

Complaints Against the South African Police

When police overstep their powers

The police have no powers other than those granted by acts of parliament, the most important being the Criminal Procedure Act, 1977, and the South African Police Service Act, 1995. Any police officer acting outside these powers is liable to disciplinary proceedings, criminal prosecution or to a civil action for damages.

Misconduct

If you feel that a police officer has acted in an improper or illegal manner you may complain at the nearest police station. The police must investigate your complaint, but if you are unhappy about the way the matter is being handled, ask to speak to the station commander. If you are still dissatisfied, complain in writing to the district Commissioner of Police for the area. If all approaches fail, contact a newspaper or a member of parliament (MP), or a political party constituency office.

Illegal search and entry

A police officer who unlawfully enters private property is regarded in law as a trespasser. Such an officer may be charged with trespass, or with malicious damage to property if he or she breaks in, or with assault if a person on the property is forcibly searched. The general rule is that a search warrant must be produced.

The police may, however, enter and search, and seize goods without a warrant if the person in charge of the premises consents, or if they have reasonable grounds for believing that they could have obtained a warrant, but that the delay in doing so would defeat the object of the search. (See police, powers of the.)

A police officer who exceeds the limits of a warrant - for example, by searching a person when the warrant does not authorise it or by acting without a warrant unjustifiably - may be sentenced to a fine or imprisonment and may also be liable to a civil action for damages.

Quick Tip - What to do if you think a warrant has been improperly attained

If you have reasonable grounds for believing that a warrant has been improperly obtained or that it was issued in bad faith, you may contest its validity by laying a charge against the police officer involved.

Unlawful arrest

A police officer who exceeds the limits of authority to arrest is liable to conviction for assault or any other crime committed while making the arrest. Even the mistaken belief that an arrest was authorised, would not normally be excused.

A police officer who makes an arrest in terms of a warrant, must produce the warrant - you cannot be arrested until you know what you are being arrested for.

Note, however, that resisting arrest, or interference or obstruction of a police officer must be justifiable (for example, the police were not authorised to act or you were acting in self-defence). Resistance which is not justifiable could result in a charge of obstructing the police in the execution of their duties.

A charge of unlawful arrest or assault or both may be brought against a police officer who makes an arrest while not empowered to do so or makes an improper arrest. The charge can be laid at any police station and the police must make an official record of the charge

and investigate the matter as they would with any other alleged crime.

If you are arrested unlawfully and held by the police, you may apply to court for your release. It is best to do this through an attorney. If you do not have an attorney, phone around until you find one who is prepared to act for you.

Case History - The rumpus at the railway station

While Karvie was waiting for his train, a military policeman approached him and demanded to see his ticket. The policeman had no authority to do this. When Karvie refused, the military policeman called a sergeant, who forcibly dragged Karvie off to the charge office. In trying to escape, Karvie struck a policeman.

- The magistrate hearing the matter said: 'Every man has the right to offer reasonable resistance to an unlawful aggression upon his person, and if he is unlawfully arrested he is entitled to do anything reasonable to free himself ... in striking the constable in order to effect his escape from the unlawful arrest, the appellant did not act unreasonably.'

(Rex v Karvie, 1945)

Complaints in court

If you wish to complain about the way you were treated when you were arrested or while you were in custody, you should do so when you are brought before a court. If you were denied access to a lawyer, bring it to the attention of the court.

Civil claims against the police

A police officer who breaks down a door and enters your house unlawfully is guilty of malicious injury to property and of trespass; in this instance, unlawful arrest may also lead to a charge of assault.

In addition to criminal charges, you may institute a civil action against the police for damages caused by their unlawful conduct, involving trespass, assault, wrongful imprisonment, malicious damage to property or malicious prosecution.

In law, police officers are regarded just as any other employees are. They are employed by the state, which, like any employer, is liable for any civil claim that may arise from unlawful action by its employees in the course of their employment.

If you have been wrongfully arrested or assaulted by the police and you wish to sue for compensation, there is one essential fact to remember: if you do not act swiftly, you may find that your action has prescribed ('gone stale') and you can no longer proceed with it.

Generally, if you wish to sue a private citizen for assault, you must begin the action within three years, or your action will prescribe. When assault, or any other wrongful action, concerns the police, however, the South African Police Service Act, 1995 states that your action will prescribe after 12 months. Before you sue the police, you must give the national Commissioner of Police one month's written notice of intention to do so.

Failure to give this notice, which must include details of the incident which has led to the proposed action, will jeopardise your case.

Quick Tip - What to do if you're arrested

Before resisting arrest or laying a charge, you must clearly establish your rights.

If you are apprehended by the police, ask them whether you are being arrested, under what authority and for what offence. Because it is often impossible to know at the time whether an arrest is legal or not, it is advisable to comply and to complain later if it should turn out to be

unlawful.

Warning - Resisting arrest

Police officers in South Africa carry firearms. Although you may have the right, technically, to resist unlawful arrest, in practice and in nearly every instance you would be ill-advised to do so.

A wrongful arrest could be the result of a misunderstanding, and the police officer could react to resistance harshly, albeit in good faith. The only sensible procedure would be to submit to arrest and complain afterwards, usually when you take legal advice, lay a charge or appear in court.