



The "Role of Independent Organisations in Matters of Security Ethics"

Synthesis Report of Seminar, 27 and 28 of May 2013

Speakers:

- *Mr Claude SIMARD, Ethics Commissioner (Québec)*
- *Mr Nicholas LONG from the IPCC - Independent Police Complaints Commission (England and Wales)*
- *Ms Kirsten DYRMAN, Director of the IPCA - Independent police complaints authority (Denmark)*
- *Mr Emile DEJEHANSART, magistrate, member of Belgium's Committee P.*
- *Ms Carmel FOLEY, Commissioner within the Garda Síochána Ombudsman Commission (Ireland)*
- *Mr Jaanus KONZA, councillor to the Chancellor of Justice (Estonia)*
- *Ms Carmen MARIN, technical adviser to the Defensor del Pueblo (Spain)*
- *Mr Fabrice KELLENS, deputy executive secretary to the CPT (European committee on the prevention of torture)*

Topic 1: Disciplinary penalties

Introductory comments by Ms Françoise MOTHEs

Speech by Mr Claude SIMARD: "The Police Ethics Commissioner in Québec"

Behaviour by Québec police officers considered not to be in accordance with the Québec ethics code may result in the following penalties:

- warning,
- reprimand,
- official warning
- suspension, with maximum 60 days without salary,
- demotion,
- discharge or period of incapacity to act of 5 years or more, in case of resignation, retirement or release.

These penalties are pronounced by the Ethics Committee, which is the jurisdictional body to which matters are referred by the Québec Police Ethics Commissioner.

The Québec Police Ethics Commissioner receives and examines complaints made by anyone against police officers, wildlife protection agents, special constables, traffic controllers and investigators from the UPAC (permanent anti-corruption unit).

It does not cover disciplinary matters (conflicts between police officers and their hierarchy), which are dealt with internally.

Mr Claude SIMARD states that there is much racial profiling in Québec and that numerous referrals concern the subject.

Plaintiffs can lodge a complaint within a period of one year from the date of the event or knowledge of the event giving rise to the complaint.

After having acknowledged receipt of his/her complaint within 5 days, the Commissioner makes a preliminary analysis of it, then, within 40 days, informs the plaintiff of any action subsequent to his/her complaint. Several orientations are possible:

- rejection of the complaint, if it does not fulfil the conditions for admissibility;
- conciliation procedure. Conciliation is the rule except for cases "of public interest" (with death or serious injuries inflicted on the person, or concerning situations where public trust is seriously compromised). In cases where conciliation fails, the case may be sent for investigation or closed;
- the matter may be referred to the appropriate police body if the Commissioner considers that a criminal offence has been committed;
- investigation (case of public interest). Following investigations, if the complaint proves to have no basis in law, or be frivolous or vexatious, it is rejected. If, however, the complaint is justifiable, the commissioner may summon the police officer before the Ethics Committee or transfer the case to the Director of Public Prosecutions.

Hearings of the Ethics Committee are public and its judgements may be appealed.

In case of a criminal investigation concerning the same events, the Commissioner will suspend his/her investigation and will only resume at the end of the criminal investigation. In case of a

criminal conviction, the Commissioner may spare itself from performing the investigations and be content, during the Committee hearing, to submit the criminal judgement, which will be valid as both the investigation and proof of the exceptional behaviour.

The Commissioner is responsible for overseeing the application of disciplinary penalties imposed by the Committee. All police bodies cooperate without any difficulty in the application of these penalties, including the police unions. The police officer is represented, it being emphasised that in most cases, the police officer's lawyer is chosen by the union and paid for by the employer.

A police officer may request his/her conduct to be excused:

- within a period of 2 years after the implementation of a warning, a reprimand or an official warning.
- within a period of 3 years after the implementation of a suspension or demotion.

Requests for excuse are not possible for acts having led to discharge or release.

From a statistical point of view:

- 60% of complaints received by the Québec Police Ethics Commissioner are rejected after preliminary examination,
- 721 conciliation actions were awarded for 2011/2012, and nearly 80% of them were successful.
- 148 cases were the subject of "investigation" procedures in 2011/2012.

The Code of Ethics of Québec (CEQ) contains obligations similar to those to which French police officers and gendarmes are subject, notably (non-comprehensive list):

- the obligation for probity (Article 8 of the CEQ)
- the requirement for judgement in the use of weapons and any other piece of equipment (Article 11)
- the obligation for impartiality (Article 9).

Québec police officers are also required to behave in such a way as to preserve the trust and respect that their function requires (Article 5 of the CEQ). Thus, the police officer must not behave in a discriminatory or disrespectful manner, just as he/she must not fail to, or refuse to, identify himself/herself using an official document when a person requests him/her to do so (this last point raises a difficulty because there is no obligation to carry an official document).

Likewise, the police officer must avoid any form of abuse of authority, such as threats or intimidation (Article 6 of the CEQ), respect the authority of the law and the courts (Article 7 of the CEQ), exercise the rights of all persons placed in his/her custody and avoid showing him/her any indulgence (Article 10)

Debate: Mr Nicholas LONG stated that the IPCC is unfortunately perceived as an enemy by the English and Welsh police forces and unions. In his opinion, the IPCC system is not currently satisfactory and Mr LONG is campaigning to further improve the evaluation of police officers with regard to their professional performance. Mr LONG had also argued for the identification of police officers in London, which is currently in place.

Ms Kirsten DYRMAN spoke to state that there was good cooperation with the Danish police services on penalties and that the Commissioner decides on disciplinary measures based on the opinion of the IPCA, which is a totally independent body.

Mr Emile DEJEHANSART spoke to state that in Belgium, the Committee P must give an opinion within 6 months of the complaint, whatever the time when it is registered. Also, the Committee P, in

contrast to Québec, only very exceptionally waits for the judgement to impose disciplinary penalties. Lastly, in Belgium, the disciplinary law provides for the two lightest penalties to be deleted from the record after one year. For the 5 heavier penalties, deletion is only subject to upon request.

On the same subject as the last speaker, Ms Carmin MARIN stated that the Defensor del Pueblo had received 163 complaints in 2012 concerning the behaviour of Spanish security forces (civil guard and national police in the 800 Spanish municipalities) and that Article 17 of the Organic Law required the Defensor del Pueblo to suspend his/her investigation in case of court proceedings. The Defensor del Pueblo then requests the administration to begin a disciplinary procedure. If, at the end of the procedure, the improper conduct of the police officer is proven, penalties are imposed.

Topic 2: Alternative modes of resolving disputes between citizens

Introductory comments by Benoît NARBÉY, head of the Defender of Rights' security ethics division.

Speeches by Ms Carmel FOLEY (Ireland), Ms Nathalie LE THANH DIBBA (Geneva) and Mr Nicholas LONG (England and Wales)

In Ireland, "informal resolution" is applied for the least serious cases (such as mere misunderstandings). About 2,000 complaints per year are received by the Irish institution, 1/3 of which are outside its competence. Amongst the remaining 2/3, half concerns criminal behaviour and the other half concerns serious or minor problems of discipline.

The Irish agents are resistant to mediation. In response to a proposal for mediation, they often prefer the risk of a disciplinary penalty and proof of their improper behaviour being demonstrated. This is why the team in charge of mediation within the institution (about 80 persons) endeavours to promote informal resolution to the police unions and police officers during their training. The Ombudsman Commission has put forward the argument, to the competent ministry, that police officers should be required to participate in at least one informal resolution session, if they are not prohibited from refusing them. Unfortunately, the ministry was not in favour of this.

Ms LE THANH DIBBA focused her comments on the bill that is currently being studied, which aims to transform the police and prison personnel ethics Commission in Geneva into a mediation body.

Several findings have led to this bill:

1. The limited effectiveness of the Commission. In order to overcome the defensive attitude of the police in relation to the Commission, several meetings have taken place between the police authorities and the Commission. A relationship of trust has been established. However, this has come at a price because the Commission's actions are highly circumscribed. Firstly, it is the police forces who select the documents that they send to the Commission. Secondly, the Commission suffers from a very relative independence, both in terms of time and resources: in terms of resources, the Commission is obliged to appoint the General Inspectorate of Police to conduct investigations. In terms of time, as soon as criminal proceedings exist concerning the same events, the institution can no longer intervene and is never informed of disciplinary penalties applied.

2. The Commission suffers from lack of visibility by citizens and the institution is very poorly known (due to its name and the lack of a link to an Internet site).
3. The Commission does not cover ethics, which involves the disciplinary field.

Mediation has advantages, from all points of view. Firstly, at the personal level, it offers a mode of redress and the feeling of having been listened to and enables the police officer to be better understood in his/her action. Secondly, at the level of the police institution, mediation gives information on how police action is perceived by the public and may also constitute a tool for managing its professional practices.

Ms LE THANH DIBBA nevertheless notes two points where care must be taken: mediation must not become an alternative to court proceedings for cases for which there is a lack of proof. Furthermore, the context of the police makes mediation difficult: effectively, how can a police officer feel free to admit an act that he/she knows is punishable?

The bill currently being studied follows on from the Annoni report presented in December 2012 by a working group that was constituted in 2011. This group is campaigning for more mediation (to be differentiated from conciliation, mediation being intended to re-establish contact between the police and the citizen). The term "mediation body" of the police was preferred to that of "ethics delegate" so as not to restrict the nature of cases. The working group recommended that only grievances be dealt with by mediation, meaning complaints relating to interventions which do not call for reparation or punishment, therefore everything which does not come under criminal law. When the facts are reprehensible from a criminal or disciplinary standpoint, the request will be reclassified and sent to the prosecutor.

Ultimately, it is a hybrid model, an ombudsman which has a duty of both managing conflicts with the administration and issuing recommendations.

Concerning England and Wales, the law which governs the IPCC does not provide for "mediation" but recommends local and appropriate resolution, in due time, of complaints from citizens against the police forces.

There are 43 local police units, managed independently. The quality of local resolution varies depending on the police unit concerned. Following these investigations, the complainant may exercise recourse against the IPCC to complain, not about the result of the local resolution, but only about the way in which it was carried out.

The IPCC received 30,134 complaints in 2012 (representing 9% more than in 2011). 27% of these complaints were dealt with by local resolution, over an average duration of 55 working days. Mr Nicolas LONG considers that a reasonable average processing period to be 20 working days (namely one calendar month).

As well as this local investigation mode, in each district, citizens are elected to resolve local problems. These citizens, who have demonstrated effective management of local problems, are arguing for their powers in mediation matters to be increased and could be used as new players in disputes between police and citizens.

Studies are currently being carried out on the IPCC concerning the concept of "complaint" in itself (many claims do not use the word) and the new tools that may be used in investigations, such as blogs or Twitter, which have proved their effectiveness, notably on television in resolving commercial disputes.

Debate:

Mr Claude SIMARD spoke to detail the conciliation procedure in Québec: the conciliator first makes contact with the complainant to gauge his/her personality and judge whether or not it is a malicious complaint. This first approach may, in certain cases lead to a withdrawal. He/she then makes contact with the police officer, usually with his/her union. Both parties are then met separately by the conciliator, then during a common meeting. The plaintiff may object to conciliation by explaining his/her reasons to the Commission (for example, because he/she wants the case to be dealt with by investigation).

Concerning the police officer, he/she cannot refuse the conciliation, but this is only in principle because there is no criminal penalty if the police officer does not come to the conciliation meeting. In practice, when this happens, the Commissioner has two choices: he/she can close the case and send it for investigation, or he/she can summons the police officer before the Ethics Committee, where he/she will have no choice but to appear. A Québec police officer who is the subject of ongoing complaints is not eligible for the promotion process. From this point of view, conciliation has the advantage of being a rapid mode of settlement. Also, conciliation leaves fewer traces in a police officer's file than a penalty. Not all cases fulfil the conditions for going to conciliation. Thus, the most serious cases (including those in which force was used) do not go to conciliation. The settlement formula may consist of partial or total recognition of responsibility. Certain police officers may refuse the settlement formula put forward through fear that it may be used against them.

This fear is unfounded, according to Mr SIMARD, because everything that is said in conciliation is confidential. Except in cases of perjury, the words spoken in conciliation cannot be used against the police officer. The aim of the conciliation is not to impose penalties but to put the citizen and the police officer on an equal footing. Thus, for example, the police officer must not come armed or in uniform. If, in addition to the conciliation, the plaintiff also wishes to receive compensation for the harm suffered, he/she will be oriented towards the police services. Without revealing the content of the settlement, the plaintiff may cite it to the police authorities who, generally, will contact the police officer to have confirmation that conciliation has taken place.

In Denmark, local resolution also exists. In 2012, 40% of complaints received by the Danish institution were resolved locally, without hearing any police officers.

Mr DEJEHANSART raised the question of protecting claimants who found themselves in danger following denunciation of police behaviour. He stated that this question was not resolved in Belgium.

Mr Nicholas LONG replied that in Great Britain there was a system for protecting "whistleblowers" who have access, in public buildings, to a free telephone line directly connected to the government's intelligence services. However, few calls are made on it (between 20 and 30 per year).

Topic 3: Frisking and searching

Introductory comments by Benoît NARBÉY

Speeches by Mr Jaanus KONZA (Estonia) and Ms Carmen MARIN (Spain)

According to Estonian law, searching is a preventive measure, which is intended to protect police officers from any harm to their safety. The police officer himself/herself assesses the risk of harm.

Searches, of the body or cells, are routine practices in Estonian detention centres.

Prisoners are searched at the time of their admission to the detention centre and, generally, each time they leave their cells (extraction, visits to the visitors' room, ...). The searches are carried out by prison personnel of the same sex as the prisoner.

In Spain, searches may take place in the context of keeping order, during police custody or in a detention centre.

Concerning keeping order, police officers are authorised to practice searches by frisking on persons in public places, for example during identity checks, or on the road, in order to seek hidden elements. The procedure is strictly governed: police officers must suspect an offence and find the most discreet location possible to perform the search.

Searches by frisking may also be practised upon the arrival in the police station of persons remanded in custody. Police custody practised in Spain may not exceed 72 hours, a period following which the person must be either released or charged. At the beginning of the measure, the person held in custody is notified of his/her rights.

The Defensor del Pueblo may make visits to places of detention. The searches carried out in detention centres are governed as strictly as those practised in the context of maintaining order. Upon their arrival in the detention centre, the persons detained are informed of their rights and may benefit from a medical examination within 24 hours of their arrival. They present their personal effects to the prison guards, who list them. It is not uncommon for prisoners to complain to the Defensor del Pueblo that they have not recovered all of their personal effects when they are returned to them.

The persons detained are searched, as are their cells.

Prisoners may be searched naked and/or be subject to a radiological search, using x-rays. Concerning naked searches, they are decided by the manager of the detention centre. A jacket is given to the prisoner at the time of this search, which must be recorded in a register, in which the reasons for the measure must also be shown. Naked searching consists of a visual investigation of the intimate parts of the prisoner, without any physical contact. It must be done by a person of the same sex, out of sight.

Concerning radiological searches, they are done subject to court authorisation (the manager of the centre must send a request to the competent court) and may only be practised by doctors. The presence of a lawyer is not obligatory.

Minors in detention may also be searched. As soon as they arrive, minors must present security personnel with any objects that are prohibited within the centre. These objects are then given to the families against a receipt or retained in a room in the centre. The rooms of minors may be subject to random searches by the security personnel, always in the presence of the minor. Minors may be searched naked, but between 14 and 18 years old, searches by frisking only are authorised. They must be done by personnel of the same sex, must have been previously authorised by the manager of the detention centre and be recorded in a register with the reason that led to the measure. The competent courts must be informed of the search. These searches are performed in the presence of the educator who monitors the minor. The Defensor del Pueblo receives few complaints concerning searches of minors.

Debate:

Ms DYRMAN stated that searches in Denmark are practised in case of suspicion of an offence. They may also occur outside this context, in places where weapons are held.

The speaker from the IPCC stated that searches may be carried out upon request of the hierarchy by English and Welsh police officers, but only at a given time and place (for example, at demonstrations or if there is a high risk of violence).

Mr Fabrice KELLENS closed the debate by emphasising certain recommendations of the CPT in matters of searches and/or detention:

- *all searches of cells must be carried out in the presence of the prisoner*
- *the assessment of risk must not be made according to the nature of the offence for which a prisoner has been sentenced*
- *body searches must not be done by a doctor from the hospital, but by an external doctor*
- *street searches must be done by asking the person to lift the top then the bottom of his/her clothing*
- *there are 3 high-risk periods of suicide in the life of a prisoner: arrival, liberation and presentation before the courts. The high number of suicides in detention occurring in many European countries raises the question of the psychiatric examination of the prisoner by a doctor, particularly upon his/her arrival in detention.*

Topic 4: The use of intermediate weapons (rubber bullets and Taser)

Introductory comments by Françoise MOTHEs

Speeches by Ms Carmen MARIN (Spain) and Mr LONG (England and Wales)

The weapons used by Spanish security forces are firearms, rubber bullets and batons.

The Defensor del Pueblo has had numerous complaints referred concerning the use of intermediate weapons, often accompanied by video recordings. He/she has therefore made recommendations, notably concerning the supervision of peaceful demonstrations by the security forces.

The Defensor del Pueblo is currently carrying out a study on the use of rubber bullets during demonstrations. In particular, he/she has asked the National Police Directorate to provide it with the texts and instructions that govern the use of this intermediate weapon.

According to jurisprudence of the Spanish Supreme Court, the use of intermediate weapons must fulfil the following conditions: it must be proportionate, happen in a professional context, be necessary to protect the public interest and be used as a last resort in response to resistance. Two types of intermediate weapons are used in England and Wales: the Taser and the spray, since about 10 years ago. Rubber bullets are not used by British security forces.

More particularly concerning the Taser, it was introduced gradually from 2003, firstly within certain territorial security forces. From 2004, all of the security forces were authorised to use it, but only in case of violence or risk of violence against the public or the police officers themselves. Its use was then extended to all corps, including special units.

The Taser is equipped with an electric audio system. 3 modes of use are possible: remotely in deterrent mode (with the red pointer), in firing mode or in contact mode.

The figures on the use of the Taser, notably when it is used on handicapped or mentally ill persons or in confined spaces, are communicated to the IPCC. To date, the IPCC has not had to deal with a case in which the use of a Taser was the direct cause of a death.