

# IPCAN

INDEPENDENT POLICE COMPLAINTS  
• AUTHORITIES' NETWORK •

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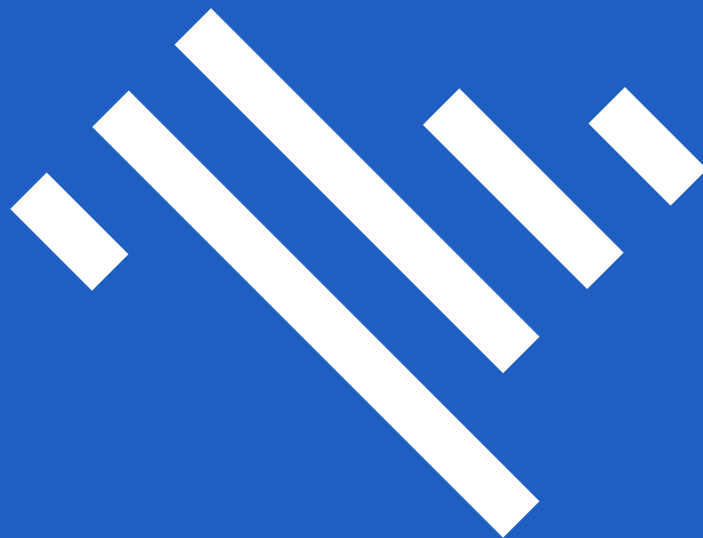
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7TH IPCAN SEMINAR

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EXECUTIVE SUMMARY

**EXTERNAL AND INDEPENDENT MECHANISMS OF MONITORING OF POLICE:  
FUNCTIONING, INTERACTIONS, AND EFFECTIVENESS**





## 7<sup>th</sup> IPCAN Seminar

### “External and independent mechanisms of monitoring of police: functioning, interactions, and effectiveness”

#### EXECUTIVE SUMMARY

## Introduction

### Background information

While research tends to confirm a correlation between the existence of reliable police oversight and the public’s confidence in its police, data from European surveys conducted by the European Social Survey and the European Union Agency for Fundamental Rights show that citizens have mixed views on police practices. There are major differences between European countries, but also according to groups and different categories of police operations.

In the context of a demand for greater accountability of police forces<sup>1</sup>, external and independent oversight bodies play a key role in the “ecosystem” of police oversight mechanisms (hierarchy, internal inspections, parliament, courts, civil society, etc.).

In order to assess the security forces’ compliance with the law and ethics, these oversight mechanisms must meet standards of impartiality, independence and transparency. Higher oversight standards will increase citizens’ trust in the police. This trust is strongly correlated with trust in national institutions and in the democratic foundations of the state<sup>2</sup>.

Today, however, these bodies - mostly members of IPCAN - have a wide variety of statuses, powers and positions in the institutional landscape of police oversight.

It would seem that today, the existence of such external and independent police oversight mechanisms is a given in European societies. With this in mind, is it possible, after several years, or even several decades of operation of these oversight bodies, to assess their operation, their contribution and their action?

### Presentation of the IPCAN network and the 7<sup>th</sup> seminar

- **Ms Claire Hédon**, Defender of Rights, France

This year, the seventh seminar is examining how the mechanisms for oversight of the security forces function in IPCAN member countries.

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<sup>1</sup> De Angelis J., Wolf B., “Perceived accountability and public attitudes toward local police”, *Criminal Justice Studies*, Vol. 29, no. 3, 2016, pp. 232-252; Walsh D.P.J., Conway V., “Police governance and accountability: overview of current issues”, *Crime Law Soc Change*, Vol. 55, 2011, pp. 61–86.

<sup>2</sup> Kutnjak Ivković S., “A Comparative Study of Public Support for the Police”, *International Criminal Justice Review*, Vol. 18, no. 4, 2008, pp. 406-434.

The Defender of Rights commissioned a comparative study of various police oversight mechanisms as part of the POLDEM project (Police and Democracy), managed by Sebastian Roché, Director of Research at the CNRS (*Centre national de la recherche scientifique* [National Centre for Scientific Research]).

*“The comparative approach has several advantages. Firstly, it strengthens the understanding of protecting rights by detaching it from the national political and partisan context, and secondly, it puts national institutional mechanisms in perspective in relation to others. We then discover our differences, which themselves raise questions about the foundations of our own models and practices, and finally, this is the objective of the exercise, in the long term, this comparison can lead to recommendations for external oversight bodies but also for national governments, in order to improve their own mechanisms.”*

In this context, this seminar aimed to present, from a theoretical but above all an operational perspective, some of the existing bodies among the great diversity of external oversight mechanisms in Europe. The interest of such a presentation was not only to provide a “static” description of each body but also to address, from a dynamic perspective, how these mechanisms operate, internally as well as in relation to other oversight bodies and institutions.

- **Mr Michael Lockwood**, Director General of the Independent Office for Police Conduct, an IPCAN Member, United Kingdom (via video)

Every two years, the IPCAN network organises a European seminar on issues related to the complaints handled by the network’s 22 members in the field of security ethics. At the sixth IPCAN internal seminar in December 2020, IPCAN members decided that the 2021 European seminar would address the issues of the functioning and effectiveness of external and independent police oversight mechanisms.

Entitled “External and independent mechanisms of monitoring of police: functioning, interactions, and effectiveness”, the seventh IPCAN seminar, held on 3 December 2021, aimed to present, from an operational perspective, some of the existing bodies among the great diversity of external oversight mechanisms in Europe.

The study of several concrete examples, both by members of the IPCAN network, but also by other actors involved in police oversight and by police representatives themselves, representatives of civil society and researchers, has highlighted how these bodies function in their institutional “ecosystem”. Through examining a few concrete examples, it was able to consider the way in which they interact firstly with other institutions such as parliament, government and the judiciary, and secondly with other oversight bodies such as internal oversight departments, inspection bodies, sanctioning bodies, but also with civil society, NGOs and the media.

*“We use learning to develop and inform new legislation, for which government is responsible, but also to provide guidance on legislation in other sectors: health, prisons, security, etc. In this way it helps to safeguard a good relationship between the police and the public, as prevention is always better than cure.”*

The seminar was structured around three themes: the positioning of external oversight bodies in the national landscape of police oversight; the question of the independence and impartiality of such bodies; and the question of the effectiveness of such bodies.

This event brought together not only IPCAN members, but also other actors involved in police oversight, such as representatives of Council of Europe institutions and police representatives themselves, as well as representatives of NGOs and researchers, to explain how they communicate and work together in a complementary way, as well as the challenges they face in implementing their respective missions.

### Scope: Analysis of oversight mechanisms and their effects in Europe: a challenge

- **Dr Sebastian Roché**, Director of Research, CNRS, France

### Background information

To date, there is no comprehensive comparative research on external police oversight mechanisms with clear criteria for comparison. There are few reports and studies on how police activities are monitored in Europe<sup>3</sup>, and even fewer on the functioning and effectiveness of the external and independent oversight of these activities.

Thus, in parallel with the organisation of the IPCAN seminar in March 2021, the Defender of Rights wished to contribute to the financing of a study entitled “*Contrôles de la police dans les démocraties de l’UE : une approche comparative*” [Police oversight in EU democracies: a comparative approach] managed by Sebastian Roché (CNRS, France). As the objective complemented that of the seminar, Sebastian Roché’s team were able to facilitate the work of the network and provide scientific resources.

In order to have concrete and relevant information, a questionnaire was prepared as part of the POLDEM project and sent to all IPCAN members in order to collect detailed information. The presentation by Sebastian Roché, introducing the theme of the seminar, was an opportunity to present the preliminary results of the POLDEM study.

### Objectives of the study

The overall objective of this study is to provide a comprehensive review of independent police oversight bodies in Europe and Canada. It can be broken down as follows:

- To provide the first systematic multidimensional mapping of external oversight bodies in a number of countries;
- To explore the disparities between these bodies with regard to their combined characteristics according to specific measures and indices (e.g. powers, resources, strategies);
- To provide an analysis of how external mechanisms contribute to the effective functioning of the police and confidence in institutions.

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<sup>3</sup> Nevertheless, it is possible to take into account certain guidelines and recommendations issued by various European and international organisations. See for example documents published by the Council of Europe in 2017: <https://rm.coe.int/policeoversight-mechanisms-in-the-coe-memberstates/16807175dd>; Committee P (Belgium) in 2020: <https://comitep.be/document/onderzoeksrapporten/2020-01-10%20Benchmark%20ENG%20synopsis.pdf> ; OSCE: <https://www.osce.org/files/f/documents/5/8/138711.pdf> ; and UNODC: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_police\\_Accountability\\_Oversight\\_and\\_Integrity.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf)

- **The diversity of oversight mechanisms: mandates, authority and resources**

The existence of independent oversight mechanisms stems from the need for impartiality and fairness in police oversight. These requirements are the pillars of liberal democracy and the basis for the legitimacy of the security forces and their effectiveness in preventing crime.

However, while *“each country is familiar with its own system, we do not currently have a basis for international comparison, or comparative data on services”*.

Thus, one of the major difficulties that the POLDEM study aims to overcome is the existence of “black boxes” in the analysis of independent police oversight mechanisms. Describing these mechanisms as “black boxes” means that, while some of their actions may be made public, as well as their financing, their internal functioning remains opaque. POLDEM is providing initial results.

Firstly, the initial finding of the study is the heterogeneity of the oversight bodies studied. They share only three common features:

- the people at the head of the oversight mechanisms are not elected by the public;
- all the bodies surveyed receive and deal with complaints;
- and finally, they all make recommendations.

#### Creation of oversight mechanisms

The independent police oversight bodies were established at various points. The oldest one, which was set up in Sweden, dates back to the beginning of the 19<sup>th</sup> century. However, since 1980 there has been a wave of independent mechanisms established.

*“A new standard has been created for police oversight over the years”*.

#### Mandates of the oversight mechanisms

When we look at the mandates of the bodies reviewed by the POLDEM study, they fall into two groups:

- The largest group consists of bodies that have the task of monitoring the police force, but also other entities. They therefore have a wider scope than just police conduct.
- Some bodies have the sole task of police oversight.

#### The independence of oversight mechanisms

One of the key elements of the study concerns the independence of police oversight bodies.

*“The concept of independence is interpreted in very different ways by different countries, and by Europe and Canada, at least.”*

Thus, independence is a concept that varies greatly. The independence of the oversight mechanisms is assessed according to several criteria: the robustness of the legal basis for the creation of the body, its official independence (measured against appointment procedures, for example), but also the level of its funding, etc.

Somewhat counter-intuitively, the best known oversight mechanisms with the largest resources are also those that appear to be the least independent (Scotland, Northern Ireland, England, and Wales).

## The capacity of oversight mechanisms to act

*“Most countries can make recommendations, maybe not always in the same way, but at least they have that capacity. However, when it comes to having judicial or investigative capacity, it is different.”*

The operational capacity of police oversight bodies also varies: most can make recommendations, most of which are non-binding, and decide how to use their resources, while their investigative capacities vary greatly.

However, effectiveness also depends on the resources (including human resources) available to the oversight bodies. From this point of view, there are also large disparities. Therefore, if we look at the IOPC, for England and Wales, there are a lot of people dedicated to police oversight, more staff than all other IPCAN members put together. In contrast, the Defender of Rights in France has very few staff to fulfil her mandate concerning the rules of conduct of security forces.

If we compare the human resources of oversight bodies with the number of police officers in each country, again England and Wales, but also Ireland, the Netherlands and Quebec are above average. France is below average.

*“If we combine two factors, for example the capacity to act, i.e. having sufficient resources, and having a sufficient degree of independence, what we see is that these countries are the countries that have the largest number of people and have the highest number of human resources. And this very high number is characteristic of the 16 organisations that are the least independent.”*

Two models therefore seem to emerge from the initial results of the POLDEM study:

- bodies with a high level of official independence, but few financial and human resources;
- bodies that receive substantial government funding but have little official independence.

Thus, there appears to be no government that provides both the financial and human resources and the independence necessary for effective police oversight in Europe and Canada.

## The activities of oversight mechanisms

In addition to the legal bases of the police oversight bodies, it is also interesting to analyse their concrete activities, and in particular the extension of their activity from handling complaints, which is their primary mission.

*“These bodies all started in the same way, they started with handling complaints, and from that activity they expanded to other activities, such as making recommendations, determining sanctions, determining how those sanctions will be applied, and sometimes they themselves are the body that will judge which sanctions apply.”*

Again, the actions and strategies chosen by different organisations vary greatly. Some, such as Croatia, make many recommendations in order to change police practices. When it comes to cooperation with the police, we can cite Schleswig-Holstein, while in the area of communication with the public, the French Defender of Rights ranks highly.

Finally, in terms of evaluating their own effectiveness, half of the bodies have already started to reflect on the effectiveness of their action. However, many mechanisms have not yet addressed this issue.

## I. What place do external oversight mechanisms have in the national landscape for monitoring police forces?

**Moderation and introduction: Ms Pauline Caby**, Deputy in charge of security ethics, Defender of Rights, IPCAN member, France

- **Ms Kathleen Stinckens**, Chair of Committee P, IPCAN Member, Belgium
- **Mario Coderre**, senior partner of Roy Bélanger avocats, Quebec, Canada
- **General Alain Pidoux**, Lieutenant General, Head of the General Inspectorate of the National Gendarmerie (*Inspection générale de la gendarmerie nationale* - IGGN), France

### 1. Introduction

The objective of this session was to examine the specific characteristics of the missions and the scope of intervention of external oversight mechanisms, as well as their concrete and functional relationship with other oversight mechanisms and national institutions.

Oversight of police forces varies: internal oversight, hierarchical oversight, oversight by judges, parliamentary oversight, oversight by independent administrative authorities and also by international bodies, as well as by civil society.

Thus, it seemed important to be able to present three representative examples of this diversity of police oversight, with three very different speakers: the chair of one of these institutions, a lawyer, working with one of the institutions, and the head of one of the internal oversight bodies of the internal security forces.

### 2. The place of an oversight mechanism in the national landscape for monitoring police forces: Belgian, Quebec and French examples

#### a. *Committee P: A mechanism integrated into parliamentary oversight*

#### **Kathleen Stinckens**

Chair of Committee P, IPCAN member, Belgium

The standing police oversight committee, also known as Committee P, was established by the Act of 18 July 1991.

*“Committee P was set up under the aegis of Parliament to assist it in its constitutional function of overseeing the executive, so our oversight focuses in particular on protecting citizens’ rights and freedoms, as well as on the coordination and effectiveness of police services.”*

The operation and procedures under which Committee P exercises its authority were established by internal rules adopted in 1994 and approved by Parliament.

Committee P’s link with Parliament is fourfold:

- the five members who make up the steering committee of Committee P and the Head of Administration are appointed by Parliament;
- Committee P gives an annual or interim activity report to Parliament;
- the activities of Committee P are monitored by a standing parliamentary committee with which the steering committee meets at least once every six months;
- Parliament determines the budget of Committee P.

Committee P also coexists with other oversight mechanisms within the Belgian institutional landscape:

- the General Inspectorate of the federal and local police and the internal oversight services, which are themselves monitored by Committee P;
- the supervisory body for police information;
- oversight by the judicial authorities and administrative police authorities, with which Committee P cooperates.

*“Committee P occupies a unique information position in the landscape of police oversight services, because the organic law requires several authorities to provide us with the information we need to carry out our statutory oversight tasks.”*

*b. The Police Ethics Commissioner: the coexistence of oversight mechanisms*

**Maître Mario Coderre**

Senior Partner of Roy Bélanger Avocats, Quebec, Canada

The Police Ethics Commissioner was created in 1991 by the Quebec Provincial Police Act. This body replaced the Police Commission and is responsible for receiving and dealing with the complaints submitted to it. The Commissioner is appointed for a renewable term of five years by the executive.

Two police oversight mechanisms co-exist with the Police Ethics Commissioner. Firstly, the Police Ethics Committee, which is the administrative court that decides whether a police officer has committed an act that contravenes the Police Code of Ethics. This Committee, which reports to the executive but is independent, *“does not simply make recommendations, it is truly an administrative court, whose remit is to make decisions and determine whether or not ethical misconduct has been committed”*.

Secondly, these two mechanisms coexist with the *Commission des droits de la personne et des droits de la jeunesse*, which has the authority to examine violations of the Charter of Human Rights and Freedoms.

This parallel coexistence sometimes gives rise to difficulties, particularly when the same situation is the subject of two complaints before the Police Ethics Commissioner and the *Commission des droits de la personne*. *“The same event may be the subject of five, six, or seven investigations at the same time, all with different rules in terms of the charter of rights.”*

To illustrate the problems raised by this coexistence of oversight mechanisms, Mr Coderre mentioned the right to silence. While a police officer has the right to remain silent before the Police Ethics Commissioner, there are provisions that require the officer concerned to answer questions before the *Commission des droits de la personne*. Therefore, *“for the same event, there could be a criminal allegation where there is a right to silence”*. However, in some cases, *“each of the bodies can take the statement made in the other file, subject to certain arguments that must be presented to the court, to decide on the admissibility of this evidence”*.

Alongside these independent mechanisms, in Quebec there are also a number of situations that are subject to a public inquest by the coroner. *“The coroner is not there to determine whether there is a culprit or a perpetrator, the coroner is there to explain the circumstances of a death or a situation, for example. But here, there is often a coroner’s inquest, and it is associated at the same time with the other investigations, which makes it a little special.”*

*General Inspectorate of the National Gendarmerie: dialogue between internal and external bodies for oversight of the security forces*

**Pauline Caby**

Deputy in charge of security ethics, Defender of Rights, IPCAN member, France

The external oversight of security forces is a task that falls within the remit of the Defender of Rights. It is an independent administrative authority created by the constitutional review of 23 July 2008 and established by the organic law of 29 March 2011.

The Defender of Rights is not attached to any other institution established by the Constitution. They are appointed for a non-renewable and irrevocable six-year term by the President of the Republic, after a vote of the parliamentary assemblies.

With regard to the ethics of the security forces, Pauline Caby specifically pointed out that *“the oversight of the internal security forces is one of the missions of the Defender of Rights, who therefore carries out four others, and who has many officers to carry out these missions, 225 [...] but a very small number of these officers are entirely devoted to the oversight of external forces.”*

**General Alain Pidoux**

Lieutenant General, Head of the General Inspectorate of the National Gendarmerie, France

The General Inspectorate of the National Gendarmerie (IGGN) was established by decree in 2009 – at the same time as the National Gendarmerie was attached to the Ministry of the Interior. Its mission is to deal with all individual breaches involving all civilian, military, active and reserve personnel (i.e. almost 135,000 people), but also to conduct audits on how the services are functioning and to carry out risk management.

*“The internal oversight of the national gendarmerie, like the national police, is first and foremost the oversight of the immediate hierarchy, and it exercises the first level of oversight.”* In this respect, 2,277 disciplinary sanctions – ranging from a simple warning to removal from the staff list and termination of employment contracts – were given in 2020. *“The IGGN performs the second level of oversight for the most serious and sensitive acts.”*

Since 2014, the IGGN, like the national police, has had a platform for reporting misconduct by gendarmes that any individual can use.

The IGGN is an independent body, not directly attached to the Directorate General of the National Gendarmerie (*Direction générale de la gendarmerie nationale* - DGGN). In this respect, “the IGGN informs the DGGN of the breaches identified at the end of administrative investigations and audits”. Thus, the IGGN constitutes “a lever of efficiency for the Director General”, and the Director General, “as head of the central administration, must ensure the proper performance of the services and units” while reporting to the Minister of the Interior.

As part of its activities, the IGGN also reports to a number of external oversight bodies:

- firstly, the Defender of Rights and the *Contrôleur Général des Lieux de Privation de Liberté*;
- judges who supervise and monitor the investigations conducted by the gendarmerie’s service personnel, who also note the criminal investigation officers [*police judiciaire*];
- parliament, this oversight is carried out through hearings, committee inquiries and written and oral questions to government;

- the National Advisory Commission on Human Rights (*Commission consultative des droits de l'homme – CNCDH*), considered an independent administrative authority, which also appeals to the IGGN through its annual reports, but also calls on it to testify before it<sup>4</sup>;
- European and international bodies and institutions.

In addition, civil society, as well as journalists and the media, which play a particularly important role, notably due to the power of social networks, also observe the action of internal security forces.

*“The IGGN is intended to be a tool to maintain and strengthen the bond of trust between our fellow citizens and their gendarmes, and it is of course, in my opinion, the complementarity of the many controls I have just listed that guarantees their effectiveness, and therefore this trust between the public and the internal security forces.”*

### 3. The path of a complaint in the “ecosystem” of oversight of the security forces

The first session of the seminar was also an opportunity to present in a concrete way how mechanisms overseeing security forces function in Belgium, Quebec and France.

#### a. Handling the complaint

Committee P may act on its own initiative, at the request of Parliament, the Minister of the Interior, the Minister of Justice or any competent administrative or judicial authority. It can also act on the basis of a complaint from any citizen, but also from a police officer.

*“Committee P is therefore competent to handle complaints and reports it receives concerning the functioning, intervention, action or inaction of police services and their members. This may concern both individual behaviour contrary to police ethics and organisational or structural failings.”* (Kathleen Stinckens)

However, *“Committee P is not intended to be a complaints office”*. The main objective is not to serve the personal interests of the complainant, or to find individual fault, but rather to ensure that “each complaint is properly and conscientiously examined”, without the Committee itself necessarily dealing with all the complaints it receives.

As such, *“Committee P directs complaints to the most appropriate body to handle them”*:

- It may assign the complaint to its own investigation department, particularly complaints about structural problems relating to the protection of citizens’ rights and freedoms or the coordination or effectiveness of police services.
- It automatically forwards the complaint to the judicial authorities when it finds that a police officer has committed criminal offences.
- It may transfer the handling of the complaint to the line manager of the concerned police service if it considers that the complaint does not concern organisational failings or failings due to negligence or serious individual misconduct. In this case, the complainant may contest the findings of the investigation and ask Committee P to reconsider the complaint.

*“Committee P thus always has a view on how the complaint was handled.”* (Kathleen Stinckens)

Beside the handling of complaints, Committee P may also conduct oversight inquiries into the operation of police services, in order to have a wider influence on the work and practice within the

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<sup>4</sup> For example, in its [Opinion on Police-Public relations: Rebuilding trust between the Police and the Public](#), 11 February 2021, French only.

police services. *“These investigations cover a wide range of areas, including the functioning of an entire police force or a particular service, but they can also be thematic investigations, for example, an investigation into leadership and integrity in the aeronautical police”*. These investigations have three objectives:

- To examine how the police services perform their tasks;
- To point out possible failings or shortcomings;
- To make proposals and recommendations for the police and authorities.

The Quebec Police Ethics Commissioner can hear complaints from anyone, whether or not they have a direct interest. However, discussions are currently under way in Quebec to amend the law to remove the possibility of any individual filing a complaint.

When the Commissioner becomes aware of the complaint, a preliminary analysis is carried out to determine whether the evidence falls within the scope of security ethics. As a result of this analysis, several decisions can be taken:

- if the evidence does not fall within the scope of security ethics, the complaint will be dismissed;
- if the allegation is likely to constitute a criminal offence, the Commissioner will inform the police force which has jurisdiction to investigate;
- the Commissioner may also decide to investigate the allegations himself.

Both Committee P and the Police Ethics Commissioner have their own investigation departments.

Having decided to open an investigation, the Commissioner has to determine whether there is ethical misconduct, or whether they are able to discharge the burden of proof. When conducting an investigation, the Commissioner is not bound by the wording of the complaint. Thus, if the investigative services find evidence that may constitute ethical misconduct, even though it was not mentioned in the complaint, they may investigate this evidence. In the course of the investigation, the investigative services can summon various people and demand documents without a warrant. Thus, *“under Quebec law, if, for example, the witness does not want to travel, the Commissioner could send them a summons to appear before the Commissioner”*. Should the person refuse to cooperate, they could be held in contempt of court.

The Defender of Rights also has very broad conditions for the referral of cases: they can be referred to them directly, by a legal entity or individual, witness or victim, or indirectly, by national or European parliamentarians, or they can refer a case to themselves.

The Defender of Rights only conducts administrative investigations. In the event of a referral to the judicial authority, they must obtain the court’s permission to act. When they find evidence likely to be classified as criminal, they inform the judicial authority.

As part of their investigations, the Defender of Rights may also *“request administrative or judicial investigations established by the internal security forces, police or gendarmerie, which are therefore systematically communicated to them”* (Pauline Caby).

As an internal oversight mechanism, the IGGN has various operating procedures. It can conduct two types of investigations: judicial investigations and administrative investigations.

For the former, it is the judges, investigating judges or *Procureurs de la République* who refer cases to the IGGN. The investigations are then carried out by the staff of the criminal investigation office [*bureau des enquêtes judiciaires*].

For administrative investigations, the IGGN acts either at the request of the Director General of the National Gendarmerie or on its own initiative. As of 1 January 2021, administrative investigations must be carried out within three months.

Like the Police Ethics Commissioner or Committee P, if the IGGN becomes aware of a crime or offence, it reports it to the *Procureur de la République* under Article 40 of the Code of Criminal Procedure.

The Defender of Rights may also refer cases to the IGGN. In 2020, the Defender of Rights' departments sent 14 cases to the IGGN to obtain information. In the same year, 16% of the cases referred by the Defender of Rights concerning the conduct of security forces were related to the gendarmerie.

A judicial investigation, an administrative investigation and a referral to the Defender of Rights may exist at the same time.

*"We may have differences in how we assess situations, and I think it is very important to explain them, write them down, and even have direct dialogue, to remove any misunderstanding"* (Alain Pidoux).

#### *b. Decision-making power*

At the closing of the investigation, if the complaint is well-founded, Committee P may adopt recommendations, in order to ask the police officials to adopt the necessary measures. In the case of individual failings, for example, it may ask *"those in charge to consider speaking to the person concerned or pursuing the examination of the facts at disciplinary level or paying compensation for the damage caused"*. However, it does not have the power to impose disciplinary sanctions, or adopt decisions binding on the police, or even mediate in a dispute.

*"Committee P does not have disciplinary powers with regard to members of the integrated police force, so when a complaint concerns facts that may constitute a disciplinary offence or when facts that may constitute a disciplinary offence are found during an investigation, the competent disciplinary authority is informed to take the appropriate action."* (Kathleen Stinckens)

However, Ms Stinckens pointed out that as Chair of Committee P, she had the power to require the high disciplinary authorities to initiate an investigation. Thus, these authorities must examine if the facts are likely to lead to a disciplinary procedure and inform Committee P of the action taken.

Similarly, the Police Ethics Commissioner has no disciplinary or prosecution powers as such, so cannot impose sanctions. Following the investigation carried out by the Commissioner's departments, the Commissioner determines whether to bring the case – in whole or in part – before the aforementioned court, called the Police Ethics Committee. To that end, while the Commissioner cannot actually impose a sanction on the police officer concerned, they have the power to decide on whether to bring the case before the competent court to adopt that sanction. If the Commissioner decides not to summon the police officer concerned before the Police Ethics Committee, the complainant may then request a review before the Committee.

The particularity of the Quebec system is illustrated in the transformation of the role of the Police Ethics Commissioner. If, before the case is brought before the Committee, the Commissioner is not a party to the case and is tasked with investigating the facts, after having summoned a police officer, the complainant becomes a mere potential witness, and the Commissioner will play the role of the complainant.

Following the summons, and after a hearing, the Committee may decide to acquit the police officer(s) concerned or find them partially or fully liable for ethical misconduct. In this case, the Committee can impose several measures: dismissal, suspension, demotion, or reprimands.

In France, like their counterparts in Quebec and Belgium, the Defender of Rights does not have the power to order or give disciplinary sanctions. They make recommendations to the services concerned to ensure that appropriate measures are taken. These recommendations are not binding on the hierarchical authority, but this authority must nevertheless explain why they have not been followed.

The IGGN cannot issue binding decisions either, it has no decision-making powers. However, like the IGPN (*Inspection Générale de la Police Nationale* [General Inspectorate of the National Police]), it can adopt recommendations for the direct line manager of the gendarme concerned.

#### 4. The variety of powers of oversight mechanisms

##### a. Committee P: Dual investigative powers

###### **Kathleen Stinckens**

Chair of Committee P, IPCAN member, Belgium

Committee P has its own investigation department. By establishing Committee P, *“the legislator granted Committee P’s investigation department (the “Investigation department P”) an investigative remit that is twofold”*:

- firstly, investigations conducted following complaints, under the authority of Committee P;
- secondly, judicial investigations carried out at the request and under the exclusive supervision of the judicial authorities (Crown Prosecutor or investigating judges).

The Director General of Investigation Department P is responsible for the Committee’s relations with the judicial authorities.

According to Kathleen Stinckens, Committee P’s twofold investigative remit represents both a difficulty and an opportunity.

An opportunity first of all, because Committee P has an observatory function for the police services and aims above all to identify structural failings in order to make recommendations. While, in order to observe the separation of powers, a distinction is made between criminal investigations and other Committee P investigations, *“the knowledge gained from criminal investigations can be processed in a completely depersonalised way in order to contribute to the broader, overall picture of how the police work”*. In addition, if Committee P’s investigation department finds organisational failings during a criminal investigation, they may, under certain conditions, inform Committee P, which may lead to a separate oversight inquiry.

*“This duality certainly allows our organisation to have an even more comprehensive and complete picture of how the police work.”*

However, this duality also entails certain difficulties, particularly with regard to the functioning, composition and recruitment of members of investigation department P.

*“On the one hand, for judicial tasks, it is essential to be able to count on investigators with experience and expertise in judicial investigations, hearings and special investigation techniques. On the other hand, the proper execution of non-judicial investigations and the formulation of realistic proposals and recommendations that can be implemented in the field require not only a great deal of*

*knowledge of the police's organisation and police matters, but also experience in methodology and experience of the field and the problems that arise there."*

Thus, in order to stay in touch with the realities on the ground, and to benefit from members with specialist skills, the investigation department is made up of both staff directly from the police services – temporarily seconded to Committee P's investigation department or no longer linked to the police – and staff from other backgrounds, such as academics.

This composition, which results from the willingness to stay connected with the reality of the field, is the source of criticism which points to a lack of independence and impartiality – unjustified according to Kathleen Stinckens.

*b. Conciliation: a specific feature of Quebec*

**Maître Mario Coderre**

Senior Partner of Roy Bélanger Avocats, Quebec, Canada

The possibility of choosing the conciliation route is one of the particular characteristics of the Quebec police oversight body. Thus, after the preliminary review, the Police Ethics Commissioner may send a file to the conciliation body in order to establish dialogue between the citizen and police officer concerned. In the most serious cases, the Quebec Police Act stipulates that conciliation is mandatory. This mediation is confidential.

According to Mario Coderre, this conciliation experience has great educational value, particularly in terms of restoring trust between citizens and police forces.

Furthermore, he also argued that in the context of overloaded institutions, where the handling of complaints is clearly too long, with negative consequences for both the complainant and the police officer involved, as well as a loss of confidence in the system, conciliation can be a solution.

This mediation between the citizen and the police officer concerned has a particularity: the conciliation cannot lead to the negotiation of financial compensation.

If conciliation fails, the Commissioner may decide either to dismiss the case, and therefore not open an investigation, or to open an investigation.

**I. The independence and impartiality of external mechanisms: guarantees and implementation**

The need for greater impartiality has led to the emergence of external police oversight bodies. The creation and development of such organisations sometimes follows triggering events that reveal the difficulties sometimes encountered by public authorities in implementing effective oversight of their own services.

Thus, the second round table of the seminar provided an opportunity to reflect on the conditions of impartiality and independence that define IPCAN members, but also the conditions of their implementation in the concrete functioning of these oversight mechanisms.

**Moderation and introduction: Ms Olena Petsun**, Office of the Commissioner for Human Rights, Council of Europe

- **Ms Marie Anderson**, Police Ombudsman for Northern Ireland, IPCAN member, Northern Ireland
- **Mr Andreas Pottakis**, the Greek Ombudsman, IPCAN member, Greece (via video)

- **Ms Charlotte Storgaard**, Independent Police Complaints Authority, IPCAN member, Denmark
- **Prof. Massimiliano Mulone**, Researcher, International Centre of Comparative Criminology (ICCC), Quebec, Canada (via video)

## 1. Introduction - Independence and impartiality: defining and measuring elements

### a. Council of Europe perspective

#### **Olena Petsun**

Office of the Commissioner for Human Rights, Council of Europe

From the Council of Europe's point of view, oversight by national mechanisms is important. This meets member states' obligation to ensure that an independent, impartial and prompt investigation, including victims and their representatives in the process, is carried out in the case of the police's violation of a right protected by the European Convention on Human Rights.

According to Olena Petsun, the Office of the Commissioner for Human Rights, which is intended to ensure that this impartiality and independence are observed, generally find shortcomings in investigations concerning the police.

In 2009, the Office of the Commissioner for Human Rights of the Council of Europe published an opinion concerning independent and effective determination of complaints against the police<sup>5</sup>. Emphasising the essential role of external mechanisms and their independence and impartiality, the Commissioner's office noted the case law of the European Court of Human Rights. The European Court has given several decisions recently, notably concerning Articles 2 and 3 of the European Convention on Human Rights, which concern respectively the right to life and the prohibition of torture and inhuman and degrading treatment<sup>6</sup>. The Commissioner's office recommended the creation of such mechanisms for those Member States that had not yet established them.

Olena Petsun also referred to a 2017 report<sup>7</sup> concerning external police oversight mechanisms. She highlighted several comments on these mechanisms in Council of Europe member states. Firstly, in many states, external oversight mechanisms are absent or dysfunctional. Furthermore, there are not always the legal bases necessary for the establishment of such independent and impartial bodies. In many of these mechanisms, complaints are not dealt with within a reasonable time frame, and there are real risks of reprisals. Finally, in places of deprivation of liberty, "people were not aware of the possible recourse available and that it was difficult to file a complaint or that, in general, those in custody did not wish to file a complaint for fear of reprisals". The report also noted that there was a lack of trust in the complaints process.

### b. Elements intrinsic to independence and impartiality

External police oversight mechanisms should be independent, impartial and autonomous, and should be perceived as such by all stakeholders.

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<sup>5</sup> [Commissioner for Human Rights of the Council of Europe, opinion concerning independent and effective determination of complaints against the police, CommDH\(2009\)4, 12 March 2009.](#)

<sup>6</sup> See for example ECHR, *Castellani v France*, no. 43207/16, 30 April 2020; *Chebab v France*, no. 542/13, 23 May 2019.

<sup>7</sup> See the Council of Europe report [Police oversight mechanisms in the Council of Europe member states, 2017.](#)

With regard to independence, Olena Petsun cited a range of components that are inherent in independence, and necessary to assess the independence of institutions: the legal basis for establishing the institution, the procedure for appointing or dismissing people who work for these institutions, how people who work for these institutions are chosen, job security and employee protection, diverse representation in decision-making, but also procedures that allow communication with all groups in society, and the allocation of resources, whether human or financial.

In addition, Olena Petsun also referred to the notion of accountability, particularly that the accountability of an oversight mechanism should not lead to seeking the approval of government authorities, or other powers.

Regarding impartiality, according to Olena Petsun, it is based on fair and just treatment, and on decisions that are based on independent criteria.

Finally, transparency is also key to impartiality. It is composed of several elements: *“regular and public information, transparency of the decision-making process of the relevant authorities, cooperation with relevant actors, civil society, and national institutions, and also accessibility and public awareness”*.

2. The added value of external oversight mechanisms for the security forces in terms of independence and impartiality
  - a. *The context for creating an external oversight mechanism: an indicator of the need for independence and impartiality*

### **Andreas Pottakis**

The Greek Ombudsman, IPCAN member, Greece

For Andreas Pottakis, the primary reason for creating an independent police oversight mechanism was pressure from the Council of Europe on the Greek government. As part of the cases that had been submitted to the European Court of Human Rights, it had become apparent that the disciplinary bodies of the Greek police services were unable to investigate these cases. The Greek government was therefore asked to set up an independent body to investigate all cases of misconduct, not only by the police, but also by all law enforcement agencies (coastguards, prison staff, firemen and women, etc.).

*“In general, the public has the impression that the police are trying to cover up and conceal the offences committed by the police, and that they do not try to investigate police wrongdoing. The fact that we have the opportunity to have a right to review every investigation involving the police has increased public confidence in the police and in the process itself.”* (Andreas Pottakis)

In 1997, the Greek Ombudsman started to handle complaints related to misconduct by the police. This Ombudsman was able to make recommendations, write reports, and represent the mediation institution in Greece.

In 2016, government and Parliament passed new legislation to give the Ombudsman a range of additional powers that now allow it to act as a truly independent external oversight mechanism, fully equipped to conduct an effective investigation and judicial process involving the police.

In 2020, the Ombudsman’s statute was amended, with the support of the Council of Europe.

### **Charlotte Storgaard**

Independent Police Complaints Authority, IPCAN member, Denmark

From the 1970s, a debate emerged in Denmark about ensuring that complaints against the police force were dealt with effectively and as impartially as possible. In 2006, the Danish Minister of Justice decided to set up a committee to examine existing methods of dealing with complaints against the police, due to a number of serious cases, including shootings involving the police.

In the discussions, it was mainly pointed out that due to the specific nature of the Danish system, the police were both judge and party in investigations involving the police. The police and the prosecution services are two branches of the same organisation; however, the prosecution service was responsible for investigating complaints against the police.

Consequently, in 2009, the committee produced a report in which the majority of its members recommended changing the existing police oversight system.

Subsequently, the Independent Police Complaints Authority was established by Act No. 404 of 21 April 2010, which came into force on 1 January 2012. This authority is responsible for handling complaints and investigating violations and offences committed by the police, as well as the use of force resulting in death or serious injury.

### **Marie Anderson**

Police Ombudsman for Northern Ireland, IPCAN member, Northern Ireland

In Northern Ireland, the creation of a Police Ombudsman was linked to the region's history, and in particular the troubles in Ireland since 1969. The main difficulty was the community's lack of trust in what was the Royal Ulster Constabulary, including numerous assassinations and other tragic incidents.

These events led to the creation of the Police Ombudsman in 2000, an independent external police oversight body. Previously, investigations of complaints against the police were conducted by other police officers.

This body deals with all complaints against the police, the National Crime Agency, international police and border police, but also against the paramilitary. This remit is due in part to the failings of previous institutions and to Northern Ireland's history, where there were particular issues between the police and the paramilitary in the past.

As an independent body, the Police Ombudsman can investigate past events, such as assassinations.

#### *b. Assessment of the independence of oversight mechanisms and good practices*

First of all, the Greek Ombudsman is a constitutional authority. This constitutional mandate is essential for the independence of an external oversight mechanism, as it gives it independence in respect of its operation, resources and personnel. The Ombudsman is appointed by Parliament by a qualified majority. However, this majority was reduced in the last constitutional review.

The Danish Independent Police Complaints Authority is independent of the Ministry of Justice, the State Prosecutor and the police. The body is governed by the Police Complaints Board, chaired by a judge and, amongst others, has at least a lawyer in his Board. This Complaints Board establishes the rules applicable in proceedings before the Authority.

The Queen appoints the Police Ombudsman for Northern Ireland on the recommendation of the Prime Minister, and not the Northern Ireland Assembly, despite this being suggested by Marie

Anderson. The Ombudsman is part of the Ministry of Justice and must submit an annual report to the Ministry.

*“I think it is important that there is accountability, a principle of accountability, but I think I should have closer links with the Assembly, like in Greece, where this authority is much more linked to Parliament.”* (Marie Anderson)

Thus, the Greek Ombudsman is independent of the executive. It does not receive instructions, and it may conduct disciplinary procedures and has sanctioning powers, which it exercises independently. It works in cooperation with the Greek police force, but separately. According to Andreas Pottakis, the impartiality of a body also depends on the methodology applied, and one important factor consists of the case law of the European Court of Human Rights. The Ombudsman uses these decisions to develop its arguments.

The Danish authority cooperates with the police. There was also an internal debate about the independence of former police officers as investigators. However, the institution concluded that the professional skills of these investigators were particularly important. Nevertheless, the authority is trying to find independent sources of training.

The Police Ombudsman’s office has judicial powers. For example, they can arrest police officers. As proof of its independence, the Police Ombudsman can refer cases to itself. It works in cooperation with the other oversight mechanisms in a complementary way.

In terms of transparency, while the Greek Ombudsman does not release information on ongoing cases due to confidentiality rules, it does publish reports on all investigations carried out. It also informs police forces and government of any violations and breaches of its recommendations.

In Denmark, the Independent Authority issues an annual report, which is published on its website and sent to the Ministry of Justice and Parliament.

*“One of the most important factors in relation to trust and transparency is, in my opinion, the fact that our work is carried out in a professional and serious manner. There are a number of articles, also on subjects we consider important, and we provide the public with files and information on complaints and on cases of police misconduct.”* (Charlotte Storgaard)

### 3. Challenges and future prospects for the impartiality and independence of oversight mechanisms

#### *a. Human and financial resources*

Andreas Pottakis pointed out that one of the difficulties regarding the independence of the Greek Ombudsman was the inability of the institution to recruit its own staff. For example, due to the tax adjustment plans, the Ombudsman must apply the recruitment procedure applicable to the entire public sector.

He also pointed out that recruitment procedures are time-consuming, affecting the quality and quantity of the work produced by the institution, and therefore the public’s perception of it.

#### *b. A lack of actual power*

It emerged from the discussions during the round table that IPCAN members felt that they lacked the powers and authority to carry out their tasks.

In Greece, Andreas Pottakis emphasised the need to enhance the mechanisms and powers of the Ombudsman so that it can carry out quasi-criminal proceedings. He cited, for example, the impossibility of issuing detention orders, or the need for unrestricted access to police databases.

*“We currently depend on the goodwill of the Greek authorities. We rely heavily on the level of cooperation and the level of trust that we have in the police.”* (Andreas Pottakis)

This dependence on the goodwill of the police authorities also exists in Denmark. The Danish Independent Authority does not have the power to impose sanctions. It is the National Police Commission that has the authority to decide on and apply disciplinary sanctions.

*“In general, police forces comply with the decisions taken by the independent oversight authority, which means that there is an important link between the disciplinary sanctions imposed and the relevant complaints. If there is a difference of opinion on disciplinary sanctions, this could be a direct obstacle for the independent oversight authority.”* (Charlotte Storgaard)

Similarly, while the Police Ombudsman for Northern Ireland can make recommendations to the Crown Prosecution Service or the Police Standards Department and initiate criminal proceedings, it cannot initiate disciplinary proceedings or impose sanctions.

Access to information is also an important issue for the oversight mechanisms of the security forces. In this regard, Marie Anderson has been working on a memorandum of understanding on access to information, in order to have direct access to police databases, but also to have greater transparency on the recommendations made by the Ombudsman.

### **The impact of complaints on police officers**

Massimiliano Mulone

The seminar presented the results of a study conducted by Massimiliano Mulone and Rémi Boivin on the consequences of complaints on police officers, both personally and professionally. This study was conducted on 71 police officers who had received a complaint in the five years prior to the study.

#### *Polarised views*

Firstly, the study showed that there was a deep divide between complainants and police forces in how they viewed complaints against police officers, as well as a negative perception of the police oversight system on all sides. On the one hand, the complainants considered that a complaint would be pointless because the police had impunity. On the other hand, the police considered that they were excessively monitored, that they received many frivolous or malicious complaints, and that they were victims of “anti-police” sentiment.

These opposing views can be explained. If we look at the complaints that resulted in a sanction, in Quebec only 20 out of 1,800 complaints resulted in a sanction. However, if we put the number of complaints in perspective with the number of police officers in Quebec, i.e. 15,000, this means that about 12% of the police force receives a complaint each year.

While sanctions are rare, complaints are common. However, the study showed that these complaints, although they do not necessarily lead to a sanction, have a real impact. Consequently, these complaints have a moderate impact on about 7 out of 10 police officers and a very significant impact on a third of them. These consequences vary: anxiety, mood disorders, resentment towards

the employer, major depression, breakdown of relations, loss of trust in peers or the employer, questioning the job, demotion, etc.

### *The effectiveness of complaints against police officers*

In Quebec, the Ethics Commissioner's primary mission is to protect the public, but the Commissioner is also tasked with strengthening the professional standards of police officers. However, the results of the study are not positive.

The large majority of police officers say that following a complaint, they have not changed their way of doing things in any way. Moreover, when change does occur, it is described as negative, in line with discourse on police disengagement. In this respect, the police officers consider that since they have received a complaint, they intervene much less often in situations that would nevertheless merit intervention.

There are several reasons for this discourse. First of all, there is a strong sense of no guilt, and therefore a deep sense of injustice. Thus, the vast majority of police officers interviewed considered that they were not at fault, even if it gave rise to a complaint, and whether or not there was a sanction.

But it goes further than the absence of guilt: for some police officers, the complaint does not simply produce worse police practices, it even becomes proof of a police officer's professionalism.

*"The complaint that should convey to someone that: "You did not act appropriately", in fact, conveys to the police, and is interpreted by the police as proof that, on the contrary, they were very good police officers, because they put themselves at risk of receiving a complaint in a situation that merited police intervention, despite the risk of a complaint."*

This study then highlighted the challenge of the legitimacy of police oversight mechanisms, and in particular the impact of this legitimacy on the effectiveness of their action.

## **II. The effectiveness of oversight mechanisms: achievements and obstacles**

**Moderation: Ms Sarah Green**, Regional Director for South East England, Independent Office for Police Conduct, IPCAN member, UK

- **Ms Irena Ivanovska**, Head of Communication and Coordination, European Council of Police Trade Unions
- **Ms Anne-Sophie Simpère**, Advocacy Officer, Freedom Programme, Amnesty International France
- **Mr Pavlo Pushkar**, Head of Division, Department for the Execution of Judgments of the European Court of Human Rights, Directorate General for Human Rights and the Rule of Law, Council of Europe

The aim of this round table was to examine the notions of the effectiveness and efficiency of external oversight mechanisms for the security forces, and in particular to identify the objectives in this area, the means to achieve them, but also the evaluation tools and possible indicators.

It was interesting to invite not only IPCAN members to this session, but police representatives, European institutions and NGOs in order to have the perspective of other stakeholders on the work and effectiveness of external mechanisms.

1. Introduction - The notions of efficiency and effectiveness: definition and measurement tools

*“We are calling for an effective oversight mechanism, as police accountability is absolutely essential if human rights are to be upheld.”* (Fanny Gallois)

According to Fanny Gallois, Head of the Freedom Programme at Amnesty International France, *“external oversight mechanisms are essential, as they are better equipped to conduct objective investigations, avoiding the kind of subjectivity that we see with internal mechanisms. We often see that the results of external investigations are much more credible than the results of internal investigations. In general, external mechanisms help build trust in the policy.”*

However, for these mechanisms to function properly and build public confidence in institutions, they need to have certain guarantees and characteristics - although the specific features of national contexts need to be taken into account. Among these guarantees, Fanny Gallois mentioned:

- The presence of a legal basis for the creation of such a mechanism
- A clear mandate for police oversight
- A broad mandate including policy analysis
- The possibility to analyse patterns of abuse
- Accessibility of mechanisms to the public without the need to refer to other bodies beforehand
- The possibility for these mechanisms to conduct investigations and participate in policy reviews
- The funds needed to ensure they function properly.

Pavlo Pushkar, Head of Division of the Department for the Execution of Judgments of the European Court of Human Rights (SERVEX), noted that some of these essential criteria have been established by the European Court of Human Rights in judgments concerning judicial investigations: necessary resources, victim participation and publicity of investigations.

However, in addition to the specific characteristics of judicial investigations, it is also essential to consider the binding or non-binding nature of the decisions given by external oversight mechanisms. In this respect, *“it would be interesting to analyse in depth the consequences of recommendations or binding or non-binding decisions”* (Pavlo Pushkar).

In order to assess the effectiveness of external police oversight bodies, one solution may be to conduct a survey with the public. The Independent Office for Police Conduct (IOPC) conducted such a survey, which Sarah Green, Regional Director for the South East of England, presented at the seminar.

In this survey, several elements were used to assess the effectiveness of the organisation:

- the number of investigations completed;
- the number of appeals envisaged;
- the result of the appeals;
- the time it takes to process an investigation or appeal;
- the number of cases transferred to the Crown Prosecution Service;

- the number of cases leading to a conviction;
- the number of disciplinary sanctions;
- the number of recommendations made and their subject;
- the police's response to recommendations;
- the number of complaints filed against the IOPC.

While the survey results showed that the majority of the public in England and Wales were satisfied with the work of the authority, the results differed when it came to young people and ethnic minorities, who had less confidence in the impartiality of the police, but also in the organisation.

One of the questions asked was what would increase confidence in the IOPC's oversight work.

*"The most common response was that they needed to feel that they were taken seriously, that they were listened to, and that there needed to be a simple and straightforward complaints process and an independent body for processing these complaints and that the outcome also needed to have an impact on police methods and lead to change. It is less common for the public to want evidence of sanctions, although there are many people in ethnic minorities, particularly the Black minority, who want sanctions in place."* (Sarah Green)

The IOPC also conducted a comparative survey of oversight bodies to understand how they were addressing the issue of recommendations. *"The result showed us that some of our organisations cannot make recommendations. Or may make recommendations, but we have few resources to implement these recommendations."* (Sarah Green)

## 2. Obstacles to the effectiveness of police oversight mechanisms

In order to assess and reflect on effectiveness, it was essential to address the challenges faced by external police oversight mechanisms. Several challenges of a different nature emerged from the exchanges between the speakers.

First of all, one of the major difficulties was organisations' lack of power. This is particularly the case when they can only make recommendations and have no power to impose sanctions.

*"Most of the IOPC recommendations are accepted, which is a good starting point. However, as I said to you about our powers, we can only make recommendations and ask for a response. The police may reply to us saying: "Thank you very much, but we will not be implementing your recommendations." So it's a little bit frustrating"* (Sarah Green)

In addition, the lack of resources of the oversight mechanisms also affects their effectiveness in carrying out their tasks. This lack of financial and human resources is part of a wider phenomenon of an overloaded judicial system, which has an impact on the time taken to process cases and leads to extremely lengthy and costly proceedings.

Beyond the two issues of organisations' lack of power and resources, according to Sarah Green, *"the biggest obstacle is that people don't complain"*.

*"If people don't trust the system, if they don't come and tell us, if they don't complain, how are we going to find out about these violations, this conduct? We need to create an environment where people have confidence in the system and will come to us to make a complaint. And it's getting more and more difficult as we live in an era where the information space is unregulated."* (Sarah Green)

*"Recently, a police operation was launched against police officers in France who had used force and injured people. Well, these people did not testify. These victims did not testify because they thought it*

would be pointless. And this is something that is not uncommon. It demonstrates people's lack of trust, especially young people, in the police and in the institutions of their country. If there was an independent investigation mechanism that could act quickly, that had the resources necessary, and if people were aware of its existence, if they trusted it, well, that could overcome at least some of these obstacles. But it must also be possible to make progress on these issues. Therefore, the recommendations of these oversight bodies must be implemented. And it is the responsibility of all the institutions involved: the hierarchy, the judicial system, political institutions, etc." (Fanny Gallois)

Finally, the police's lack of confidence in the oversight mechanisms is a challenge to their effectiveness.

*"Over the years, we have been given the authority, the power to force the police to speak to us. They are not suspects, they are witnesses. But nevertheless, we had to get special powers to force them, to make them talk to us. Of course, the police cooperate in many investigations, but there are still some special cases where it is very difficult to encourage the police to testify."* (Sarah Green)

### 3. Strengthening institutional cooperation to rebuild trust

#### a. With police forces

*"Accountability at police level requires the participation of a large number of actors, many representatives of civil society, government, police bodies, and many other police officers, but especially the police themselves."* (Irena Ivanovska)

From the point of view of the European Council of Police Trade Unions, represented at the seminar by Irena Ivanovska, police oversight mechanisms are an integral part of the legislative and regulatory system for exercising and defending rights.

However, in order to establish a proper mechanism and real trust, there must be a law enforcement training system.

*"The aim is to have external mechanisms that have a positive influence on internal mechanisms. But for all this to work, police officers and police forces must be properly guided and trained in a very professional way and have appropriate working conditions."* (Irena Ivanovska)

In carrying out its tasks, it is of the utmost importance, according to Irena Ivanovska, that the police cooperate not only with institutions, but also with all relevant stakeholders: the prosecution service, local authorities, NGOs, human rights institutions, police unions, etc. This cooperation helps to improve the functioning of police forces and overcome problems arising from police operations. For example, it may be possible to propose legislative change.

*"Institutional cooperation between all stakeholders is a driver of change, of changes in society. However, if there is no institutional support, if there is no coordination, in the end we will end up with improvised and isolated solutions that will not lead to beneficial change."* (Irena Ivanovska)

#### b. With civil society

Civil society, and in particular non-governmental organisations (NGOs), represented here by Amnesty International France, play an essential role in monitoring the security forces.

According to Fanny Gallois, NGOs have two main ways of contributing to this monitoring:

- firstly, by monitoring and documenting police practices (collecting information, writing reports, educating the public about human rights violations, challenging governments and institutions, speaking in court);
- secondly, advocacy work to hold the police accountable and to establish investigations into human rights violations committed by police forces.

c. *With the Council of Europe*

SERVEX's mission is to assist Member States and the Committee of Ministers with enforcing judgments of the European Court of Human Rights, including identifying measures that could be adopted in line with the judgments given.

*"It's a flexible process that also looks to the future. Because, if we take events that happened some time ago, the state has an obligation under the convention to ensure that these events do not happen again. And it must therefore establish a system that will prevent similar violations in the future."* (Pavlo Pushkar)

In this context, one of SERVEX's recommendations to a Member State found guilty by the European Court of Human Rights may be the creation of an external body. Pavlo Pushkar gave the example of the surveillance carried out in the case of *Identoba and others v. Georgia*<sup>8</sup>. The debate focused on police actions, including homophobic attacks, during demonstrations. SERVEX called for the establishment of a specialist investigative body.

*"[...] The oversight role of national human rights institutions or bodies has been enhanced in the decisions of the European Court of Human Rights."* (Pavlo Pushkar)

For the Council of Europe, the existence of national oversight mechanisms is also important, as it facilitates the analysis of practices and policies in a state. Indeed, *"statistics and research into police practices, which are the result of the work of regional and national partners, are very useful and can help to improve practices among members"*. The recommendations made by these mechanisms can also constitute indicators.

Furthermore, Pavlo Pushkar pointed out that under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements<sup>9</sup>, a body such as IPCAN may refer matters to the Committee of Ministers, in order to submit recommendations.

4. Transparency and accessibility of data: two issues for police forces and oversight mechanisms

Accurate, complete and accessible information and data on police conduct and practices is essential for oversight mechanisms. For example, the IOPC has access to data on stop and searches, or the results of investigations.

It is therefore essential that police oversight mechanisms have data to assess the conduct and performance of police services, but also that they produce data themselves in order to assess their own effectiveness.

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<sup>8</sup> ECHR, *Identoba and Others v. Georgia*, No. 73235/12, 12 August 2015.

<sup>9</sup> Committee of Ministers, *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, adopted on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1,275th meeting of the Ministers' Deputies.

*“The existence of this data is important, but what is also important is the public’s access to this information.” (Sarah Green)*

In addition, Pavlo Pushkar and Sarah Green also mentioned the importance of information flow and good practices. In this respect, the Committee of Ministers is a mechanism for police forces to share good practices and methodologies, and much information is available online.

*“We have newsletters where we talk about situations where the police have done particularly well, where the police have had very good results, where the methodology has been very useful. So we do more than just identify abuses. Unfortunately, the media do not necessarily follow us.” (Sarah Green)*

#### 5. Going beyond individual responsibility: the systemic approach to organisational issues

*“If there is a violation, an exception which is a violation that is not repeated, this type of violation is easier to resolve at national level. But we have a number of cases where the Court has established that the violation, the behaviour related to these violations, the abuses, the ill-treatment, as well as other forms of abuse that are related to the violations of various rights, these kinds of violations are due to systemic reasons.” (Pavlo Pushkar)*

Pavlo Pushkar emphasised the essential role of international supervisory mechanisms, such as the Committee of Ministers, in identifying systemic problems and finding solutions to prevent them.

*“If you take the systemic approach as opposed to the case-by-case approach, it is essential to make police officers accountable for their actions to avoid further violations. But we must go beyond individual responsibility.” (Fanny Gallois)*

Thus, it is important that national external police oversight mechanisms are also able to analyse systemic issues, police practices, and the causes leading to offences, in order to enable them to make appropriate recommendations to effectively improve law enforcement behaviour.

With this in mind, Sarah Green gave the example of “super-complaints”, filed by civil society, which the IOPC can receive, and which allow for better detection and understanding of systemic problems than individual complaints. These complaints are based on the large number of complaints filed for various violations.

### Closing comments

- Justice **Mary Ellen Ring**, Chair of the Garda Síochána Ombudsman Commission of Ireland

The study of the various missions and parameters of the national external police oversight mechanisms has made it possible to address the need to maintain their impartiality vis-à-vis the police services in different countries. The results of the POLDEM study highlighted the differences between these organisations, but especially the importance of them having sufficient financial and human resources to be able to carry out their various mandates, as an organisation’s lack of capacity undermines society’s trust in it.

*“In Ireland, we have more than 14,000 police officers and the Garda Ombudsman has only 42 investigators. We have a budget of just over €11 million, while the police services have a budget of 17 million. The funding of bodies that handle complaints against the police should be financed uniformly in Europe.”*

Regarding the various methods of appointing the Ombudsman, IPCAN members, however appointed, work towards their independence. However, for some, many challenges remain: inability to recruit their own staff, lengthy recruitment processes, challenge of accessing information held by the police, issues related to the possibility of investigating.

Similarly, the importance of including the police in discussions on effective oversight mechanisms must be recognised. Their investigations and processes demonstrate, for the most part, that the police follow standards and good practices. Independent mechanisms can assist and help police bodies and police oversight bodies, which are often seeking to improve their practices.

Finally, the work of the European Court of Human Rights clarifies the judicial and legal situation and provides the necessary sources for creating good procedures, and indirectly supports the transformations that oversight mechanisms have long sought from their national institutions. The Court is thus an important ally for investigative mechanisms.

*“We hope that police activities can move beyond the monitoring by society.”*



# IPCAN

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