

LEGAL ASPECTS OF POLICE ORGANIZATION IN BOSNIA AND HERZEGOVINA

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Abstract: Police are certainly one of the most important state organs, but many would claim they are the most important one. That comes from the type of jurisdiction that police have, and which reflects on all law subjects, more or less. In order for police to be able to fulfill their important role they need to be well organized. The police organization influences fulfillment of police functions on large scale as an important state service. A very important question certainly is how police organization should be legally founded, i.e. in accordance with the current legal acts, besides the actual model of organization. As we all know, Bosnia and Herzegovina has a very complex structure in many aspects but the culmination of it is most certainly the organization of police structures in the country. Basically, police agencies in Bosnia and Herzegovina are in contradiction of the Constitution of Bosnia and Herzegovina, which makes the functionality of police system in the country very inadequate. In order to change the situation for the better, it is necessary to coordinate the organization of police agencies with the Constitution and then move forward to improve the general functionality of this key element of state apparatus.

Keywords: police, organization, legal basis, police agency, police functionality.

INTRODUCTION

Modern democratic society abiding by the rule of law has been keeping the public law and order and protection of basic human rights and liberties as the most significant role. It is expected from police to be assisting citizens. So, modern society has numerous and diverse roles for police and to be able to expect from the police system to be functional, it is necessary that it is organized in accordance with the interests of citizens and interests of a country and aligns with the organization of the entire state or the union. The complex organization of the state presupposes a complex police system, but it does not necessarily presuppose

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a police system that is formally complex but complex in variety and numerous assignments (Jovicic, Setka, 2018:39).

Police have been highly important for every state since their foundation. Through the historical development of a state and society, the role of police was shifting towards stronger position. It led to the special emphasis within the modern society on the protection of citizens' interests. We need to be aware of the fact that contemporary police development brings more assignments and increases in numbers. Our country is an obvious example of that, as well as other countries in the nearest surrounding (Jovicic, Setka, 2018:40).

Therefore, the role and functionality of police in modern society is of extreme significance for each citizen and the whole society respectively. In the eyes of citizens police are the most visible representative of a state due to their ways, uniforms and presence unlike other state organs. An important segment of police-citizen relations is definitely the active role of citizens as subjects of security system. Citizens should by nature be interested in their own safety which contributes the safety of other people and the entire society. It means the security culture of citizens is extremely important in singular understanding of security significance and possible ways of achieving it. Citizens as subjects of security system and subjects of informal social control are expected to be cooperative with other subjects of security for the purpose of maintaining the satisfactory level of security in a community.

Police are certainly one of the most important state organs and the question of their organization is highly important. Police organizations are mostly understood as parts of the state organization. These organizations are complex and permanent, but most of all, human, as they consist of people that work and act to achieve the well established common goal (Milosavljevic, 1997:407).

THE TERM AND ELEMENTS OF ORGANIZATION

Organization begins with the first people, the beginning of useful production in order to produce the basic human needs. It is clear that humans use organization and belong to it their entire life – from birth till death. The word is derived from the Greek word *organon*, which means tool or instrument, musical instrument, and organ. It developed into Latin word *organisatio*, which means activity and claims to develop an organism (Setka, 2014:205). An **organization** (or **organization**) is an entity comprising multiple people, such as an institution or an association, which has a particular purpose. The meaning of organization is not limited only to productivity but also to entire work and life activity (Jovicic, 2011:48).

An organization that is established as a means for achieving defined objectives has been referred to as a formal organization. Its design specifies how goals are subdivided and reflected in subdivisions of the organization. Divisions, depart-

ments, sections, positions, jobs, and tasks make up this work structure. Thus, the formal organization is expected to behave impersonally in regard to relationships with clients or with its members. According to Weber's definition, entry and subsequent advancement is by merit or seniority. Each employee receives a salary and enjoys a degree of tenure that safeguards him from the arbitrary influence of superiors or of powerful clients. We can therefore define organization as a complex and connected group of people acting on the basis of a certain plan and work division in order to achieve a certain goal (Jovicic, 2011:48-49).

Since the organization represents the network of functions that should secure the achievement of certain goals (functionality), there are special functions within organization that secure permanent focus, coordination and organizational activity. The higher his position in the hierarchy, the greater his presumed expertise in adjudicating problems that may arise in the course of the work carried out at lower levels of the organization. It is this bureaucratic structure that forms the basis for the appointment of heads or chiefs of administrative subdivisions in the organization entrusted with the authority attached to their position. If the rules are not followed, sanctions are the result (Political encyclopedia, 1975:683).

The aim of each organization is to complete the programmed affairs within the shortest deadline, with fewer expenses and people involved, i.e. with as less diligence as possible. If this goal is not being achieved, organization will proceed to reorganization. By coordinated and planned cooperation of the elements, the organization is able to solve tasks that lie beyond the abilities of the single elements. An organization is defined by the elements that are part of it (who belongs to the organization and who does not), its communication (which elements communicate and how do they communicate), its autonomy (which changes are executed autonomously by the organization or its elements), and its rules of action compared to outside events. Organizations may also operate secretly or illegally in the case of secret societies, criminal organizations and resistance movements. It is also not rare to use the term – disorganization as a decomposition of the existing organization. And in some cases may have obstacles from other organizations but what makes an organization an organization is not the paperwork that makes it official.

Organizational connection (structure) represents the creation of relations among people that are connected with material use as a result of work division. The organizational structure is an element of organization founded by the activity of organizational process. It is needed to have in mind that organizing is not a routine but a thought through process which requires certain knowledge and knowing of analytic, synthetic and legal methodology and principles of organization (Talijan, Miletic, 2011:203-204). Due to the current situation in Bosnia and Herzegovina, it can be concluded that people with no knowledge or with only political interests in mind are in the position to deal with the police organization, as well as other parts of state organization. Therefore, knowledge is disregarded.

As far as the organization elements, the characteristic elements for all organizations apply to police organizations. Police organization is a specific managing

organization, primarily because the members of police can apply police authority which is different than any other state authority. That means the members of police can use the legally prescribed authority and force towards people that break the law. Without taking into account the difference between the police organization and other organizations, it can be said that it is determined by its key elements.

It is considered that to be an organization - police organization or any other - there must be five elements for existence:

- a goal in mind,
- a leader or committee making the decision,
- action involved,
- legal basis and status and
- communication and members. (Talijan, Miletic, 2011:206).

What makes an organization recognized by the government is either filling out Incorporation (business) or recognition in the form of either societal pressure causing concerns or being considered the spokesperson of a group of people subject to negotiation. Each element has a certain influence on organization functionality, but in this essay we will focus on the legal basis of organization in fulfilling its functionality.

THE ROLE OF ORGANIZATION IN POLICE FUNCTIONALITY

The efficiency of the police system is linked to the degree of compliance of its organization with the surroundings (relatively stable or turbulent). Paul Valery once said: "If the state is strong, it hates us. If the state is weak, we decay." The purpose of the organizational structure of each police system, as well as the organizational structure of the police agencies that make up the police system, is the achievement of the mission, goals and tasks of the police system. The organizational structure should enable the police organization a quick response to the challenges, risks and threats to security that brings the surroundings to enable the police to effectively and efficiently function, i.e. to achieve defined goals and desired results with the minimum expenditure of human, material and technical resources. There are many examples through history where the role of police becomes deviant and turns into domination as a key factor of political life (Puseljic, Jelenski, 2007:7-8).

Every organization, police included, despite differences in activity and goals, faces questions of formation of organizational units, how and with which forms they are connected in one unit, which methods and means secure unified planning, direction, coordination, control, responsibility and other questions of inner organization and functionality (Miletic, 1997:244).

The level of development of these relations between the state apparatus and citizens is considered one of the most important parameters of success and acceptance of any state institution in social system, and police is no exception. The question of police-citizen relation is very complex as it is considered to be the consequence of specificities of police functions, functionality and model of organization. Primarily, the police system is divided into closed and open. Closed systems are those characterized by a traditional way of management and whose basis is a hierarchical structure with vertical communication and the dominant role of leaders. In contrast to closed systems, open systems (models) are characterized by an emphasized role of providing recommendations and advice instead of orders, where you build partnership relations, which looks more like a business organization models.

We can further distinguish simple and complex police systems. If the police system of a country is organized so that all the police forces are subordinated to a single police department, then we are talking about one police organization and simple model of police systems. On the other hand, if in a country there are two or more police organizations, each of which is subjected to special centers (controls) which are autonomous - in that case it is a model of a complex police system. The model of complex police system is more present and one could say it is a typical structure of modern police organizations (Jovicic, 2011:63-64).

When we talk about models of police system, it should be noted that the centralized and decentralized police systems also occur as a model of organization of the police, and there are also combinations of these two models. Whether it is a centralized or decentralized police system depends on the influence the central government makes on the management. This is often difficult to determine, due to the rare application of one or another model in pure form. The main condition of functionality within the modern surroundings is the development and existence of the adequate model that will have a satisfying level of flexibility. The reason for this state of affairs is that the mundane surroundings is turbulent and its basic characteristic is discontinuity (Cvetkovic, 2010:111). In such complex conditions, police can respond properly to issues ahead only if it is well organized.

Organization is half the job done. That old saying is something we should remember as it is also showing the significance of organization in achieving police functionality. The success of police assignments depends on the way police structure is organized. So, the functionality of police agencies which make the police system is directly related with the way police system is organized. The efficiency of police system is related to the degree of coordination of the organization with the surroundings (relatively stable or turbulent). The purpose of organization of each police system (its organizational structure), as well as the agencies that it is consisted of, is the mission accomplishment, achievement of aims and police assignments. The way police are organized should achieve quick response of police organization to challenges, risks and security threats, to enable police for effective

and efficient functionality, i.e. achieving defined goals and desired results with low investment of human resources, time and material (Setka, 2016:105).

LEGAL BASIS OF ORGANIZATION

State, as the largest and most important organization, fulfills its functions through state organs which together make the state apparatus. The organization of state apparatus is founded in the Constitution, then legal and sublegal acts, meaning that the framework of a state and law is normative, and the role of norms is to secure the logic and no contradiction of legal system (and the whole state management), where citizens have legal security and legal system is efficient.

The existence and organization of any state organ, police included, must be clearly defined through the legislature and based on law. Only the organizations that exist and act in accordance with the law can legally perform their activities. The role of a state in modern conditions is to secure its branches of government to act in accordance with the incumbent legal framework. It is known that a state prohibits certain organizations and activities with its legislature, so even those legally founded can be banned if they step out off their limits proscribed by the incumbent regulations. As Hans Kelsen said: "Normative order has the highest norm at the top, its relevance is not derived from other norms, it is the source of all other norms within the order." So the entire state apparatus must be organized in accordance with the highest act of legislature, i.e. the Constitution (Jovicic, Setka, 2018:73-74).

Legal status is one of the elements of organization of public safety (police being the pillar of the system). It is what marks the position, i.e. the autonomy, *de jure* or *de facto*, of this segment of organization within the Ministry of Inner Affairs, as well as other organs of state and non-governmental subjects (Talijan, Miletic, 2011:215-216).

Law obliges those who create it, that is, the state and its organs, state officials that perform activities for and in the name of the state. Therefore, everything the state does needs to be legally based. In every serious country that is out of question. Let's take Croatia as an example. Their Ministry of Inner Affairs relations and activities are regulated to the smallest detail by legislature. From the legal point of view, the organization of the Ministry of Inner Affairs is determined by the Constitution of the Republic of Croatia, taking into consideration human rights and liberties. Therefore, the police system in Croatia is structured based on these regulations (Puseljic, Jelenski, 2007:13).

Modern states ground their organization on the Constitution as the highest legal act. Even those that are not jurists find nothing disputable in accordance of legal acts with the Constitution and that all organizations need to be founded within the limits of law. It is also undisputable that incumbent regulations need to be respected and following that everyone subjected to it must act accordingly. The

incumbent legislature (Constitution, law and sublegal acts) is obligatory for those it relates to. All activities performed must be in accordance with the incumbent legal framework and since the state applies the law, it is also obliged to respect the law in order to be legitimate.

CURRENT STATE OF AFFAIRS IN BOSNIA AND HERZEGOVINA

Modern Bosnia and Herzegovina was founded as a country by The General Framework Agreement for Peace in Bosnia and Herzegovina, signed in 1995. The country is largely complex and decentralized and comprises two autonomous entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska. The Federation of Bosnia and Herzegovina covers 51% of Bosnia and Herzegovina's total area, while the Republic of Srpska covers 49%. The current Constitution is the Annex 4 of The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement. The institutions of Bosnia and Herzegovina have the authority to assist rulers in the coordination of behaviors and norms, enabling the international and legal recognition. National question has been resolved by disabling any domination and making all three constituent peoples state-founding.

The concept of a complex society and modern state were born from the need for cohesive organization, and a need for protection from external threats. States hold unanimous power to resolve disagreement and possess the mechanisms to coerce people as means to achieve order. In fact, institutions with flexibility to absorb different polities are crucial to the development and stability of an emerging state. The role of institutions is thus crucial in the implementation of standard practices to ensure cohesive order and rules for interactions. Certain authorities in Bosnia and Herzegovina with its *sui generis* political system which is originally something between a federation and confederation and 23 years later, following the various non-constitutional changes in jurisdiction, has moved up to the level of Bosnia and Herzegovina from the Entities level (Jovicic, Karan, 2018:150-152).

The Constitution of Bosnia and Herzegovina defines responsibilities of the Institutions of Bosnia and Herzegovina and the Entities (Article III, act 1). The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- (a) Foreign policy.
- (b) Foreign trade policy.
- (c) Customs policy.
- (d) Monetary policy as provided for in Article VII.
- (e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina.

- (f) Immigration, refugee, and asylum policy and regulation.
- (g) International and inter-Entity criminal law enforcement, including relations with Interpol.
- (h) Establishment and operation of common and international communications facilities.
- (i) Regulation of inter-Entity transportation.
- (j) Air traffic control.

Since the Constitution of Bosnia and Herzegovina enumerated the responsibilities of the state union and its entities, what comes to full understanding is what professor Petar Kunic said: “The Constitution of Bosnia and Herzegovina accepted the concept (known in legal theory) that enumerates the jurisdiction of state institutions (positive method of enumeration), while everything else, non-specific in Constitution, is put under Entities supervision in the general clause” (Kunic, 2000:92).

As already mentioned, the Constitution of Bosnia and Herzegovina clearly designated that police activities are the responsibility of the Entities. The division of responsibilities is one of the key parts of any complex organization and its efficiency depends on it. As the state is a highly complex organization, the division of responsibilities is the basic condition of efficient functionality of the state organization. The main principle in modern states is to divide responsibilities in accordance with the constitutional regulations which prescribe the framework and define the institutions and area of their jurisdiction.

Despite the fact that the Constitution of Bosnia and Herzegovina clearly designated that police activities are the responsibility of the Entities, the structure of the police system is not harmonized with the Constitution. With time, the principles of the Dayton Agreement were abandoned in certain areas due to the tendency of transferring police jurisdiction from Entities to the level of Bosnia and Herzegovina. Since the structure of the police system is not harmonized with the Constitution, the transfer could not be finished despite years of persistence and international influence to adopt a different concept (Jovicic, Setka, 2018:252-253).

The regulations of the Constitution about the division of responsibilities within the complex country of Bosnia and Herzegovina have been disregarded as well as the territorial division within the country. There is no sovereign country which disregards its own territorial organization when organizing the police system (not to mention to organize it contrary to the territorial organization) if the goal is to have an efficient police system. Having in mind the significance of police in modern society, we can clearly see how police in Bosnia and Herzegovina cannot fulfill their role adequately.

Police system now consists of police agencies that are on the level of the common institutions of Bosnia and Herzegovina, the Entities, the Brčko District of Bosnia and Herzegovina (since 1999) and cantons (this level is represented only in the Federation of Bosnia and Herzegovina). These police agencies within the

Ministry of Security work as an administrative organization with operational independence. These agencies work within their territorial jurisdiction on the whole territory of Bosnia and Herzegovina. Formation of these institutions are in accordance with the law changes in the Bosnian Parliamentary Assembly and many of them find justification in those changes. Legally, that is absurd as these new regulations are contrary to the Constitution. Therefore, we live in a country where the highest organ of law enforces regulations which are not in accordance with the highest legal act – Constitution.

Having a police system which is contrary to the Constitution is something certainly unique in the world. Practically, this anomaly creates large problems in work and functionality, so instead of partnership, we have conflicts of jurisdiction and competitive relations (Jovicic, Setka, 2017:70).

Besides, police agencies including even the Ministry of Security of Bosnia and Herzegovina, are not in accordance with the incumbent Constitution, another important aspect of it is that this police system is multi-layered, slow, expensive and inefficient. Since the police system in Bosnia and Herzegovina consists of more police agencies on the level of joint institutions which have jurisdiction over the same part of the territory, as well as entity and cantonal police agencies, it can be concluded that the police system in Bosnia and Herzegovina is a complex uncoordinated police system. This means that the basic characteristic of complex uncoordinated police system is "co-responsibility for the action of a private police agency in the same territory". For example, the case of Flaming the Building of Presidency of Bosnia and Herzegovina, where the security of the Building was under jurisdiction of the Directorate for coordination of police organizations, and the responsibility was on the Agency for investigation and protection, and its director. "Absurdity is even bigger since the Directorate took over the responsibility from the Agency for investigation and protection when it was founded" (Setka, 2016a:196).

Bosnian police system completely neglects the basic principles of police work. An example of that is the principle of knowing people and territory, which is crucial in performing police activities. That principle cannot be applied in Bosnia and Herzegovina on the level of police agencies. The Agency for Investigation and Protection is present in only four cities in the country (Sarajevo, Banja Luka, Tuzla, Mostar), based on the regulation and the authority, so it does not have field operatives. As everyone knows that the database consists of local police organizations, it leaves us with question: How can someone believe that this agency can actually be efficient?

Even the Directorate for coordination of police organizations has not been able to achieve any special efficiency in its work for ten years. The reason is clear: since the police system in Bosnia and Herzegovina consists of more police agencies on the level of joint institutions which have jurisdiction over the same part of the territory, as well as entity and cantonal police agencies, it can be concluded that the police system in Bosnia and Herzegovina is a complex uncoordinated

police system. Therefore, the Directorate is unable to accomplish any results in such a system.

If any part of a state apparatus is not organized in accordance with the legal framework, and police system is one of the state's most important organizations, then such institutions are fragile. And where institutions are fragile, criminal is always on the rise. The interest of citizens of Bosnia and Herzegovina can hardly be to have instable institutions and high crime rate. We believe that citizens want to live in stability and order, no matter where they live in Bosnia and Herzegovina. So, here is the final question for the political elites: How do they perceive the order in the state if we currently have a legal disorder in the area of police system organization?

CONCLUSION

Police are certainly one of the most important state organs, but many would claim it is the most important one. The nature of police affairs and assignments is of interest to every citizen and entire society as a whole. The modern conditions give us new forms and sources of security threats assigning even more important role to the police.

In order to fulfill their important role, accepted from everyone, police need to be well organized. Organization is a dynamic category, as the quality of organization is something that is always the goal and should adjust to the changes within the society. Every organization has to be founded on certain principles and must have shared key elements. Among them, especially significant is the legal basis of the organization. Every organization must be legally founded and based on law regulations, which means it needs to be in accordance with the incumbent legal framework. Those organizations that may be legally founded but eventually cross the line of legal framework or change their activities, can be prohibited.

Bosnia and Herzegovina has a clear constitutional regulation when it comes to the police system. A complex coordinated police system is a police system where one police agency is responsible for one territory. an uncoordinated complex police system is a police system where more police agencies share the jurisdiction over one territory. This means that the basic characteristic of a complex uncoordinated police system is "co-responsibility for the action of a private police agency in the same territory". Since the police system in Bosnia and Herzegovina consists of more police agencies on the level of joint institutions which have jurisdiction over the same part of the territory, as well as entity and cantonal police agencies, it can be concluded that the police system in Bosnia and Herzegovina is a complex uncoordinated police system. For Bosnia and Herzegovina, it is necessary to develop a police model that fits the current state of affairs in the country and not to depend on any political needs or tendencies. There are countries in Europe with more complexities and we can take them as an example to create an efficient

police system. There is no European state where police organization is not in accordance with the territorial division within the state.

There are no countries in Europe where organized police is not in accordance with the incumbent legal framework, i.e. with the Constitution and its regulations. Unfortunately, this only means that Bosnia and Herzegovina will not have efficient police working in interest of its citizens as long as it is organized contrary to the Constitution. It is necessary to enforce legal order in the country with application of positive legislature and not counter it. There will be no law and order in the society where law regulations are contrary to the Constitution of the state.

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