

HCLU on the Police

What is the police for? Who are police accountable to? Does the protection of public safety justify infringement of citizens' rights? Can criminal justice agencies themselves become sources of danger? How does a highly regimented organization such as the police force become controversial because of instances of unjustified use of violence and corruption? Talking about police in Hungary nowadays, these questions are asked again and again.

The mission and status of police in the state

Protection of public safety or maintenance of internal order?

Under Communism, the government used police both for protecting public safety and maintaining the political order. The two functions were not clearly separated, combating crime mixed with political considerations, and the efforts to sustain the regime often degenerated into criminal prosecution.

Traces of the blending of these two functions can be found in the 1989 constitution and in Act XXXIV of 1994 on Police (hereinafter Police Act). Both documents mention the protection of internal order as one of the functions of police. This is an outdated view. In today's Hungary, the protection of state security is the task of the national security services. In countries with rule of law, the national security services have broader powers to collect data than police do but, as a rule, they do not have the right to apply coercion or restrict the personal freedom of citizens.

A politically directed or a politically neutral police force?

Throughout the world, and especially in countries of continental Europe with a political system similar to ours, police are dependent on the government of the time, which means they are at least indirectly dependent on party politics. However, only authoritarian regimes apply police methods to realize partisan purposes. In a democracy, the police should not be used for political ends. It must operate observing strict political neutrality. Policing may not be legitimate unless it strictly adheres to the law and the constitution, depository of the most fundamental values and rules.

The architects of Hungary's transition to a multiparty regime professed that creed. The regulations passed about police in 1989 expressed the concern that the armed services, including police, could be used for obtaining or maintaining power by force. The Duna-Gate scandal of January 1990 (in which illegitimate activities of the Ministry of Home Affairs were exposed) showed that such fears were not unjustified. The 1989 amendment of the constitution, redefining the status of the armed forces in the state hierarchy and the legal limits of their operation, helped dismantle the repressive regime. Decision was also made on that a new Police Act would need the approval of two-thirds of the members of Parliament present at the vote.

The framers of the amended constitution were concerned that the government might intend to merge, or oblige to cooperate, various services of the armed forces (the army and the border guards) and police. Therefore, the constitution makes it clear that the defense of the homeland must not be confused with the maintenance of internal order: "The armed forces may be used only in times of an emergency situation promulgated in accordance with the provisions of

constitution, in case of armed action aimed at the overthrow of the constitutional order or at the seizure of absolute power, furthermore, in cases of violence committed with arms, or the use of force in a manner endangering the safety of the life and property of citizens on a mass scale, and only when the deployment of the police is not sufficient.” (Article 40/B.) An 1993 amendment of the constitution bars police officers from political activities and party membership altogether.

Law abidance or efficiency?

It is an old fallacy that strict abidance by the law obstructs the efficient protection of public safety. There might be cases when ostensibly it is a valid dilemma whether to adhere by the law or to seek efficiency in protecting public safety. To contain prostitution, for instance, police may cooperate with pimps. In such cases, police tolerate or even collude with the breakers of the law in exchange for their support to maintain order in the everyday sense of the term. Such conduct will not pay in the long run. If police tolerate breaches of law for whatever reason, they lose credibility, which is a precondition for acting against criminals. It is impermissible for police to compromise themselves with criminals. In a democracy, police must be superior to criminals not only in terms of force but also in terms of law abidance.

Police may best improve public safety if their entire conduct carries the message that it is worth observing the rules of law. Consequently, consistent compliance with the law is a virtue which the police force must display in an exemplary fashion. In other words, police should never violate the binding rules of the state. Their actions must carry the message that they do honor the rule of law.

Is there a limitless potential of improving police efficiency?

Contrary to popular belief, there is no correlation between crime rate and various characteristics of the activities of police, such as the size of the police force, the amount of funds available for police and the technical equipment at their disposal or other factors that are often mentioned (the methods employed, the powers of police, the salary of policemen, etc.). However efficiently police work, they can never reach the complex and deep roots of crime, they can only scratch the surface of crime. Police can, for instance, make an underpass safe by fending off offenders, they may apprehend all the members of a major criminal network, but that is just scraping the surface. The vendors who sell their goods in the street without a license will show up in another part of the city because that is their only source of income. As long as there is demand for them, trade in drugs and prostitution will be around.

It would be wrong to conclude that police were not needed. Policing makes a major impact on society which should not be measured by statistics or the lengths of prison sentences. In fact, the most important influence police can exert on society is by showing an example of operating honestly, working at a high standard and by a strict observation of the law.

Is police playing a privileged role in combating crime?

Almost everybody would answer to this question: yes, it is. HCLU disagrees. In the whole of the administration of criminal justice, police investigation is an important stage but nothing more than preparation. That is why police are fully subordinated to the Prosecutor’s Office in their

investigation activities. The next stage in processing a case is administered by the Prosecutor's Office, and the final assessment of the evidence and the passing of judgement is a task for the courts.

As for planning and implementing various aspects of crime prevention, police play no role at all, not at least under ideal conditions. It is undesirable for instance that police should take part in classes where schoolchildren are being informed about the dangers of drug-taking, neither are police officers welcome in institutions where drug users are rehabilitated or at general health care facilities. The social welfare institutions have a key role to play in crime prevention and police have nothing to do with them either.

Police approach or civil approach?

In the previous paragraphs, we considered three beliefs:

- that the efficiency of policing can be improved at the cost of encroaching on citizen's rights,
- that there are no limits to improving the efficiency of policing,
- that police and police alone have tasks in the field of the administration of criminal justice.

Police tend to share and propagate these beliefs. Therefore, we can refer to them as the police approach to public safety. By contrast, the HCLU advocates a civil approach. According to this, all the above three statements are mistaken. The civil approach is based on the conviction that not even combating crime can justify infringing on citizens' rights by the police.

Which rights should constrain police powers?

We have to mention first the requirement of respecting the fundamental constitutional rights, particularly those of personal liberty. For instance, no interests of criminal investigation may justify the taking of the life of a suspect or of any other person. Issues related to the risks that police take and to the use of firearms have to be considered in the light of that constitutional principle.

Article 16 (3) of the Police Act recognizes the citizens' inalienable right to human dignity. It is provided by that section that police is not permitted to apply torture or coercive methods of questioning, nor to treat any individual in cruel, inhuman or humiliating ways. At variance with other provisions of the Police Act, Article 16 (3) calls for strict action against those who violate its prohibitions irrespective of their position, rank or person.

Personal liberty and the right to a fair criminal procedure have to be observed in the way police operate and in the way police activities are directed.

The citizens have the right to privacy and to protection of their personal data, especially the sensitive ones. It is, for instance, inadmissible that police should have access to bank accounts or medical records of persons who are not even charged with committing a crime. It is inadmissible, furthermore, that police should collect private information that is not closely connected to any crimes or that it should connect databases that keep personal information or that it should use

data for purposes other than those defined by the organization that originally collected those data. It is equally inadmissible that police should keep such data well beyond the closing of the case in connection with which they were collected.

What should be the status of police in the state?

Police is an armed organization, it is structured like the Armed Forces, and secrecy is essential for their operation. In view of these attributes, there is the danger that police should become a closed, isolated organization, which stand closer to the other armed services than to society.

It must not be forgotten that the *raison d'être* of police is the service of civil society. It is therefore of paramount importance that police must not be divorced from society. Police should be aware of society's demand for safety but should also be aware of society's demand that it is protected against the danger of abuses of power. The civilian aspects of police have to be strengthened. Institutional channels need to be created that let police learn about the expectations of society.

In a democratic country with the rule of law, the place of the police force must be in the civil service rather than among the armed services. A policeman is a public employee just as any administrator. The operation of the police force is supervised by a ministry which is directed by a civilian politician and where civilian administrators do day-to-day work. In many countries, the police force is decentralized, which means its provincial or country level divisions are under the control of not a national police headquarters but of local self-government. Self-government bodies take part in the appointment of senior police officers and the police officers are accountable to them. When a policeman breaches the law, the case is examined by the Prosecutor's Office and then forwarded to a court.

International expectations concerning policing

Why are there so few international agreements on policing?

Policing is typically considered an internal affair, even if international cooperation has become necessary in a growing number of cases. The structure and regulations of the law enforcement agencies vary from country to country and, occasionally, among different parts of the same country. In Germany, for instance, they vary from province to province and in the United States from state to state, or even from city to city.

That is why there are few international agreements that cover policing, and among the few that can be found, most are of a regional character. The EUROPOL Convention is an example. It covers the work of EUROPOL, which coordinates criminal investigations in the territory of the European Union.

Which are the most important conventions in this field?

For an evaluation of policing, the international agreements on human rights are of special importance. After all, among the various agencies that the government has at its disposal, it is the police that are most likely to interfere with citizens' freedom or even endanger citizens' lives. Let

us note in this context the following documents: the International Covenant on Civil and Political Rights (United Nations, 1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950). These instruments of international law have been incorporated into Hungarian law by law decree 8 of 1976 and Act XXXI of 1993, respectively.

What role international courts are playing?

If a Hungarian citizen has exhausted all domestic fora of legal remedy, he or she can turn directly to international fora that work on the basis of the above documents. Let us mention, as an example, the *Párkányi v. Hungary* case, where the complaint was based on the International Covenant on Civil and Political Rights. Having examined the case, the United Nations Commission on Human Rights concluded that during Párkányi's pre-trial detention in police custody, his human rights were violated: he could not wash or do physical exercise. [Communication No. 410/1990, U.N. Doc. CCPR/C/45/D/410/1990 (1992)]

In Europe, the most important institution in the field of the protection of human rights is the Strasbourg European Court of Human Rights. Many of its sentences cover aspects of policing. Let us mention here the *Ergin v. Turkey* case, in which the court concluded that police were responsible for the death of a person who died during a police action even though police did not kill that person. In that case the police action was found as not having been organized with the required care, and the investigation was not as detailed as it should have been. (The sentence was handed down on 28 July 1998 in Strasbourg. 66/1997/850/1057)

The European Court for Human Rights has also considered *Rekvényi v. Hungary*, a case in which the Hungarian state was directly involved. László Rekvényi, former secretary general of Hungary's Independent Police Trade Union, sent the petition to the court. (He is currently president of that trade union). He claimed that it was inadmissible that members of police were not allowed either to carry out political activities or join a political party. (That prohibition is confirmed by the Hungarian constitution.) In Rekvényi's view that prohibition is incompatible with the European standards on the freedom of expression and association. Rekvényi argued that the term "political activity" is too broad and it allows room for various interpretations, including arbitrary ones. In a democratic state, Rekvényi maintained, it is unjustified to impose a total ban on party membership. The court resolved that the Hungarian state was right. The dismissal was partly motivated by the fact that representatives of the Hungarian government made certain concessions to Rekvényi's claims. They declared that the constitutional ban on political activities could not be enforced directly, only through the rules that apply to various fields of political action (as for instance, the election law, the association law, etc.). The court approved the ban on party membership in view of the special situation of Hungary as a transition country where there are still well-founded anxieties regarding possible abuses of power. (The decision was passed on 20 May 1999 in Strasbourg.) To sum up the decision of the court: the members of the police force are entitled to the entirety of the human and civil rights. Restrictions on those rights are only acceptable inasmuch as they are required by the nature of employment by the police. Such restrictions may differ from country to country and from one historic period to another. Whenever they are applied, the conditions have to be carefully examined and unjustified restrictions cancelled as soon as possible.

What are international recommendations for?

The internal conditions of states are different, and the international community has to respect the differences. However, now that more people can enjoy the freedom of travel and integration is on the agenda of Europe, it is hardly tenable that countries should so widely differ in policing policies. Certain respected international organizations have issued recommendations urging countries to narrow the gap in their practices. Many of these recommendations remind the members of the police force that their first priority is to honor unconditionally the laws of their country.

Article 8 of the United Nations Code of Ethics for Law Enforcement Officials (which the General Assembly adopted on the 17 December 1979, No. 34/169) provides that officials have to honor the law and the UN Code of Ethics. The officials have to do everything in their power to prevent any violation. In 1979, the Parliamentary Assembly of the Council of Europe adopted a statement on police (Resolution No. 690). Item 4 of Chapter A of the document says that a member of the police force has to execute the duly issued order of his or her superior but he or she has to disobey an order about which he or she knows, or should know, that it runs against the law.

In February 1999 the Hungarian Helsinki Committee organized an international conference in Budapest on the police. The participants were theorists and practitioners from many countries. The papers presented at the conference included the findings of comparative police surveys. The recommendations that the conference adopted emphasized that the provisions of law have to be honored by police at all times, and that it is impermissible to fulfil orders that violate the law. Action must be taken against all instances of torture, cruelty, and inhuman or humiliating treatment in policing. The conference emphasized the need to combat corruption. It is equally important, the conference participants emphasized, that the members of the police force should also have their rights enforced. "The human and civil rights of the members of the police force may only be restricted inasmuch as that is necessary in the interest of policing."

The situation and problems of the police in Hungary

What has changed since the fall of communism?

The architects of Hungary's transition to multiparty democracy sought to separate police from the national security services and to put the police under the rule of law. There was broad consensus among political agents on that the highly centralized police force had to be decentralized. The political parties of the transition period committed themselves for the idea of a police subordinated to self-governing municipal organization.

That tendency came to a halt in 1991. The idea of subordinating the police to local self-government was abandoned. The minister of home affairs announced the slogan of a "masculine" police force, which meant that members of the police, rather than being bothered by the interpretation of rules and regulations, should act immediately and resolutely. From then on, the legal restrictions of police action were progressively loosened. That was in harmony with the mentality of the right wing parties in power at that time. Unfortunately, the liberal and socialist opposition did not put up too strong a resistance either. The tendency began by the government of

József Antall was later continued by the government of Gyula Horn and that of Viktor Orbán. We are witnessing a long period in which police are being granted ever increasing powers.

What explains the turnabout?

In the years of the transition to multiparty democracy, in other words, in the late 1980s and early 1990s, the crime rate increased dramatically in Hungary. In 1988, statistics showed 185,344 criminal acts; in 1991 the figure rose to 440,370. People began to feel less safe also because of the appearance of unprecedented street violence (cars were blown up and there were shootouts even by daylight). Irrespective of their political affiliations, politicians thought that the worsening crime situation was a consequence of greater freedom. To remedy the ills, the politicians thought, the human rights needed to be curtailed, and police and other law enforcement agencies were to be given greater powers.

That is why in 1994 Parliament adopted the controversial Police Act without any vote against and with only one abstention. The crime situation did not improve in the years following the adoption of the Police Act, though. In fact, statistics showed a continued worsening. In 1998, over 600,000 criminal acts were recorded.

Although statistics about 1999 show a measure of improvement, that is only due to imperfections in the methods of registering (as nowadays fraud is measured by the number of aggrieved persons, the number of criminal acts went down by tens of thousands). As far as the efficiency of police investigations and the finding of offenders are concerned, no improvement has been registered despite the fact that fewer criminal acts were recorded. In fact, the relevant ratios were worse than in previous years.

According to statistics published on the website of the Ministry of Home Affairs (<http://www.b-m.hu/rendorseg/bun/bunuld95.html>), in the first three quarters of 1999 in Budapest only 7% of criminal acts with unknown offenders were resolved.

The politicians should have come to the conclusion that the expansion of police powers, the removal of procedural guarantees and the increasingly rigorous sentences will not bring the desirable results. But that is not the case. Despite the repeated failures, increasingly repressive rules of law were adopted.

A closer look at the regulations

The Police Act of 1994 includes numerous provisions that are hardly compatible with the constitution. It enables, for instance, members of police to ask anybody, anywhere for a certificate of identity without prior justification for that measure. The police have the right to question the person they ask for identity and to search their clothes. If he or she is reluctant to cooperate (because, perhaps he or she finds it as humiliating and as amounting to a harassment), then police have the right to apply coercion, may take that person to the police station and detain him or her for twelve hours. The Police Act empowers police to use firearms against persons whose behavior endangers police or other persons or if they attempt to escape from custody or if such a person is charged with having committed a crime against the state. The Police Act fails to

include rigorous rules for the collection, use and storage of personal data and the linking of data obtained from various databases.

Since the Police Act was adopted, several new legal instruments have been enacted that have given police further powers. An example can be the law on the handling of medical records (Act XLVII. of 1997). The law that has caused the greatest harm has been that against organized crime (Act LXXIX. of 1999.). It gives powers to police that are reminiscent of those police enjoyed under the repressive regime before 1989. Under that law, police may have access to medical records and secret bank accounts and can use clandestine techniques for the surveillance of suspects.

In the meantime, the process of bringing police under civilian control has slowed down. The law on the armed services of 1996 provides that the police personnel belong to the armed corps, which is tantamount to departing from the promise of putting members of the police force in the category of civil servants. Since 1998, the politician who heads the Ministry of Home Affairs is himself a career policeman.

The present situation

Official statistics show that nowadays the Hungarian police annually ask citizens for their identity in 1.5 million cases and 1.3 million people are fined. Year by year hundreds of complaints are submitted against police beating up suspects, detaining persons without a good reason, and apply coercive methods during questioning. Official inquiries are only launched into between 25 and 30 percent of such cases.

Frustration over unsuccessful investigations may contribute to increasing police brutality. Police commanders fail to distance themselves from excesses such as when policemen beat up and humiliate a lady teacher in the presence of her students, or when a detachment of policemen besieged a bloc of flats that was predominantly inhabited by Romas, or when police violated fundamental norms of civilized behavior.

In the meantime, public confidence in police has drastically declined. According to a survey of Gallup Hungary (published by *Magyar Nemzet* on 13 November 1999), police were listed as the 14th among 15 institutions in terms of popular confidence. Earlier, police were in the middle of that list. Only 4 percent of those interviewed said they believed the official police reports about investigations into corruption affairs.

The prestige of police, either moral or legal or else professional, is at its lowest. In HCLU's opinion that is because – apart from the exceptional years of 1989-90 – police have shown contempt of the constitutional value of human rights.

The HCLU's recommendations

That having said, the HCLU does not question the fact that the predominant majority of the members of the police force are committed to their mission and carry out an arduous work to promote the rule of law. As has been mentioned, the police officers and non-commissioned officers are themselves curtailed in the exercise of many of their fundamental rights. Our

criticism has for its target policies and regulations, not people. The recommendations listed here are concentrating on the most urgent tasks. They are meant only to outline the direction of the proposed changes.

- The police should return to constitutionality. Crime statistics have not justified the claim that the efficiency of policing can be improved at the cost of restricting fundamental rights. On the contrary, public safety is nothing but the undisturbed exercise of fundamental rights. Consequently, their institutionalized violation can only make the situation worse. It is the principal duty of police to observe and protect the human and civil rights of the people. The respect paid to these rights, rather than harming the efficiency of policing, contributes to strengthen it. In cases when it is justified to restrict fundamental freedoms, necessity and proportionality have to be honored.
- The HCLU agrees with the recommendations adopted by the conference that the Hungarian Helsinki Committee organized in February 1999, and it is working to translate those recommendations into reality.
- In our view, police need to be demilitarized and decentralized in order that it regains its social prestige and that its members themselves become able to assert their human rights at a higher level. For police to fulfil their mission, they need to be sovereign personalities who respond to social phenomena sensitively and responsibly rather than subordinates who can just obey order blindly. In our view, the local problems of public safety need local solutions and therefore, decision-making should be transferred from the national headquarters of police to local police centers.
- For these aims to become reality, it is necessary to strengthen civil control over the work of police. For that reason institutions of civil control have to be created or further developed (as for instance, prison cells of police stations have to be monitored), civil organizations are needed that can make inquiries into complaints against police action, and proper powers have to be ensured for existing public institutions (as for instance, the parliamentary commissioner for human rights).
- The HCLU supports the efforts at creating a community police and to make police problem-oriented. We are convinced – and research has confirmed that view – that the best way of improving the efficiency of policing is not to emphasize strength and to make use of clandestine operations but to improve relations with society. That requires openness and mutual confidence. Whether or not society has confidence in police will depend on the latter's attitude. Police will have to work hard to earn that confidence day by day.
- In our view, there is need for a new Police Act, one that will show an example also for the regulation of the work of other law enforcement agencies. The new Police Act should be based on the safety requirements of the citizens rather than the requirements of the members of the police force.

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