

CIVILIAN CONTROL OF THE POLICE: DIFFICULTIES AND OPPORTUNITIES. IN PARTICULAR CONCERNING HUNGARY

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Abstract

Constitutional democracies with a long history have high expectations of the public administration, including the police, at a fundamental level. An important pillar of this is the establishment of a system of checks and balances and its operation within the constitutional system. Its law enforcement aspect seeks to answer the question of the degree of transparency of organizations with a monopoly on the use of violence. Furthermore, how and by what means society can control them. Post-socialist countries are in a particularly difficult situation. In their structure and operation, their police organizations are hardly capable of giving NGOs greater scope to be involved in the control of their activities. Of course, for civilian control to work well within the police, it is also necessary for the community to truly feel its role in creating and developing public security, rather than transferring responsibility to the political leadership and authorities

Keywords: civil control, law enforcement, police, public security, third sector

INTRODUCTION

An important and indispensable basis for democratic social organization is formed by non-governmental organizations, which have become active participants in our everyday lives through their active participation. The role of civil society in the democratization process was summarized by English political scientist Gordon White as follows.

Civil society:

- it can shift the balance of power between the state and society in favor of citizens;
- controls and supervises the state so that civil servants are accountable and the soundness of political decisions can be judged in public forums;
- plays a key mediating role between the private and public sectors (which can be embodied, for example, in the process of negotiation or compromise between the state and certain social groups) (White 1994, 383).

In the exercise of power in a democratic way, the functioning of power and the legitimacy of decisions at the governmental and municipal levels are controlled by civil society. NGOs also play their part in open legislation and represent a variety of interests. As NGOs are able to provide alternatives to the community in the field of public services, the state is increasingly allowing civic participation in the fields of education, culture, health and social care, among other things, thus taking the

burden off the state (Fricz 2019, 292). By its very nature, civil society complements the state supply system, so it is clear that the current government and local governments have the same interest as non-governmental organizations in the development of a well-regulated system of cooperation and cooperation between the state and the civil sphere.

USE OF TERMS

The term civic is used in the context of the social and economic organizations that make up civil society, which are non-state, exist for purposes other than financial gain, and act voluntarily and in the public interest. The activities and organizational forms of such organizations range from a very wide range of diversity. The term civil sphere is a negative definition that refers to characteristics that are different from the public and market sectors. The most important characteristics of non-governmental organizations can be stated below (Kuti 1998; Bartal 2005; Csefkó 1999):

- institutionalization,
- independence,
- prohibition of profit distribution,
- self-government,
- volunteering.

The civil sector and civil society are not to be confused. The term civil sector should be understood as meaning non-governmental organizations and non-profit organizations, while the concept of civil society has a much broader meaning, as it includes all informal organizations outside the civil sector which citizens have set up through their voluntary organizations. Were created. So they are located between the two (Frey 2001, 47).

Civil society has a key role to play in mediating between the private and public sectors. There are a number of terms used in a similar sense for NGOs, such as non-profit organizations; In addition, non-governmental organizations ('Non-Governmental Organization', or NGO) taken over from the European Union (EU) are also synonymous with non-governmental organizations. The European Commission's 1999 discussion paper (Official Journal of the European Communities C329 / 10 / 17-11-1999) identified common characteristics of non-governmental organizations.

It is expedient to choose different names depending on which characteristics of the role of the civil sphere in society we want to highlight:

- Civil society organizations: focusing on the importance of citizens' initiatives;
- Civil society: the key elements are citizens' initiatives, the voluntary and autonomous protection of citizens' interests and values;
- Non-profit organizations: autonomous, non-profit social organizations serving social needs;
- Voluntary organizations: sheds light on the voluntary nature of the work of supporters and members;
- Civil sector - third sector: the name emphasizes that the civil sector is separate from the public and market sectors;

- NGO: a phrase arising from international practice, when the non-governmental nature of partner organizations representing society is of particular importance.

FORMS OF NON-GOVERNMENTAL ORGANIZATIONS AND GROUPING OF THEIR ACTIVITIES

The civil sector consists of the following organizational forms (Bíró 2002, 4.):

- foundations
- public foundations
- associations
- economic and professional interest groups
- public bodies
- clubs, circles, self-help groups
- mass organizations
- public benefit purpose companies

The activities of NGOs can be grouped according to several aspects. It is a general ordering principle when it is based on the defining functions and primary scope of activities of organizations.

Another type of categorization is the International Classification of Nonprofit Organizations (ICNPO), which is an internationally accepted, widely used classification (Kákai 2009, 7).

The Hungarian Central Statistical Office's (HCSO) classification list for non-governmental organizations groups the categories of activities as follows:

- communications, publishers
- art, culture
- sports, hobbies, education
- health activity
- social organizations
- environmental, animal and disaster protection
- settlement and economic development
- protection of rights and interests
- interest representation organizations, bodies (Source: HCSO)

CHARACTERISTICS OF THE THIRD SECTOR

It is an accepted paradigm in our rule of law that the principles of a market economy and democratic functioning now require the cooperation of three sectors instead of the two sectors traditionally defined by the economy: that is, public, market and civil economic actors.

The three most important criteria for the third sector are:

1. Prohibition of profit distribution:

NGOs do not belong to the market sector because their establishment and operation are not driven by profit goals. It is conceivable that their income is generated through their core business or businesses, but it is utilized for predetermined purposes and is in no way distributed among each other (founders, members, sponsors, etc.) (Márkus 2016, 16).

2. Separation from the government sector and operational autonomy:

NGOs are not part of the public sphere, so they are not directly dependent on government. They are characterized by self-government, they have their own governing and decision-making body, and the state only exercises legal supervision over them. However, this autonomy does not preclude them from receiving state subsidies or from performing public tasks (Gyórfy 1995, 51).

3. Institutionalism, independent legal personality:

NGOs are officially listed institutionalized organizations that act in accordance with their internal rules of operation and act to achieve their goals.

No less important additional characteristics of NGOs could be the following:

- volunteering
- public benefit (Czike 2002)

THE ROLE OF THE CIVIL SECTOR IN SOCIETY

NGOs play a significant role in the life of society, as the public-private sphere, ie mediation between public authorities and citizens, is one of the most important elements of the functions they represent. In addition, they serve to meet complex social needs, providing social control by making state power subject to community control and accountability through their operational mechanisms (Korten 1996, 118). The use of the services they provide is an alternative to the performance of public duties, as well as representing not only social but also professional interests, as well as protecting social pluralism by strengthening cultural, ethnic, linguistic, religious and other identities.

In general, their purpose can be said to be more than an organization that performs a task for the common good (Solomon et al. 2003,20). Here it is important to emphasize the role of the ability to compromise. In the expression of common civic interests, individual opinions go through a kind of filter, and in the expression of the public good modeled in the end result, solutions can be considered that are not optimal for the realization of individual ideas, but certainly for the service of group interests.

It is also important to mention that from a governmental point of view they meet many social self-organization needs and that they stimulate the need to express civic behavior in all areas of social life, encouraging people not to always rely on the goodwill of state power (Stumpf, 1999, 108-109). Due to this characteristic, non-governmental organizations also appear as active shapers of social policy, as they often try to influence decision-makers and politics in connection with their operation. In implementing this function, civilians try to use a number of influencing techniques; one of these is open lobbying. Code of Conduct for the Conference of International Civil Society Organizations, adopted in October 2009 (CONF/PLE 2009 Code 1)

However, civilians have learned from their past experiences and now try to use a range of alternative methods to open lobbying in order to succeed in influencing decision-makers (Zoltán, 2009, 2-4). In order for NGOs to be involved in the political decision - making process without discrimination, a stimulating and

empowering environment is needed, based on a common and uniform interpretation of democratic values and the rule of law (CONF / PLE (2009) Code 1, p. 6).).

COOPERATION BETWEEN THE CIVIL SOCIETY AND THE ADMINISTRATION

Until the 1990s, non-governmental organizations could only assume a complementary role in the performance of public tasks - however, the change of regime, which also brought about the growing non-governmental role mentioned above, brought the third sphere to the forefront.

NGOs seeking to meet rising expectations and EU patterns have been challenged by the sometimes controversial requirements, which have become a criterion not only for taking over and performing more effectively the tasks of budgetary bodies, but also for addressing new societal needs (including unemployment, improving the situation of the homeless, collective redress and the environment). On the other hand, it could be feared that NGOs, partly due to their financial unreliability, would not be reassuringly capable of performing public tasks. It follows from the uncertainty of this financial efficiency that the importance of the third sector is most innovative, due to its ability to fill gaps in the fulfillment of government tasks, and that its services are an alternative to public service. The variation in cooperation between the civil sector and government agencies is not only territorially and formally diverse, but the orientation of the system of relations between them can also be very diverse (Baranyai et al. 2003, 20).

However, the mutual benefits of cooperation are not always clear. The trend in practice also shows that long-term and short-term interests often do not materialize at the same time, while fiscal burdens are immediate for the state, while the expected benefits of state aid usually occur only at a delayed time.

Due to the above-mentioned financial uncertainty of the civil sector, the primary task of the state is to create legal regulations that make the financial instability of the NGOs of the third sector available if necessary and have the appropriate legal tools to deal with it.

NGOs can be of great benefit to a community as well as the state. Due to their special knowledge, integration into society, and the motivation of their employees, they are able to perform and solve tasks and challenges to which the public administration cannot or only less effectively respond (Sebestyén 2002, 7). The voluntary participation and autonomous unity of the people in social life is an essential element of a healthy civil democracy.

NGOs are more productive and economical in terms of operations. On the one hand, because they do not require continuous state funding as opposed to the administration. On the other hand, a well-functioning non-governmental organization can achieve longer-term and larger-scale results with the significant added activity and voluntary commitments from the funds received from grants and tenders. The amounts of support allocated to them are incomparably smaller than what would have to be spent on the maintenance and operation of a state or municipal body in the case of the same or similar task volume (James 1987).

THE POLICE AND THE CIVIL SPHERE

The change of regime in Hungary also resulted in the rebirth and strengthening of civil society. A large number of social groups, that is, civil communities, were formed, and the framework for social self-organization gradually developed. Volunteering, self-activity and donation are the characteristics and forms of civic activity that tens of thousands of citizens live as a specific terrain for the fulfillment of their individuality. The participation of non-governmental organizations is also unavoidable in the creation of public security as a collective social product. The police cooperate with state and local government bodies, social and economic organizations and their communities. It supports the voluntary activities of citizens' communities to improve public safety (Act of XXXIV of 1994 on the police. 2. §. and 3/1995 on the Police Staff Regulations. BM Decree 91.§.).

The possibility of cooperation between non-governmental organizations and the police is also provided by an internal organizational norm, which also gives the head of the local body the opportunity to conclude cooperation agreements with non-governmental organizations (instruction 44/2008. (OT. 26.) ORFK).

The relationship between law enforcement and NGOs can be basically divided into two parts. On the one hand, non-governmental organizations can be involved in the process of creating public security by taking an active part in it, especially with regard to local law enforcement tasks, with an active contribution to it. The most typical form of this is involvement in crime prevention, with emphasis on victimization or victim support, drug prevention and harm reduction. (Cooperation between the White Ring Public Benefit Association and the Police. Prevention of becoming a victim, victim assistance within the framework of the TÁMOP-5.6.1.C-11 / 1-2011-0001 tender.) In the reduction of criminal opportunities, the presence of public places together with or next to the law enforcement agencies, as well as informing, assisting and enlightening the citizens.

The task that forms the need for the participation of other prominent non-governmental organizations is the civilian transparency, ie the civic transparency of the operation of law enforcement activities. All this would mean the continuous monitoring of the legitimacy and professionalism of the exercise of public power with a monopoly of violence, the independent investigation of possible violations of the law and the provision of appropriate professional feedback to the professional and political structures of the police. In order to identify system-wide and case-specific operational problems and to propose solutions. One of the typical problems is the elimination of ethnic disparities in police action practice (www.ekint.org). Police action on Gypsies has long been the focus of civil society organizations, in particular the Society for Civil Liberties, a human rights civil rights organization, with a high profile. Their active involvement is well illustrated by the fact that in 2018 they provided legal assistance in 3,000 cases in human rights violation proceedings and had 185 pending cases (tasz.hu). The Hungarian Helsinki Committee (HHC) also launched a consultative forum in connection with the police's certification practice, in which a structured dialogue was held on the subject with the involvement of the local population (Strategies For Effective Police Stop And Search - Effective Police Certification Strategies, 2011-2012. The Project of the Hungarian Helsinki Committee). The importance of this issue is well illustrated

by the fact that the European Union gives priority to the prohibition of ethnic discrimination and, by providing financial and intellectual resources, encourages action against hate crimes related to ethnicity. As part of this, a working group against hate crimes was set up, which was also set up by NGOs in 2012, and serious efforts are being made to curb hate crimes with the involvement of experts (gyuloletellen.hu). As stated in the strategy, their aim is to improve investigative procedures and police communication. Improving the control of police behavior, in particular the detection and prevention of crime, does not in itself presuppose the involvement of new external factors. The body's own response systems, the Law Enforcement Protection Service, the investigator, and the military prosecutors could, in principle, be able to do this work together. However, as Szikinger puts it, it is another matter that this system is largely closed, by its very nature it gives the appearance to the outside that there are really no problems. He never acknowledges any systemic errors in his external communication, so he does not conduct comprehensive research or investigation to identify them, he also tries to keep external scientific research away from them. Emerging negative cases are set as individual professional errors, and efforts are made to ensure that negative and comprehensive conclusions cannot be drawn regarding the operation of the entire organization (Szikinger 2007, 3).

For civilian control to function effectively in a democracy, it is certainly necessary for a community to truly feel its role in creating public security, not to place its creation and responsibility for its mistakes on the authorities alone. It is obvious that the democratic institutional system and legal regulation in Hungary are already sufficiently developed for the greater role of non-governmental organizations in the direction of the police. Only an adequate social background is not provided for a qualitative leap. The main reason for this is that citizens continue to expect the state, especially the police, to establish public order, so they also blame the law enforcement agencies for the failures in this process. Rather than showing a greater sense of responsibility, they would realize that they themselves are not doing everything they can to make the police work with greater transparency and accountability. And the police organization alone: in its nature and operation, is not suitable for opening and initiating role. Especially because, similarly to the period before the change of regime, in a closed military and strict hierarchical system, representing a specific subculture, it was encapsulated in society as a kind of inclusion (Kr mer 2003, 147). This particular social attitude is supported by the research carried out in 2011 by the Social Sciences Department of the Hungarian Law Enforcement Society (MRTT) regarding the role of the Civil Guard (CG) in crime prevention and the shaping of public safety. It was found that the CG does not have a separate place, only together with the police, in the municipal power and security space, close to the security factor of acute security, law enforcement presence and security establishment. Together, they form the segment of the municipal power and security space where the CG is also located. This part of the space is far from the space occupied by both individuals and other institutions. People perceive in their own place of residence that the CG (and the police) have only a weak, insecure relationship with other actors present in the settlement. What they think of development and change suggests that they have no idea how

important it would be for these actors to work together, nor how important their own contribution to security would be.

CONCLUSION

Constitutional democracies with a long history also have serious expectations at the level of the administration, including the police, one of the important pillars of which is the development of a system of checks and balances and its practical manifestation in the constitutional system. The law enforcement aspect of this provides the most answer to the extent to which organizations enjoying a monopoly on the use of violence are transparent and to what extent they are controlled by society (Vári 2018, 311). In England, police data on legitimacy is provided by population surveys and independent organizations. Each police unit is associated with independent advisory bodies who can visit police detention facilities and production facilities at any time, in an unannounced manner, and examine the conditions of detention and talk to detainees and persons under trial. An annual report is being prepared, and in 2016, a pilot program was conducted for complaints against 13 police bodies that did not meet the criteria in at least 3 or more respects (Best Use of Stops and Search revisits. HMIC, September 2016). Similar forms of civil control are far from present in Hungary. In my own empirical research, We came to the conclusion that We agree with the arguments of the cited authors: We found an adequate social milieu to promote civilian control and greater involvement of NGOs, and the lack of an open and supportive police organizational culture. Unfortunately, the police feel that they are much more in solidarity with the population than the population in their direction, and would even support the population's self-organization of public security, but they clearly reject the role and importance of the CG and greatly underestimate it. It is valued that the police carry values that are independent of citizens, not community-based, but power-based, authoritarian, and politically governed. According to the majority of the responding police officers, there is currently an authoritarian, non-communal police station operating in Hungary, which should move towards a communal approach, but primarily away from political and power interests, with its basic social purpose (Vári 2016,163). In focus of this, We believe that the key to the solution may continue to be the growing and transparent role of non-governmental organizations in society. It is expedient to communicate the benefits and role of these in the widest possible circle of society. In addition, the dialogue between NGOs and the police needs to be strengthened, with the active use of all existing communication channels. The latter could effectively contribute to breaking down mutual prejudices. A number of excellent initiatives have been launched recently, but there are still many tasks to be solved to achieve a relationship between non-governmental organizations and the police operating in Hungary at a level similar to Western democracies.

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Abbreviations

NGO : Non-Governmental Organization

ICNPO: International Classification of Nonprofit Organizations

EU: European Union

HCSO: Hungarian Central Statistical Office

ORFK: National Police Headquarters

BM: Home Office

MRTT: Hungarian Law Enforcement Society

HHC: Hungarian Helsinki Committee

CG: Civil Guard

NKE: University of Public Service

MTA: Hungarian Scientific Academy