

# Tendencies of Militarization in Central and Eastern European Policing

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*The paper addresses basic problems of confusing military and police activities. The thesis is developed according to which introduction of army type arrangement into law enforcement is detrimental not only to the constitutional values but also to police efficiency - even in the narrow professional meaning of the term. Militarism as a perspective and militarization as a process are defined as applying military structures and arrangements to the essentially civilian police job and organization. There are a number of ways where such an approach shows. These include uniform, the rank-order, compliance with orders, belonging to military justice, etc.*

*The second part of the contribution deals with Hungarian developments. In spite of the strong criticism against the over-centralized and over-militarized system of the late socialist regime by the opposition to the party-state, no resolute steps have been made following the constitutional reform to reorganize police. Although some promises of demilitarization were declared by the first democratic government, nothing actually happened to realize them. On the contrary, reinforcement of the old methods complemented with some new but also militaristic elements have been on the agenda of legislation and organizational design.*

*Some phenomena in other former socialist states are also presented illuminating that militarization is not an exclusively or even predominantly Hungarian characteristic.*

*In conclusion the author emphasizes some negative impact of militarization not only on the police profession itself but also on the relations with society. Finally, some remarks point out the incompatibility of the militaristic approach with the elementary expectations of modern management.*

## INTRODUCTION

Before turning to discussions on recent developments in Central and Eastern European Policing it is appropriate examining the often misunderstood and, in my opinion, too narrowly perceived phenomenon of militarization as a process and militarism as a guiding principle in the structure and functioning of state organs. In full agreement with Miguel Martin Pedraz I would define militarism not by disproportionate presence of soldiers in Government activities but basically as dominance of military methods in the work of by nature civilian agencies including police. Rightly puts Pedraz that militarization of the police clearly contradicts tot he service role of the organization as a clear sign of parting with the values of civil society (Pedraz, 1992:105-108). As a perspective, militarism is

*"...the glorification of the tools and bureaucracies that perpetuate organized state violence"*

(Kraska, 1996:407)

Empirical and comparative research fully confirmed the conclusion that militarism is a principle and phenomenon not only antagonistic to the fundamental values of a democratic legal state but, at the same time, rather direct cause of dysfunction of police even in professional terms (Skolnick - Fyfe, 1994:113-133; Chevigny, 1996). As Schlichter explained:

*"The military is designed, organized and equipped to effect the rapid, violent and efficient destruction of the "enemy", whoever that may be. Military methods are not designed to handle the shades of grey that a police officer encounters on the beat, but are tailored to the stark black and white of the battlefield"* (Schlichter, 1993).

In a broader context, militarism can be seen as a result of a security doctrine treating external and internal threats in essential unity. William Stanley, in agreement with

José Manuel Ugarte, rightly puts that the failure to distinguish between the realm of national defence and internal security leads to a doctrine that places priority on protecting the nation as a whole. Such an approach, widely used in Latin America, results usually in negating the importance of individual rights and defining entire classes of people and currents of political opinion as threats to the security of the nation. A further logical step is to engage in a war against deviant behaviour, thus necessarily treating groups of people as enemies (Stanley, 1996:37-38).

Communist regimes typically make use of militarization of police as dictatorships prefer concentrating power instead of dividing it. Internal troops and forces in dual (military and policing) status, are important parts of the security complex. Their presence is a clear sign of the fear of domestic unrest to be oppressed by military operations. On the other hand, it is true that most of the socialist states have lived in a very insecure surrounding. Therefore, militaristic structure of police and other law enforcement agencies is important to maintain compatibility with the army. The political role of well disciplined and unquestionably loyal security forces is not negligible either (Salas, 1979:273-274).

Capitalist democracies reject the idea of unlimited use of power by the state. One important aspect of the principle of division of powers is the distinction between internal versus external forces of security.

German authorities in police history see a self-evident fact in the coincidence of demilitarization of police with significant steps made toward creation of a legal state (Harnischmacher - Semerak, 1986:74-75; Funk, 1986:320). Rightly contrasts a study on law enforcement of the Weimar Republic the paramilitary style of policing with the modern one (Bessel, 1992:343). It is the prevailing opinion that a professional police force aiming at a level satisfying up to date expectations of society has, first of all, to get rid of the militaristic features (Hildebrandt, 1990:90). Professor Feltes, Rector of the Police Higher School of Baden-Württemberg persuasively pointed out the essential difference between police and military in the fields of management, weaponry, image

of enemy, the tasks, the relations with the community, flexibility, complexity, situations of danger, and specialization (Fettes, 1996).

Anglo-Saxon perspectives put even stronger emphasis on resolute separation of police from the military. Sir Robert Peel laid down as the first of the policing principles:

*“To prevent crime and disorder as an alternative to their repression by military force and by severity of legal punishment”.* (Peel, 1990:140)

Constitutional standards of English police like minimum force and consensus based functioning exclude by nature using the army for internal order maintenance or establishing a police agency along similar organizational lines. According to American writers repudiation of military intervention in domestic law enforcement be the very bedrock of the process upon which their government was built (Whelan, 1985:267). Indeed, the use of soldiers to deal with internal public security threats constitutes a criminal offence according to US law (Hohnsbeen, 1986). Logically, it is generally held that the more the police resemble or assume the features and functions of the military, the more likely they are to cause problems for democratic societies. Civilian control and civilian influence are the elementary prerequisites of a democratic police force (Berkley, 1969:52-53)

## **MILITARIZATION OF THE POLICE IN HUNGARY**

There are considerable traditions of militarizing police in Hungary. Article 50 of the 1881 Budapest Police Act, the first significant piece of legislation on police, declared that the police force was a civilian institution but the watch personnel stood under military discipline as to internal service relationships. The gendarmerie, established also in 1881, was a military organization reporting originally to the Minister of Defense, responsible for rural law enforcement. In addition, the army had the mission to protect the country but also to contribute to internal order maintenance. In spite

of emphasizing civilian character of criminal and administrative policing, military influence has had always a major impact on protecting public safety. This feature of Hungarian law enforcement was pointed out by R Fosdick as early as 1915 (Fosdick, 1969:124-126). Militarization of policing culminated in 1944 when police and gendarmerie were reorganized into an integrated military structure of order protection. Since then police have conserved their army-like internal structure and external appearance. The over-centralized, politicized, and militarized police served as a key institution of the socialist dictatorship.

The first Interior Minister of the democratically formed Government following the 1990 free elections rightly put when analyzing the causes and circumstances of the oppressive and politicized nature of totalitarian police:

*“Two factors contributed to such functioning of the organization. One of them was the military structure, the principle of unconditional obedience and all external signs accompanying that militaristic system. As this strictly hierarchical establishment totally corresponded to ideological mission of police the arrangement has been extended even to those fields where nature of the activities actually contradicted to that. ... The other invention was the comprehensive secrecy of police work”* (Horváth, 1990:4).

These words adequately characterize perspectives of contemporary political forces replacing the communist political elite in 1990.

An important principle of the 1989 comprehensive constitutional amendment in Hungary was enshrined in the provision as to resolute separation of police from the armed forces strictly limiting the latter’s involvement in public order maintenance. Article 40/B, Paragraph (2) stipulated:

*“The armed forces may be used only in times of an emergency situation promulgated in accordance with the provisions of the 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”.*

The quoted provision appears to be in accordance with democratic constitutional standards. Principles for further lawmaking and structural development have been laid down.

There was no question about the necessity of reorganizing border guard service into a pure policing agency. Parting with the constitutionally unacceptable situation whereby border guard, belonging to the system of armed forces, performed clearly law enforcement duties, was a significant goal set among others in the program of the democratically formed Government following the 1990 free elections. By 1993, however, still under the same Government, perspectives of political leadership have tensions around Hungarian frontiers, instead of introducing far reaching reforms of the border guard structure, the contradiction with constitutional provisions excluding armed forces from internal functions has been solved by a new amendment to the basic law expressly authorizing the service to fulfill policing duties while not changing its position as part of the armed forces.

Despite the very sharp critique expressed during the debates on the Border Guard Bill by Members of Parliament even from governmental parties the Parliament passed the Act on Border Guard (No. XXXII. from the year 1997) basically confirming the dual (military and policing) status of the organization. At the same time new policing powers including those of conducting criminal investigations have been added to the competence of the border guard service.

The 1994 Police Act has not modified military type structure of the force either, although opened the way to employ civil servants to perform pure administrative duties (without any practical consequences till now).

Return to organizational principles of the totalitarian dictatorship was crowned by the 1996 Service Relations of Officers of Armed Organs Act. This piece of legislation, actually contradicting at several points even to the 1993 Defense and 1994 Police Acts, determines rights and duties of all officers serving in organs structured into a military framework. The law uses the summary term "armed organs" for these agencies: although fire brigades do not carry arms. The military, border guard service, prison service, state and local fire brigades, customs service and financial guard, civil defense and national security agencies are covered by the Act.

Unconditional obedience and all the external signs of militaristic structure, once so vehemently rejected by the Minister of Interior of the first democratic Government, are again the underlying principles of running "armed organs". Most cynically, the reasons submitted by the drafters to the Service Regulations Bill simply stated that uniform regulation was required by the essential identity of professional service independent of which particular armed organ employed a given officer.

The Act on Service Relations of Officers of Armed Organs of 1996 implements an organizational philosophy of strict linear subordination outdated even in modern military management. The preamble declares:

*"The state demands firm faithfulness and courageous fulfilling of commitments from all officers of the organs performing the duties of protection of the independence and constitutional order of the Hungarian Republic, and of the population and material goods of the country...."*

That is: faithfulness not to the constitution but to the state. Article 3 of the Act defines service relationship as a special legal relation of public service established between the state and the officer, in which both parties are bound by duties respectively rights corresponding to the special circumstances of the service. The members of the armed organs perform their duties for sake of fulfilling the

determined tasks of the armed organ based on voluntary commitment, viewing the service as a vocation for life, acting in a strict system of discipline, risking life and bodily integrity, and accepting restrictions on certain basic rights.

Police officers are soldiers in terms of criminal law. This means that they are subject to special provisions of the criminal code in addition to the ordinary ones. Disobedience, for example, is an offense even if the order proved to be unlawful. The only justification of refusal to comply with orders is avoidance of committing a criminal offense.

## **DEVELOPMENTS IN OTHER POST-COMMUNIST COUNTRIES**

The Hungarian Helsinki Committee initiated a comparative survey to explore the main common and particular tendencies in the law enforcement structures of some Central and Eastern European states including also Germany and Great Britain as examples of established democracies. The endeavor, sponsored by the Ford Foundation and the Constitutional and Legal Policy Institute, commenced in 1997 by studying principal issues of transitional development as framed by a comprehensive questionnaire. In addition, pieces of legislation on police have been translated into English. One of the issues addressed by the research was the presence of militaristic approach and phenomena in policing. Although deeper analyses of the data are still ahead, preliminary conclusions point to strong presence of the soldier's perspective in all the post-totalitarian countries while it seems to have less impact in the policing system of advanced democracies.

Bulgaria was among the first to reorganize its internal security protection system. The legislation on the Ministry of Interior and the agencies reporting to it introduced significant changes and guarantees aiming at democratization or order maintenance. However, some features of the Bulgarian policing still reflect the military security philosophy. The Border Police and the Gendarmerie perform predominantly law enforcement duties. Nevertheless, both of them belong to the system of the armed

forces. There is a Military Police force functioning with proper legal foundations expanding its activities in certain cases also to civilian persons. The National Police Service is more resolutely separated from the army but the principles of organization and functioning are really close to the standards applied to the latter. Police officers have ranks equivalent to those of the defense forces. Training and internal service regulations appear to be highly militarized as well. Obedience and liability within all security organs have been designed in compliance with standards of military justice (Bulgarian Helsinki Committee, 1997).

Article 56, paragraph 3 of the Czech Police Act (No. 283/1991) also provides that military criminal offenses committed by police officers will be adjudicated by military courts. Soldiers may take part in policing operations under conditions defined by Article 50/A. Limiting that possibility to cases of emergency situation and insufficient police capacity is in line with relevant international standards.

Strong impact of the military perspective on police can be observed in Romania. Police are dealt with by the Constitution together with the armed forces as parts of specialized central public administration. The Police Act (26/12 May 1994 on the Organization and Operation of the Romanian Police) itself defines police as a specialized institution of the state. This vague concept avoids determining solid legal basis for law enforcement activities. Based on the constitutional provision referred to one would answer the question as to applicability of the administrative procedure in the affirmative. However, particular norms and institutions relating to the administrative judicial review of police measures seem to exclude this extraordinarily important remedy against possible misuse. Obscure legal definitions undoubtedly contribute to opening the way for a cooperation among military and policing units possibly exceeding the limits acceptable in a constitutional democracy. Decisions on particular issues of coordination will be passed by the Romanian supreme Council of National Defense without giving possibility for substantial democratic control. The Act No. 41/1990 on the Ministry of National Defense openly requires close cooperation with police and military among others for the purposes of maintaining and restoring

the lawful order (Article 12). No special guarantees provide for clear distinction between policing and military tasks. On June 13, 1990, for example, a major anti-government demonstration was brutally suppressed by the intervening army. Discipline of the police mirrors that of the military. Any deviant behavior of a law enforcement officer will be dealt with the military prosecutors and court cases tried by military courts (Romanian Helsinki Committee, 1997). Prosecutors have enormous discretion in deciding whether to charge a police officer suspect. Outsider complainants have hardly the possibility to challenge such resolutions resulting in considerable impunity. The whole system of military criminal justice fails to satisfy elementary standards of the independence of judiciary (Macovei, 1998).

In Slovakia, the Police Act (No. 171/93) requires assignment of military personnel under the command of the Police Corps if the forces and the means of the latter would not be sufficient for the protection of state borders, guarded premises or for keeping public order (Articles 70 and 71). The period of secondment will depend upon necessity but training and other provisions make it clear that this refers to a well institutionalized military involvement as opposed to prompt reactions to acute emergency situations. Police officers are public officials but the actual philosophy of organization and functions reflects the military perspective (Charta 77 Foundation, Slovakia, 1997).

More resolute steps have been made in Poland toward consequent separation of police and military. However, there are some features of the service that distinguish police service from other civilian jobs and rendering it a strictly hierarchical structure. Worth mentioning that the 1990 Police Act makes it possible to have conscripts in service who fulfill their military obligation in the prevention squads of the police (Polish Helsinki Foundation, 1997).

According to the former Deputy President of Interpol, Mr Budimir Babovic, internal structures of all the three (Federal, Serbian, Montenegrin) police forces of Yugoslavia are based on the military organizational model. Especially the Serbian one can be

pointed out as an example of complete militarization. The rank-order has been adapted to the military hierarchy and the number of generals largely exceeds the total of the same group of the whole former Yugoslavia. Military subjects are taught at the Police Academy including the skills of operating heavy weapons which belong to the normal equipment of the force (Babovic, 1998).

Although Russia and other countries of the former Soviet Union have not been covered by the comparative research referred to, we know from different sources that the militarization of law enforcement there exceeds even the not negligible level of other Central and Eastern European states. Russia, for example, maintains internal troops with 450,000 people serving there including conscripts. The internal troops report to the Ministry of the Interior but otherwise there is practically no difference between them and the regular units of the army (Pustintsev, 1998). The war waged against fellow citizens in Chechnya illuminates well that organizational and functional characteristics have a determinant impact on the operations themselves. It has to be emphasized that the actions in Chechnya were officially justified as fighting crime. However, it was nothing else but a war resulting in destruction of whole communities regardless of age, gender, and involvement in any kind of criminal activities. In addition the immediate harm caused by the attacks of internal troops that were followed by the same actions of the regular army far reaching consequences on the whole constitutional system could be observed. As an outstanding researcher of the Soviet and Post-Soviet law enforcement, Louise Shelley put:

*“This war has led to massive violations of human rights and international conventions, gross misinformation carried in the mass media, censorship and deception of fighting personnel. This war, fought in the name of organized crime, has struck a major blow to important elements of the democratic process by undermining governmental accountability and strengthening the hand of the most repressive elements of the state”. (Shelley, 1995:837)*

Of course, militaristic phenomena and tendencies are not totally alien to policing systems of advanced democracies either. Even in England, where the traditional perception of police officers as ordinary citizens has survived for a long time, some trends toward militarization of certain policing areas are obviously present (Jefferson, 1990), not to speak about Northern Ireland. Some continental forces, especially gendarmeries, also bear recognizable roots tracing back to the armies. However, apart from some particular developments of secondary significance, none of the recent reform moves within these countries has pointed to strengthening the militaristic elements of law enforcement. On the contrary, substantial demilitarization (Belgium) and decentralization (France) is on the agenda of developed democracies. The strong global movement of community policing itself denies any value of heavy reliance on military or military type power in law enforcement.

## **CONCLUSION**

My thesis is that militarization of policing, in Central and Eastern Europe, with some respectable exemptions, is one of the most characteristic features of organizational design. While it is undeniable that this institutional philosophy has considerable traditions in the region, new pieces of legislation do not seem to part with it either. Survival of old structures can be explained by the peaceful, negotiated changes of the political system in most countries of the region. Resurrection of gendarmeries and introduction of new military type arrangements, however, cannot be attributed to inertia only. Reasons for such a surprising institutional design lie certainly in the nature of political currents whose analysis is not the task of the present contribution. Nevertheless, it is appropriate to point out some implications of the militaristic option with regard to the theme of the conference.

The militaristic approach results in isolation of police within society as it prefers internal discipline to sensitive reaction to problems faced by officers. Another consequence is creation of enemies without which no "army" can function. As criminal

can only be lawfully identified from the point of their sentencing police have to look for visible enemies among society at large. Minorities offer a suitable target for these purposes and police really discriminates them. The war philosophy also manifests in using intelligence methods in an unjustifiable extent and manner, often disregarding the difference between national security and police activities. This leads to a degree of secrecy practically preventing masses of people from learning about possible violation of their rights and, consequently, making use of their right to legal remedies. The cases of Chechnya and Kosovo illuminate that the process can easily end up waging a real war against masses of innocent citizens.

It is a commonplace within management scholarship that motivation of the staff is a key factor in achieving the best results. Of course, the same applies to policing. Successful police management systems have to be based on devolved decision making because front line officers are the ones who know how to solve the problems they face. Giving them the authority to do their best within the framework of the law is the most reasonable arrangement both in terms of efficiency and job satisfaction which are largely interdependent (Butler, 1992:2). Militarization of the internal structure of security organs generates exactly the opposite outcome. Blind obedience deprives police "soldiers" of their commitment to the actual objectives of the work replacing it with adaptation to the often changing values and norms of their management without any need to understand the real reason of action. In short, they become simple tools at the disposal of their superiors instead of being treated as conscious human beings. Needless to say that this does not remain without further impact on the relations between police and people.

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