

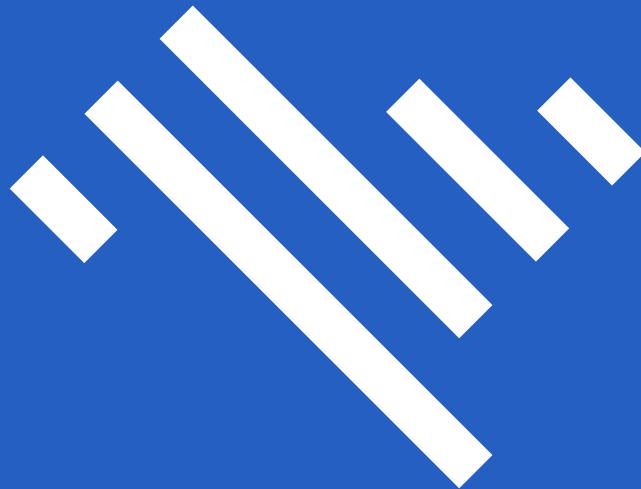
# IPCAN

INDEPENDENT POLICE COMPLAINTS  
• AUTHORITIES' NETWORK •

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5<sup>th</sup> IPCAN NETWORK SEMINAR

Police/population relations:  
challenges and practices





# Intro- duction

## BACKGROUND

Recent surveys<sup>1</sup>, including those carried out by the European Union Agency for Fundamental Rights (FRA)<sup>2</sup>, reveal a high level of public trust in the police within the countries of the European Union (EU). However, this trust varies from one country to another, and decreases among people who are victims of breaches of security ethics, discrimination, or violence by the police.

National independent bodies responsible for the external monitoring of security forces, and members of the IPCAN (Independent Police Complaints Authorities) Network<sup>3</sup> receive complaints reporting inappropriate behaviours such as discrimination, situations where there has been disproportionate use of force, and difficulties encountered by victims or vulnerable groups in their relations with the police.

## PRESENTATION OF THE IPCAN NETWORK AND ITS 5TH CONFERENCE

Entitled “*Police/population relations: challenges and practices*”, the 5<sup>th</sup> IPCAN Network Seminar, organised by the Defender of Rights and the FRA, was held on October 17<sup>th</sup> and 18<sup>th</sup> 2019. The aim of the seminar was to analyse interactions between the police and the population, and situations likely to lead to tensions.

The seminar focused on discrimination and profiling, particularly during identity checks, management of public demonstrations, and lastly the reception and protection provided to victims and vulnerable groups. Its plenary sessions and roundtables addressed the concrete challenges faced by the police and identified tools and practices permitting to overcome them.

The event was attended by almost 150 experienced professionals, including members of police forces, public authorities, external law enforcement monitoring bodies, lawyers, victim support services, researchers and other experts, as well as representatives of international organisations and EU institutions.

<sup>1</sup> See the EUROSTAT surveys on trust in the police in the study “Average rating of trust by domain, sex, age and educational attainment level”, [https://ec.europa.eu/eurostat/web/products-datasets/-/ilc\\_pw03](https://ec.europa.eu/eurostat/web/products-datasets/-/ilc_pw03) ; <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/18/groupKy/88>

In France, the Defender of Rights’ Access to Rights Survey, “*Police/population relations: the case for identity checks*” (“*Relations police/population : le cas des contrôles d’identité*”), shows that, in general, 82% of the population has confidence in the police. Study, 2016, Defender of Rights, [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapport-enquete\\_relations\\_police\\_population-20170111\\_1.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapport-enquete_relations_police_population-20170111_1.pdf)

<sup>2</sup> Second European Union Minorities and Discrimination Survey – Main results report (p.69), FRA, <https://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>

<sup>3</sup> Concerning IPCAN, see <https://ipcan.org/fr/>





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# The frame- work for police/ popula- tion relations

## **Sébastien Roché**

CNRS Research Pr. (French National Centre for Scientific Research)

The “review” of research activities on relations between the police and the general population, has improved these last years, both at theoretical and empirical levels.

As regards theoretical progress, the reformulation of the question of relationships between the police and the population was a decisive factor. It led to the issue of the legitimacy of the police: (...) “why do people obey the police?”

“The legitimacy of the police is based on recognition of the moral right we give them to oblige us to do something, to order us to do something”.

Consequently, this is the fundamental issue that has been empirically explored, and research has attempted to test the determinants for our willingness to obey, and cooperate with the police. These investigations have not only focused on the issue of compliance with legality, but also legitimacy, by identifying the latter’s four cornerstones: police integrity, equality in the treatment of the citizens by the police, minimisation of the amount of violence employed in the conduct of their activities, and the quality of services provided by them.

In addition, empirical progress has been made on several levels:

Regarding the measurement of trust, Sébastien Roché makes a distinction between diffuse and specific support:

- “*Diffuse support*” corresponds to an agreement about what are the police’s missions, which is measured by “general opinion of the police” or “trust in the police” levels; diffuse support levels were found to be quite high within the EU;
- “*Specific support*” is a contextualised assessment related to specific tasks (e.g. their effectiveness in combating certain types of crimes) or experiences with agents. Here, the levels of trust are much lower within the EU, and especially in France (around twenty percentage points lower).

It is therefore a critical matter to be able to measure specific support for the police in order to develop an effective trust measurement tool, which is directly connected to what the police do to citizens, and may be used for providing guidance to policing policies.

Research has also focused on comparisons between various European countries. This is a major development of research. Results indicate greater legitimacy for certain national police forces compared with others. A simple and of utmost importance lesson is that “*Policing methods vary*”. The leading countries were in Northern Europe, in the fields of policing system’s legitimacy and police training systems. France was amongst the last ones.



### Regarding the measurement of satisfaction and legitimacy

It is still the case today that most “States do not measure citizen satisfaction. How can a legitimate policing system be created unless the aim is to improve satisfaction?”

**Regarding the police force’s capacity to justify itself opposite citizens** (particularly by explaining that what police is doing is right during interactions), major differences exist once again between Northern countries and, for example, France and Portugal. A major approach for improving police legitimacy is to train officers into explaining why they act the way they do, and reply to questions from the public.

### To what extent police checks are discriminatory?

Advances in research are based on the implementation of systematic observation tools. A key innovation has been the introduction of police observation systems in the USA, particularly in New Jersey. For an identical offence, it was found that twice as many individuals from black populations had been subjected to checks. This American method has been replicated in Paris for pedestrians (see Fabien Jobard and René Levy in France<sup>4</sup>), amongst other cities, and the same discrepancies were revealed in checks carried out at *Gare du Nord* railway station involving white and non-white individuals.

A second advance in measuring the extent to which police checks are discriminatory was the introduction of surveys among general populations, and especially the monitoring of adult minority populations checks in France. A study showed that, in France, minority populations were submitted to a significantly greater number of checks<sup>5</sup>.

If we look at the frequency of police checks, we can observe, for example, that in Germany, people who are checked more than 5 times a year do not particularly belong to one ethnic group or another, whereas in France, for the same type of population and in cities of

comparable size, there is a very clear gap between minority and majority populations in the frequency of checks<sup>6</sup>. According to Sébastien Roché, it is therefore possible to realize identity checks without having such a large difference in the frequency of checks between ethnic groups as we have seen in France.

Lastly, research has been developed on the effectiveness of identity checks. A New York study shows the absence of correlation between numbers of checks and numbers of crimes. Comparable findings stem out of a study that has been carried out in London. It is therefore recommended not to equate *a priori* deterrence of crime with more stops and identity checks.

Sébastien Roché offers some suggestions on what remains to be explored, in order to stimulate thought on the subject of greater compliance with fundamental rights in policing doctrines and practices. First of all, a greater police legitimacy could be gained through less use of force (not only lethal force, especially in the EU context). Very little research or comparative work has been carried out regarding this question (particularly with respect to daily security and police patrols). In addition, the effectiveness of strategies to improve trust in the police is unknown: it would be helpful to determine which strategies are effective on building trust. Eventually, a closer comparison of control mechanisms would also be useful in order to assess their efficiency and learn what the good practices may be: networks such as IPCAN are being set up, but their impact on good policing is still unknown. A detailed European overview of the various oversight mechanisms (internal and external, independent or not) would help to make progress on all the matters raised above.

<sup>4</sup> See <https://www.cairn.info/revue-population-2012-3-page-423.html>

<sup>5</sup> [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/170120-cp-ddd-enquete\\_relations\\_police\\_population-en\\_1.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/170120-cp-ddd-enquete_relations_police_population-en_1.pdf)

<sup>6</sup> See the study “Controlled Origins: Police and Minorities in France and Germany”, Jérémie Gauthier, in *Sociétés contemporaines* 2015/1 (No. 97), pages 101-127.

# I. Discriminatory identity checks and profiling

## 1) Introduction

The aim of the talks given during plenary sessions and the seminar's roundtable about discriminatory identity checks and profiling was to present promising tools, experiences and experiments enabling prevention of the use of such practices by the security forces in the exercise of their prerogatives.

### WHAT IS PROFILING IN THE CONTEXT OF LAW ENFORCEMENT?

As the FRA explains in its 2018 handbook<sup>7</sup>, profiling in the context of law enforcement is commonly and legitimately used by law enforcement officers and border guards to prevent, to investigate and to prosecute criminal offences, as well as preventing and detecting irregular immigration.

Profiling means any form of automated processing of personal data consisting of the use of data to evaluate certain personal aspects relating to a person, in particular to analyse or predict aspects concerning that person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements<sup>8</sup>. The results of this data

processing are used to guide law enforcement actions: to identify individuals based on specific intelligence, and as a predictive method to identify 'unknown' individuals who may be of interest to law enforcement.

### WHAT IS ETHNIC PROFILING?

Racial or ethnic profiling in policing has been defined by the European Commission against Racism and Intolerance (ECRI) as "*the use by the police, with no objective and reasonable justification, of grounds such as race, colour, languages, religion, nationality or national or ethnic origin in control, surveillance or investigation activities*" (identity checks, stop and searches, raids, border checks, surveillance, inspection of vehicles and luggage...) <sup>9</sup>. Ethnic profiling may include conscious or unconscious prejudice (or bias) which may lead to discrimination against certain individuals.

*"Racial or ethnic profiling occurs when the police "target" certain individuals during their operations (identity checks, searches, surveillance, data collection, etc.) on the basis of stereotypes rather than objective data or evidence". (Rebekah Delsol, Open Society Foundation).*

<sup>7</sup> FRA, Preventing unlawful profiling today and in the future: a guide: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-preventing-unlawful-profiling-guide\\_fr.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-preventing-unlawful-profiling-guide_fr.pdf)

<sup>8</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, ("police" directive) article 3, paragraph 4.

<sup>9</sup> ECRI General Policy Recommendation No.11: Combating racism and racial discrimination in police activities: <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>





Ethnic profiling is illegal and in violation of the principle of non-discrimination guaranteed by International and European Law, and domestic law.

The European Code of Police Ethics also recalls that the police must carry out their duties in a fair manner, respecting, in particular, the principles of impartiality and non-discrimination. The exercise of police prerogatives must therefore be based on objective criteria, such as an individual's behaviour.

#### THE USE OF PREDICTIVE AND ALGORITHMIC PROFILING IN QUESTION

With the rapid evolution of technology, security forces can draw on data – including personal data – stored in databases and computer systems, algorithmic profiling using various techniques to establish profiles based on correlations between data. The objective is not to "predict" crimes but to predict their likelihood. It enables police officers to target specific individuals or groups that pose a certain risk, based on analysis of data. The results may guide police forces' actions, such as checks, stops, searches, arrests, etc.

When collecting personal data, police services and border management authorities must ensure that their collection and processing of data have a legal basis, a valid and legitimate objective, are necessary and proportionate and not based on an prohibited ground alone, as origin is.

## Predictive policing and algorithmic profiling

Elise Lassus, FRA<sup>10</sup>

Predictive policing is defined as the collection and analysis of data on previously committed crimes for statistical forecasting and identification of individuals who are most likely to be involved in criminal activities. Algorithmic profiling, which the police are increasingly making use of, is therefore used not to "predict" crimes but to predict their likelihood.

The probabilities identified are then used in management of human resources in police forces, sending more police officers to areas where crimes are more likely to be committed.

Several phases have been proposed concerning the use of predictive policing:

- Preparation of the algorithm: definition of the algorithm's purpose and development;
- Collection and preparation of data that may derive from various sources (police services, other authorities, or freely available information). The data is then prepared to enable the algorithm to detect trends;
- The data is analysed by a computer to identify trends and correlations;
- The results are used by police officers when making decisions: officers can then make decisions regarding deployment of their teams or concerning specific operations that will impact individuals and their fundamental rights;

These techniques present challenges regarding the protection of fundamental rights. These issues are particularly linked to the quality of the data used to "feed" the algorithm: the data may be incorrect because of human mistake, but it may also be incomplete, obsolete or biased. Information

coming for the most part from databases belonging to police services will, by definition, be particularly fragmented. The algorithm is therefore never totally neutral: on the one hand, analysis can only be produced on the basis of the data transferred to it, and on the other hand, it will be able to reproduce the errors and prejudices of its designers by masking them with objectivity. Furthermore, it is noted that currently, there is no methodology for a complete and reliable assessment of the algorithms used.

Finally, it is important to note that a new generation of predictive policing is being developed and is starting to be employed: it consists of identifying not a place where a crime may be committed, but one or more individuals who are more likely to commit a crime one day. Here, individuals are selected based on their interactions with other people, not because of their own actions. It is the information related to the group to which they belong that is then decisive, not their personal choices. This new method of prediction, still little used in Europe, presents additional risks to those already identified, by erasing the complexity and particularities of each individual.

## 2) The current state of play

At European level, studies drawn up by the FRA (EU-MIDIS) show that skin colour accounts for 41% of checks carried out on black individuals. Only 7% of individuals who consider themselves victims of discriminatory checks seek redress<sup>11</sup>.

In EU Member States, very few national studies on cases of profiling have been carried out, whether concerning the results of observational surveys or based on feedback from minority groups.

During the seminar, **Patrick Charlier**, Equinet (European Network of Equality Bodies) Board Member and Director of Unia<sup>12</sup>, briefly outlined the studies carried out on this subject by some of the network's members<sup>13</sup>:

- In Belgium, at Unia's request, the INCC (National Institute of Forensics and Criminology / *Institut national de criminalistique et de criminologie*) has undertaken a two-year investigation of procedures and processing during identity checks, and operations in the Brussels-North police zone. With this project, Unia wants to contribute to the research and debate on the risk of ethnic and discriminatory profiling during police operations. A report with the results of this research will be presented in spring 2020.

- In 2010, the British Equality and Human Rights Commission (EHRC) published a report entitled "Stop and think: a critical review of the use of stop-and-search powers in England and Wales"<sup>14</sup>; it shows that black people are at least six times more likely to be stopped and searched than white people, and Asians approximately twice as likely.
- In France, the results of the Defender of Rights' Access to Rights Survey, carried out on a sample of over 5,000 individuals and published in spring 2016, show that, all things being equal and in relation to the population as a whole, young men in France who are perceived as Arab/North African or black are twenty times more likely to be subject to checks than others<sup>15</sup>.

The ECRI points this out in several reports: *"Very little research and follow-up concerning racial profiling has been carried out within Member States of the Council of Europe. There are serious deficiencies in knowledge concerning both research into methods for identifying and measuring racial profiling, and studies covering various aspects (...) involving the definition of racial profiling, i.e. the criteria for its effectiveness, its necessity, and the harm caused by racial profiling". ECRI considers that "these deficiencies encourage the continued practice of racial profiling and its intensification in specific security contexts"*<sup>16</sup>. ECRI also emphasised this fact and made related recommendations in several of its General Policy Recommendations<sup>17</sup>.

<sup>11</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-being-black-in-the-eu-summary\\_fr.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-being-black-in-the-eu-summary_fr.pdf)

<sup>12</sup> Unia is an independent public institution that combats discrimination and promotes equal opportunities.

<sup>13</sup> See the Equinet document [http://equineteurope.org/wp-content/uploads/2019/07/equinet\\_compendium-ethnic-profiling\\_A4\\_DEF\\_web.pdf](http://equineteurope.org/wp-content/uploads/2019/07/equinet_compendium-ethnic-profiling_A4_DEF_web.pdf)

<sup>14</sup> Stop and Think: A critical review of the use of stop-and-search powers in England and Wales, Equality and Human Rights Commission, Report, 2010, available at: <https://www.equalityhumanrights.com/en/publication-download/stop-and-think-critical-review-use-stop-and-search-powers-englandand-wales>.

<sup>15</sup> <https://www.defenseurdesdroits.fr/fr/etudes-et-recherches/2017/01/enquete-sur-laces-aux-droits-volume-1-relations-police-population-le>

<sup>16</sup> The ECRI's Annual Report for 2014.

<sup>17</sup> Useful links: ECRI General Policy Recommendation No.11: Combating racism and racial discrimination in police activities: <https://www.coe.int/fr/web/european-commission-against-racism-and-intolerance/recommendation-no.11>; ECRI General Policy Recommendation No.8: Combating racism whilst fighting terrorism <https://www.coe.int/fr/web/european-commission-against-racism-and-intolerance/recommendation-no.8> ECRI General Policy Recommendation No.7: National legislation for combating racism and racial discrimination <https://www.coe.int/fr/web/european-commission-against-racism-and-intolerance/recommendation-no.7>.



In Europe, "data collection is an understandably sensitive issue for many communities. But this data can be collected whilst respecting individual rights and data protection regulations. The vast majority of countries do not collect data on police checks, or the ethnicity of those stopped. Therefore it is impossible to get a picture of who is stopped, how effective those stops are or to measure the impact of any reform introduced to improve the use of stops. Very often, complaints are our primary source in identifying the issue". (Rebekah Delsol, Open Society Foundation).

### DISPUTED EFFECTIVENESS AND ADVERSE CONSEQUENCES ON POLICE-POPULATION RELATIONS

During the seminar, a number of speakers referred to the ineffectiveness of identity checks and discriminatory profiling, regarding prevention and investigation of crimes alike. The FRA's research shows that "hit rates" are very low. In addition, such discriminatory practices have a negative impact on relations between police and population. They lead to a deterioration in trust and cast doubt on security forces' legitimacy.

*"Unlawful profiling has a negative impact on routinely targeted individuals. It may have the effect of stigmatising entire groups and discouraging them from going to the police should they become the victims of crimes. It creates a hostile environment. Hostility may lead to aggression and aggression to violence. This is a vicious circle that needs to be broken"* (Michael O'Flaherty, FRA)<sup>18</sup>.

For Rebekah Delsol, discriminatory checks are ineffective and counterproductive. "They distort the notion of criminality. Police forces are under pressure, and tend to focus on stereotypes rather than on evidences. This undermines trust in the police among the general population. And this lack of trust leads to a lack of cooperation from the community which hinders police work. They have a negative influence on communities. They have an impact on those who are stopped and their communities.

*Research into this phenomenon has been going on for years and the problem has been acknowledged. Yet there remains little action and political will to address it"* (Rebekah Delsol, Open Society Foundation).

Finally, these practices adversely affect the security forces themselves: "Discriminatory practices have a negative impact on young people and on police officers' working conditions: Such styles of action have harmful effects. They increase suffering at work and adversely affect conditions under which they are acting in working-class neighbourhoods, and they also cause their young inhabitants to feel that they are being treated as second-class citizens, with sometimes major psychological consequences (loss of self-confidence, etc.)" (Hélène Balazard and Naim Naili, members of the PoliCité Collective, France).

### DISCRIMINATORY IDENTITY CHECKS AND RACIAL PROFILING IN RECENT JURISPRUDENCE

#### **Before the French Court of Cassation** (Rulings of 9 November 2016)

Jacques Toubon, Defender of Rights (France), referred to the Court of Cassation's 13 rulings from November 9<sup>th</sup> 2016, according to which identity checks based on physical characteristics associated with actual or supposed origins and carried out without prior objective justification are deemed to be discriminatory. They are therefore a gross misconduct, and individuals who consider themselves victims of discriminatory identity checks may hold the State accountable.

In this particular case, thirteen individuals considered that they had been subject to identity checks solely on the basis of their physical appearance: actual or supposed African or North African origin (skin colour, features and clothing). The claimants initiated a legal action against the State for compensation for moral damage.

The Court of Cassation therefore ruled on these questions for the first time.

<sup>18</sup> See also the Guide to preventing unlawful profiling today and in the future, FRA 2019 (pp.45-57): [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-preventing-unlawful-profiling-guide\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-preventing-unlawful-profiling-guide_en.pdf)



In addition to declaring the State responsible for discriminatory identity checks, the Court also specified how such discrimination is to be proven: individuals who have been subject to identity checks and are petitioning the courts must first provide the judges with evidence presuming the presence of discrimination. It is then up to the administration to demonstrate either the absence of discrimination or the difference in treatment is justified by objective elements; the judge then reviews the facts presented to him.

### Before the Supreme Court of Canada

(Ruling R. v. Le, 2019 SCC 34)<sup>19</sup>

**Marc-André Dowd**, Ethics Commissioner (Quebec) relates the recent case of Mr Le, a young man from Asia, who was in a block of flats with four black friends in a disadvantaged neighbourhood in Toronto. The police were searching for a suspect; they saw the group of friends, climbed over the fence surrounding the building, and subjected them to a check. They asked Mr Le what was in his bag; he fled the scene but was caught. The police officers subsequently found drugs and money in his bag.

Mr Le was prosecuted then acquitted. The Court found that the police had obtained evidence of the offence as a result of unlawful profiling. In its view, social and racial motives had led them to enter a private property via its backyard, something they would not have done in a less “racialised” neighbourhood. The majority of judges asserted that if such behaviour were approved, people would lose trust in the judicial system.

In this particular case, proof of the offence committed by Mr Le could not be obtained by the police due to the seriousness of the unlawful acts committed by the officers concerned.

The Supreme Court also commented on the impact of racial profiling: more than a mere inconvenience, it has harmful effects on the mental and physical health of individuals and impacts the studies of those involved and their chances of obtaining work.

Profiling contributes to the continuing social exclusion of racial minorities and perpetuates criminalisation.

### A number of the ECHR’s rulings

In a case involving discriminatory identity checks (*Timichev v. Russia*, 13 December 2005), the European Court of Human Rights recalled that discrimination based on actual or perceived ethnic origin constitutes a form of racial discrimination. “[It] is a particularly odious form of discrimination and, given its dangerous consequences, requires particular vigilance and a vigorous response from the authorities. This is why the latter must use all the means at their disposal to fight racism, thereby strengthening the democratic view of society, perceiving diversity not as a threat but as an asset.”

In a more recent case regarding a raid carried out by security forces on a Roma community living in a village in Romania (*Lingurar v. Romania*, 16 April 2019), the Court considered that –in addition to the disproportionate use of force involved— these individuals had been targeted because the authorities saw members of the Roma community in general as criminals. As these factors demonstrated that the authorities had automatically established a link between ethnic origin and criminality, the Court considered that this constituted ethnic profiling and discriminatory behaviour, and was in violation of Articles 3 and 14 of the European Convention on Human Rights.

<sup>19</sup> <https://www.scc-csc.ca/case-dossier/cb/2019/37971-fra.aspx>



### 3) What forms do discriminatory identity checks and profiling take?

#### EXAMPLES OF CASES HANDLED BY MEMBERS OF IPCAN

##### **Greece, Ombudsman: unjustified checks and racist remarks concerning a street musician of African origin:**

A street musician from West Africa reported an unjustified and racist check carried out by police patrolling in a square in the city-centre of Athens. When confronted with this situation, the Greek Ombudsman found that the internal investigation report from the police, which concluded that the complaint was clearly unfounded, was itself biased. In his decision, he noted the lack of video footage, and the absence of search for witnesses to the incident other than the police themselves, the lack of a thorough investigation into possible racist intent, and the absence of an assessment of the medical report on minor injuries. The Ombudsman requested that the police address the investigation's shortcomings and stressed the need to apply the same scrutiny to the evidence of claimants and officers alike, in line with European standards. As a result of his input, the police ordered a review of the internal investigation.

##### **France, Defender of Rights: discriminatory instructions issued by a police station:**

A police station issued instructions concerning the implementation of identity checks, within a sector, amongst “*black and North African gangs*”, and “*the systematic removal of members of the Roma community and homeless people*” in the absence of any wrongful behaviour. In a ruling issued in 2019, the Defender of Rights found such measures to be unlawful and such practices to be based on racial and social profiling as they are based on prohibited discriminatory criteria such as physical appearance alone, actual or supposed ethnicity or race, origin and specific economic vulnerability. He made a series of recommendations, including one to the Minister of Justice, to take into account all the implications of the Constitutional Council's ruling of January 24<sup>th</sup> 2017 and incorporate the following sentence into Article 78-2 of the Code of Criminal Procedure: “*checks must not be based on the discriminatory criteria set out in Article 225-1 of the Penal Code*”. He also recommended raising awareness amongst police officers on combating discrimination and stereotyping. Lastly, the Defender of Rights requested an inspection of all the police stations in the Prefecture's jurisdiction, in order to assess the extent of such discriminatory removals.

##### **England and Wales, Independent Office for Police Conduct**

One example is the use of facial recognition technology (FRT) to identify members of the public who are on police watch lists. Concerns have been raised about this in the United Kingdom (UK) after the discovery that FRT is being used at key transport hubs such as Kings Cross railway station and the data passed to the police. The UK has one of the highest numbers of surveillance cameras in the world outside China. In the UK the face is not treated as biometric data unlike DNA and fingerprints. The UK Government has thus far failed to introduce legislation about this despite all three of its data regulators (the biometrics Commissioner, surveillance camera Commissioner and information Commissioner)



saying that the UK Government strategy is not fit for purpose and needs to be updated. The House of Commons technology committee has called for a moratorium on the use of FRT until it is properly regulated, amid concerns that the technology has lower accuracy rates for individuals with darker skin, women and children. However, in a recent court case brought against South Wales police, the high court ruled that although the use of FRT to search for people in crowds was an interference with privacy rights, it was lawful for legitimate policing purposes.

#### EXAMPLES OF SITUATIONS REPORTED BY OTHER SPEAKERS AT THE CONFERENCE

##### **Finland: a case involving ethnic profiling and discrimination resulted in conviction by the Finnish Anti-discrimination and Equality Tribunal<sup>20</sup>:**

While walking in the city centre early one morning, two women of Tanzanian origin were stopped and searched by the police. They complained that they had been subject to discrimination. The police officers explained that they were tasked with carrying out checks on illegal foreign prostitutes who might be victims of trafficking. The officers acknowledged that they had carried out the checks based on the colour of their skin. In its 2018 ruling, the Anti-discrimination and Equality Tribunal found the objective of combating prostitution and human trafficking to be a legitimate justification for direct discrimination. Nonetheless, disproportionate means were used in this case. Moreover, the Court observed that the white man accompanying the plaintiffs had not been checked by the police, even though legislation prohibits the buying and selling of sexual services in public spaces. In its ruling, the Court prohibited the police from carrying out discriminatory checks and searches and sanctioned a conditional fine of €10,000.

**Momodou Malcolm Jallow**, Swedish Member of the Parliamentary Assembly of the Council of Europe and currently elected General Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on combating racism and intolerance, presented his personal experience of numerous discriminatory checks, from his arrival in Sweden at the age of 15, to trips he went on as a Swedish MP in Swedish delegations. As a 15 years old boy, he was detained by *“these police officers, who were armed and in uniform. He was nervous, terrified. (...) he began to cry, because this was the most humiliating thing that had ever happened to him. (...) This first encounter with the Swedish police shaped his perception of what a relationship with the police represented: humiliation, dehumanisation and discrimination”*.

**Omer Mas Capitolin**, founder of the MCDS (Community Institute for Solidarity Development / *Maison Communautaire pour un Développement Solidaire*) (France) presented the various types of checks that he had been able to identify, particularly in the neighbourhoods in which he operates in Belleville.

- **Facial identity checks:** *“people feel that checks are being carried out not because they are committing an offence or behaving inappropriately but because they have a presupposed appearance which reflects a presupposed community”;*
- **Eviction checks:** these are checks, carried out in public spaces on a daily basis, on “racialised” young people who the police request to “clear off” without checking their identity papers;
- **Checks/fines:** these repeated checks accompanied by fines (for causing a nocturnal din at 2 pm; for pouring noxious liquids onto a public space) target young people in a single location. These frequently increased fines are often exorbitant (€6,000 to €14,000): *“This phenomenon is all the more problematic in that it impacts the financial situations of some families. These kids are already underprivileged.*

<sup>20</sup> European network of legal experts in gender equality and non-discrimination, Flash report, 20 Feb. 2019.



*They owe considerable sums of money. (...) This is not a recent dynamic, but I would say that we have moved from small scale to industrial scale. (...)*. Such methods may lead certain young people to engage in some form of criminal activity (selling drugs to be able to pay fines of several thousand euros in the absence of alternative ways of coming up with such amount of money).

*“This is a real issue in our democracy. It reminds us that we are not seen as full citizens. However, we do not choose our skin colour, our place of origin or our sexual orientation. We live with this on a daily basis.”*  
(*Omer Mas Capitolin, MCDS, France*).



## 4) The main challenges regarding the fight against discrimination in security forces' exercise of their activities

During the seminar, speakers and participants identified many obstacles to fight discrimination in security forces' exercise of their activities, in a number of areas.

### **Lack of data on identity checks and discriminatory behaviours such as racial profiling:**

For **Momodou Malcolm Jallow** (parliamentarian, member of PACE): “We have no data. We do not collect aggregated data. But we need to have systematic data collection”.

“(…) Very few police services in Europe collect data on identity checks or on the impact of initiatives to reform ID checks. And often when data is collected, it is not used effectively to manage the use of stops to ensure there are being used fairly and effectively. Data is essential. All too often, complaints lodged are our only means of identifying the problem. Yet many people do not complain about mediocre or discriminatory stops: often victims are required to complain directly to the police who just stopped them or to oversight bodies who lack expertise in ethnic profiling”. (**Rebekah Delsol**, Open Society Foundation).

### **Absence of traceability of identity checks and justification to individuals checked:**

“(…) nowadays, we have written traces for parking and other fines... But if the security forces take someone to a police station for several hours, they can finally leave with no written trace of them being held there, with the consequences this may have on their work in the event of unjustified absence or lateness, etc.” (**Omer Mas Capitolin**, MCDS, France).

### **Police perception of racialised criminality:**

“It is very important to put an end to this perception. Training is important, but greater diversity is also needed in police forces. Genuine accountability must also be ensured. It's not only individual officers who profile. It's the institution. It's the environment that has allowed this abuse of power. We need concrete measures to address it” (**Sarah Chander**, ENAR).

### **Difficulties connected with modification of the burden of proof:**

For **Patrick Charlier** of Unia and member of Equinet, several studies published over the last twenty years or so show that ethnic profiling exists and is widespread. However, in his opinion, “the difficulty lies in proving this sort of profiling in individual situations. How do you use such statistics to provide sufficient presumption of ethnic profiling in an individual situation? The problem is yet to be resolved in European law. Anti-discrimination laws provide for the mechanism of adjustment of the burden of proof: if there are a few factors that may suggest possible discrimination, the burden of proof is shifted to the defendant. It is an exceptional mechanism and, generally speaking, it's already hard to get it accepted (in such sectors as employment and accommodation, for example). Regarding ethnic profiling, the problem is to get people to accept that it's a reality”;



**The public authorities' refusal to acknowledge that discriminatory behaviours and even a systemic problem, exist within the police:**

Various of the security forces' representatives deny that such profiling exists and insist that the police act objectively and neutrally. Structural or systemic discrimination is not acknowledged. Many of the security forces' representatives dispute the legitimacy of studies and research on ethnic profiling.

**Lack of training programs adapted to the issues involved and impacting professional practices:**

*"In Ireland, most white police officers, who come from small rural communities, have received training on the law and their code of ethics and so on, but they are then sent into increasingly complex urban societies to tackle ethnic and gender questions... questions they have never previously encountered. They are then assessed on the number of checks and arrests they have made, but not on best practices. There is only limited training on human rights. Such tools as pistols, Tasers and handcuffs are provided, but with no tools to fight discrimination or uphold human rights, how do you reward best practices?" (Mary Ellen Ring, Garda Síochána Ombudsman Commission).*

**Lack of support to police officers who want to initiate new practices, who sometimes work in isolation and whose careers are impacted by their efforts.**

**The public authorities' refusal to acknowledge that discriminatory behaviours and even a systemic problem exist within the police.**

**Lack of leadership in the police and of political leadership on the subject:**

*"With no external pressure on them, the police have no reason to change their way of doing things. Strong political leadership is required in order to acknowledge the existence of such discrimination and make it clear that it has no place in police forces." (Rebekah Delsol, Open Society Foundation).*

**Absence of dialogue and platforms for exchanges between police and population**

**Underreporting as a consequence:**

*"Victims of ethnic profiling don't lodge complaints, and many of them see it as normal. Work on raising awareness needs to be done. It's a question of motivating people, whence the need for providing organisations promoting equality with the necessary resources" (Patrick Charlier, Unia, Equinet).*

*"Problems are not so much caused by checks as such, but by checks for no reason (...). They are ineffective and counterproductive. They distort the notion of criminality and undermine confidence in the police, which leads to a lack of cooperation, which hinders police work. They have a negative influence on communities (...). You cannot learn citizenship from books. It has to be lived. We develop our citizenship through such interactions. Such repeated systematic identity checks end up by calling into question the place that their targets have in the Republic" (Omer Mas Capitolain, La MCDS).*



# 5) Studies of practices implemented

## MEDIATION

### **Marc-André Dowd**

Police Ethics Commissioner, Quebec, Canada

The Police Ethics Commissioner received 1,867 complaints in 2018, including 92 concerning discrimination and racial profiling (5%). The rate is low because individuals may lodge complaints for abusive use of physical or other force without specifying that they were victims of discrimination based on origin. In such cases, their files are not taken into account in statistics.

Complaints to the Commissioner are handled in two stages:

- a compulsory conciliation/mediation meeting between the complainant and the police officer concerned;
- a possible formal investigation, and, if there is enough proof, one of the ethics prosecutors takes the case to the Police Ethics Committee, and the officer concerned may be sanctioned by a reprimand, suspension without pay, demotion or dismissal.

Mediation enables “an equal-to-equal exchange” between the citizen who lodged the complaint and the police officer concerned. The law provides that the officer must participate, out of uniform, and that (like the complainant) he may be accompanied by an individual of his choice. A conciliator from the Commissioner’s Office oversees the exchanges: the officer explains the reasons for his action and both parties talk about how they felt at the time. Regarding racial profiling, police officers often come to realise the impact their action has had on the citizens in question.

In a few cases, the discussion may end with the police officer apologising.

Even when it is not the case, such mediations nonetheless help officers modify the way they interact with citizens.

If the individuals involved are satisfied with the meeting, they sign an agreement and the complaint is withdrawn and no mention is made of it in the officer’s disciplinary file (although the Commissioner keeps a record of it in his files). If the complainant is not satisfied with the mediation’s outcome, the Commissioner may decide to carry out a formal investigation.

However, when a police officer is subject to mediation procedures more than once for the same reasons, the law allows the Commissioner to open an investigation in the public interest without prior mediation, especially for situations of abusive use of force.

Independent assessment of such mediations would be useful in order to measure their effectiveness. Currently, 80% of complaints are settled at the mediation stage, and citizens say that they feel they have been listened to and treated on equal terms with the police officers concerned.

## CITIZENS’ PARTICIPATION IN MONITORING POLICE USE OF STOP-AND-SEARCH POWERS IN THE UNITED KINGDOM

### **Sally Trattle**

Northamptonshire police, United Kingdom

British legislation provides for public scrutiny of stop and search. However, there are no real directives on the subject. There are some 50 different geographical forces in the United Kingdom, each with its own methods of carrying out checks. Their effectiveness is not measured.

However, the United Kingdom has the advantage of possessing a large quantity of data on stop and search (ethnicity, details of individuals concerned, date, place, reasons, etc.), which is possible to exploit.

The “Reasonable Grounds<sup>21</sup> Panel” procedure was implemented and developed in the Northamptonshire police force.

<sup>21</sup> “Reasonable grounds” are the reasons justifying the identity check. They must seem reasonable to an ordinary member of the public.



It is an innovative approach for regulating police officers' use of their stop-and-search powers.

For the past 6 years, the Panel scheme has got members of the public, "ordinary people", to participate in examining the reasons for which police officers have stopped and searched individuals, and whether they seem reasonable to them.

The Panel enables the public to voice their opinions and understand how stop-and-search procedures are carried out.

How does that work? Each month, statistics on checks (between 100 and 200) carried out in Northamptonshire are presented to the Reasonable Grounds Panel. Panels meet within various community groups -which definition is fairly wide, from sports clubs to pubs- in which a dozen people or so over 16 years old get together.

A police officer moderates discussions. The Panel then votes on the reasonableness of the motives for the identity checks carried out (data presented on such factors as the ethnicity, age and gender of individuals targeted is anonymised). In most cases, a consensus is reached among the panel members and police representatives on the reasonableness on the checks carried out.

When the Panel decides that police officers have not complied with legal standards of conduct during a stop-and-search procedure, the officers concerned are subject to a series of increasingly rigorous corrective measures, including training, supervision and professional development. If an officer's use of his powers does not improve, he is suspended from carrying out any further stop-and-search procedures until he has completed a professional development programme.

The Panel's decisions have an impact on the officers concerned:

1. The first time, if the Panel considers that there were no reasonable grounds for a check, the officer concerned simply receives a warning by email;
2. The second time, he has to undergo a "one-to-one coaching"
3. The third time; he is no longer authorised to carry out checks until he has completed a "development" programme;
4. The fourth time, the case is referred to the Police Complaints Department.

In the last six years, only 5 officers have gotten to level 3. The great majority of officers concerned have received recommendations by email.

The scheme's effectiveness lies in its simplicity, minimal cost, the rigorous work carried out by participants, and their commitment and awareness of what a police officer's work entails and the difficulty of deciding whether or not to carry out a check.

*"If we want change, we must be ready to make it. We have to stop wanting to draw lessons from the past and start to act."* (Sally Trattle, Northamptonshire police, United Kingdom<sup>22</sup>).

<sup>22</sup> For an evaluation of the reasonable grounds panel see : <https://www.justiceinitiative.org/uploads/353acfb-085c-44bd-8051-016f66b0f633/regulating-police-stop-and-search-20191106.pdf>

## RECORDING IDENTITY CHECKS ON MOBILE APPLICATIONS

### André Müller

Zurich municipal police, Switzerland

An implementation of an identity-check recording system in Zurich was carried out in several stages. Following a court ruling ascertaining the existence of racial profiling practices in the local police, Zurich's Parliament requested that receipts be given acknowledging identity checks carried out. As a result, the Bern University Swiss Human Rights Centre was entrusted with analysing the situation. This led to a study conducted among counterparts in Europe (Birmingham in particular). Discussions were then held with community organisations.

Following this work, Zurich's municipal police launched a project entitled "*a fair and effective police force*", with the goal of analysing identity check and search operations, with an objective of reducing racial profiling if necessary and developing skills on the subject.

In order to achieve this, the police decided to use a simple tool, a smartphone app enabling the recording of identity checks, the collection of statistics (place, time, reasons, means, results, etc.) and the drafting of reports. Various "reasonable" grounds for carrying out identity checks are listed in it and must be completed. Personal data on individuals checked, such as their ethnicity, is not included. Results are provided by unit rather than by officer which avoids competition effects.

The results speak for themselves, as the success rate (corresponding to checks that need to be followed up) is high regarding searches for suspects (62 %), but lower when based on an individual's behaviour or appearance (22%). With this tool, officers therefore have to change their methods of checking identities in order to obtain the best results possible.

The practice must be accompanied by appropriate training, along with a department within the police responsible for assessing results and taking corrective measures when necessary.

### Several countries record identity checks carried out by their security forces

Recording such operations is also recommended by a number of institutions, including the European Commission against Racism and Intolerance (ECRI), according to which it is a way to enable individuals to show how often they are subject to checks and identify possible forms of racial discrimination. The Parliamentary Assembly of the Council of Europe (PACE) and the UN Committee on the Elimination of Racial Discrimination also recommend that receipts or reports be provided to individuals checked.

Regarding Spain, **David Martin**, a member of the Fuenlabrada municipal police, highlighted the launch of several projects aiming at reducing ethnic profiling and improving police-population relations. One of the measures taken is provision of receipts containing specific pieces of information to individuals subject to police checks. The use of receipts, which was introduced in Fuenlabrada in 2008, has led to a 2/3 reduction in the number of identity checks, and their success rate (how often they need to be followed up) rose from 6% to 17%. Fuenlabrada continued to use such forms with positive results; in 2012, their success rate reached 30%<sup>23</sup>.

<sup>23</sup> <https://www.justiceinitiative.org/uploads/21ac6560-639d-461c-a6b7-06822ad1c07e/under-suspicion-the-impact-of-discriminatory-policing-in-spain-20190924.pdf>



**A PARTICIPATORY YOUTH ACTION/  
RESEARCH TO DEVELOP DIALOGUE BETWEEN  
POLICE AND INHABITANTS AND TO REDUCE  
ORDINARY DISCRIMINATION**

**Hélène Balazard** and **Naïm Naili**

Members of the PoliCité Collective, France

In 2016, the PoliCité Collective launched a participatory action/research project that brought together youth professionals, a dozen young people and two researchers in Vaulx-en-Velin, a Lyon suburb that has been at odds with the police since 1990.

The Collective's goal was to objectify and better understand the impact on young people of so-called ordinary discrimination, which is less visible and more difficult to identify. The young people involved were trained to act as investigators and pass on the idea to other young people that routine acts of discrimination were worth reporting.

The carried out investigation found that tensions between police and the youth are not necessarily due to violent behaviour or open displays of racism. Alongside acts of so-called "pure" discrimination, there was a range of everyday micro aggressions including overfamiliar forms of address (use of informal pronoun "tu"), verbal confrontations and provocative gestures, leading to displays of aggression and provocative behaviour on the part of the young people involved.

Given the context of tension, the police saw identity checks as necessary in order to assert their presence on the ground.

*"(...) for the police, the point of such behaviour was to get young people to demonstrate their submission to authority by a style of action that researchers describe as confrontational (...)"*

Yet such practices have negative effects on the officers themselves, the conditions under which they exercise their profession, and on the young people they deal with:

*"Such styles of action have harmful effects. They increase suffering at work and adversely affect conditions under which they are acting in working-class neighbourhoods, and they also cause their young inhabitants to feel that they are being treated as second-class citizens, with sometimes major psychological consequences (loss of self-confidence, etc.)".* (Hélène Balazard and Naïm Naili, members of the PoliCité Collective, France)

The PoliCité investigation brought to light the submerged part of the iceberg. In this context, it observed that recourse to the law was often ineffective, as young people were stakeholders in the phenomenon and police officers' behaviour did not necessarily constitute obvious breaches of their code of ethics.

Based on this finding and in order to overcome such confrontational styles, the PoliCité Collective developed actions focusing on deliberation:

- Creation of an educational tool, a comic strip presenting the two viewpoints and which seeks to overcome reciprocal prejudices;
- Organisation of a citizens' conference in December 2018, bringing together Vaulx-en-Velin's police forces and inhabitants in order to give thoughts on how to turn confrontation into trust. The conference provided an opportunity for the various actors to discuss on equal terms and resulted in the adoption of 12 recommendations;
- Organisation of discussion evenings with the city's police officers;
- Interventions in schools.

The PoliCité Collective has found that such deliberative actions have beneficial effects. They help do away with institutional blindness as to the consequences of identity checks and lead professionals to examine the types of action involved in coproduction of conflicting situations.



Regarding ethnic profiling, at the end of the citizen's consensus conference, participants finally voted on a common proposal aiming at objectivising the consequences and effectiveness of identity checks, share them, providing pieces of information on legal remedies, and initiate a national project to end ethnic profiling.

In conclusion, the Collective states that security is not just a matter for professionals, hence the importance of making use of collective intelligence and promoting horizontal exchanges. It notes that there is on-going momentum to continue with the initiative.

## TRAINING IN LAW ENFORCEMENT

### **Training of police officers by their peers in order to reduce racial profiling**

#### **Bas Böing**

Amsterdam police, the Netherlands

**Bas Böing's** mission as a member of the Dutch police force is to reduce illegal profiling by increasing professionalism through training programmes and action/research projects.

Racial profiling was acknowledged as being a systemic problem in the police force at all levels of its organisation. The acknowledgment of its existence made change possible and the decision was taken to root out the problem, from police officers' routine practices to management policies and instructions. Policies and instructions are never intentionally discriminatory, but they are sometimes drawn up by individuals who make mistakes or who are biased.

In order to ensure the mission, maximum effectiveness the project entitled "Ambassadors" was launched, bringing together a group of 130 officers whose job was to assist about the implementation of change. The initiative seems to have been generally well received, as police officers tend to discuss their practices with their peers.

One of the project's training tools is "Search, Detect, React (SDR)", a 2-day training course on predictive profiling during which officers learn to observe deviant behaviours and malicious intentions and are confronted with their own prejudices and stereotypes.

### **Training of European police officers**

#### **Elisabeth Zinschitz** (CEPOL, EU)

As **Elisabeth Zinschitz** explained, at an European level, CEPOL provides training and advocates for cross-border training activities for law enforcement, including police officers, border guards, customs officers and other professionals as well as for judicial staff; these activities include residential and online training as well as an Exchange Programme. CEPOL's cross-border training activities advocates for and promotes multi-disciplinary cooperation by bringing together members of security forces and other professions to develop a common culture.

## PRACTICES INITIATED BY MEMBERS OF EQUINET, THE EUROPEAN NETWORK OF EQUALITY BODIES

#### **Patrick Charlier**

UNIA, member of Equinet's BOD<sup>24</sup>

Equinet is a network of bodies promoting equality at an European level. Its missions include training and awareness-raising, research, carrying out studies and providing assistance, along with the processing, reporting and management of cases of discrimination. Equinet currently represents some 40 organisations in 36 countries, operating in and outside the EU.

Bodies promoting equality are distinct from bodies monitoring the police, even though they work alongside each other, because they have no legal mandate to deal with abuses committed by police forces as regards ethnic profiling, which is inevitably linked to racial discrimination.

<sup>24</sup> Reference : <http://equineteurope.org/2019/07/25/equality-bodies-countering-ethnic-profiling/>



In November 2018, Equinet held a seminar on ethnic profiling, focusing in particular on the role of equality bodies in this respect.

Equality bodies have carried out studies and held training courses on discriminatory checks, and have also played key roles in various national disputes, by investigating and reaching decisions presented in court. Their participation has resulted in positive regulations and court rulings recognising the police's obligation to act in non-discriminatory way.

It reveals on the one hand the illegality, unfairness and ineffectiveness of ethnic profiling, and on the other hand many obstacles which have to be overcome in order to remedy the situation (including denial of its existence, absence of statistics, the problem of lack of proof, and absence of redress).

One of the challenges highlighted by Equinet's members is that the police is responsible for enforcing the law, including laws on non-discrimination. Therefore, they are allies of bodies that fight against discrimination as they are supposed to defend people who have been victim of it. Finally, police forces are also employers and the policy of diversity within their ranks is therefore important as it helps build trust in the institution.

## PROFILING AND USE OF PNRs (PASSENGER NAME RECORDS), ITS LEGAL FRAMEWORK AND THE SAFEGUARDS PROVIDED

### **Julia Ballaschk**

Police, Denmark

**Julia Ballaschk** pointed out, that within the legal framework of EU Directive 680/2016 on data protection within the law enforcement sector (Law Enforcement Directive), profiling is generally allowed. However, she stressed that certain restrictions apply when profiling produces adverse legal effects on the individual or significant effects. In these cases, profiling needs to be authorised by law and appropriate safeguards have to be provided, at least when "human" interventions are planned.

Profiling, which is based on the so-called special categories of data (such as ethnicity, religion, political belief), "is only allowed when suitable safeguards are in place".

All profiling which leads to discrimination is prohibited.

Julia Ballaschk then explained that "*with the EU PNR Directive, a legal framework was created to produce a basis to profile flight passengers in order to identify unknown criminals on the basis of objective criteria, while at the same time providing strong protections for fundamental freedoms*".

The PNR Directive allows law enforcement authorities to collect personal information on a large number of individuals who were mostly law-abiding travellers. In order to balance the intrusion into the right to private life of innocent passengers, the PNR Directive only allows law enforcement authorities to process data in order to investigate and prevent specific serious crimes and terrorism.

With the use of PNR-information, she highlighted that "*profiling is not always targeted at individuals but rather at certain objective criteria which can be connected to specific types of crime*".

For example, PNR-data shows travel routes, whether passengers take baggage with them and how they pay for their tickets.







For crimes such as drug trafficking, this piece of information is very useful when algorithms are created to filter out travellers whom for example pay for their tickets in cash and use certain known drug trafficking routes.

For Julia Ballaschk the use of algorithms, “*may prevent potentially discriminative profiling practices at border control points, such as ethnic profiling*”.

Without PNR-data, potentially suspicious travellers are often singled out by border guards or customs officials based on “gut feeling” or prior experience. It is not uncommon, that individual which fit unconscious or conscious stereotypes are overrepresented in these manual checks.

In the Danish police, all profiling rules need to be approved by a superior and are accessible to the Data Protection Officer. This puts a considerable limitation on potentially discriminatory rules. Additionally, all rules undergo quality checks and may only run for a limited time period in order to allow assessing whether the rule still is necessary. Additionally, all processing operations are logged and audited proactively.

## 6) Proposed solutions arising from the seminar

### COLLECT, SHARE AND ANALYSE MORE INFORMATION ON THE SUBJECT

- Police departments should collect data on their use of identity checks, stops, and searches. Data collection is essential in order to monitor and track disproportionate impacts and assess the effectiveness with which these powers are used. The collection of statistical data on police stop-searches and ethnicity is essential to determine whether, where, and why ethnic profiling is occurring and support measures to reduce it. Detecting and monitoring ethnic profiling require anonymised ethnic statistics that allow for comparison of minority and majority groups' experiences of policing (see in particular recommendations issued by the ECRI in 2007);
- The FRA, EUROPOL and other European institutions should gather quantitative and qualitative information on security. These studies should focus on the impact of ethnic profiling on individual and communities ;
- A particular attention should be focused on the risk to rights posed by the use of algorithmic profiling, FRA, Europol, European institutions and national governments should work together in the coming years to ensure there is adequate governance to identify and challenge discrimination in the use of predictive policing and new technologies.

### STEP UP DIALOGUE

- Stepping up dialogue with the police is important: local government representatives, whether responsible for their police forces or not, are finally seen as being responsible for citizens' security. They should be incorporated into ongoing dialogue as facilitators;
- Promoting dialogue between police and population: police officers need to know the areas they operate in. Towns could organise integration days designed to acquaint them with the local voluntary sector, civic participation schemes and any consultative bodies that might act as levers to facilitate such dialogue;
- Creating platforms, places and times for meetings: security is not just a matter for professionals. Get police and citizens together to initiate dialogue so that people understand their respective constraints, and make use of collective intelligence (PoliCité citizens' conference, and upcoming meetings that the Bourgogne Franche Comté police is planning to organise in the same way );
- It is also important to increase the collaboration:
  - Between authorities fighting discrimination and external police monitoring mechanisms, when all the necessary competences are not possessed by a single organisation (as it is in France, Greece and Croatia, among others);
  - Between authorities fighting discrimination and police forces in order to strengthen the latter's capacities as:
    - Security forces that must receive complaints about discrimination and racist remarks and acts of violence, and identify and handle them;
    - Employers, through a reinforced internal antidiscrimination and diversity policy, which will also help improve the population's trust in the institution;





- Further increasing European cooperation with the objective of providing promising local and national experiments (such as those carried out by the IPCAN network) with greater visibility, and enabling other countries to draw inspiration from them. Such European Union institutions as the FRA could contribute to this by developing appropriate standards.

### IMPROVE LAW ENFORCEMENT TRAINING

- Regarding training, it is important that the hierarchy is convinced of its necessity and becomes a stakeholder in making real changes in the institution's culture. There is little point in training officers if the institution does not support or promote local actions.
- assessment of the effectiveness of training activities contributes to quality insurance and management.

Finally, a number of participants stressed the need:

- for IPCAN members to be better known and more easily accessible in their respective countries;

- to ensure the existence and effectiveness of monitoring mechanisms and recourse in the fields of policing ;
- and provide mechanisms to monitor the use of artificial intelligence and algorithmic profiling .

*“Better to do something that partially solves the problem than to do nothing until you have the ideal answer. We need to experiment and then adapt”.* (Sally Trattle, Northamptonshire police).

*“All these finding require that we join forces to collectively address the issue of identity checks. And we need to free ourselves from the current situation of deadlock and inertia that reigns above France, where we do not succeed, for now many years, in moving things forward on the subject.”* (Jacques Toubon, Defender of Rights).

# II. The management of public demonstrations

## 1) Introduction

Across Europe, relations between the police and the general population are characterised by high levels of trust on behalf of the populations of European countries towards the police. Yet, in certain countries, in a context of tougher security policies, they are marked by tensions or even a deterioration of trust among some sections of the population. A number of factors may have contributed to tension in these relationships, such as cutbacks in the resources allocated to law enforcement agencies, an increase in the number of tasks assigned to them, working conditions and the effects on the public of economic and social crises<sup>25</sup>.

Law enforcement operations represent decisive moments in the building of trust between the police and the public. But these moments can trigger increased tensions and violence.

**Kati Magi**, advisor to the Estonian Chancellor of Justice, reported that only a minority of institutions in the IPCAN network have so far had the opportunity to deal with complaints related to police management of public demonstrations. This is the case of the Defender of Rights, but also of his British, Estonian, Greek and Quebec counterparts.

**Olivier Fillieule**, a professor at the Faculty of Social and Political Sciences at the University of Lausanne, spoke during the first part of the seminar about the changing economic context (economic crisis, austerity policies, increasing

inequalities and the emergence of a new class of working-poor, low-skilled workers, found among immigrant populations and women), which, in his opinion, is leading to an increase and intensification of social conflicts. In this context, Olivier Fillieule observes a general trend in Europe towards increased repression – a ‘brutalisation of policing’.

**Anne Wulleumier**, a researcher at the INHESJ (National Institute of Higher Studies of Security and Justice / *Institut national des hautes études de la sécurité et de la justice*), highlighted that the notion of ‘trust’ must play a central role in the management of public demonstrations: management based on trust between police and demonstrators results in a minimum use of force. In return, when there is public trust in the work of the police, its regulatory work is made easier. It is therefore crucial to maintain trust between police and population, to seek to maintain and strengthen it, which requires better cooperation, improved communication between the various parties involved, maintaining of contact during events, but also on a daily basis, both upstream and downstream, because trust is also built over time.

The different approaches presented by the panellists in the discussion on policing, which focused on the British, German, French and Belgian examples of managing demonstrations, are in line with this vision. These approaches are presented below, following a brief explanation of the main challenges in policing and examples of cases handled by members of the IPCAN network.

<sup>25</sup> See Defender of Rights Opinion No 18-08 of 12 March 2018, following the Defender of Rights’ hearing before the Senate’s committee of inquiry on the state of internal security forces in March 2018. [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=18582%20](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=18582%20).

## 2) Situations encountered by members of the IPCAN network

### USE OF DEFENSE BALL LAUNCHER (LBD) DURING PUBLIC DEMONSTRATIONS

France, Defender of Rights:  
Decision 2017-277, December 1<sup>st</sup> 2017<sup>26</sup>

#### Facts

Circumstances in which a police officer used a defence ball launcher (LBD) as a deterrent, aiming at protesters at very close range in an attempt to disperse a demonstration against the El Khomri Labour Law on 15 September 2016.

#### Recommendation

The Defender of Rights concluded that the use of force was disproportionate to the objective (to drive back the protesters), to the absence of danger posed by the protesters, to the risk involved in firing the weapon and to the likely trauma caused by the violent nature of the action. It recommended that disciplinary actions be taken. It reiterated its recommendation to prohibit the use of LBDs during demonstrations.

#### Response

The Minister of Home affairs finally considered in 2019 that the facts did not constitute a breach and that the recommendation should therefore not be acted upon. Yet, this very recommendation, included in the Defender of Rights' report on policing, published in January 2018, had received a favourable response by the Police Prefect.

### LACK OF IDENTIFICATION OF SECURITY FORCES

Estonia, Chancellor of Justice:  
Decision No.16-4/07654<sup>27</sup>

#### Facts

On April 26<sup>th</sup> and 27<sup>th</sup> 2007, major riots took place in Tallinn city centre. Some 1,500 people took part in the riots.

The Chancellor received 52 complaints from individuals detained by the police and individuals against whom restraining measures had been used. The complainants stated that they had simply been in the city centre and that the police had used disproportionate physical force against them, while suppressing the riots taking place at the same time. Some complainants claimed that the police had used plastic binding strips to detain individuals for long periods and that the officers had not worn name tags.

#### Conclusions

After conducting an investigation, the Chancellor presented his findings that the individuals concerned had been detained during the mass riots and placed in temporary detention centres in contravention of established criminal procedure.

#### Recommendations adopted

The Chancellor also made several recommendations to the Minister of Internal Affairs, including the drafting of a regulation defining the procedure for using name tags on police uniforms and replacing them, where necessary, with identifying number combinations.

#### Response

In his reply to the Chancellor's proposals, the Minister of Internal Affairs explained that the Ministry had prepared a draft amendment to Government Regulation No. 160 of 13 July 2006 'Description of police uniform', supplementing the description of the elements constituting the uniform with an identifying sign. According to the Minister, the amendment had come into force on 8 November 2007.

<sup>26</sup> [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=17113](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=17113)

<sup>27</sup> [https://www.oiguskantsler.ee/sites/default/files/annual\\_report\\_of\\_the\\_chancellor\\_of\\_justice\\_2007.pdf](https://www.oiguskantsler.ee/sites/default/files/annual_report_of_the_chancellor_of_justice_2007.pdf)



## France, complaints by the ‘Gilets jaunes’ handled by the Defender of Rights:

In France, 2019 was characterised by intense tensions, particularly during demonstrations led by the *Gilets jaunes* (“Yellow Vests” – a spontaneous, unstructured and strongly social movement) and the Defender of Rights was often called upon to intervene.

As of the day of the seminar, the Defender of Rights had received 168 complaints. 36 of them have been closed (mostly because plaintiffs withdrew their complaints or claims were insufficiently substantiated) and 132 were still under investigation. 42 of the total number of referrals received (there may be several complaints per referral) questioned the use of LBDs, 42 challenged the disproportionate use of force, 42 concerned procedures deemed arbitrary (confiscation of objects and preventive interrogations), 45 called the use of tear gas into question, 22 challenged the use of traps, and 10 related to obstruction of photography.

Geographically, 40 concerned events that took place in Paris, 19 in Toulouse, 16 in Dijon, 5 in Rouen and 6 in Bordeaux. The remaining 44 took place in other cities including Marseille, Nice, Lyon and Montpellier.

The majority of these complaints are still being investigated. However, it is already clear that the Defender of Rights’ findings in his 2018 report are more relevant than ever. This is particularly true when considering the dangers posed by certain intermediate-force weapons, such as the LBD.

## 3) Key challenges in democratic crowd control

Challenges identified during the discussions are as follows:

- **Difficulties associated with building good communication between police and protesters**, which has not developed in the same way and to the same extent in the various European countries, and the importance of ensuring such communication not only with organisers of demonstrations (e.g. union representatives) but with all participants, particularly smaller groups of protesters, the more radical groups, etc.

It was also noted that communication by the police with the various people involved in demonstrations should take place at all levels of the hierarchy. Even where dialogue units are set up specifically to ensure such communication, all units must take part in the dialogue, especially those that will take action in the event of tensions arising;

- **The need to create dialogue with protesters while ensuring that such dialogue is not used for intelligence purposes.** In the United Kingdom, for example, liaison officers are perceived by some sections of the population as having infiltrated demonstrations in order to gather intelligence (nowadays, liaison officers leave this role strictly to the intelligence services: liaison officers gather information about the demonstration, for example if a group decides to depart from the planned route, but cannot request any personal information);
- **Use of force by law enforcement forces**, which must be necessary and proportionate. The use of force also includes the question of weapons used by the police during law enforcement operations, which differ greatly from one country to another.





The use of so-called intermediate-force weapons in policing operations, particularly in France, highlights ongoing problems related to the seriousness of the injuries they cause and the lack of transparency concerning their conditions of use.

- **Existence of misrepresentations of each other**, between police and protesters that could undermine their trust in each other. For example, the police often reportedly believe that protesters refuse to engage in dialogue with them, which in most cases proves to be untrue;

- **The emergence of new forms of protest** (not only demonstrations but also blockades, etc.) and the possibility of protests without a clearly identified spokesperson to liaise with the police;
- **The presence of violent individuals or groups** in certain demonstrations. This raises the question of how to manage them or even remove them from the demonstration.

## 4) Case studies practice(s) implemented

Over the last thirty years, several European States have implemented policing reforms, some of the most recent of which were inspired by the KFCD (Knowledge, Facilitation, Communication, Differentiation) model and the GODIAC project (Good practice for dialogue and communications as strategic principles for policing political manifestations in Europe), implemented between 2010 and 2013.

The aim of the GODIAC Project – presented at the IPCAN seminar by project leader Christian Wessman, then First Deputy Commander of the Stockholm County SPT (Special Police Tactics) Division – was to bring together national officials from different European security forces in order to observe the conduct and management of public demonstrations in the European countries concerned and then discuss of the tools and strategies used, with the support of researchers. Such discussions resulted in 10 field study reports on each country's experience and also led to the drafting of a handbook on the field study methodology, hoping to promote and inspire security forces to conduct their own studies for learning purposes. The guide was based on the following principles:

- Analysis of crowd dynamics based on the elaborated social identity model (ESIM) suggesting that a protester's identity may change during a crowd event as a reaction to security forces tactics or behaviour. If managed poorly, this may lead to formation of a group ready to confront the 'danger' collectively.

The aim is therefore to avoid the formation of groups as a means of resistance against the security forces and if possible achieve so called self-policing<sup>28</sup>;

- Coordination, management and supervision of demonstrations for the purposes of facilitating legal aims; the key idea is to move away from public order « control » and aim more for public order « management », implying that security forces need to understand crowd dynamics and psychology;
- Constant negotiations with protesters and development of communication before, during and after the demonstration;
- Differentiation (see below) and targeting of policing operations based on an explicit typology of groups of protesters.

The GODIAC project has inspired the reform of several national police forces in Europe, the most recent of which being the Gendarmerie Vaudoise.

### A GERMAN DOCTRINE CHARACTERISED BY THE NOTION OF 'DE-ESCALATION' AND EMPHASIS ON COMMUNICATION

#### **Fabien Jobard**

French National Centre for Scientific Research, CNRS, France

In Germany, policing is managed on the basis of the government's commitment to prevent uncontrolled behaviour on the part of security forces.

Since the 1990s, German police forces (regional authorities) have been oriented towards mediation and communication tasks. This development is the implementation of a 1985 landmark decision of the Constitutional Court<sup>29</sup>, which imposes a duty of cooperation and communication on the police authorities.

This ruling provides police officers with a framework for intervention based, among other things, on a duty to differentiate, to listen to all parties and to assess the need for '**de-escalation**'.

<sup>28</sup> Cf. This approach was highlighted in 2006 at a CEPOL conference (Police Sciences Conference).

<sup>29</sup> The Brokdorf ruling is a decision by the Federal Constitutional Court dated 14 May 1985. It was issued following an illegal ban on demonstrations against the construction of the Brokdorf nuclear power plant (Schleswig-Holstein).



The notion of ‘de-escalation’ in German doctrine means ‘*neutralisation of conflicts by means of mediation and amicable resolution, while avoiding use of interrogation and lodging of complaints*’<sup>30</sup>.

### Differentiation

German police officers intervene by ‘*differentiating between groups of protesters*’, in particular between those who comply with the law and those who do not. In situations where arrests cannot be avoided, police officers should be able to prevent the crowd from forming a protective group around the individuals who are to be arrested.

They first inform the other protesters of the planned intervention using loudspeakers and Twitter. Then, the preferred method used is to isolate the group before conducting identity checks. This tactic stems from the Brokdorf case referred to above, which states that the police must differentiate between protesters based on their violent or peaceful behaviour. Interrogations during demonstrations are carried out in the presence of mobile teams of prosecutors. These methods are described as a way of reducing violence against police officers, particularly by sociologists who point out that ‘*removing from a crowd an individual known to be violent [...] prevents him from causing harm*’ and avoids ‘*turning the crowd to violence, joining forces with the most radical elements*’<sup>31</sup>.

Police officers may also wait until the end of the demonstration to arrest an individual, including on his or her way home, if they have sufficient evidence. To this end, police officers are equipped with cameras, can collect information, and put together files that are rapidly communicated to the courts.

### An emphasis on communication

For large demonstrations, the police make contact with their organisers and maintain such contact throughout the event. Police officers therefore act as ‘*problem solvers*’, ‘*chatty officers*’ whose ‘*talking is the main law enforcement weapon*’<sup>32</sup>.

While demonstrations are taking place, police actions must be understood and perceived by protesters as legitimate. To this end, the police maintain frequent communication with the crowd via giant LED screens, press conferences and social media.

However, this ‘German’ doctrine is not applied consistently across the country. For example, according to Fabien Jobard, the Hamburg Police Force maintains a hard-line tradition that prompted confrontations at the G20 in July 2017. In contrast, the example of Berlin’s de-escalation management of the “revolutionary 1<sup>st</sup> of May” demonstrations starting in the 1990s paved the way to pacification of an annual demonstration that had long given rise to public disorder, violence and destruction.

According to Fabien Jobard, the strategy was then adapted to :

- Allow a certain amount of destruction to take place in order to ensure a more general limitation of such destruction and better management of the demonstration as a whole;
- Carry out highly targeted questioning of people identified as ‘leaders’;
- Provide communication teams or liaison officers;
- Plan ‘advance discussions’ with those identified as the main leaders in the preceding days (home visits to inform them that they have been identified by the police);
- Conduct large-scale police deployment (the aim being to deter leaders by a show of force in order to avoid having to use it).

<sup>30</sup> Jérémie GAUTHIER, « Origines contrôlées. Police et minorités en France et en Allemagne », *Sociétés contemporaines*, vol. 97, no. 1, 2015, pp. 119.

<sup>31</sup> Op.cit. Jérémie GAUTHIER, « Origines contrôlées. Police et minorités en France et en Allemagne », p. 119.

<sup>32</sup> According to Karl-Heinz Schenk, Superintendent of the Federal Mobile Forces at a meeting with the Defender of Rights on 8 March 2017 in Berlin.



The May Day demonstration in Berlin is now peaceful. This is partly the result of police action, but is also due to the city's public policy in response to the inhabitants of the neighbourhoods concerned, who have a lower degree of tolerance of violence. Cooperation with local businesses was set up to hold popular festivals at locations that were traditionally targeted for destruction, so making it very difficult for troublemakers to take action.

This suggests that changes in management of demonstrations cannot be based solely on changes in policing theory or tactics. In order to be effective and prove their worth, such solutions must also be the result of thought that goes beyond the narrow confines of policing questions.

## **NEGOTIATED MANAGEMENT OF PUBLIC SPACE BY INTEGRATED POLICE FORCES**

### **Thierry Maurer**

First Chief Superintendent, Belgium

### **A new framework for intervention**

In Belgium, the framework for managing public demonstrations, presented during the IPCAN seminar by Thierry Maurer, underwent significant changes at the end of the 1980s with the adoption of the circular of December 10<sup>th</sup> 1987 related to the maintenance of order, after the Heysel tragedy. In addition, the methods of event management, under the direct responsibility of the administrative authorities, and mainly of the Mayor, evolved in the "Pentecost Plan" of 5 June 1990. This plan provides, among other things, for the coordination of the security forces and new practices by giving priority to dialogue and de-escalation.

The implementation of these new practices was then consolidated and anchored by two important circulars: Circular CP4 of May 11<sup>th</sup> 2011 on negotiated management of public space for integrated police forces, structured

on two levels, and Ministerial Circular OOP 41 of March 31<sup>st</sup> 2014 on negotiated management of public space<sup>33</sup>. These circulars are the result of a gradual evolution of operational practices implemented by police services and their authorities in the daily management of events.

As in Germany, the de-escalation doctrine is prescribed by law and taught in practical ways in training courses: *'De-escalation refers to a confrontational situation in which an outbreak of violence is imminent but where every effort is made to avoid it through negotiation and compromise. Failing this, we then proceed with regulation and, if necessary, repression'*<sup>34</sup>.

### **Consultation and coordination**

Negotiated management of public space presupposes that *'dialogue and consultations with the different parties begin as soon possible and end when all the lessons have been learned. This dialogue-based approach should contribute to increase mutual trust, keeping the frustration threshold low, positively influencing the perceived legitimacy of the measures taken and the integrated and multidisciplinary management of an event'*<sup>35</sup>.

Information management is no longer limited to a closed, vertical police information system. The Belgian authorities recommend the use of a *single, multidisciplinary information sheet* to be completed by the event organiser and the various stakeholders involved (fire brigade, first aid, municipal services, etc.).

In terms of communication and preparation of the event, under the supervision of the administrative authority, the head of the local police force or the coordinating director of the federal police, "Gold Commander", must initiate a dialogue and a consultation with the different parties as early as possible, by naming a police contact point for the management of the event, i.e. an identified interlocutor known to the organisers.

<sup>33</sup> The mayor is accountable to his constituents for local implementation of policing. It is therefore essential to take local policy into account when deciding on the approach and decisions to be taken during a public demonstration. .

<sup>34</sup> Circ. CP4, Belgium. [https://www.etaamb.be/fr/circulaire-du-11-mai-2011\\_n2011000309.html](https://www.etaamb.be/fr/circulaire-du-11-mai-2011_n2011000309.html)

<sup>35</sup> *Ibid.* Circ. OOP 41, Belgium.

During the event itself, the deployment by the police of more interactive and targeted, individual approaches can make an important contribution to the smooth running of the event and can take different forms such as: communication officers, information teams, liaison officers, contact points, surveillance police, spotters (observers), support teams, specialised teams, judicial teams. During the IPCAN seminar, **Thierry Maurer** highlighted the time-consuming aspect of negotiated management of public space before, during and after the demonstration. It is particularly important that after each demonstration there should be a review of the management methods used and how to improve them with regards to the objectives pursued, in cooperation with all relevant parties.

In closing, Thierry Maurer explained the limits of the system, which requires carefully chosen spokespersons who are sometimes difficult to identify for certain demonstrations, as well as protesters who are willing to engage in dialogue, which is not always the case. However, even in these circumstances, attention should be paid to the general philosophy of negotiated management of public space. The concrete modalities of implementation may, however, be differentiated.

## A CENTRAL ROLE FOR LIAISON OFFICERS

### **Keith Leahy**

MET, United Kingdom

In England and Wales, the theory behind policing is a doctrine of 'maintaining the peace'. It places the police 'in contact' with protesters, in particular with the help of protester liaison officers who are central to the policing system and whose role is to inform, negotiate, mediate and make regular use of social networks.

Sergeant **Keith Leahy**, has almost 30 years of experience in the Metropolitan Police. He is also one of the most experienced officers in the UK, in the role of Police Liaison.

These days, British Police Command officials consider liaison officers vitally important to the smooth running of operations for the management of public demonstrations. This is an initiative borrowed from the '*dialogue police*' in Sweden. Once installed, liaison officers provide a continuous flow of information between protesters and command that allows for real-time negotiation and problem solving. The presence of law enforcement officers in the crowd is the optimal way of continually 'measuring the temperature' of how the demonstration is progressing and being informed well in advance of any possible shift towards violence by certain groups. Such information gives the security forces valuable time to react and change their strategy on the ground.

The first liaison officers were trained in 2011 and the first deployments were made in 2012 during the Olympic Games. There are now 130 of them and they manage over 300 demonstrations a year.

However, liaison officers have been the subject of debate in the United Kingdom in the past. They were seen by certain sections of the population as having infiltrated demonstrations in order to gather intelligence. For Sergeant Keith Leahy, it is indeed the case, that in 2012 some Officers performed both roles of Police Liaison and Intelligence gathering. However Intelligence Gatherers no longer perform the role of Liaison Officers and the roles are kept separate. It is only on very rare occasions that Liaison officers have requested personal information on individuals' identity.

**Anja Bienert** of Amnesty International also stressed the importance of communication and negotiation, following the KFCD model, with the need of a proper understanding of each of the elements:

**Knowledge** not being misunderstood as surveillance, but as a method to understand the needs, perceptions and motivations of participants in order to avoid unnecessary confrontation.





A **facilitative** approach requires showing a supportive attitude to help for a smooth running of the assemblies and avoids an excessively restrictive approach that would only fuel tensions: she referred to the G20-summit in Hamburg being a sad illustration of how peaceful assemblies can turn into a heavily violent confrontation with serious damage, harm and disorder.

**Communication** (differing from simply issuing orders) must seek to establish a two-way dialogue in order to solve problems and ensure that the police response to specific situation does not come as a surprise to participants.

Police tactics, interventions and weapons must avoid affecting all participants, but seek to intervene in a **differentiated** manner, affecting peaceful participants as little as possible. The use of weapons that by nature have an indiscriminate effect must therefore be subjected to a very high strict use, only permissible when differentiation is not possible.

Finally, she emphasized the need for a proper, transparent and genuine lessons-learned process and mentioned a number of situations and incidents (Northern Ireland, Gothenburg, London, May-Day demonstrations in Germany), where such a process indeed led to a different and improved policing of public assemblies.

## 5) Proposed solutions arising from the seminar

The practices presented during the seminar focus mainly on communication, before, during and after demonstrations, between the police and protesters in different ways. The aim is to facilitate the demonstration, clarify and justify police actions, increase mutual trust, better read the changes in the crowd and be able to negotiate continuously and resolve conflicts more easily. Communication –permanent dialogue between police officers and protesters – is central to the so-called 'de-escalation' strategy, the aim of which is to avoid escalation of violence as much as possible through negotiation, mediation and interpersonal interaction.

### STRENGTHEN TACTICAL COMMUNICATION DURING EVENTS

For many European security forces today, tactical communication is of key importance in law enforcement management. The examples of the liaison officers in the United Kingdom and 'Anti-Konflikt Teams' in Germany are not isolated; there are variations of the same system in several European countries, including the 'event police' in Denmark, the 'peace units' in Holland, the 'three Ds' model (dialogue, defuse, defend) in French-speaking Switzerland and the 'Special Police Tactics (SPT)' in Sweden<sup>36</sup>.

This European model is promoted and disseminated by such organisations as the European Union, the Council of Europe, the Organisation for Security and Cooperation in Europe, and their respective training bodies. Exchange programmes and forums have proliferated, enabling knowledge sharing.

### REFOCUS POLICING ON THE ADMINISTRATIVE POLICE'S MISSION OF PREVENTING OUTBREAKS OF VIOLENCE AND SUPERVISE THE EXERCISE OF THE RIGHT TO DEMONSTRATE USING A NON CONFRONTATIONAL APPROACH DESIGNED TO PROTECT INDIVIDUAL FREEDOMS

Policing strategies based on the notion of '**de-escalation**', as in the Berlin example explained above, help to ensure that demonstrations take place in a peaceful manner and contribute to improve relations between the police and the general population.

From this point of view, it is necessary to allow certain 'outbursts', some level of disorder, to prevent the overall level of disorder from becoming too high and avoid excessive destruction.

The adoption of legal texts of general scope (circulars, laws, jurisprudential decisions) as in Belgium or Germany often constitutes a bonus in order to articulate the policing and protection of individual liberties.

### INCLUDE ALL PARTIES, PARTICULARLY COMMUNITY GROUPS, THE PUBLIC AND OTHER LOCAL STAKEHOLDERS, SUCH AS RETAILERS, IN THE STRATEGIES USED TO MANAGE EVENTS

Policing during public events does not solely rest with law enforcement bodies. It is important that they also rely on local networks of community groups, public bodies and local businesses.

<sup>36</sup> Olivier FILLIEULE, Pascal VIOT, Gilles DESCLOUX. « Vers un modèle européen de gestion policière des foules protestataires ? », *Revue française de science politique*, 2016, 66, 2, p. 295-310.





IN THE POLICE, AT ALL LEVELS OF THE HIERARCHY, DEVELOP AN UNDERSTANDING OF THE DIFFERENT TYPES OF PROTESTERS, THEIR EXPECTATIONS, THEIR OBJECTIVES, ETC

Finally, participants in the IPCAN seminar also commented on the usefulness of setting up a GODIAC II project, which would first of all enable input from security forces in countries that were unable to contribute to the results of the first project, as was the case for the French forces.

Secondly, given that some of the characteristics of current demonstrations and the contexts in which they take place have changed in recent years, it would be useful to update the principles set out in the project.

# III. Support for victims and vulnerable groups

## 1) Introduction

### WHAT DOES IT MEAN TO BE A VICTIM?

During the seminar, the European Commission representative **Katarzyna Janicka-Pawlowska** reminded to the participants of the definition of ‘victim’, referring to EU Directive 2012/29/EU establishing minimum standards for the rights, support and protection of victims of crime<sup>37</sup> (*‘Victims’ Directive*).

*‘A “victim” means: a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by a criminal offence; family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death’.*

This definition of victim has been transposed into the laws of the EU’s Member States. The ‘Victims’ Directive provides that all victims, whether they have lodged a complaint or not, should benefit from a number of rights, including:

- The right to have access to information: that includes the right to understand and to be understood, which implies the use of plain and easy-to-understand language, the right to interpretation and translation<sup>38</sup> and also implies that adjustments should be made according to each victim’s personal circumstances, be it a child, a person with a disability, a victim of violence, etc.;

- This right also implies that the police should be able to provide victims with the information needed to assert their rights and initiate proceedings, from the first contact, taking into account their specific needs;
- The right to assistance and support, in accordance with each person’s needs;
- The right to protection.

The main aim of the Directive is to ensure access to justice, support recovery of victims and that victims are not exposed to secondary and repeated victimisation, i.e. that they are treated with respect, dignity and in a non-discriminatory and professional manner, in particular by the police services to which they may turn. The first time a crime victim encounters the police and justice services is critical to build trust in the police. The importance of the first contact with the police and the need to foster a relationship of trust was specifically mentioned by the European legislature in the Directive.

The Directive’s second aim is to encourage more victims to report offences, by boosting levels of trust and ensuring that victims are protected in a way that reflects their vulnerability.

<sup>37</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&qid=1582204429268&from=EN>

<sup>38</sup> Article 7 of the Directive referred to above.

## WHAT DOES BEING VULNERABLE MEAN?

There is currently no precise legal definition of 'vulnerability' as there is no common legislation in Europe on the subject. The European legislature wanted to avoid drawing up an exhaustive list of situations of vulnerability. It was mentioned that three aspects should be taken into account when determining vulnerability (in the directive):

- (a) the personal characteristics of the victim;
- (b) the type or nature of the offence;
- (c) and the circumstances of the offence.

However, a person may be considered particularly vulnerable if he or she is at risk of experiencing some form of secondary victimisation. There are criteria for identifying particularly vulnerable groups (children, people with disabilities, etc.), but the system must be able to recognise multiple forms of vulnerability that exist, based on complex individual characteristics. For example, a white man from an affluent background could be a particularly vulnerable victim if his wife had recently passed away.

Assessing a victim's vulnerability in a meaningful way is essential if they are to be properly assisted, supported and protected. Some vulnerable groups, such as children, have special rights. Under the directive, those assessed as particularly vulnerable have the right to specific protection measures e.g. interviews carried out on specially designed premises, by individuals trained for interviewing those victims etc.

Therefore, the challenge for the police and those working directly with victims is how to assess adequately a victim's vulnerability and needs.

## The special case of victims of 'hate crime'<sup>39</sup>

Hate crimes are defined as crimes that are motivated by the victim's actual or perceived membership of a racial group, religion, sexual orientation, etc.

'Hate crimes' impact their victims heavily for several reasons (*Robert Kusche, RAA – Sachsen e.V.*):

- These types of crimes send a clear message not only to the victims, but also to all those who share the identity that has been targeted: the whole community will be affected and may feel fear or anger just as much as the victim. In the end, these crimes are aimed at the whole of society and threaten social peace.
- Studies show that victims of hate crimes suffer more than other victims: they experience higher rates of depression, loss of confidence, greater tendencies towards fear, anger and so on;
- These crimes often have financial implications for victims (many of these crimes involve the destruction of a person's property, home or workplace).

<sup>39</sup> See the ENAR report on racist/hate crimes in Europe: <https://www.enar-eu.org/Justice-gap-racism-pervasive-in-criminal-justice-systems-across-Europe>, the OSCE report 'hate crime victims in the criminal justice system', published in December 2019, and the 2019 FRA report, 'Justice for victims of violent crime. Part I: Victims' rights as standards of criminal justice' Luxembourg, Publication Office of the European Union.



## 2) Analysis

According to a European Commission study<sup>40</sup>, 75 million people are victims of serious criminal offences in Europe every year. Many of these criminal offences go unreported.

This represents 15% of the population, or 200,000 victims every day.

Several figures discussed during the seminar illustrate the problem of legal remedies not being pursued:

- Only 7% of victims of discriminatory profiling report it to the police (FRA);
- Only a third of female victims of sexual violence contact the police (FRA).

A French study, carried out by Interstats<sup>41</sup>, also identifies this problem with regard to victims of sexual violence in France. Between 2011 and 2018:

- 81% of victims of domestic violence did not go to the police;
- Only 50% of those who did go to them made a complaint;
- 6% of them relied on voluntary organisations;
- 57% of victims said they did not tell their friends about the violence they suffered.

With regard to ‘physical and/or sexual violence within the home’ over the same period:

- 84% of victims of violence in the home did not go to a police station or local police. (81% of victims of multiple incidents did not go to a police station or local police; 90% of them did not go there when they were victims of a single incident).
- 11% of victims of physical or sexual violence at home report having filed a formal complaint.
- 57% of victims said they did not tell their friends about the violence they suffered.

- 13% of such victims contacted social services and 6% met with members of victim support groups.

Victim Support Europe has also produced a report on the implementation of the Directive in the various European countries<sup>42</sup>.

## 3) Examples of complaints handled by IPCAN members

The security services are entrusted with a public service mission: they receive complaints from victims, deal with them and can intervene at the victim’s request. The mission is an important aspect of relations between the police and the general population.

However, complaints received by IPCAN members show that this mission may be affected by a lack of appropriate tools for dealing with victims and vulnerable groups, which can undermine citizens’ confidence in the police.

Specifically, **Charlotte Storgaard**, (IPCAN member, Denmark) highlighted claims of complainants being dismissed and lack of accommodation. Such shortcomings create significant barriers hampering vulnerable groups and individuals who are in need of specific responses, such as female victims of violence, victims of hate crimes, children, people with disabilities, people with health problems, foreign nationals, and victims facing other barriers such as language.

<sup>40</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en)

<sup>41</sup> Interstats 2019 ‘Cadre de vie et sécurité’ is a survey conducted each year by INSEE in partnership with the National Observatory of Crime and Criminal Justice (ONDRP) and the Ministerial Statistical Service for Internal Security (SSMSI). Survey report: <https://www.interieur.gouv.fr/Interstats/L-enquete-Cadre-de-vie-et-securite-CVS/Rapport-d-enquete-Cadre-de-vie-et-securite-2019>

<sup>42</sup> See the Summary Report: [https://victimsupport.eu/activeapp/wp-content/files\\_mf/1564677465VOCIARE\\_Synthesis\\_Reportweb.pdf](https://victimsupport.eu/activeapp/wp-content/files_mf/1564677465VOCIARE_Synthesis_Reportweb.pdf)





### **Denmark, Independent Police Complaints Authority, emergency calls**

In Denmark, the Independent Police Complaints Authority examined the case of a young woman who turned to the police because her ex-boyfriend was threatening her at home. But the call did not go as planned. She told the police officer concerned that a mentally ill person has entered her home. The officer replied, “It sounds like you’ve been infected too, young lady”. When the young woman asked, “If I’m killed, they’ll remember this call, won’t they?”. The office responded, “Yeah, sure, we’ll send a hearse’. The Police Complaints Authority concluded that the police officer had acted in a questionable manner.

### **France, Defender of Rights, dismissal of complaint, person with a disability**

A hearing-impaired complainant went to the police station to file a complaint. The police officer who received her did not take into account the difficulty she had in understanding and expressing herself. Her complaint was not recorded. The Defender of Rights noted the refusal to take into account Ms X’s disability and the discriminatory treatment she suffered at the police station, pointing out that the conditions for receiving and gathering information during an interview with a person

who has come to file a complaint necessarily form part of the police force’s duty to provide assistance.

### **Switzerland, Police Ombudsman, situation concerning a person with a mental disability**

Mr S. had been suffering mental illness for many years and, when an incident occurred, his neighbours called the police. They forced their way in and firmly restrained him. Since then, Mr S. has been traumatised and no longer feels safe in his own home. Thanks to the intervention of the Swiss Police Ombudsman, a medical follow-up was organised, involving the police services. Two police officers from his neighbourhood were asked to meet with him and begin a process of mediation. Mr S. expressed his feelings and his fear that similar events might happen again. He explained his illness, the importance of treatment and his wish to lead a quiet life. The officers were attentive and empathetic. Mediation makes it possible to draw up an intervention protocol, to prevent any future problems, based on very simple logistical precautions, such as providing a set of keys at a neighbour’s house to avoid the door being forced and communicating such information to the central command, coordination and alarm centre (117). Other measures were implemented involving all parties concerned.



## 4) Key challenges in victim support

One of the main problems discussed during the seminar was the insufficient recourse of victims to the relevant institutions in order to assert their rights (underreporting phenomenon): according to the statistics above, many victims do not report having suffered a crime, which has a significant impact on accessing their rights. This often stems from a lack of trust in the police, a reluctance to engage in lengthy legal proceedings without sufficient support, and also from a lack of information on their rights as well as on the organisations and services that provide support and guidance during proceedings. ‘Non-take-up’ can also occur when victims ‘normalise’ an assault or fail to report it because they do not believe it will change anything.

When victims do decide to report an offence, they may still encounter difficulties. Members of the IPCAN network deal with numerous complaints about the police or gendarmerie’s refusal to record complaints.

With regard to hate crimes, and other offences, it is important to note that police officers and gendarmes do not always recognise victims as such, due to a lack of training or conscious or unconscious bias, which affects victims’ rights insofar as they do not receive adequate attention and support.

In addition, it is equally important that police learn to appreciate the specific needs of victims of these crimes: *‘sometimes going to court isn’t the answer; the victim just wants to feel safe, nothing more, nothing less’*. (*Herman Renes, independent trainer*).

Cooperation between the various parties involved in assisting and supporting victims is essential. The police cannot assume all the roles: in some cases, certain governmental services and voluntary organisations are better

suited to receiving certain complaints, taking initial witness statements or referring victims to the relevant services. However, victims do not always know where to turn; they often lack information about organisations that can support them. According to Levent Altan, few national police forces in Europe have set-up an automatic system for directing victims to the most appropriate support services.

Cooperation between the various parties involved is essential as it ensures that victims have access to all the services to which they are entitled.

## 5) Case studies/ practice(s) implemented

### CITIES, KEY PLAYERS IN COOPERATION BETWEEN THE VARIOUS PARTIES INVOLVED IN VICTIM SUPPORT

**Elizabeth Johnston**  
EFUS, EU

Cities play an important role in **providing opportunities for dialogue in the wider community, creating platforms for cooperation, and facilitating the sharing of knowledge**. For example, the city of Rotterdam in the Netherlands has launched a ‘pop-up’ police station that travels to different neighbourhoods to engage with the local population.

The city of Bordeaux in France has set up a unique scheme, ELUCID (*‘Ensemble luttons contre les inégalités et les discriminations’* or ‘Let’s fight inequality and discrimination together’)<sup>43</sup> for victims of discrimination or discriminatory violence. This access-to-rights network was created in partnership with the Bordeaux Bar Association, the regional branch of the national police force, the Defender of Rights, the “*département*” or county and the

<sup>43</sup> <https://www.elucid.bordeaux.fr/>

relevant voluntary organisations. Tailor-made support is provided for victims who contact the network online, by telephone or via its hotline:

- An appointment with a discrimination specialist;
- A free legal consultation;
- An opportunity to be heard in confidentiality;
- Targeted support;
- An introduction to lawyers, jurists and/or voluntary organisations.

### SEXUAL VIOLENCE CRISIS CENTRES

#### **Antonio Caci**

Committee P, Belgium

A pilot experiment was financed by the Belgian government, focusing on the reception of victims of sexual violence in three Belgian hospitals with an aim to set up ‘sexual violence crisis centres’<sup>44</sup>: these integrated centres take in female victims of sexual violence directly at the hospital, where the police, social workers, and others are present. Victims of sexual violence that attend such centres can receive the following services:

- Medical care and follow-up;
- Psychological support (initial care and follow-up);
- Forensic investigation (recording injuries, gathering evidence, etc.);
- Option to file a complaint onsite with a specially-trained police officer.

Such centres therefore bring together all those involved in the care of victims under one roof and outside the police station, and promote cooperation between the police and other victim support services (hospitals and voluntary organisations).

According to **Antonio Caci**, many women find it easier to seek help from these centres rather than from the police.

### INTERNAL AND EXTERNAL ASSESSMENTS OF RECEPTION OF VICTIMS BY THE LOCAL POLICE

#### **General Labbé**

Head of the General Inspectorate of the National Gendarmerie, France

The reception of vulnerable groups by the French Gendarmerie (local police) is monitored in a number of ways in order to ensure that they fulfil their duties to receive, listen to, advise and support such groups:

- Internal monitoring by the Gendarmerie;
- External monitoring by an independent body to measure the ‘satisfaction’ of victims in its care (e.g. study published by Interstats (see above) on the ‘satisfaction’ of victims of domestic violence);
- Monitoring by citizens: every year, 1,500 complaints from citizens are submitted to the Head of the General Inspectorate, requesting explanations for gendarmes’ conduct towards victims;
- The Defender of Rights also plays a role in monitoring compliance with the police and gendarmerie’s code of ethics, and receives complaints from citizens every year.

General Labbé, who attended the seminar, mentioned two innovative tools launched recently regarding the assistance to vulnerable groups. The first one is specifically intended to domestic violence victims and was implemented after an audit on the reception of vulnerable victims within the gendarmerie. New trainings, a danger evaluation grid and the creation of special units dedicated to the prevention of domestic violence and the follow up of victims, with a special emphasis on the collaboration with social services were recently carried out.

Besides, the “digital brigade” was set up to respond to requests made by citizens through a dedicated website. The advantage of this technological innovation is the availability 24 hours a day, seven days a week: it is possible to obtain or pass information such as shocking videos circulating on social networks, reports of sexual and/or domestic violence from

anywhere, at any time of the day, through a smartphone, a tablet or a computer. The gendarmes of the digital brigade are especially trained to advise and orient the victims of domestic violence and have processed around 2,100 requests concerning this matter since the opening of the portal in 2017.

General Labbé also stressed the importance of conducting an independent assessment of the practices implemented. He gave the example of the digital brigade set up to respond to victims of domestic violence, whose services are monitored by an independent body, Vox Usagers, which assesses, through citizens' testimonies left on a dedicated website, various public services, including the gendarmerie. In order to guarantee the independence of its assessment, the body is not paid by the Gendarmerie but by the DITP (Interministerial Delegation for Public Sector Development / Délégation Interministérielle à la Transformation Publique).

#### HATE CRIMES VICTIMS SUPPORT PROJECT

##### **Robert Kusche**

RAA Association – Sachsen, Germany

Since 2005, the German association RAA - Sachsen has been running a government-funded project in three cities in Saxony, a region with a long history of racist and neo-Nazi violence. In 2018, 320 cases of violence were recorded in the region, mostly physical injuries and threats; one person was killed because of his sexual orientation. These figures do not take into account cases of unreported violence. The aim of the project was to address the challenge of non-take-up due to a lack of trust in the police and lack of information about organisations that provide victims with support. When hate crimes go unreported, they are not taken into account in public discourse and victims are not protected.

The organisation has set up a watch on such violent acts, not to supply data on the subject but rather to make direct contact with potential victims of these unreported crimes.

Thus, using the resources of a network of grassroots agencies, police reports and articles, the organisation identifies hate crimes in the area and attempts to contact the victims. Once the victim is identified, a support plan is devised to enable him or her to cope with the situation. In most cases, the organisation accompanies them to the police and lends its support throughout the judicial process.

#### DIGITAL BRIGADES SERVING VICTIMS OF DOMESTIC VIOLENCE

##### **General Labbé**

France

The French Gendarmerie has set up an online chatroom for victims of domestic violence. The aim is to address the difficulty for some of them to go to the gendarmerie to report what has happened to them. With this forum, they are able to speak out online in complete privacy.

The first exchanges last for an average of an hour. Members of the brigade are tasked with listening, counselling and signposting victims. For instance, they can refer to them to support groups and arrange an appointment with a gendarme in the place of their choice, not necessarily at the gendarmerie (hospital, a relative's home, etc.). Victims can also use the chatroom to ask gendarmes to intervene.

Every month, the brigade responds to 7,000 leads, 140 of which are related to domestic or sexual violence. Feedback is assessed by the independent body Vox Usagers and has been generally positive.

## 6) Proposed solutions arising from the seminar

### STRENGTHEN COOPERATION BETWEEN THE VARIOUS STAKEHOLDERS: POLICE AND GENDARMERIE SERVICES, PUBLIC AND LOCAL AUTHORITIES, CIVIL SOCIETY, ETC.

Public authorities and cities can contribute to fostering such cooperation, creating collaborative platforms and reception areas for victims, bringing together all the services available to them;

### ENSURE THAT AN AUTOMATED AND COMPREHENSIVE REFERRAL SYSTEM TO VICTIM SUPPORT AGENCIES IS SET UP

This requires structural changes and a long-term change in policing culture. The challenge is to help police officers understanding that listening and supporting victims is as important as catching criminals;

### 'EMPOWERMENT' OF VICTIMS

Make it easier for victims to be recognised as such in criminal trials and to participate in the proceedings.

### ENSURE BETTER RECOGNITION OF VICTIMS OF HATE CRIME BY POLICE SERVICES

Take account of hate motives in investigation of these crimes, and acknowledge the impact of these crimes on their victims in order to respond appropriately.

### TRAINING POLICE OFFICERS TO LISTEN, ACCOMMODATE, GUIDE AND SUPPORT VICTIMS

During initial training, it is important to teach interpersonal skills along with practical skills: learning to adapt to different situations, acknowledge the other person and cultivate altruism. Police officers and gendarmes must understand how important it is to listen, advise and accommodate each type of victim. These qualities are essential in order to fully address a person's vulnerability and be able to respond appropriately, as well as providing information on his or her rights and procedural questions.

From this perspective, training courses on how to receive victims should adopt a 'victim-centred approach': what are the victim's needs? What is secondary victimisation and how can it be prevented? If victims are not properly listened to, feel that they have not been taken seriously or that there is no follow-up or guidance, they will be more vulnerable. Training should therefore include instruction on the risks of secondary victimisation (when the victim is not listened to).

The introduction of referral officers, as in France for the LGBTI community, is important in this regard. *'The authorities considered it beneficial to have a dedicated point of contact for LGBTI issues to facilitate the lodging of complaints'* (**Sophie Hatt**, Directorate of International Cooperation, Ministry of the Interior, France).

In responding to victims, the police should also be aware that prosecution is not always the best option. Some victims are more concerned about feeling safe again, protecting their loved ones, etc.

It was also noted that peer training sometimes has a greater impact on trained police officers because they tend to respond differently.



**INTRODUCE SYSTEMATIC INDEPENDENT  
ASSESSMENT OF PRACTICES IMPLEMENTED  
AND THE WAY VICTIMS ARE RECEIVED BY  
POLICE SERVICES**

According to FRA reports and ECHR jurisprudence, there is a particular need to raise awareness among the police about the situation of the Roma community in Europe. Considered to be the continent's largest ethnic minority, they are among the most discriminated against and the most vulnerable.

They are particularly at risk of being victims of hate crimes or abuse by the police. Police officers should receive special training on these issues. However, training alone will not solve the problem. Internal and external authorities (including members of the IPCAN network) must recognise the situation and strive to protect the Romas.

Members of the IPCAN network wished to bring together a number of recommendations issued from the Seminar's discussions in a joint IPCAN statement, published in June 2020.

# IPCAN

INDEPENDENT POLICE COMPLAINTS  
• AUTHORITIES' NETWORK •

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