

The European Union's "Civil Society Facility" program
for civil society organizations associations



URGENT POLICE DEPOLITICISATION IN THE WESTERN BALKANS



The publication is
supported by the EU.

POINTPULSE 
WESTERN BALKANS PULSE FOR POLICE INTEGRITY AND TRUST

**URGENT POLICE
DEPOLITICISATION
IN THE WESTERN
BALKANS**

**URGENT POLICE DEPOLITICISATION
IN THE WESTERN BALKANS**

Publisher

Belgrade Centre for Security Policy
Djure Jakšića 6/5, Belgrade
Tel: +381 11 3287 226
Email: office@bezbednost.org
www.bezbednost.org
www.pointpulse.net

Author

Sofija Mandić

Editor

Saša Djordjević

Translation

Alisa Koljenšić Radić

Design and layout

DTP Studio

Printed by

UNAGRAF

Copies

300

Belgrade, 2016

About Policy Paper – The policy paper is published as part of the Action “Western Balkans Pulse for Police Integrity and Trust: POINTPULSE”. The Action is supported by the European Union through the program “Civil Society Facility” under the Instrument for Pre-Accession Assistance (IPA). The contents of the policy paper are the sole responsibility of the Belgrade Centre for Security Policy and views expressed in this document are not necessarily those of the European Union.

About the POINTPULSE Network – Seven civil society organizations: Analytica from Skopje, Belgrade Centre for Security Policy (BCSP) and Balkan Investigative Reporting Network (BIRN) from Belgrade, Centre for Security Studies (CSS) from Sarajevo, Institute Alternative (IA) from Podgorica, Institute for Democracy and Mediation (IDM) from Tirana, and Kosovo Centre for Security Studies (KCSS) from Pristine, networked into the POINTPULSE Network aimed to oversight of police integrity in the Western Balkans. The POINTPULSE aim to contribute to increased trust and confidence in the law enforcement agencies in the Western Balkans by fighting police corruption and promoting police integrity.





RECOMMENDATIONS

1. The European Commission needs to continually refer to the lack of operational independence of the police in the annual progress reports for the Western Balkans.
2. Police depoliticisation needs to be one of the key indicators of progress on which to base the financial support of the European Union within the framework of the Western Balkans association process.
3. International community active in the Western Balkans must insist that the role of the Ministries of Interior be limited to the creation of home affairs policy, facilitation of professional work and development of the police, and supervision of its operations.

SUMMARY

One of the biggest problems faced by the police in the Western Balkans is politicisation and lack of operational independence from political leaders and structures. This is confirmed by the legal framework on policing which introduces a wide scope of competencies of Ministers of Interior and other politically elected figures, and by the citizens' perception that the police serve the political parties' interests.

The Bosnia and Herzegovina (BIH) Law on Internal Affairs of 2014 allows direct and indirect influence of political parties and officials on the autonomy of the police. Most important shortcomings are related to the Federal Minister of Interior who is allowed to make decisions regarding concrete police actions, influence human resources micro-management, and decide on the use of police finances and detention treatment and rules. The Law only declaratively stipulates that the police are subjected to civilian and democratic control. However, more than 80 percent of the citizens of BIH believe that the influence of politics on operative work of the police is quite high.

In Kosovo, before the Prime Minister takes a decision on the appointment of Police Director General, the Minister of Internal Affairs interferes in the process by establishing and regulating the work of the Commission whose task is to nominate the candidates. The 2012 Law on Police in Kosovo allows direct influence of the Minister of Internal Affairs on the internal organisation of the police and the establishment of special police units. The Minister can compromise the operational independence of the police regardless of the fact that the Law on Police stipulates otherwise. More than 70 percent of the citizens perceive police as politicised and fully, or to some extent, under political control.

The Montenegrin Law on Internal Affairs of 2012 allows the Minister of Interior to influence the Police Director's appointment by proposing the candidate to the Government, and to influence the work of the Police Directorate by appointing Police Director's deputies. The Minister is allowed to define the



exceptions concerning the duties that are deemed incompatible with police work, but he also has discretionary powers to allow police officers to conduct some activities that are in contravention to the rules if he estimates that this will not harm the professional work of the Ministry. The Minister can decide in disciplinary proceedings and develop its rules. The public image of the police as an authority serving the citizens is better, to the extent that the legal framework is more progressive – one third of the citizens believe that the police is working in their interest.

The Serbian Law on Police of 2016 does not create sufficient and necessary conditions for depoliticisation of the police. The text of the law mentions “respect for the operational independence of the police” but fails to specify what that actually means. The Minister of Interior is allowed to prescribe the mode of performance of internal affairs tasks, request reports, data and other documents relating to the work of the police and the Ministry, and provide the Internal Affairs Sector with binding instructions for work, as well as with orders to perform certain tasks and undertake certain measures. The Minister is given the power to assign and dismiss the highest ranking heads of the Police Directorate. More than 80% of the citizens see the police as an institution serving others’ interests instead of theirs.

There are various legal shortcomings influencing the operational independence of the police in the Western Balkans. It is therefore necessary that the international community – the European Union (EU) in particular – advocate the development of legal instruments and institutional mechanisms which will prevent the political leaders and structures from crossing the forbidden line and becoming involved in the operational work of the police.

OPERATIONAL POLICE INDEPENDENCE: WHY IS IT IMPORTANT?

Operational independence means that the police apply the law without any political interference and based on the principle of legality. The government is responsible for setting up the policing policy and this task requires strategic political decisions. In a democracy, there is no space for political interference in operational police work. This is why it is crucial to safeguard the separation of the roles of the executive and the police. It is however also necessary to ensure police accountability.

The paper discusses the state of police independence in four communities that used to belong to the ex-Yugoslav Federation: Bosnia and Herzegovina, Montenegro, Serbia and Kosovo. Ex-Yugoslav territories share the political foundation according to which the decisions have always been made at the central political level, directly – by the Communist Party, or indirectly – in the institutions led by the Party officials. During the years of Yugoslavia’s existence this model of decision-making had spread through all the aspects of life, including police work.

During the 90s, the four communities were all, to a greater or lesser extent, involved in the ex-Yugoslav armed conflict. Police, military and paramilitary forces were pulled into supporting different

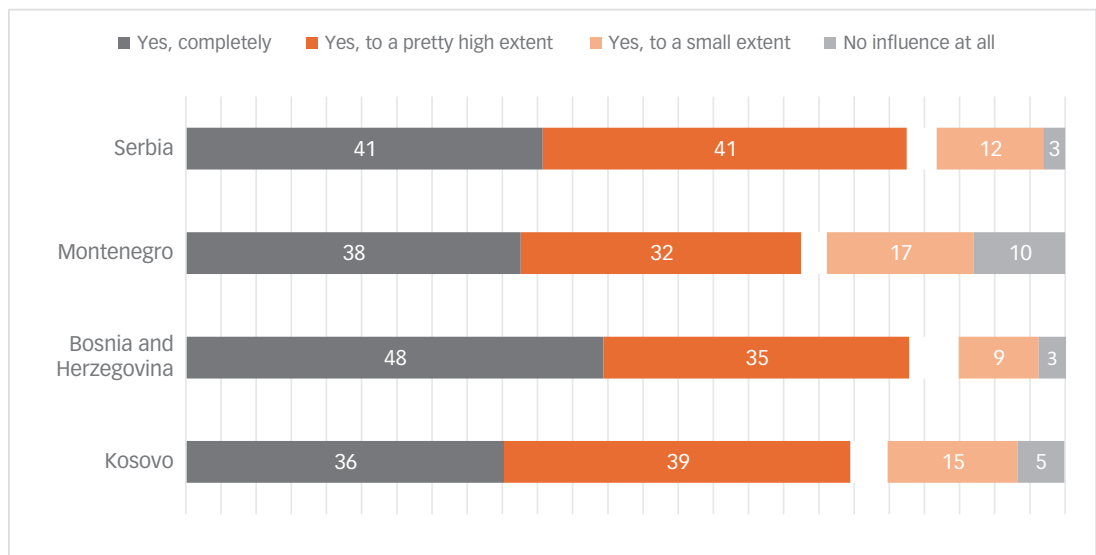


sides and political interests in the conflict, where the concept of political and centrally controlled decision-making developed even further, in line with new and different national goals. The new fragmented collective goals only strengthened the common centrally-oriented political base, but this time not in the Yugoslav Federation but in its former territories.

More than 20 years after the disintegration of Yugoslavia, we are witnesses to the fact that the Western Balkans today faces similar politicisation and lack of operational independence of police forces. The security sector reform began 15 years ago; however, deconstruction of the ties between the police and political structures remained on the margins of political priorities and was always sacrificed in favour of other types of reforms in the security sector. Although there has been some progress, police services are still perceived as a tool for supporting political and not the citizens' interests.

The 2015 POINTPULSE public opinion poll concluded that four Western Balkans communities share a similar perception of the state of police operational independence. The perception that politics are deeply involved in police work is shared by the great majority of the citizens – from 83% in BIH to 70% in Montenegro (Elek, Mihailović 2015: 14).

Graphic 1: Do you believe that politicians exert influence on the operating work of police force? (One answer. Base: Total population)



To date, the processes of reconciliation and the EU integration have proven to be insufficient in freeing the police from its past, and from the political culture which supports the image of political life as a game of force and power. This situation is confirmed and cemented by the legal framework, which introduces a wide scope of competencies of Ministers of Interior and other politically appointed figures.



There is still room, however, for citizens as well as EU institutions to try to change these long term practices. This would ensure the citizens’ security and trust in state institutions, and also bring a reliable and professional police force into the EU once all the countries join the Union. Until then, continuous work is needed to ensure that political leaders and structures do not cross the forbidden line and become involved in police operational work. The starting point for this endeavour is the mapping of the relevant legal framework.

Bosnia and Herzegovina

Activities aimed towards depoliticisation and improvement of professionalism of the police forces in Bosnia and Herzegovina (BIH) began in 2002, when entities introduced Police Directors and cantons established Police Commissioners. The duty of both is to organise police work professionally and without any political interference (Kovačević, Visca 2015).

The Law on Internal Affairs of 2014 allows direct and indirect influence of political parties and officials on police autonomy.¹ Most important shortcomings are related to the Federal Minister of Interior who is allowed to make decisions concerning concrete police actions, influence human resources micro-management, and decide on the use of police finances and detention treatment and rules.

Table 1: Opportunities to influence police operational work in Bosnia and Herzegovina

Article No.	Political figure of influence	Opportunity for influence	Direct (D) / Indirect (I)
6	Federal Minister of Interior	Decisions on conflict of jurisdiction between different levels of the Ministry and police units	D
19	Federal Minister of Interior	Act on the Systematization of Job Positions	D
21	Federal Minister of Interior	Developing network of local police stations	I
22	Federal Minister of Interior	Managing all police actions/competencies	D
33	Federal Minister of Interior	Managing police finances	D
40	Federal Minister of Interior	Detention treatment and rules	D
64	Federal Minister of Interior	Second instance decision as on first instance police acts/decisions	D
64	Federal Minister of Interior	Instructions for the implementation of police acts/actions	D

Although it is obvious that the Federal Minister of Interior has wide competencies and influence on police work, the Law on Internal Affairs also includes some provisions which - albeit on a declarative level only – can indicate that the police is subjected to civilian and democratic control.² The most im-

¹ Law on Internal Affairs of the Federation of Bosnia and Herzegovina, Official Gazette No. 81/14.

² Ibid: Article 34.



portant provision of this type is the one referring to police autonomy³ while simultaneously providing for the Minister's direct instructions concerning police acts and actions.

All these forms of allowed behaviour make room for the influence of political structures on police everyday work, as the Minister is obviously the final and direct decision maker. Although the Law on Internal Affairs contains some elements that could be used for depoliticisation, such as an independent body nominating candidates for Police Directors to the Government, or a parliamentary body to review the complaints filed concerning the work of police officers, these measures are still not sufficient to outweigh the overall competencies of the Minister, especially if we keep in mind that he can order any Police Director or police officer how to act. Because of that, the above depoliticisation provisions can be better used as an excuse for claiming police autonomy than for building professional and democratically led and controlled police.

The perception of the citizens of BIH corresponds with the conclusions reached in the analysis of the police system: according to the 2015 POINT-PULSE public opinion survey, more than 80% of the citizens of BIH believe that the influence of politics on the operational work of the police does exist.

Kosovo

The police in Kosovo operate under the authority of the Minister of Internal Affairs,⁴ but the Minister's authority "does not include operational management of the police," which falls under the competence of the General Directorate. Still, Prime Minister appoints the Director General of the police upon the recommendation of the Government,⁵ making obvious the link between politics and police work. Additionally, before the Prime Minister decides on Director General's appointment, the Minister of Internal Affairs interferes in the process by establishing and regulating the work of the Commission whose task is to nominate the candidates.⁶ The Minister can thus influence the Director's daily decisions. Also, the Law on Police enables direct influence of the Minister on the internal organisation, the establishment of special and police reserve units and police financing.⁷

Similar with BIH, the Law on Police in Kosovo contains provisions governing conflict of interest, forbidding police officers from entering public office and the government, or taking part in political campaigns.⁸ Nevertheless, even though police officers can't be politically active, they do receive indirect orders from political structures, as already described.

3 Ibid: Article 64.

4 Law on Police, Official Gazette, No. 04/L-076, Article 5.

5 Kosovo Constitution (with amendments I-XXIV), Article 128.

6 Law on Police, Official Gazette, No. 04/L-076, Article 37.

7 Ibid: Articles 32, 36 and 51.

8 Ibid: Article 49.



Since 2008, the relevant Kosovo institutions exercising external oversight of the police have actively expressed their criticism regarding the politicisation of the police through the influence of political parties in the Government. The fact that senior management of the police is appointed and controlled by political bodies demonstrates that heads of police do not represent the interest of the police but rather political interests. In the 2015 Kosovo's Progress Report of the European Commission it was mentioned that judicial structures were still prone to political interference (Avdiu, Perteshi 2015).

Citizens of Kosovo believe that political influence on the police is quite strong. According to the 2015 POINTPULSE public opinion poll, more than 70% of the citizens perceive police as politicised and under political control, fully or to some extent.

Montenegro

Unlike in other Western Balkans countries, the police in Montenegro are not officially operating under the direct authority of the Minister of Internal Affairs. Although some room is left for political influence, it doesn't even come close to the open and formal submission to political leaders that exists in some other countries. In order to confirm non-partisan police affiliation, the Montenegrin Law on Internal Affairs of 2012 contains provisions on compliance with the relevant international standards⁹ and introduction of civic control of police,¹⁰ in addition to parliamentary and internal control.¹¹

Members of the Civic Control Council are lawyers, medical doctors and civic organisations dealing with human rights. Although the Law stipulates the obligation of the police to respond to the Council's requests, much can be done to improve the position of the Council within the system. There is also room for improving the structure of the Council itself, as the list of parties interested in police civic control is longer than the one defined by the law.

Continuing with the comparison of this and other laws on internal affairs in the region, when a Montenegrin law prescribes that by-laws will additionally regulate a certain issue, it is the Ministry (not the Minister) that is obliged to develop a concrete by-law. There is a qualitative difference here: although the Minister is the one who signs all the decisions taken by the Ministry, it shows a different approach where the Ministry is seen as a state authority that is only *led* by the Minister. The Minister is not replacing the entire institution and personally deciding on important issues.

As regards provisions that are problematic from the aspect of police independence, there is still room for a Minister to influence the Police Director's appointment by proposing the candidate to the Government,

9 Law on Internal Affairs, Official Gazette No. 044/12, 036/13, 001/15, Article 14.

10 Ibid: Article 112.

11 Ibid: Article 110.



and to influence the work of the Directorate by appointing Director's deputies.¹² In this particular case the Minister's influence is limited to some extent by the Montenegrin National Assembly's discussion of the proposed candidate for Director, and by the Director's proposing of candidates for his deputies.

Also, the Minister is allowed to define the exceptions concerning the duties that are deemed incompatible with police work, but he also has discretionary powers to allow police officers to conduct some activities that are in contravention to the rules if he estimates that this will not harm the professional work of the Ministry.¹³ This opens up room for the executive branch's discretionary decision making and the Minister's influence on specific police officers involved.

Also, even though the Minister is treated as a political, not an operational authority of the Ministry, he is able to decide in disciplinary proceedings and influence its rules.¹⁴ Although police officers are legally prohibited from being politically active, activities such as membership in political parties, running for elections and presence at political rallies in official uniform have not been suppressed (Bajramspahić, Sošić 2015).

The public image of the police as a service to the citizens is better than in other countries, to the extent that the legal framework is more progressive – one third of the citizens believe that the police is working in their interest. Although this far from a good result, it shows that citizens are sensitive to different legal approaches and can detect some positive aspects of them.

According to the 2015 POINTPULSE survey, only 27% of the Montenegrin population believes that the police act as a service to citizens. Everyone else believes that they work to protect the interest of the Government, the political parties, or interests of the people in the highest positions of the police force.

Serbia

The newly adopted Law on Police¹⁵ does not create sufficient and necessary conditions for depoliticisation of police leadership. The text of the Law mentions respect for the operational independence of the police,¹⁶ but fails to specify what that actually means.

This declaratively stated operational independence is compromised in several provisions. For example, the Minister of Interior is allowed to prescribe the mode of performance of internal affairs tasks,¹⁷

12 Ibid: Article 9.

13 Ibid: Article 95.

14 Ibid: Articles 106 and 107.

15 Law on Police, Official Gazette No. 6/2016.

16 Ibid: Article 12.

17 Ibid: Article 4.



request reports, data and other documents relating to the work of the police and the Ministry,¹⁸ provide the Internal Affairs Sector with binding instructions for work, as well as with orders to perform certain tasks and undertake certain measures.¹⁹

The Minister is given the power to assign and dismiss the highest ranking heads of the Police Directorate²⁰, but also to directly influence human resources strategy development²¹, systemisation of job positions²², public job competitions processes, recruitment, candidate selection, employees' evaluation²³ and retirement criteria²⁴. The Minister also defines the criteria for social and psychological support²⁵, specific healthcare²⁶, and bonus payments²⁷. It is clear that all this allows for further politicisation, and dependence of the police on the Minister as a political figure.

In addition to these wide, general competencies concerning the operational work of the police, the Minister is also given the power to influence micro-management issues such as prescribing the standards for premises, the citizens' complaints procedure, or the modes of selling seized or keeping found objects. This only confirms the tendency of political actors to get involved in police everyday decisions in as much detail as possible.

Similar to other countries, the public image of the police as a service of the citizens is in line with the real state of play – two thirds of the citizens see police as an institution serving others' interests, not theirs.

The 2015 POINTPULSE poll concluded that only 15% of the population believes that the police mostly act in the interest of the citizens. Others believe that they protect the interests of the Government, political parties and top ranking police officers.

18 Ibid: Article 14.

19 Ibid: Articles 232 and 233.

20 Ibid: Article 149.

21 Ibid: Article 129.

22 Ibid: Article 9.

23 Ibid: Article 129.

24 Ibid: Article 129. And 174.

25 Ibid: Article 182.

26 Ibid: Article 180.

27 Ibid: Article 186.



BIBLIOGRAPHY

Alma Kovačević, Hamza Visca. 2015. *Assessment of Police Integrity in Bosnia and Herzegovina*. Belgrade, Sarajevo: Belgrade Centre for Security Policy, Centre for Security Studies. Online: <<http://goo.gl/UGnQg2>>

Bojan Elek, Dunja Tasić, Saša Djordjević. 2015. *Assessment of Police Integrity in Serbia*. Belgrade: Belgrade Centre for Security Policy. Online: <<http://goo.gl/sQAHVk>>

Bojan Elek, Vojislav Mihailović. 2015. *The Views of Citizens Concerning Police Accountability: A Comparative Analysis of the Results of Public Opinion Polls in Bosnia and Herzegovina, Montenegro, Serbia and Kosovo*. Belgrade: Belgrade Centre for Security Policy. Online: <<http://goo.gl/yg54VP>>

Dina Bajramspahić, Marko Sošić. 2015. *Assessment of Police Integrity in Montenegro*. Belgrade, Podgorica: Belgrade Centre for Security Policy, Institute Alternative. Online: <<http://goo.gl/UnWSQL>>

Plator Avdiu, Skender Perteshi. 2015. *Assessment of Police Integrity in Kosovo*. Belgrade, Pristine: Belgrade Centre for Security Policy, Kosovar Centre for Security Studies. Online: <<http://goo.gl/sxdO5y>>

POINTPULSE 
WESTERN BALKANS PULSE FOR POLICE INTEGRITY AND TRUST

 www.pointpulse.net

 twitter.com/POINTPULSEnet

 facebook.com/POINTPULSEnet/