

Taking Stock of SSR in SEE: Police and Justice Reform Security

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Introduction

After the collapse of the Soviet Union and Yugoslavia the global security situation changed very dramatically. The new independent states especially in the Western Balkan area are facing new and daunting challenges.

Security of our citizens is the responsibility of the national parliaments, the governments and the law enforcement community.

Reforming, restructuring and transforming law enforcement agencies in South East European (SEE) countries have gained an important place on these states' political agenda. Numerous projects with domestic and international partners were introduced and carried out. There is no police reform without political decision and support. Reforming and restructuring the law enforcement agencies are the most complicated tasks. Selecting the right people, having a good plan and necessary financial resources are the key issues for the implementation of the reform.

Democracy needs a well functioning and effective police service. Representatives of the national assemblies and the civil society play an important role in keeping the services effective, accountable and within the rule of law.

1. Democratic Policing and Police Reforms

There are several examples in Central and Eastern Europe for transforming, reforming and restructuring police and other law enforcement agencies. There are policies, laws and practices available

for SEE countries for study and use for their reforms. Police reform itself is not efficient without reforming the whole justice system. By the end of the day, law enforcement reforms must show up on the street and in the everyday work of the police officers.

“The goals of democratic police reforms (or creation of a democratic policing system), then, are sustained legitimacy, skilled professionalism and effective accountability.”¹

2. Principles of Democratic Policing

2.1 Police must operate in accord with the principles of democracy.

Police officers and leaders are able to operate in accord with the principles of democracy if they are properly trained and equipped. This is not always the case, especially in post-conflict States and in the former socialist countries.

2.2 Code of professional conduct

Council of Europe (CoE), OSCE and UN as well as national code of conducts need to be followed by police officers. Again, education and training are very important. Supervision and civil control of the performance by law enforcement officers are essential.

2.3 Protection of life

The use of deadly force needs to be very well regulated in national laws in accordance with CoE and UN principles. Supervisory agencies and police leaders need to conduct investigation in each case.

¹ Marina Capirini and Otwin Marenin: Police Transformation in Central and Eastern Europe: the Challenge of Change, p. 5. DCAF 2004

2.4 Serve for the community and accountable to the community

This principle is a basic one for law enforcement officers in democratic states. Unfortunately, not all states are using the community policing model and not every police force serve for the community, even in Europe. Political decisions need to be made to follow this community policing concept. A well developed civilian control or oversight needs to be established.

2.5 Prevention of crime, protection of life and property

Providing safety and security to the State's citizens is the main responsibility of the police service. Preventing crime is always providing a more secure environment to the public. Crime prevention could be part of the community policing concept. Education of citizens and children on security issues like drug prevention, traffic safety is very important.

2.6 Respect of human dignity and human rights

The key question regarding this principle is the implementation, because in many countries they believe that they follow the CoE, OSCE and UN declarations, but in practice they do not. Non-governmental organizations have a crucial role in the oversight of the everyday operations of the law enforcement agencies.

2.7 Non-discrimination

In all of our countries we have different ethnic and religious groups and groups of different sex. The law enforcement officers need to know his/her role as a public servant in this context. Again education and training is essential.

Reform and transition take time and don't happen overnight. We need patience, tolerance and time.

3. The Hungarian Experience

In 1989 we had a major political change in Hungary. The political changes were followed by legislative and constitutional changes and parliamentary democracy, multi-party political system, market economy were introduced. New international relations were established with the CoE, NATO and later on with the EU.

Reforming the Hungarian Police and other law enforcement agencies has been on the political agenda since the beginning of the political transition. We have received international assistance (Team Consult from Switzerland).

The main area of the Police Reform in Hungary are:

- changing the duties of the Hungarian National Police (HNP),
- restructuring, reorganizing the HNP,
- depoliticization,
- decentralization,
- demilitarization,
- strength of HNP,
- new human resource management,
- education and training,
- accountability and civil control,
- respect of human rights and dignity,
- corruption,
- images and attitude of police personal towards the citizens.

By implementing the Police Reform in Hungary, certain key areas of the police system have achieved progress, such as training, depoliticization. Some fundamental reforms are still waiting to be established, such as decentralization, demilitarization and deeper structural changes.

During the last 16 years there was no systematic strategy for Police Reform.

Currently the HNP is again going through a major reform. The integration of HNP, Border Guard and Immigration Bureau is led by the Ministry of Justice and Law Enforcement.

4. Roles and Responsibilities of National Institutes and the Civilian Community in the Police Reforms

4.1 National Parliaments

The National Parliament has major responsibility for providing adequate, democratic oversight on police (law enforcement agencies) including reforms. The National Parliament is sharing its responsibility with the Government. The democratic and transparent oversight includes dialogue between opposition political leaders and high-ranking officers of the law enforcement agencies based on mutual trust as an open line of communication. These regular exchanges of views are important as they help politicians and police leaders to understand the needs of national and international security.

There are different actors involved in the parliamentary oversight of the Police, such as the Parliamentary Committees, Ombudsman, State Audit Office and the Media.

There are certain principles regulating democratic parliamentary oversight:

- The state is the only actor in the society that has the legitimate monopoly of force; the security services are accountable to the legitimate democratic authorities;
- The parliament is sovereign and holds the executive accountable for the development, implementation and review of the security and defense policy;
- The parliament has a unique constitutional role in authorizing and scrutinizing defense and security expenditures;
- The parliament plays a crucial role with regard to declaring and lifting a state of emergency or state of war;

- Principles of good governance and the rule of law apply to all branches of the government, and therefore also of the security sector;
- Security sector personnel are individually accountable to judicial courts for violation of national and international laws (regarding civil or criminal misconduct);
- Security sector organizations are politically neutral.²

4.2 The role of the civil society

The civil society has an important role in a democracy. The civil society comprises a large spectrum of voluntary associations and social movements, representing different social interests and types of activities. These organizations actively remind the political leaders that there is a multiplicity of competing demands and interests to be taken into account when deciding on public expenditures and state policies. For this reason, a well-functioning civil society is a basic requirement for democracy. Academic institutions, human rights non-governmental organizations, policy-focused associations/organizations can actively influence decisions and policies with regard to the Police.

4.3 The role of the media

The independent media has a crucial role in new democracies. Free media is a key element of democracy and reforms. In those countries where the media is not independent, it is very easy to manipulate the community and misuse the media by the rulers of the state.

Given the advantages of the internet, the potential for public access to information (official and non-official) is huge. The media has the right to gather and distribute information on security and police related topics, which are of public interest and has responsibility for providing news that meets standards of truth, accuracy and fairness.

² Philipp Fluri (Editors-in-Chief): Parliamentary oversight of Security Sector, p.22-23

The media could help Parliaments and Police Services to explain their decisions and policies to the citizens, who have the right to be informed and to participate knowledgeably in the political process.

4.4 Parliamentary oversight on Police Reform (Law Enforcement Agencies- LEA)

In democratic states the Police (LEA) is under the supervision of the National Government, but accountable to the National and local Assemblies. The Police should operate within the rule of law. In democratic states the Police should provide public security and at the same time respect individual liberties and human rights.

The actual control mechanisms in the law enforcement sphere are different from one state to another and include such as:

- Parliamentary debates on Police Service
- Parliamentary questions and interpellations relating to the performance of the Police Service
- Parliamentary inquiries on Police performance by Law Enforcement Committees or sub-committees and special committees.

In a democracy the Chief of Police could be called upon once a year to report on the performance of the Police Service or on special occasion to the Parliament or its Law Enforcement Committees. On the local level the same right could be exercised by the Local Security Council.

The State Audit Office has a right and responsibility to inspect the use of the budget by the Police Service. The Ombudsman has the right and responsibility to conduct inquiry on police performance on his/her own initiative or on request by citizens.

4.5 The Ombudsman

The Ombudsmen are usually appointed by the Parliament and report to the Parliament. Among the independent institutional actors monitoring the Police Service, the Ombudsman has a special position. In many

countries the Ombudsman has general competence and deals with problems generated by a malfunctioning of the Law Enforcement Agencies. In other countries, specialized Ombudsmen are dealing with the security sector.

The Ombudsman represents an additional mechanism for monitoring the Police Service on behalf of the citizens and Parliament. Citizens or members of Law Enforcement Agencies can ask the Ombudsman to start an inquiry. Parliamentarians can also ask the Ombudsman to investigate alleged abuses and complaints. If the Ombudsman finds that a complain was justified, she/he can make recommendations, including demanding of the Police in question to change or reconsider its decision.

4.6 The parliamentary oversight of the Police in Hungary

Laws:

Law on National Police of Hungary, 1994

Law on Hungarian Border Guards, 1997

Law on Hungarian Custom Service, 2004

Law on Hungarian Prison Guards, 1979

Parliamentary Committees:

Defense and Law Enforcement Committee,

National Security Committee,

Finance, Budgetary and Audit Committee.

Civil society in Hungary dealing with law enforcement issues:

Hungarian Helsinki Committee,

Hungarian Association of Police Science,

Law Enforcement/Police Union,

Bertalan Szemere Hungarian Law Enforcement Historian Association,

Association of Hungarian Criminologists,

Hungarian Police Women Association,

Roma Police Officers Association,

Consulting Collegium for Law Enforcement and Crime Prevention.

Conclusions

Effective Police Reform could be achieved with strong political willingness, determination, and allocation of adequate resources. The basic problem is to maintain public order and security and at the same time to carry out the reform with the same law enforcement management while the crisis of the police is still going on in terms of low salaries, under-motivated staff and low moral prestige of the police profession.