

The Excesses of the Police Function During Arrests in Flagrante Delicto and their Impact on the Constitutional Rule of Law

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Abstract

Police excesses during arrests in flagrante delicto represent a significant threat to the Constitutional Rule of Law, transcending borders and political systems. The research addressed the impact of such excesses in the national and Latin American context, addressing the tension between maintaining public order and protecting individual rights. The main objective was to understand the impact of police function excesses during arrests in flagrante delicto on the Constitutional Rule of Law. The methodology employed was an exhaustive documentary analysis of legal, academic, and jurisprudential sources, following a qualitative approach to explore the complexities of the phenomenon. The main results reveal that these excesses violate fundamental rights such as equality before the law, due process, and the prohibition of inhuman treatment; manifestations include excessive use of force, arbitrary detentions, discrimination, and denial of procedural rights; perceptions vary among actors, who perceive them as serious violations of rights, while the police emphasize the need to maintain order, and the consequences are profound, generating distrust in the police institution, which can perpetuate cycles of impunity and weakening the foundations of the State. It was concluded that police excesses during flagrante delicto severely affect the legitimacy of the Constitutional Rule of Law by systematically violating fundamental rights and basic constitutional principles.

Keywords: Police excesses, flagrante delicto, fundamental rights, Constitutional Rule of Law, due process.

1. Introduction

The abuse of authority during police custody represents a serious threat to the validity of fundamental rights in a Constitutional State, this phenomenon, as Cisneros (2019) points out, transcends borders and systems of government, manifesting itself in various ways depending on the sociocultural and legal context. A crucial aspect lies in the tension between the maintenance of public order and the safeguarding of individual rights, Cisneros (2019) reveals that even in consolidated democracies such as Spain, there have been cases of degrading treatment during police interventions, which denotes that this problem is not exclusive to authoritarian regimes.

The typology of police abuse is varied, Rondón (2014), analyzing Fabien Jobard's research, shows how the exercise of police force can exceed the established legal and ethical limits, transforming into a form of institutionalized violence, additionally, it is alarming how the practice of "sowing or planting" illicit elements during arrests, which not only violates the rights of the detainee, but also undermines the integrity of the judicial system.

Garrido and Torres (2014) point out that the abusive exercise of police power can violate not only the rights but also the psychological integrity of the detainee. Mattos (2007) argues that this phenomenon is perpetuated due to a culture of impunity prevalent in certain police institutions, where some officials engage in illegal practices during investigative procedures, with repercussions that transcend the moment of arrest.

Abiuso and Kleidermacher (2022) underline that racial discrimination and profiling play a significant role in this problem, indicating that police arrests tend to focus disproportionately on ethnic minority groups. Méndez et al. (2021) warn that the consequences of these practices erode public trust in police institutions and foster authoritarian attitudes.

López (2021) points out that an additional obstacle is the lack of transparency and the difficulty in obtaining reliable statistics on police detentions. Barbería et al. (2009) discuss the most extreme consequences, such as sudden death syndrome in young people after police arrests.

In the Latin American regional context, Plaza (2020) has observed an evolution in police harassment practices in Argentina, moving towards more subtle forms of social control that mainly affect marginalized young people. In Brazil, Da Rosa (2023) shows the persistence of abusive practices despite regulatory efforts to control them.

In the specific case of Peru, Saint (2023) expresses concern about the preparation of police reports after the arrest, identifying this moment as critical for the materialization of irregularities, therefore, he proposes the use of audiovisual material in arrests for *flagrante delicto* as a preventive measure.

Consequently, the complexity and multidimensionality of this problem require the development of more effective control mechanisms and a transformation in the institutional culture of law enforcement, promoting transparency and accountability to restore citizen confidence in police institutions and strengthen the rule of law.

The general problem: How do the excesses of the police function during arrests in *flagrante delicto* impact the Constitutional Rule of Law? The specific problems: (a) How do the excesses of the police function manifest themselves during arrests in *flagrante delicto*? (b) What are the perceptions of the actors involved about the excesses of the police function in arrests for *flagrante delicto*? and, (c) What consequences do the excesses of the police function during arrests in *flagrante delicto* have for the legitimacy of the Constitutional Rule of Law?

The present study finds its theoretical justification in the integration of various disciplines, especially in the doctrine of human rights, the principles of modern criminology, the postulates of legal sociology and the contributions of social psychology. Methodologically, the research is framed in the qualitative paradigm, a strategy that facilitates an exhaustive exploration of the phenomena under study. This approach allows for a detailed analysis of various sources,

including the current regulatory corpus, reports emanating from official bodies, specialized academic literature and testimonies of relevant actors. From a practical perspective, the relevance of this study lies in its potential to inform public policy-making and propose institutional reforms in the police and judicial spheres. The social justification of this research is based on its in-depth approach to a problem that directly affects the physical integrity and fundamental rights of citizens, with special emphasis on groups in vulnerable situations.

This study is aligned with the principles enshrined in the Political Constitution of Peru, particularly in its Article 1, which establishes the defense of the human person and respect for his or her dignity as the supreme goal of society and the State. It is also linked to Article 44, which stipulates that it is the primary duty of the State to guarantee the full observance of human rights. At the international level, the investigation is part of the commitments assumed by the Peruvian State under the American Convention on Human Rights, specifically in relation to the rights to humane treatment (Article 5) and personal liberty (Article 7).

The main objective of the research was: To understand the impact of the excesses of the police function during arrests in flagrante delicto in the Constitutional Rule of Law. The specific objectives were: (a) To describe the manifestations of the excesses of the police function during arrests in flagrante delicto; (b) To explore the perceptions of the actors involved about the excesses of the police function in arrests for flagrante delicto; and, (c) To analyze the consequences of the excesses of the police function during arrests in flagrante delicto for the legitimacy of the Constitutional Rule of Law.

2. Theoretical Framework

Police custody is an issue that has been the subject of exhaustive scrutiny from various legal, sociological and criminological perspectives. The multidisciplinary analysis focuses on the abuses and excesses exercised by police officers during detention in cases of flagrante delicto.

From a legal-constitutional perspective, Bujosa (2023) analyses the imputation and detention of police officers in Spain, underlining the importance of fundamental rights in this procedure. The researcher postulates that police detention should be conceptualized as a precautionary measure of a personal nature, which entails a temporary restriction of freedom, subject to rigorous constitutional controls.

It is imperative to emphasize that the constitutional framework, specifically in its Article 2, paragraph 24, paragraph f, establishes the legal foundations of detention. This constitutional provision is complemented by article 259 of the Code of Criminal Procedure (Legislative Decree No. 957), which defines the cases of flagrante delicto that justify police intervention.

Hernández (2021) delves into the relevance of the right of access to the essential elements to challenge the legality of police custody. The author argues that access to information on the reasons for detention constitutes a fundamental right that guarantees the possibility of an effective defence. This perspective is in line with the provisions of Article 71 of the Code of Criminal Procedure, which lists the rights of the accused, including the right to be informed of the charges against him.

From a more critical perspective, Cisneros (2019) examines the prohibition of inhuman and degrading treatment in the context of police detentions. Their research suggests that, despite the existence of legal guarantees, practices that violate the dignity of detainees persist, which requires a constant review of police protocols. This concern is echoed in the Peruvian legal system, as evidenced by Law No. 30364, which establishes measures to prevent and punish violence against women and members of the family group.

López (2021) brings a quantitative dimension to the analysis of police identifications and arrests. Their study reveals significant disparities in arrest rates between different demographic groups, raising concerns about potential biases in policing practices. Although the study focuses on Spain, its findings are relevant to the Peruvian context, where the principle of equality before the law is enshrined in Article 2, paragraph 2 of the Constitution.

De Miguel and Zuloaga (2020) address the criminalization of women through police custody, arguing that women face specific challenges in the criminal justice system from the moment of arrest. This gender perspective is crucial in the context of Law No. 28983, Law on Equal Opportunities between Women and Men, which establishes the need to incorporate the gender approach in all public institutions, including the police forces.

Abiuso and Kleidermacher (2022) offer a spatial perspective of police arrests, focusing on the Senegalese population in Buenos Aires. The authors argue that the spatial distribution of police stops reveals patterns of selectivity that disproportionately affect certain migrant communities. These findings are relevant in relation to the Aliens Law (Legislative Decree No. 1350), which establishes the rights of migrants, including protection against discrimination.

In the field of abuse of authority, Da Rosa (2023) analyzes police violence in the context of the new Abuse of Authority Law in Brazil. Their study underscores the importance of effectively implementing laws that criminalize abuse of authority to prevent excesses in police detentions. In the Peruvian context, the Penal Code (Legislative Decree No. 635) typifies the crime of abuse of authority in its article 376, providing a legal framework to address this problem.

The existing literature on the subject highlights the complexity of the phenomenon analyzed. It is therefore imperative to maintain a clear view of the fundamental constitutional, conventional, legal and procedural rights that may be affected by abusive practices arising from arrest and *flagrante delicto*. This comprehensive approach is essential to ensure respect for human rights and due process in the context of police interventions.

The phenomenon in question encompasses various fundamental theories and concepts that are essential for its comprehensive understanding.

- Criminalization theory, according to De Miguel and Zuloaga (2020), when applying the theory of criminalization to the field of police detentions, it is established that detention can be the beginning of a broader process of criminalization, especially in relation to vulnerable groups. This approach is linked to the principle of equality before the law, enshrined in Article 2, paragraph 2 of the Constitution, which guarantees that all individuals must be treated equally.

- Labeling theory, developed by Howard Becker, is relevant in the context of police arrests. Becker argues that assigning a criminal label through processes such as arrest can have

lasting effects on an individual's identity and behavior. In the national legal framework, this theory is related to the principle of presumption of innocence, established in Article 2, paragraph 24, paragraph e) of the Constitution, which stipulates that every person is considered innocent until his or her responsibility is judicially declared.

- Legality of police detention, Manrique (2018) argues that the constitutional limits of police detention are essential guarantees of the rule of law, not mere formalities. This perspective is in line with the principle of legality enshrined in Article 2, paragraph 24, paragraph d) of the Constitution, which establishes that no one may be prosecuted or convicted for an act that is not previously classified as a punishable offense. Bujosa (2023) expands on this concept, indicating that the legality of detention implies not only formal compliance with the law, but also adherence to constitutional and human rights principles, reflected in Article 259 of the Code of Criminal Procedure, which details the circumstances of *flagrante delicto* that justify an arrest.

- Abuse of authority, De Rosa (2023) argues that abuse of authority in police detentions not only infringes on individual rights, but also undermines public trust in security institutions. The Penal Code typifies the crime of abuse of authority in Article 376, which establishes custodial sentences for public officials who abuse their position. Santos et al. (2022) add that rules on abuse of authority must balance the need to prevent police excesses with the possibility of effective police action.

- Due process, Hernández (2021) argues that the right to due process begins from the moment of detention, including the right to be informed about the reasons for detention. This right is guaranteed by Article 139, paragraph 3 of the Constitution, and is complemented by Article 71 of the Code of Criminal Procedure, which details the rights of the accused, including the right to be informed of the charges against him or her and to designate a person or institution to be notified of his or her arrest.

- Proportionality in the use of force, Cisneros (2019) indicates that the use of force during arrests must be proportional, since disproportionate use not only violates human rights, but also weakens the legitimacy of police action. Legislative Decree No. 1186 regulates the use of force by the National Police of Peru, establishing in Article 4 the principles of legality, necessity and proportionality.

Previous research has provided diverse perspectives on the phenomenon analyzed, addressing methodological aspects that require a critical analysis of the information that each study has provided.

In the study carried out by López (2021), a quantitative analysis of police identifications and arrests in Spain is carried out. This analysis reveals that the available data show patterns of selectivity in detentions, which could indicate the existence of institutional biases. However, a significant limitation is highlighted: the absence of data disaggregated by ethnicity or nationality, which makes it difficult to examine possible discriminatory practices more thoroughly. This research is pertinent, as a similar challenge is also faced in the local context due to the scarcity of public data on police arrests. Although the National Institute of Statistics and Informatics (INEI) publishes statistics on citizen security, these often do not include detailed information on the demographics of detainees, complicating an objective assessment of police practices.

In the study by Abiuso and Kleidermacher (2022) they examine the spatial distribution of police arrests of the Senegalese population in Buenos Aires, arguing that the concentration of detentions in certain urban areas reflects and perpetuates patterns of social and spatial segregation. This spatial approach is relevant for our research, given that in Peru there are cities, such as Lima, with high socio-spatial segregation. However, the application of this methodology in the Peruvian context would be hampered by the lack of georeferenced data on detentions. Law No. 27806, which regulates Transparency and Access to Public Information, could serve as a resource to request this type of information, although its availability is not guaranteed.

In the research by Miguel and Zuloaga (2020), they bring a gender perspective to the study of police detentions, arguing that women face specific forms of criminalization from the moment of their arrest. Despite the fact that gender stereotypes influence police decisions, this phenomenon results in an overrepresentation of certain profiles of women in arrests. Within the framework of the national justice system, it is important to consider that Article 2, paragraph 2 of the Constitution establishes the principle of equality before the law. In addition, Law No. 30364, in line with the Convention of Belém do Pará, provides an appropriate regulatory framework for incorporating the gender perspective in police actions. However, there is evidence of a significant gap in the information related to police detentions from this perspective.

In Cisneros (2019) he examines the prohibition of inhuman and degrading treatment in the context of police detentions, arguing that, despite existing legal guarantees, practices that violate the dignity of detainees persist. This situation is exacerbated by the lack of effective monitoring and accountability mechanisms, which contributes to the continuity of these practices. It is crucial to note that Legislative Decree No. 1186, which regulates the use of police force, establishes proportional limits for its exercise. However, Da Rosa (2023) indicates that the mere existence of laws that criminalize the abuse of authority does not ensure their effective implementation. This observation is applicable to any context where there is a discrepancy between what is regulated and the training of the professionals in charge of its application, which poses a challenge to identify and quantify these cases.

Previous studies have provided valuable information on various aspects related to police arrests in situations of *flagrante delicto*. However, it is evident that there are significant problems in the development of the phenomenon, mainly due to the lack of an institutional database that adequately reports on these eventualities. It is therefore imperative to address these gaps in order to develop a more comprehensive and nuanced understanding of the phenomenon under investigation. This reformulation seeks to maintain the integrity of the original content, using appropriate legal and scientific language, while ensuring the correct attribution of ideas and avoiding any problems of coincidences or plagiarism.

The existence of gaps in the scientific literature related to the topic in question has been identified, especially highlighting the scarcity of longitudinal studies. Most of the research offers a static view of the current situation, which underlines the need to develop new studies that analyze the evolution of the use of police force and the excesses in police activity during arrests in the framework of the process of *flagrante delicto*.

The adverse effects and psychological impacts derived from the abusive or excessive exercise of police activity constitute a phenomenon that requires a more in-depth analysis in the affected communities. Although the analysis of inhuman and degrading treatment has been addressed, it is essential to understand how the situation of these individuals evolves over time. This approach allows not only to identify the deficiencies in the existing research, but also to highlight the urgency of carrying out studies that provide a more dynamic and complete understanding of the problems related to the use of force by law enforcement authorities.

The lack of a longitudinal analysis limits the ability to properly assess trends and changes in police practices, which is essential for formulating effective public policies that ensure respect for human rights and the integrity of detainees.

3. Methodology

This study was developed under a qualitative approach, which is ideal for the exploration and analysis of complex and delicate phenomena, such as excesses in the police function during arrests in flagrante delicto and their repercussions on the Constitutional Rule of Law. As highlighted by Hernández and Mendoza (2018), qualitative research allows for an in-depth understanding of social and legal phenomena in their context, facilitating the interpretation of the complexities inherent in policing and its constitutional implications.

The study uses a documentary research design, in line with the recommendations of Bowen (2009), who argues that this approach is suitable for the analysis of complex socio-legal phenomena through a systematic review of documentary sources. This design allows for an exhaustive exploration of regulatory frameworks, judicial decisions, and relevant academic literature, in order to understand the challenges presented by police excesses in arrests in flagrante delicto in the context of the Constitutional Rule of Law.

For data collection, the documentary analysis method was chosen, which will facilitate the evaluation of laws, court rulings, official documents and relevant academic articles. As Rapley (2018) points out, documentary analysis is particularly useful for understanding the historical evolution and current context of complex legal and social phenomena, such as police detentions and their constitutional implications.

The criteria for the selection of documents are based on aspects such as relevance, topicality, diversity and academic quality, in order to ensure an exhaustive and rigorous review of the topics addressed. Likewise, ethical criteria will be applied that will guide the investigation procedure, such as appropriate citation, objective interpretation and confidentiality.

For data analysis, the qualitative content analysis method will be followed, according to Schreier's (2012) approach, which includes systematic coding, identification of topics, contextual interpretation, and the development of analytical categories, with the aim of organizing and synthesizing information on arrests in flagrante delicto and the Constitutional Rule of Law.

Finally, to guarantee the quality of the research, the criteria proposed by Tracy (2010) will be applied, such as rigor, sincerity, credibility, resonance, significant contribution, ethics and significant coherence, in order to provide new perspectives on the balance between the police function and constitutional guarantees.

4. Results

The results of the documentary analysis are as follows:

AUTHOR	TITLE	COMMENT
Bujcha (2023)	Accusation and police detention. Spanish perspective	The article examined the indictment and detention of the police from a Spanish legal perspective. The legal and constitutional aspects of detention practice were discussed, providing a comparative analysis that may be useful to contextualize the situation in other Spanish-speaking countries.
Da Rosa (2023)	Police violence in the face of the new Abuse of Authority Law - Federal Law No. 13,869, of September 5, 2019	The article analyzed police violence in the context of the new Abuse of Authority Law in Brazil, providing a legislative and practical analysis on how this law affects police conduct and the protection of human rights.
Abiuso and Kleidermacher (2022)	Systematization of police detentions of the Senegalese population in the city of Buenos Aires, from a spatial perspective	The article analyzed how police arrests are systematically carried out against the Senegalese population in Buenos Aires, using a spatial approach to map and understand the patterns of these detentions. The legal and social implications of this phenomenon are explored and it is related to possible police excesses and structural discrimination.
Gutarra (2022)	Flagrancy and human rights. Rethinking the law	The research discusses the prosecution in flagrante delicto and its importance for contemporary criminal law, considering the need to balance the effectiveness in the prosecution of the crime with respect for human rights. Research is necessary to understand the tensions between public security and constitutional guarantees.
Vásquez (2022)	Violation of principles and guarantees against the accused in police detentions	The investigation analyzed the reality of the application of the immediate process in police detentions and the possible violation of principles and guarantees to the accused. It is relevant to understanding the abuses that can occur during arrests in flagrante delicto.
Hernández (2021)	Right of access to the essential elements to challenge the legality of police detention and affected constitutional guarantees	The investigation examined the rights of detainees to access essential elements or instruments to challenge the lawfulness of their detention and how constitutional guarantees are affected. It is crucial to understanding the mechanisms of legal protection against arbitrary detention.
Loureiro (2020)	The Parisian grotesquerie: traces of the unusual in Edgar Allan Poe's detective narrative	The particularity of this research is how the police officer is identified in Allan Poe's literature, where scenes related to police excesses are described in fiction and their impact on the public perception of the police.
By Miguel and Zuloaga (2020)	First links in the criminalisation of women: police detention of women in the Autonomous Community of the Basque Country (CAE)	The research analysed how police arrests specifically affect women in the Basque Country, exploring the first steps in their criminalisation. In addition, it offers a gender perspective that is crucial to understanding the totality of police excesses.
Ortega and García (2020)	Human rights and use of force in police detentions	The research discusses human rights in the context of the use of force during police detentions, specifically addressing the legal and ethical limits that officers must respect to avoid excesses and abuses of power.

Cisneros (2019)	The prohibition of inhuman and degrading treatment in police or state detention in Spain	The article discussed the prohibition of inhuman and degrading treatment during police detention in Spain. It provides a legal framework to understand the State's obligations to prevent and punish these abuses, being relevant to analyze the impact on the Constitutional Rule of Law.
Luna (2017)	Habitual suspects: police detention and the fabrication of the culprit in contemporary Spain	The book analyzes how police arrests can be used to fabricate culprits, discussing contemporary cases in Spain. The document is relevant to identify the mechanisms of abuse and the construction of guilt in the context of arrests in flagrante delicto.
Luna (2017)	Habitual suspects: police detention and the fabrication of the culprit in contemporary Spain	The book analysed how police arrests can be used to fabricate culprits, discussing contemporary cases in Spain. The arguments put forward are relevant to understanding the mechanisms of abuse and the construction of guilt in the context of arrests in flagrante delicto.
Ortega and García (2020)	Human rights and use of force in police detentions	The research discusses the protection of human rights in the context of the use of force during police detentions, specifically addressing the legal and ethical limits that officers must respect to avoid excesses and abuses of power.
Grippaldi (2016)	Comment to Fabien Jobard: Police abuses. The public force and its uses	The critical commentary on Fabien Jopard's work on police abuses offers a theoretical review of how the use of public force and its excesses are conceptualized and studied.
Garrido and Torres (2014)	Police Papers: Abuse of Power and Punitive Euphemism in Mexico City's Judicial Police	The investigation focused on the analysis of the abuse of power and the punitive euphemisms used by the Judicial Police in Mexico City. The study criticizes police malpractices and/or abuses and their impact on public perception and justice.
Barbería, Castellá and Medallo (2009)	Sudden death syndrome of young men after police custody. Other risk factors	The research addresses sudden death syndrome in young men after police custody, identifying other associated risk factors. The study is relevant to understanding the extreme physical consequences that can result from police excesses during detentions.
Camargo and Alves (1970)	Use of handcuffs: abuse of authority or security for the police?	This paper discusses the use of handcuffs during detentions and how this can be interpreted as abuse of authority or as a necessary security measure for officers. It provides perspectives on the balance between security and human rights in the context of police detentions.

The documentary analysis carried out shows that the excesses in police action during arrests in flagrante delicto have a profound and multifaceted impact on the Constitutional Rule of Law. As stated, these excesses not only violate fundamental rights, but also undermine basic principles such as equality before the law, due process and the prohibition of inhuman and degrading treatment. In addition, these factors erode public trust in state institutions and pose significant challenges to constitutional control and oversight of policing, thereby compromising the integrity and effectiveness of the Constitutional Rule of Law, whose primary function is to protect fundamental rights and ensure the rule of law.

In relation to fundamental rights, Vázquez (2022) states that police excesses in flagrante delicto arrests affect the principles and guarantees enjoyed by the accused, in violation of the provisions of Article 2 of the Constitution, which guarantees the fundamental rights of the person, as well as Article 7 of the American Convention on Human Rights. that protects the right to personal liberty.

Likewise, Abiuso and Kleidermacher (2022) show that police detentions are systematically applied against specific groups, such as the Senegalese population in Buenos Aires, which turns out to be a discriminatory practice that violates the principle of equality before the law, enshrined in Article 24 of the American Convention on Human Rights.

In the research by Ortega and García (2020), the legal and ethical limits of the use of force in police detentions are discussed, indicating that the excessive use of force contravenes Article 2, paragraph 24, literal h of the Constitution, which prohibits moral, psychological or physical violence against people, as well as Article 5 of the American Convention on Human Rights. that protects personal integrity.

On the other hand, in the study carried out by Luna (2017), it was analyzed how police detentions can be used to fabricate culprits, which violates the principle of presumption of innocence established in Article 2, paragraph 24, paragraph e of the Constitution and in Article 8, paragraph 2 of the American Convention on Human Rights.

In addition, the study by Cisneros (2019) examines the prohibition of inhuman and degrading treatment during police detention, practices that violate Article 2, paragraph 24, paragraph h of the Constitution and Article 5, paragraph 2 of the American Convention on Human Rights, as well as the Convention against Torture and Other Cruel Treatment or Punishment. Inhuman or Degrading Acts of the United Nations.

Likewise, Hernández's (2021) research highlights the importance of the right of access to the essential elements to challenge the legality of police custody. The obstruction of this right has a negative impact on due process, protected by Article 139, paragraph 3 of the Constitution and Article 8 of the American Convention on Human Rights.

Finally, De Miguel and Zuloaga (2020) analyze how police detentions specifically affect women, evidencing a disproportionate impact on vulnerable groups, which contravenes the principle of equality and non-discrimination established in Article 2, paragraph 2 of the Constitution and Article 1, paragraph 1 of the American Convention on Human Rights.

5. Discussion

The analysis carried out around the main objective of the research reveals a series of significant concerns that deserve in-depth examination. The findings show that police excesses during arrests in *flagrante delicto* represent a direct threat to fundamental rights and may violate the principles and guarantees of the accused, which contravenes Article 2 of the Constitution, which guarantees the fundamental rights of the individual, as well as Article 7 of the American Convention on Human Rights. that protects the right to personal liberty.

As evidenced by Abiuso and Kleidermacher (2022), police detentions can be applied in a discriminatory manner against specific groups, being practices that violate the principle of equality before the law, enshrined in Article 2, paragraph 2 of the Constitution and Article 24 of the American Convention. Likewise, Ortega and García (2020) point out that the excessive use

of force not only violates Article 2, paragraph 24, literal h of the Constitution, but also Article 5 of the Convention, which protects personal integrity.

For his part, Luna (2017) argues that police detentions can be used to fabricate culprits, being a practice that violates the principle of presumption of innocence, established in Article 2, paragraph 24, paragraph e of the Peruvian Constitution and in Article 8, paragraph 2 of the American Convention. In addition, Cisneros (2019) examines the prohibition of inhuman and degrading treatment during police detention, practices that violate Article 2, paragraph 24, paragraph h of the Peruvian Constitution, Article 5, paragraph 2 of the American Convention, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Hernández (2021) states the importance of the right of access to the essential elements to challenge the legality of police detention, and shows how the obstruction of this right by police officers negatively impacts due process, protected by Article 139, paragraph 3 of the Constitution and Article 8 of the American Convention. Finally, De Miguel and Zuloaga (2020) analyze how police detentions specifically affect women, evidencing a disproportionate impact on vulnerable groups, which contravenes the principle of equality and non-discrimination established in Article 2, paragraph 2 of the Constitution and Article 1, paragraph 1 of the American Convention.

Police excesses during arrests in flagrante delicto erode public confidence in state institutions, which undermines the legitimacy of the justice and security system, fundamental elements of the Constitutional Rule of Law. Likewise, the prevalence of these excesses turns out to be a significant challenge that affects constitutional control and oversight of police action, essential functions in the State.

Consequently, urgent legal reforms must be carried out with the aim of addressing these institutional problems, improving police training, strengthening oversight and accountability mechanisms, and generating greater public awareness of citizens' rights. Only through a comprehensive approach can it be guaranteed that the police function is exercised within constitutional and legal limits, thus preserving the integrity of the Constitutional Rule of Law.

In relation to the first specific objective, according to Ortega and García (2020) they address the problem related to the excessive use of police force, indicating that this action affects the legal and ethical limits established during detentions, in direct violation of Article 2, paragraph 24, paragraph h of the Constitution, which prohibits any type of moral violence, psychic or physical against people. In addition, the lack of timely control and supervision of police actions in which the use of excessive or disproportionate force is exercised is also punishable by Article 5 of the Pact of San José, which guarantees the right to humane treatment. Therefore, the disproportionate use of force not only causes immediate physical harm, but can also have long-term psychological consequences for victims.

The findings of Luna (2017) and Cisneros (2019) show that during the exercise of police functions, arbitrary detentions can be carried out against citizens, and police officers can exceed against detainees, carrying out deals that go against the legal and constitutional mandate. These actions violate Articles 2, paragraph 24, paragraphs f and h of the Constitution, as well as Articles 7 (3) and 5 (2) of the American Convention, and contravene the United Nations Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Abiuso and Kleidermacher (2022) report that these types of actions, among other irregular activities by police officers, can be identified as discriminatory acts, violating the principle of equality before the law, enshrined in Article 2, paragraph 2 of the Constitution and Article 24 of the Pact of San José.

According to the investigations of Da Rosa (2023), Hernández (2021) and De Miguel and Zuloaga (2020), police officers can violate the right to defense when they prevent the intervened and/or detained person and the defense attorney from intervening in a timely manner in police proceedings, generating a procedural imbalance that affects the provisions of Article 139, paragraph 14 of the Constitution and Article 8, paragraph 2, paragraph d of the American Convention. Da Rosa (2023) argues that such acts constitute an abuse of authority and are duly typified in Article 376 of the Criminal Code, affecting public confidence in police institutions.

From the analysis of the sources, it is noted that there is an integral problem within the police institution and this phenomenon can be formalized by the Public Prosecutor's Office and the Judiciary through the competent authorities, who by acting negligently or with little diligence, can regularize irregular factual situations through the process, thus taking arbitrary cases with a formal appearance.

In view of the above, it is necessary to carry out legal and political reforms and changes in the institutional culture of the police forces to improve the education and training of officials, as well as to strengthen the oversight mechanisms related to proper police action in intervention and detention procedures, in order to identify and punish possible irregularities or violations of the fundamental rights of those intervened.

The analysis of the second specific objective, according to Tenenbaum (2015), who analyzed the perceptions and experiences of adolescents detained in Uruguay, indicates that these people often perceive police acts as arbitrary or excessive, which generates distrust in the police and judicial system. Likewise, Vásquez (2022), Cisneros (2019) and Garrido and Torres (2014) argue that arbitrary detentions derive from the excesses of police actions, which can lead to inhuman and degrading treatment that violates fundamental principles and guarantees of the accused. These acts have a negative impact on social perception, generating fear and rejection of the police institution due to the lack of information and transparency about its actions.

From Bujosa's (2023) perspective on police charging and detention, it is argued that there is a tension between police effectiveness and respect for fundamental rights. In addition, Camargo and Alves (1970) report that the use of force during detentions is necessary to maintain security, at the expense of public perception or opinion, which generates a conflict with Article 166 of the Constitution, which establishes the purpose of the National Police. Therefore, police actions have an impact on society according to their degree of legality, favourably or not.

The different positions show that police excesses are a negative event that exists in Peruvian and Latin American society, and is frequently manifested during arrests in *flagrante delicto*. Therefore, it is necessary to develop policies and practices that respect fundamental rights, while maintaining effectiveness in the fight against crime. Consequently, legal and institutional

reforms are required, as well as a change in police culture and greater public awareness of rights and responsibilities in the context of police arrests.

In relation to the third specific objective, Garrido and Torres (2014) argue that abuses of power and punitive euphemisms used by the police generate a negative perception in society. This phenomenon affects public confidence and contradicts the principle of democratic legitimacy implicit in Article 43 of the Constitution, since civil society can be arbitrarily subjugated and under the institutional protection of public entities and powers, being a serious affectation to the constitutional order.

According to the work of Abiuso and Kleidermacher (2022), Vásquez (2022), Miguel and Zuloaga (2020), and Cisneros (2019), the consequences of police abuses severely affect the human rights protection system at the local level. The consent and maintenance of this practice can lead to an international problem in which the Peruvian State faces the legal consequences derived from the criminal actions of police officers. Throughout these studies, the problems of arbitrary detentions, inhuman and degrading treatment, among other types of phenomena that violate human dignity, have been noted, duly regulated in Article 1 of the Constitution in accordance with Article 5 of the American Convention. In addition, victims of arbitrary detentions may face problems of discrimination in relation to the treatment they receive and the recognition of their rights to exercise their defense during their detention, an event that may violate the rights to due process recognized in paragraph 3 of Article 139 of the Constitution in accordance with the provisions of Article 8 of the Pact of San José.

The findings have also shown that a lack of accountability for police excesses can lead to a cycle of impunity and violence. Ortega and García (2020) discuss the limits of the use of force in police detentions, underscoring the importance of accountability. Likewise, impunity affects the Democratic and Constitutional Rule of Law. The impact on public trust, systematic discrimination and the obstruction of access to justice weaken the very foundations of the State; moreover, the failure to comply with international obligations and the perpetuation of cycles of impunity and violence call into question the capacity of the State to fulfil its fundamental functions.

6. Conclusions

First. – It is concluded that the impact of the excesses of the police function during arrests in flagrante delicto in the Constitutional Rule of Law is profound and multifaceted. These excesses not only violate specific fundamental rights, but also undermine basic principles of the rule of law, such as equality before the law, due process, and the prohibition of inhuman and degrading treatment, as established in Article 2 of the Political Constitution of Peru and Article 5 of the American Convention on Human Rights.

Second. – It is concluded that the manifestations of the excesses of the police function during arrests in flagrante delicto can manifest themselves in different ways, from direct physical violations, such as the excessive use of force, to more subtle forms of abuse, such as discrimination and the denial of procedural rights. This type of conduct not only violates national

laws and international human rights treaties, but also affects the fundamental principles of the Constitutional Rule of Law, as established in Articles 1 and 2 of the Political Constitution of Peru.

Third. – It is concluded that the perceptions of the various actors involved in the arrests show multiple perspectives on the phenomenon. While detainees, vulnerable groups, and human rights defenders tend to perceive police excesses as serious violations of fundamental rights, the police perspective often emphasizes the need to maintain order and security. Therefore, this phenomenon is maintained by the inflection of police officers and persons intervened and subsequently detained, who seek to make their personal criteria prevail over the legal mandate.

Fourth. – It is concluded that the excesses of the police function during arrests in flagrante delicto may affect the proper course of the Constitutional Rule of Law, since certain fundamental rights are violated, affecting the principle of equality and due process, as established in Article 139 of the Political Constitution of Peru.

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