

Behavior of police and other law enforcement officials

(András Kádár – Hungarian Helsinki Committee)

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The title is a somewhat euphemistic way to refer to the most burning problem concerning the relationship between police practices and human rights: that is police brutality.

My presentation will start with a short theoretical part trying to distinguish between different types of police brutality, then I will proceed to talk about the present situation in Hungary (and the latest relevant decisions of the European Court of Human Rights). At the end of the presentation I would like to speak about the causes of police brutality and outline some possible solutions for the mitigation of the problem.

1. Types of police brutality

In handling this question I will greatly rely on the work of dr. Budimir Babovic¹, an outstanding police researcher from Yugoslavia. Babovic distinguishes between two main types of police brutality: instrumental and non-instrumental brutality. Instrumental brutality when the police use unlawful force in order to achieve some kind of goal, most frequently to exhort confessions. Most frequently instrumental brutality is committed secretly, in police premises. This type of action is seen as „part of the police methods” and tolerated even in the most advanced democracies. Cases of instrumental brutality are very hard to prove owing to their secret hidden nature. Police officers are bound by a „code of silence” and the victims – especially in ex-socialist countries – are too afraid and skeptical to report the violations. Instrumental brutality may be regarded as synonymous with torture as defined by Article 1 of the UN Convention Against Torture: „Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession; punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Non-instrumental brutality covers the brutal actions of police that occur in everyday police work without a clear purpose. It might be a case of force exerted in quick anger against real or imagined aggression or an act establishing police authority by emphasizing the legal right of the police to use force. As a rule, it happens at public places, in the course of searches, arrests, during demonstrations, etc. Sometimes it is very hard to draw a distinction between non-instrumental brutality and the legitimate use of force.

This distinction becomes very important when we come to the question of how to deal with police brutality. It seems that different methods need to be applied for the two different types. I will come back to this at the end of my presentation.

¹ Budimir Babovic: Police Brutality or Police Torture, paper presented at the Police in Transition conference organized by the Hungarian Helsinki Committee in February 1999.

2. Situation in Hungary and recent decisions of the European Court of Human Rights

Police brutality is a very severe problem in today's Hungary, especially in connection with the Roma population. The Hungarian Helsinki Committee's report on the situation of the minorities living in Hungary has found that the Roma are particularly likely to be the victims of police abuse (ill-treatment in official procedure, interrogation under duress, unlawful detention, etc.). In 1997-98 György Csepeli, Antal Órkény and Mária Székely sociologists conducted a survey with the participation of 1530 police officers. 54 percent of the interviewed policemen believed that criminality was a key element of Roma identity and 50 percent agreed with the statement that the high crime rates of the Roma minority are connected to some kind of genetic determination. The most relevant finding from the point of view of police brutality is that 74 percent of the interviewed officials believed that the population expected the police to be hard on the Roma.

Furthermore, victims are often unable to obtain adequate remedies for police abuses. The 1997 statistics concerning so called "official crimes" (i.e. crimes committed by public officials) show a depressive picture. 386 reports were made on counts of *forcible interrogation*. In only three cases were policemen taken to court, in a further 38 cases were charges pressed. In 142 cases, investigation into the incidents was denied, and in 202 cases terminated. In summary, 89% of the reports ended without indictment. In the case of *ill-treatment* the figures are the following: 843 reports, 276 denials of investigation, 448 investigations terminated – altogether 86% of the cases ended without indictment. The figures for *unlawful detention* are as follows: 174 reports, 66 denials of investigation, 86 investigations terminated – altogether 87% of the cases ended without indictment. Altogether approximately 3 percent of cases brought against the police led to convictions. Even in the few cases where police officers had been convicted, penalties were usually fines, probation or suspended sentences, and police officers generally remained on the force. Thus, although the legal framework meets the international requirements and could be effectively used against instances of police brutality, the competent authorities (senior police officers, the public prosecutor's office which is in charge of investigating crimes committed by policemen, and the courts) are not willing to take firm action. An employee of prosecutor's office dealing with cases of police brutality is known to have said: „those policemen against whom no complaint is filed with our office during their career are not policemen at all.”

Let me quote a highly publicized case from the practice of the Hungarian Helsinki Committee's Human Rights Legal Counseling Office. On 27 January 2000 three plainclothes officers conducting an investigation visited the 16th district elementary school where the suspect's daughter studies. Suspicious of the three men, a teacher of the girl refused to provide them with data concerning her pupil. One of the detectives went to speak to the principal of the school, the two other officers decided to wait in front of the building. They saw a girl coming out of the school and thought she might be the one they were looking for. They stepped to her and asked for her ID card. The teacher (a woman aged 50) saw this and ran to the scene. Trying to protect the girl (who actually was not the one sought by the detectives), she pushed one of the officers (the policemen claim that she slapped him), who in turn gas-sprayed and hand-cuffed her and then started pulling her towards the car parking on the other side of the road. The teacher tripped and fell, however, the policeman did not wait for her to stand up: he grabbed the handcuffs and started dragging the elderly woman lying on the ground in the direction of the car. The Hungarian Helsinki Committee's lawyer filed a report

with the Metropolitan Prosecutor's Special Investigation Department for police ill-treatment and the abuse of powers by the police and made a request for disciplinary action to the Chief Commander of the Metropolitan Police, The commander suspended the case until the prosecutor's office completes the investigation. At the same time the police initiated criminal proceedings on the count of „violence against official person". This case caused a public outcry. Even the Ombudsman for Citizen's Rights launched an ex officio investigation which concluded that the police action violated the teacher's right to human dignity and was not proportionate. In September the prosecutor pressed charges against the teacher for violence against official person, however, we still do not know whether the policemen will be taken to court.

Another problem is that the European Court of Human Rights is also rather cautious when dealing with complaints concerning police brutality. On March 2000 the Court declared the application of G. F., client of the Hungarian Helsinki Committee's Human Rights Legal Counseling Office, to be inadmissible. On 29 April 1995 Mr. F. was working in the yard of his house when he saw a man he knew running down the street. Two policemen were chasing him. He asked them why they were chasing the man. In response the policemen ordered him to drop the wooden bar he was holding in his hand. He obeyed. Thereupon he was ordered to lie down on the floor. He got scared and started to run. The policemen started chasing him. After a while he gave up and lay down on the ground. He was handcuffed and taken to the local police station where he was severely beaten. According to the version of the police, he tried to prevent them from catching the person they were originally chasing by threatening them with the wooden bar. The police also claim that the applicant got into a fight with the policemen trying to catch him and that the nineteen counts of contusions and abrasions scattered on the applicant's head, arms, chest, back, trunk and legs were resulting from this struggle.

The applicant filed a report with the prosecutor's office against the policemen, while the police initiated criminal proceedings against Mr. F. for violence against official person. The prosecutor's office terminated the investigation saying that the evidence was not sufficient to prove that the bruises are not due to the struggle and the applicant's falling down to the ground in the context of his arrest. The applicant filed complaints to higher level prosecutorial forums, however, all these forums approved of the termination of the investigation, so the applicant's charges could not be tried by any judicial authority. Meanwhile charges were pressed against the applicant for the offense of violence against official persons and light bodily assault and the court convicted him to one year's imprisonment but suspended the execution of the sentence. The court noted that thirteen counts of his fifteen injuries were due to the struggle in the context of his arrest, however, the cause for the remaining two injuries – a wound on his right eyelid and an abrasion on the left side of his forehead – remained unclear!

In its decision on the inadmissibility of the complaint, The European Court of Human Rights noted that „several medical opinions were presented in the case, none of which was, however, conclusive as to the origins of the injuries. The testimonies [...] are controversial as to whether the applicant had already had the injuries complained of when brought to the police station. On the basis of the evidence in the case-file, the Court finds no reason to depart from the national authorities' conclusions in the matter, these authorities having been better positioned

to evaluate the applicant's allegations, and is not convinced that the applicant's injuries were indeed due to ill-treatment on the part of the police."²

One might say that the F. case is really controversial and hard to decide who is telling the truth. The other case filed by the Legal Defense Bureau for National and Ethnic Minorities (NEKI) is much more obvious.³ On 9 December 1995 an old lady was murdered and robbed in a small Hungarian village. The same night policemen took four Roma people to the local police station and accused them of murder. They were held there for a longer period of time than the maximum 12 hours set forth by law, although meanwhile the police caught the real criminals. The records taken from their last interrogation listed them as witnesses. The four Roma persons had to undergo a chemical test during the night. Benzidine was applied to their arms and fists to show whether or not their bodies had touched blood. Benzidine is an acidic chemical, which is usually applied to test whether an object has had blood on it (its use on people was explicitly prohibited by the Chief of the National Police after the case had been publicized). The cancerous effect of Benzidine has been known since 1993 and at most police stations policemen applying Benzidine use protective gloves and masks. In spite of these facts Benzidine was applied on the four applicants, one of whom had an open cut on her thumb, while in the case of another applicant the chemical was applied to his genitalia after pulling back the foreskin.

The Prosecutor's Special Investigation Department terminated the investigation in January 1997 saying that there are no data supporting the claims of either forced interrogation or unlawful detention. The applicants submitted a complaint against this decision but the higher level prosecutorial forum rejected it, saying that because it was diluted the Benzidine, „did not directly endanger the life or bodily integrity of the persons tested, neither did it cause serious injuries. At most, it could cause a mild skin inflammation which could not be found cancerous.”

The NEKI turned to the European Court of Human Rights, which – in a less than one page decision lacking the facts of the case or the elaboration of the reasons – declared the application inadmissible. The Court has devoted only one sentence to the claim of torture and degrading treatment: „The Court considers that the test complained of did not attain the level of severity which would make it incompatible with Article 3 of the Convention”⁴, which does not seem well-founded to me in a case when an acidic and cancerous chemical is applied to someone's penis (in a case lacking any sexual connotation – the police was investigating in a case of robbery and murder, how could a bloodstain get to the applicant's penis?).

I believe that the European Court of Human Rights is very cautious in connection with complaints concerning police violence, since the phenomenon is so wide-spread. If the Court took a very strict approach on this question it would soon be flooded with applications of this kind. Also taking the length of the procedure into account, we have to conclude that the Court is not the proper forum for dealing with everyday instances of police brutality.

3. The possible causes of police brutality

² Second Section Decision as to the Admissibility of Application 31561/96 by G. F. against Hungary, p.8.

³ For a more detailed description of the case see: White Booklet 1997 – cases of the NEKI. Osiris and NEKI, Budapest 1998. pp. 59-63.

⁴ Second Section Decision as to the Admissibility of Application No. 37382/97 by Gyula Bogdán and Others against Hungary.

In this chapter I will rely on the above quoted paper by Budimir Babovic and a manuscript by the Bulgarian psychologist, Svetlozar Vassilev⁵.

Several factors may be enumerated among the causes of police brutality. The following may be taken into consideration:

- Inadequate selection of candidates – candidates for police officers are not adequately screened with respect to handling aggression in stress situation.
- Inadequate education and training in police schools in this respect.
- A high level of professional stress, tension originating from the nature of the profession itself (conflict situations, traumatic experiences, daily confrontations with crime, etc.).
- Pressure of the role – let us take the well-known prison experiment of Zimbardo into account. At the Stanford University students were divided into guards and prisoners on a random basis. After a while the guards started acting very brutal upon their prisoner colleagues. The experiment had to be stopped before its scheduled conclusion because the situation became so tense.
- Military organization and spirit of the police forces – it reinforces the alienation and isolation of the police from the society and does not encourage communication between the police and the community.
- Lack of institutionalized care for the mental care and psychological stability of police officers.

4. Some suggestions concerning the solutions

There are certain things we – people working in the NGO sector – can and cannot do to prevent police brutality. We definitely cannot solve the burning financial problems of the police. It is a common place that if police officers were paid better there would be more candidates, a stricter system of selection could be applied, there were more officers, which would make it possible for policeman to have more time for recreation, which in turn would reduce their level of tension, frustration and aggression, and so on. However, it is not up to us to allocate financial means, so we have to look for areas in which we can do something about the problem.

This is where I have to refer back to the distinction between instrumental and non-instrumental brutality, since there is no point in applying the same „cure” for two different problems. I believe that the one of the most effective possible weapons against instrumental brutality is the civil control of the police. Let me quote a recent example from the practice of the Hungarian Helsinki Committee’s Police Cell Monitoring Program.

Those who are familiar with the practice of criminal procedure do know well that the situation of persons in pre-trial detention is often much worse than that of persons serving actual sentences, especially if the pre-trial detention is implemented in a police jail. This problem

⁵ Svetlozar Vassilev: Working through Police Violence in Bulgaria: the Human Relations Perspective, paper presented at the Police in Transition conference organized by the Hungarian Helsinki Committee in February 1999.

inspired the Constitutional and Legislative Policy Institute (COLPI) and the Hungarian Helsinki Committee to launch their joint Police Cell Monitoring Program in February 1996.

The essence of the program that has been in operation ever since is that on the basis of an agreement concluded with the National Police Headquarters and the National Headquarters of Penal Authorities three-member groups observe the circumstances of pre-trial detention implemented in correctional institutions and police cells. The groups which consist of attorneys, physicians, social workers and sociologists are permitted to visit police facilities at any time without advance notice, they are also allowed to enter police jails, cells and facilities used for holding arrested persons on condition that they observe the relevant security regulations. The groups may converse with the detainees under security guard but free of control concerning the content of the conversation. They may conduct interviews with the detainees and the physicians who are on the groups are allowed to examine the detainees if they consent. Under point 12 of the agreement concluded with the National Police Headquarters, should the groups experience some sort of irregularity, the Hungarian Helsinki Committee shall be obliged to inform the police organ supervising the police jail, and lastly the National Police Headquarters immediately after the visit. If a member of a visiting group experiences any phenomenon referring to unlawful practice or activity, parallel to the notification of the police, with the consent of the Hungarian Helsinki Committee and based on the authorization of the afflicted person, he or she shall be obliged to make a report for the public prosecutor's office. In connection with debates emerging in the course of the visits and with those restrictive measures of the police jail commanders which the groups regard as unnecessary, the Committee may contact the commander of the local Police Headquarters if the jail belongs to a local Police Headquarters and the chief of the county or the metropolitan Police Headquarters if the police jail is a central one.

On 28 October 1997, three monitors visited the jail of the Budapest 6-7th District Police Headquarters. They were about to leave at about 21.40, when they heard moaning coming from behind the jail's iron gate. The chief guard opened the door and monitors caught sight of a man, whose face was injured and hands handcuffed behind his back. Two police officers accompanied him. The former hit him on the top of the head with his fist and then pushed him to the floor. There, the latter repeatedly kicked him in the stomach. All this happened in the presence of the shocked monitors and the chief guard. The man still in handcuffs was then dragged up from the floor and the viewers were shoved away to make room for him to be pushed into the corridor running between the cells. Although they wanted to place him in one of the cells, the chief guard denied his admission him in this state of health. The man was therefore sent back for medical examination. One of the monitors called on the policemen to stop ill-treating the man but disregarding her protest they led him to the lift and started off downstairs. The man looked unconscious. Monitors could follow the group in the next lift. Arriving at the ground floor, they encountered a shocking scene that one of the monitors described as follows:

Stepping out of the lift we spotted the same man, this time without handcuffs. Three or four policemen were trying to squeeze him to the wall next to the coffee machine, while he was waving with his hands and screaming. Another four policemen cursing pressed another brown man down against the floor. His arms were twisted back and Lieutenant Viktor Egri stepped with his left foot onto his head. When questioned why he stepped on his head, the Lieutenant responded that he did not. Later, he admitted that he stepped on his head, only in order to help his fellow policemen. The officer on duty and three or more policemen standing by witnessed

the scene. Maltreatment stopped when we were seen to be approaching. [...] The policemen told us that the two unidentified, but most probably Ukrainian men behaved disorderly at 21.10 in a discotheque, later they attempted to maltreat [the wife of a policeman and her 9 year old child] sitting in a Trabant parked on the street. [...] They were taken to the station and beaten because they behaved very badly. Some said that they tried to escape, while others recalled that the shorter man attacked the officer on duty right after the handcuffs had been taken off him following his transport down to the ground floor.

After people more or less calmed down, the leader of the monitor group asked the officer on duty to report the event to his superiors and ensure that the two men's injuries would be looked after. After the officer on duty promised to act accordingly, the monitors left the station around 22.00. The following day the Hungarian Helsinki Committee reported to the Investigative Department of the Prosecutor's Office both identified and unidentified policemen taking part in the incident on the count of ill-treatment.

The three policemen concerned by the case were tried in May 2000. The two policemen beating the arrested Ukrainian at the jail level were found guilty of ill-treatment and were obliged by the court to pay a fine of 30.000 Forints (approximately 100 US Dollars), while Viktor Egri – whose guiltiness was also established – was put on a one year probation. I was present at the trial together with a colleague of mine. We were talking to one of the witnesses (member of the monitoring group) after the decision was declared when Viktor Egri (just few moments after he had been found guilty) passed us by. He turned to the witness and told him: „I hope we will meet again. I owe you a couple of punches in the face.”

The Hungarian Helsinki Committee reported this incident to the Prosecutor's Special Investigative Department. Although they refused to launch an investigation concerning the petty offense of „dangerous threat”, the Commander of the 6th-7th district police headquarters started an ethical procedure against the lieutenant (against whom another criminal procedure is also in progress on counts of bribery and forgery of official documents). The ethical committee found Viktor Egri unworthy of being an officer and ceased his service relationship with the police forces.

Thus, the extension of civil control to as many fields of police work as possible (for instance in the form of civil complaint boards) might be a key to reducing police violence.

With regard to non-instrumental brutality, I agree with Svetlozar Vassilev who says that in most cases it is the result of the lack of mental care for police officers. As he puts it: „The total lack of institutionalized mental health care leads to the limitation of emotions stirred up by the working task in the frame of the tight professional group. Inadequate and unhealthy strategies are mobilized in order to cope with them – denial of fear and vulnerability, denial of the feelings of anxiety and tension. These lead to unhealthy and unprofessional behavioral patterns. Some examples of the mismanagement of these experiences are: alcohol use and abuse; acting out through verbal or behavioral aggression towards the detained, citizens or even to members of their own families. The lack of institutional response to these aspects indicates the institutional denial of their existence. This denial is total and absolute and operates unconsciously as a core institutional defense. This dynamics gives birth to a false institutional culture which is manifested through the myth of the police officer as a strong hero, who is able to cope with everything and everybody without experiencing anxiety, fear or vulnerability. Another manifestation is the false belief that to speak about the emotional

dimensions and consequences of the police profession betrays weakness and feminine attitudes, and deserves mockery.”⁶

This is a field where relevant organizations may offer help to the police forces and may contribute to spreading an institutional culture requiring psychological assistance in dealing with the tensions of everyday police work.

⁶ Ibid. p. 3.