive act but an extension of the right to free speech, enabling citizens to gather and share information about matters of public interest.’⁷² This protection applies regardless of whether the video is ever viewed after it is recorded.⁷³ Moreover, freedom of expression is closely related to the right to information, ensuring that these recordings can be widely shared, enabling public awareness and encouraging meaningful debate about law enforcement practices.⁷⁴ The right to receive ideas arises naturally from the right to send them, and it is essential for the recipient’s meaningful exercise of their own rights of speech, press, and political freedom.⁷⁵ Access to ideas allows citizens to exercise their rights of free speech and the press meaningfully.⁷⁶

Some scholars even argue that ‘such a right must extend to bystander secret recordings too.’⁷⁷ By secretly recording police officers’ behaviour during their duty, the broader public can access and become aware of conduct that would otherwise go without scrutiny.⁷⁸ Secret recording ‘is the only way we can truly know how public officials are acting when the cameras are no longer rolling.’⁷⁹ The covert recording of police activities allows the public to report on these actions, highlighting any misconduct. This transparency enhances public discourse, and ‘makes democratic redress and reform possible, free from fear of police retaliation or legal sanction.’⁸⁰ Although the U.S. First Amendment provide a foundation for citizens’ right to record police actions, at least in public places, lower-level legislation mainly does not explicitly regulate this. An exception to this can be found in New York State, U.S. A New York statute protects the right to record law enforcement officers, as long as the person recording is not under arrest or otherwise in the custody of police.⁸¹ The New York City Administrative Code establishes a clear statutory right to record police officers while they are performing their official duties.⁸² The court concluded that a person ‘may record police activities and maintain custody and control of any such recording and of any property or instruments used in such recordings.’ The code also foresees that for an infringement of this right, a citizen can pursue a civil lawsuit against an officer for ‘unlawful interference with recording police activities’ and can seek damages, punitive damages, and even declaratory or injunctive relief.⁸³ It should be

⁷¹ DOUGLAS, K. C. (2021), Constitutional law: The applicability of qualified immunity versus the First Amendment right for civilians to record police officers, *American Journal of Trial Advocacy*, 45(1), 239–244.

⁷² CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaaysbastra Law Review*, 4(2), 1–13, p. 2.

⁷³ SIMONSON, J. (2016), Filming the police as an act of resistance, *University of St. Thomas Journal of Law and Public Policy*, 10(2), 83–88.

⁷⁴ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaaysbastra Law Review*, 4(2), 1–13, p. 2.

⁷⁵ HUDSON, D. L., Jr. (2016), First Amendment right to receive information and ideas justifies citizens’ videotaping of the police. *University of St. Thomas Journal of Law and Public Policy*, 10(2), 89–93.

⁷⁶ Ibid.

⁷⁷ COLEMAN, A. J., & JANES, K. M. (2021), Caught on tape: Establishing the right of third-party bystanders to secretly record the police, *Virginia Law Review Online*, 107, 166–192, p. 170.

⁷⁸ Ibid., p. 171.

⁷⁹ Ibid., p. 181.

⁸⁰ Ibid., p. 191.

⁸¹ New York Civil Rights Law § 79 (2025).

⁸² New York City Administrative Code §§ 14–189 (2025).

⁸³ GOOLSBY, M. J. (2023), Constitutional law filling the gap: The need for legislative action to protect the right to record police in the age of citizen journalism, *University of Arkansas at Little Rock Law Review*, 46(1), 147–172.

noted that following the decisions of *Glik* and *Fields*, a growing consensus of U.S. courts has recognised a constitutional right in all U.S. states to record police engaged in their duties in a public place.⁸⁴

The analysis of the legal frameworks of Lithuania, Germany, the Czech Republic, and the U.S. revealed that, generally, all countries protect freedom of speech, which includes the right to record police actions and share this information in the media. However, each country also foresees some restrictions aimed at protecting other significant values.

Limitations on the right to record police actions

A legal framework analysis of selected countries revealed that the right to record is not without limitations. Countervailing factors, such as the right to privacy, confidentiality, safety, or even the protection of copyright law, can limit the right to record.

The right to record police is strong when it occurs in public spaces, such as streets, parks, or sidewalks, areas traditionally open for public discourse.⁸⁵ In all analysed countries, citizens have the right to record police performing their duties in public. In the U.S., that was confirmed in a *Glik* case in which the court declared that Mr Glik had the right to record Boston police arresting a teenager in a public park.

In Germany, the Osnabrück court introduced the concept of “factual publicity”. Communication is considered in factual publicity when it can be perceived from a publicly accessible area. It does not matter whether anyone actually heard it. When a police operation takes place in a public space accessible to the general public, the officers’ spoken words are considered to have been publicly disclosed. Even defining public restriction zones for police actions doesn’t impact the public nature of the conversation. The restriction zone aims to facilitate the police operation but not create a private setting that justifies the confidentiality of the officers’ spoken words. This case indicates that visual and audio recordings of police officers in public spaces in Germany are generally permitted.⁸⁶

The Hamburg Court clarified in another case⁸⁷ that a speech falls under the category of *factual publicity* when a police officer makes a statement during official duties in a public area that is freely accessible to the public. According to the court’s opinion, a conversation is considered non-public only when the audience is limited and access to the discussion is restricted. The key factor is whether the speaker can control who hears the statement. In this instance, the officer made comments during an identity check of the defendant on the street, with the defendant and several bystanders present just a few meters away. The officer should have been aware that others could overhear his words. Therefore, the defendant had the right to record the police officer’s statement on his iPhone.

⁸⁴ Reporters Committee for Freedom of the Press. (n.d.), Right to record government officials in public, <https://www.rcfp.org/reporters-recording-sections/right-to-record/>.

⁸⁵ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13., p. 11.

⁸⁶ Landgericht Osnabrück. (24 September 2021), Beschluss 10 Qs 49/21, https://www.burhoff.de/asp_weitere_beschluesse/inhalte/6637.html.

⁸⁷ LG Hamburg. (21 December 2021), Beschluss 610 Qs 37/jug, https://www.burhoff.de/asp_weitere_beschluesse/inhalte/6783.htm.

The *Hanau* court went further.⁸⁸ In its decision, the court reasoned that police speeches during identity checks, especially those occurring in public or semi-public spaces with bystanders, are generally considered in the realm of *factual publicity*. The expectation of privacy or confidentiality is further reduced when the police officer, after making the announcement, activates their body camera to record the interaction for evidentiary purposes.

Recording in non-public spaces or during sensitive police operations raises essential questions about balancing public accountability with individual privacy rights. Privacy concerns can arise when recordings occur in areas where people have a reasonable expectation of privacy, such as private homes, businesses, restricted government facilities, hospitals, schools, or private companies, especially if sensitive information is involved.⁸⁹ Recording police officers in private spaces without permission may violate privacy laws or other regulations designed to protect against unauthorised surveillance.⁹⁰ Therefore, what practices exist in the analysed states? Some authors argue that the concept of *words spoken in private* as outlined in Section 201 of the German Penal Code⁹¹ should be interpreted in consideration of the public interest in controlling police misconduct, because video recordings are usually the only reliable evidence in such situations.⁹²

In the U.S., federal law, as well as thirty-seven states and the District of Columbia, permits the recording of in-person conversations as long as at least one party involved gives their consent. This means that individuals interacting with police officers can record the conversation with their smartphones without needing the officers' consent. Additionally, if the person directly interacting with the police is aware of the recording and consents to it, other individuals (such as passengers in a car) can also record the interaction, even if the police officer does not provide consent.⁹³

Lithuanian case law indicates that filming in private spaces is legal and permissible in Lithuania. In administrative case No. eA-916-1047/2024, the Supreme Administrative Court addressed the grounds for dismissing a police officer. The court relied on evidence, specifically a video recorded in a private space and shared with the media by individuals who were legally present in that area.⁹⁴

In the Czech Republic, recording in private premises without the consent of the persons involved is generally prohibited and considered an invasion of their privacy under Article 86 of the Civil Code, which protects the inviolability of privacy. An exception may be made where the recording is used to protect one's rights, for example, to prove an infringement, in which case the recording may also be used as evidence in criminal proceedings.⁹⁵

⁸⁸ LG Hanau (20 April 2023), Beschluss 1 Qs 23/22.

⁸⁹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaaysbastra Law Review*, 4(2), 1–13, pp. 8 and 11.

⁹⁰ Ibid.

⁹¹ Strafgesetzbuch [StGB] (1998), In der Fassung der Bekanntmachung vom 13 November 1998 (BGBl. I S. 3322), zuletzt geändert durch Artikel 2 Absatz 2 des Gesetzes vom 7 November 2024 (BGBl. 2024 I Nr. 351).

⁹² PRIGGE, J. (2022), Zum Filmen polizeilicher Maßnahmen. Kritische Justiz, <https://www.rav.de/publikationen/rav-infobriefe/infobrief-123-2022/zum-filmen-polizeilicher-massnahmen/>.

⁹³ ROCHE, S. P. (2024), Cops and cells: Theorizing and assessing the implications of smartphone surveillance for policing (Legacy Theses & Dissertations), University at Albany, State University of New York, p. 15.

⁹⁴ Supreme Administrative Court. (17 January 2024), Decision in administrative case No. eA-916-1047/2024.

⁹⁵ TIBITANZLOVÁ, A., & ZAORALOVÁ, P. (5 October 2023). K použitelnosti soukromých záznamů jako důkazu v trestním řízení. [On the applicability of private records as evidence in criminal proceedings] *Advokátní deník*, <https://advokatnidenik.cz/2023/10/05/k-pouzitelnosti-soukromych-zaznamu-jako-dukazu-v-trestnim-rizeni/>.

The analysis shows that open recording is justified in all analysed jurisdictions; however, among the jurisdictions, there is no uniformity in allowing the secret recording of public interactions with the police. Although it is commonly known that secret filming creates better conditions for collecting evidence about police officers conducting their official duties in public, ‘because it is less likely to disrupt police operations and less likely to engender resistance from police officers’.⁹⁶

In the U.S., the *Glik* case indicates that the Massachusetts wiretap statute prohibits secret audio recordings without consent but allows open recordings.

In Germany, under Section 201 of the Criminal Code, a person can be criminally liable if, without authorisation, they record the non-publicly spoken words of another person or make a record available to a third party.

Lithuanian case law establishes that secret filming is legal and permissible in Lithuania. In administrative case No. eA-916-1047/2024, the Supreme Administrative Court upheld the lawful dismissal of a police officer. This decision was based on a secretly recorded video in a private space that revealed an officer’s misconduct and was subsequently distributed in the media.⁹⁷

In all the analysed countries, law enforcement officers may cite safety concerns as a reason to restrict the recording of certain activities. Officers often work in volatile situations where bystanders recording their actions could inadvertently put themselves, the officers, or others at risk.⁹⁸ During protests, riots, or other chaotic events, officers may instruct individuals to stop recording or move back to avoid escalating tensions or obstructing crowd control efforts.⁹⁹ Images of excessive use of force can provoke anger and lead to violence, potentially resulting in riots, as seen in the widespread reactions to the infamous Rodney King beating.¹⁰⁰ These safety-based restrictions aim to protect everyone involved, including the public.¹⁰¹

On the other hand, research suggests that in certain situations, recording interactions between the public and police can enhance safety for all parties involved. The presence of cameras often deters crime and reduces the likelihood of violence. Officers who are aware that they are being filmed are more likely to act courteously and professionally, resulting in fewer incidents of excessive force. Moreover, when officers display less aggression, citizens tend to respond similarly, creating a safer environment for everyone involved.¹⁰²

⁹⁶ Project Veritas Action Fund v. Rollins, 982 F.3d 813 (1st Cir. 2020).

⁹⁷ Supreme Administrative Court of Lithuania, Decision in administrative case No. eA-916-1047/2024, 17 January 2024.

⁹⁸ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 10.

⁹⁹ Ibid.

¹⁰⁰ McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–[ii], p. 554.

¹⁰¹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 10.

¹⁰² McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–[ii], p. 552.

Police officers may argue that bystanders filming too closely hinder their ability to perform their duties.¹⁰³ The authors of the videos about police actions might be motivated by a desire for a high number of likes or views, and they may use provocative tactics against police officers, such as aggressive or disruptive behaviour. For example, standing in an officer's way or placing equipment between an officer and the subject of police activity can easily be considered obstruction of justice.¹⁰⁴ In one U.S. case, the court ruled that the drone's effective trespassing onto an active crime scene interfered with the police investigation.¹⁰⁵ In such situations, the police can request that the recording be stopped or that the individual move a certain distance away. 'Bystander videos taken from a reasonable distance are considered "less of a hindrance to legitimate police activity."¹⁰⁶

However, some authors argue that these interference with police action arguments 'can also be used as a pretext to prevent transparency, particularly in cases where police actions may be questionable or controversial.'¹⁰⁷ For example, in Lithuania, the police often prevent filming without explanation, especially in sensitive or controversial situations. In the criminal case No. 2K-179-976/2023 of the Supreme Court of Lithuania, the convicted person stated that the police officer forbade witnesses from observing his arrest and prevented them from filming. The police officer threatened to detain them and write an administrative violation report if they did not stop filming. The officers wrote an administrative violation report for one of the witnesses for observing the arrest and asking the officers why they were torturing a person.¹⁰⁸

To prevent such misconduct, safeguards should be built into the laws. For example, the safe distance could be indicated.

Police may argue that bystanders filming might compromise sensitive investigations¹⁰⁹ or disrupt essential operations.¹¹⁰ This is particularly true if the officers are acting undercover. Recording them may even compromise the officer's safety. The fear of being recorded might deter people from seeking help from or giving critically important information to the police.¹¹¹ For these situations, the officers can impose reasonable time, place, and manner restrictions to prevent the conduct.¹¹² However, restrictions on recording must be carefully balanced with the need for public oversight. Courts have been cautious in giving police broad discretion to prevent recordings.¹¹³

¹⁰³ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 2.

¹⁰⁴ McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–[ii], p. 553.

¹⁰⁵ Rivera v. Foley, No. 3:14-cv-00196 (VLB), 2015 U.S. Dist. LEXIS 35639 (D. Conn. 23 Mar. 2015).

¹⁰⁶ Higginbotham v. City of New York, 105 F. Supp. 3d 369 (S.D.N.Y. 2015).

¹⁰⁷ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 2.

¹⁰⁸ Supreme Court of Lithuania, Decision in criminal case No 2K-179-976/2023, 7 June 2023.

¹⁰⁹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 2.

¹¹⁰ *Ibid.*, p. 6.

¹¹¹ COLEMAN, A. J., & JANES, K. M. (2021), Caught on tape: Establishing the right of third-party bystanders to secretly record the police, *Virginia Law Review Online*, 107, 166–192, p. 177.

¹¹² *Ibid.*

¹¹³ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 6.

Privacy concerns are often at the forefront of discussions about the right to photograph and record on-duty police and of individuals interacting with police¹¹⁴ or even just bystanders. Police frequently urge that they are protecting the privacy rights of third parties by interfering with citizen photography and recordings.¹¹⁵ Considering that the law may require recorders to respect the privacy of bystanders when making recordings by taking steps to avoid capturing bystanders or notifying them that they are being filmed.¹¹⁶

The recording of a specific scene, incident, or altercation is closely linked to the dissemination of that recording.¹¹⁷ Live streaming and sharing of any content may significantly infringe the data privacy rights of recorded individuals. This indicates that the government has the authority to impose tailored restrictions on limiting the dissemination, ‘such as requiring the recorder to redact or blur the identities of other citizens and bystanders captured in the recording before disseminating.’¹¹⁸

Laws on data protection require a careful balancing of interests. The core of this assessment lies in weighing the fundamental right to freedom of expression against the fundamental right to privacy.¹¹⁹ Considering that, Article 85 of the General Data Protection Regulation allows exemptions or derogations from the data protection rules defined in the regulation when the personal data processing is carried out for journalistic purposes.¹²⁰ ‘The countries’ practices are not uniform on this issue as well. In Germany, police officers, despite their public role, are generally afforded the same privacy protection as private citizens when it comes to the publication of identifiable images taken in the course of their duties. This means that police officers and other individuals should be made unrecognisable in the video record before sharing it on social media if explicit consent to share the image is not given by the image owner. This applies even to records made in public places.

Police officers, often aware that they are being filmed, have utilised various tactics to prevent such recordings.¹²¹ The current trend is not to prevent recording, but to focus on preventing the world from seeing them. Officers are weaponizing algorithms designed to prevent infringement on online platforms.¹²² On YouTube, everyone can find the record of Deputy Shelby of the Alameda County Sheriff’s Office outside an Oakland courthouse. An activist group was questioning why the Deputy was asking them to move their

¹¹⁴ McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–[ii], p. 556.

¹¹⁵ Ibid.

¹¹⁶ SKINNER-THOMPSON, S. (2019), Recording as heckling, *Georgetown Law Journal*, 108(1), 125–174, p. 169.

¹¹⁷ Steven Helle, Reconsidering the Gathering/Publication Dichotomy: Recording as Speech? What Next?, 33 N. ILL. U. L. REV. 537, 540 (2013), p. 550.

¹¹⁸ SKINNER-THOMPSON, S. (2019), Recording as hecklin, *Georgetown Law Journal*, 108(1), p. 169.

¹¹⁹ RIESS, E. (2019), Darf ich Polizist_innen fotografieren? Zulässigkeit von Bildaufnahme und Veröffentlichung polizeilichen Handelns, *Juridikum Zeitschrift für Kritik | Recht | Gesellschaft*, 3.

¹²⁰ European Parliament and Council (27 April 2016), Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), Official Journal of the European Union, L 119, 1–88.

¹²¹ LAMSTEINT, J. (2024), “Swifties” or Swift suppression? How police officers exploit copyright law and practice online to evade public accountability, *Cardozo Law Review*, 45(3), 1017–1053, p. 1052.

¹²² LAMSTEINT, J. (2024), “Swifties” or Swift suppression? How police officers exploit copyright law and practice online to evade public accountability, *Cardozo Law Review*, 45(3), 1017–1053, p. 1029.

demonstrations.¹²³ Suddenly, the video shows Deputy Shelby taking his phone out, playing “Blank Space” by Taylor Swift, and proclaiming, ‘You can record all you want, I just know it can’t be posted on YouTube.’¹²⁴ This suggests that police officers appear to recognise that the presence of copyrighted music in a recording, even if it is incidental in the background, can prevent the recording from being hosted on popular online platforms. YouTube’s Content ID system cannot distinguish police manipulation.¹²⁵ Online Service Providers (OSPs) such as YouTube aim to avoid their own secondary liability, leading them to remove more content than necessary.¹²⁶ In this way, the officers are, in effect, causing the bystander to infringe on copyright law when the recording is posted and circulated online. This clever scheme essentially functions to prevent the dissemination of police recordings.¹²⁷

Assessment and conclusions

Open discussion about law enforcement is crucial because police are given significant discretion that could be misused to infringe on individual liberties.¹²⁸ The analysis shows that the right to record police officers is a vital aspect of public oversight.¹²⁹ It helps expose officers’ misuse of power, aids in the collection of evidence, and ensures the accountability of police officers for misconduct. The recording of police actions can change police behaviour, leading to greater care for human rights protection. Finally, recording can ensure transparency in police actions and increase society’s trust in the police. The country’s experience demonstrates that police “sousveillance”¹³⁰ leads not only to increased police accountability but also to reform of law enforcement policies and practices.¹³¹ Ensuring the right to record instils in the public a sense of fairness, balance, and confidence in the justice system, rather than the frustration and disempowerment that often results from interference with this right.¹³² On the other hand, video enables officers to demonstrate that their conduct is in line with the human rights protection standard, thereby reducing the likelihood of liability for misconduct.

The analysis of the legal frameworks of Lithuania, Germany, the Czech Republic, and the U.S. revealed that, generally, all countries acknowledge the public’s right to record police actions and share this information in the media under the notion of freedom of speech, as guaranteed in international and EU laws, and national constitutions. However, the legal regulation does not end there. Each state acknowledges that these rights do not exist in

¹²³ KTVU FOX 2 San Francisco (n.d.), RAW: Sheriff plays Taylor Swift to speak to protesters [Video], YouTube. https://www.youtube.com/watch?v=rwwU4_VUx1A&ab_channel=KTVUFOX2SanFrancisco.

¹²⁴ LAMSTEINT, J. (2024), “Swifties” or Swift suppression? How police officers exploit copyright law and practice online to evade public accountability, *Cardozo Law Review*, 45(3), 1017–1053, p. 1029.

¹²⁵ *Ibid.*, p. 1030.

¹²⁶ *Ibid.*, p. 1052.

¹²⁷ *Ibid.*, p. 1019.

¹²⁸ *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

¹²⁹ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyaayshastra Law Review*, 4(2), 1–13, p. 7.

¹³⁰ SIMONSON, J. (2016), Beyond body cameras: Defending a robust right to record the police, *Georgetown Law Journal*, 104, 1559–1595, p. 1568.

¹³¹ WASSERMAN, H. M. (2018), Police misconduct, video recording, and procedural barriers to rights enforcement, *North Carolina Law Review*, 96(5), 1313–1362, p. 1314.

¹³² McCULLOUGH, K. (2014), Changing the culture of unconstitutional interference: Proposal for nationwide implementation of model policy and training procedures protecting the right to photograph and record on-duty police, *Lewis & Clark Law Review*, 18(2), 543–566, p. 556.

a vacuum; they must be in coherence with other protected values. This is where the uniform practice of states ends. Each state has its understanding of what values are important, how much they should be protected, and whether they should supersede an individual's right to record police actions.

Each country generally allows recording in a public space; however, the right to record in private space varies significantly among the states. The most liberal state regarding these issues is Lithuania. Recording police actions is permitted in both public and private spaces. In Germany, police recording is allowed when the action is considered a matter of *factual publicity*. Otherwise, recording in a private space is not permitted in Germany. In the U.S., the primary focus is on consent. If at least one party in the interaction has given permission for recording, then recording in a private space is generally permitted in most states. That is, if the property owner records their interaction with the police inside the premises, such a recording would be considered admissible.

Open videorecording is permissible in all states; however, secret recording is a different matter. All countries, except Lithuania, prohibit the secret recording of conversations with police officers.

Police officers in all states raise public security concerns and interfere with police actions, citing the need to prohibit the recording of their activities. However, the notions 'public security concerns' and 'interfere with police actions', when not clearly defined, give the police broad discretion in prohibiting the filming for these reasons. Additionally, it is worth noting that each state has its interpretation of these notions. Such practice could facilitate the police's misuse of power when prohibiting video recording. Therefore, such restrictions must be narrowly tailored and justified only by legitimate concerns.¹³³

When seeking a means to prevent the sharing of their recorded actions, police in some countries even shield themselves under copyright law. During interactions with the public, the police play songs by famous singers, which, when heard on record, could not be shared due to copyright regulations on most popular media platforms. Such actions should be considered clearly as police misconduct.

Differences in EU Member States regarding the public right to record police actions require particular attention. The EU Charter of Fundamental Rights and the General Data Protection Regulations require uniform application in EU Member States. Therefore, different implementations of EU documents regarding the society's right to record police actions require taking some steps at the EU level. The EU legislation could establish a citizen's right to record police activity as a clearly defined right—one that cannot be evaded by law enforcement officers and one that state laws cannot supersede.

¹³³ CHAUDHARY, N. (2024), The concept and review of right to record police, *Nyayaashastra Law Review*, 4(2), 1–13, p. 7.