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ACCOUNTABLE AND RESPONSIVE POLICING IN THE OSCE

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Introduction

As we all know, with 55 participating states, the Organization for Security and Cooperation in Europe (OSCE), established in 1975 with the Helsinki Final Act, is a non-military, and thus a civilian based, a Eurasian security organization. The main characteristics of the OSCE as we know are that all issues including human dimension and human rights, economics, scientific issues, political and security issues are inter-related each other.ⁱ Human dimension and human rights issues are hence the key to the Eurasian security.

During my graduate or postgraduate degrees in the UK, I studied on human dimension/human rights perspective of the OSCE in relation to a foreign and domestic behavior of states. I remember that when I started to study on the CSCEⁱⁱ at the beginning of the 90s, some friends told me that “don’t study on that because the CSCE, which was less structured at that time, is likely to collapse in the near future”. However, I insisted on that, I mean, to carry out my studies.

Today I am really very happy about the role the OSCE plays in the Eurasian area towards peace-keeping and peace making functions. It is the only Eurasian forum where all issues from human rights to security in the area are discussed, and where periodic meetings are held to reach a consensus based decisions in various areas including human dimension issues.

The discussions about the responsive and accountable policing in upholding the rule of law and due process in CJS is a crucial stage the OSCE reached. The reason is clear: democratic policing and law enforcement, broadly speaking, the criminal justice system has a significant role in democratic countries. On the other hand, the fundamental rights including the right to life, the right to liberty and security, and the prohibition of torture are of paramount importance to all individuals, whether citizen or not, as well. So the effectiveness of everyday policing and law enforcement matters greatly to the strength of popular support for democratic institutions and the rule of law.

Before passing the explanations about the concepts “accountability”, “democratic accountability of the police forces”, let me please give some remarks on law enforcement, and thus criminal justice understanding in societies. Given that the topic of the Human Dimension Seminar (HDS) includes especially Due Process rather than Crime Control in CJS, it is really important to give information on law enforcement and criminal justice understanding to be

able to reach the mechanisms on accountable and responsive policing in national and international levels. In other words, the HDS assumes therefore that accountable and responsive policing should be based on *due process* understanding

Law Enforcement or Criminal Justice Understanding

As far as the law enforcement is concerned, there is actually a delicate balance between *public safety* and *individual freedoms*, which has been a struggle for law enforcement. Such issues become salient much especially after the 9/11. As Sandra Day O'Connor, the retired US Supreme Court justiceⁱⁱⁱ, said: '*We are likely to experience more restrictions on our personal freedom than has ever been the case in this country* (the US).

As the framework for differing views of criminal justice, the *crime control/due process model* has been first suggested by Herbert Packer (1968). According to such model, basically, there are two lines: *strong law enforcement* and *protection of civil liberties* in the Criminal Justice System (CJS).^{iv}

Crime Control

Crime Control can be defined as an approach which accepts *strong law enforcement* in a CJS.

Therefore, those who defend *Crime Control* approach:

- aim to ensure that suspects are processed as quickly and efficiently as possible,
- emphasize the importance of attempting to distinguish between the innocent and the guilty at the precharge stage,
- assume that once a suspect is formally charged, he/she can be processed on the basis of an informal '*presumption of guilt*',
- prefer guilty pleas to lengthy hearings and trials, and also prefer informal methods of disposal over legalistic procedures.

Unsurprisingly, may be in the world, the police and other law enforcement agencies are the most vocal supporters of a crime control approach to CJS. Therefore, the following are seen as vital to the effective functioning of the CJS:

- extensive police powers

- limited rights for suspects,
- greater emphasis on pretrial processes .

However, we must be careful on the potential dangers because it might undermines:

- the rule of law,
- and thus potentially the legitimacy of law enforcement,
- the CJS in the society

Due Process

The concept of *Due Process* can be defined as an approach which accepts the protection of civil liberties in a CJS. In other words, it can be broadly defined as protection from arbitrary or unfair proceedings against individuals by the criminal justice system. The concept of *due process is central to the fundamental human rights* because it requires equal protection for all individuals. For instance, the impartiality of the judge during a trial, being able to present evidence by the defendant on his or her own behalf, and being presumed innocent until proven guilty based upon the evidence presented.

Actually there are two kinds of due process: *substantive due process (SDP)*, and *procedural due process (PDP)*. SDP protects against arbitrary or unfair laws. PDP protects individuals from arbitrary and unfair *application* of the laws. The majority of due process cases heard by the courts relate to issues of procedural due process such as police entrapment,

Therefore those who defend *Due Process* approach:

- argue that CJS must keep the rights of the innocent and ensure that only the guilty are punished,
- maintain that safeguards are necessary to protect individual rights and to ensure that the wrongful convictions is kept to minimum, despite the fact that the CJS primarily aims to reduce and prevent crime,
- see the idea that ‘better that ten guilty men go free than one innocent man be punished’ is central to the due process approach,

- favor considerable restrictions on policing,
- are suspicious of informal processes,
- view the criminal trial as the most reliable method of determining guilt

Historically speaking, there has been tension between the two approaches to the CJS, namely, *crime control and due process*. Generally speaking, in the 60s in the US and Europe the civil rights movement increased the public consciousness about the individual rights and placed pressure on the CJS to develop *due process*. Regarding this, for example, *Miranda v. Arizona* and *Terry v. Ohio* cases, and the ECHR restricted the powers of the police and emphasized the rights of suspects. However, after 80s, there was a shift towards crime control approach as the crime rates increased. According to defenders of crime control approach, the rise in crime was the direct result of an overemphasis on suspects' rights and wanted to increase police powers. Today especially after the 9/11, crime control values still prevail in the world because of the global war on terrorism. Turkey for example is a country looking for the balance between *crime control* and *due process* in its CJS. Both struggling with terrorism and the process of EU are major determinants for choosing the model in the CJS.

Democratic Accountability and the Police

First of all, I must say that there is a difference between democratic responsibility and democratic accountability. The term "accountability" is broader than that "responsibility". It includes not only responsibility but also expresses that those who make action or decision should be ready to show that their actions or decisions are necessary.^v That is the reason why, the accountability is the consequence of the understanding of openness and transparency.

The accountability issue is therefore an important underpinning of democratic policing. In other words, the democratic accountability of the police forces in the participating states is the key in keeping the stabilization and the security in the OSCE area. The police should therefore be accountable to the parliament, accountable to the executive, accountable to the judiciary, and accountable to the public and people.

In my opinion, if look at the democratic accountability of the police forces from the national level, we can see that the issue is going around the accountability to the public and people because it does not seem any problem with the classic state powers-related bodies such as courts, commission in a parliament, supervision in the bureaucracy. I mean, generally

speaking, every participating state in the OSCE has such bodies to which the police force is accountable as well. If so, regarding the accountability to the public and people, we must ask ourselves, what kind of mechanisms should we have really? We must bear in mind that such mechanisms are directly concerned with individual rights and freedoms as well such as the right to freedom of media, the right to effective remedy, the right to pursue the rights etc. It is important therefore to have mechanisms in national level, concerning the media, the complaint review boards, the ombud, the international court such as the ECHR etc.

I understood from the first day sessions that some countries including the Russian Federation have the ombud system according to their law systems. The ombud system is on the agenda of Turkey, and has been discussed for a long time. The recent report concluded by Cerrah also shows that “*Members of civil society (unorganised citizens) and Non-Governmental Organisations (organised citizens) should be able to perform a function of ‘civilian oversight’ on security services*”.^{vi} I hope the ombud system will be adopted by Turkey in the near future. There is also the Human Rights Commission in the parliament, the Turkish Grand National Assembly.

Democratic accountability of the police forces is ultimately concerned with the outside supervision and examination of all police law, activities^{vii}, decisions and performances^{viii} etc. For instance, regarding arrest and the custody, there are the decisions of the ECHR regarding the *Selmouni* and *Satik* cases.^{ix} According to such cases, all states have a responsibility to make a *reasonable explanation* before the ECHR why the persons who are in the custody have been injured. In addition, the ECHR has decided that all European states should have independent monitoring mechanisms to ensure the accountability due to the use of force including proportionality. Otherwise, the governmental defense based on only oral rather than material evidence is not acceptable. That is the reason why, the United Kingdom and Turkey lost the cases before the Court, violating the Article 3 of the European Convention of Human Rights.

Conclusion

It is therefore very crucial that the HDS gives us a chance to able to discuss what kind of mechanisms in national level first, and then in international level should we have really. Having such mechanisms require a forceful stand on reaching the solution of our problems such as corruption, bias etc. It is thus of fundamental importance for those trying to build

democratic institutions. Today democratic policing is therefore concerned with the responds to the needs of individuals and private groups as well as the needs of government. The European Court of Human Rights Decisions give lights on the establishment of various mechanisms to ensure the police accountability, and thus to keep and promote individual rights.

As far as the police accountability is concerned, given that it is also related to international level, as participating states, it seems to me that we should also consider, on the one hand, the preparations through internationally guaranteed police rights, on the other hand, the establishment of an OSCE Court specialized on allegations concerning police activities-related individual rights such as the right to liberty and security, the right not subject to the torture and ill treatment, the right to life etc.

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