Background Report

POLICING THE POLICE

Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies

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1. Outline

From a human rights perspective the police is often associated with a ‘negative’ or repressive face of the state. Police officials around the world are indeed responsible for a vast quantity of human rights violations perpetrated by the state. As a result citizens lose trust in law enforcement institutions and refrain from claiming their rights. Except for the prevention and detection of crime the two other main functions of the police are to maintain public order and to provide assistance to those who need it. This includes guaranteeing security in society and to people. Hence, it should be stressed that police forces are also responsible for preventing and protecting people against violations. A professional, responsible and accountable police force is therefore a crucial and indispensable element of the rule of law.

It is hard to define what constitutes a professional police force that respects the rule of law. Cultural perceptions about the police, salaries, education and training, legislation, mandate, instructions and even basic equipment, all of these elements influence the daily practice of law enforcement officials. It is not uncommon that violations committed by the police are justified with reference to the often dangerous and harsh conditions under which police officials are working when dealing with serious and violent crimes. A similar argument is sometimes made when it comes to the powers the police should have with regard to security and anti-terrorism operations. However it should be pointed out that objective international standards with regard to policing describe in detail how police forces ought to operate, regardless of the context. The way police officers should fulfil their tasks is therefore not hard to define. Most importantly these are the UN-Code of Conduct for Law Enforcement Officials and the UN-Basic Principles on the Use of Force and Firearms. Apart from these standards the main and binding human rights treaties also contain articles that specifically refer to the practices of law enforcement officials\(^1\). These standards should be the basis for any discussion about policing the police. This is not to say that we should neglect that police forces operate in the forefront and are thus exposed to difficult and dangerous conditions.

Understanding the complete context of the law enforcement system within a country, including its operational aspects, demands an extensive analysis but it is possible to identify certain crucial institutional and operational criteria which do contribute to a professional and accountable law enforcement system. Among them a strong system of internal (f.e. a complaint mechanism) and external (f.e. oversight by an Ombudsman) accountability plays an important role.

In this paper, we seek to identify, compare and analyze police oversight mechanisms concerning public order intervention by law enforcement organizations, with a focus on excessive use of coercive power by police against civilians (Skolnick and Fyfe, 1993). We have particularly sought to highlight external review by complaints bodies, and the subsidiary procedures that apply after the completion of internal accountability procedures. Some European countries, such as the United Kingdom and Ireland, have created specific Police Ombudsmen and the Police Complaints Board\(^2\) for the purpose of external oversight (Smith, 2004: 17). Sweden has a National Police Board with a civilian component and Belgium has had an independent control committee for the police forces since 1991.\(^3\) The paper shows the outcome of a questionnaire which we addressed to the national ombudsmen in the European Union. In the course of this synthetic assessment, we will look at the appreciation of these oversight mechanisms by academics and practitioners, as well as the distribution of the type of cases that are generally dealt with by these bodies.

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\(^1\) For example the Convention Against Torture, the Convention on Civil and Political Rights, the Convention on the Rights of Children, the Convention on Elimination of All Forms of Discrimination against Women.

\(^2\) Later the Independent Police Complaints Commission (IPCC), created under Part II of the Police Reform Act 2002 (PRA).

\(^3\) Loi organique du contrôle des services de police et des renseignements, July 18, 1991 (art. 1).
2. Preliminary Notes

Accountability and responsibility represent important features of democratic societies (Kersten, 2000). It is essential to ensure the legitimacy of rule and to promote the concept of the public administrator as the servant of the people. The citizen is empowered and has the right to complain against “insensitive or callous treatment by the bureaucracy” (op cit in Smith, 1991: 95). Police oversight or police accountability is a very complex manner, given the several layers of accountability that apply, as well as the many different tasks that are performed by operational police agencies. Christopher Stone (2005: 4) summarizes this as follows:

“In short, the police are held accountable to many different standards of conduct. Broadly speaking, these are the standards of their commanders, the law, various publics, and many different customers. The misalignment of these different standards is a source of frustration for police on the front lines and a source of conflict between police commanders and various external oversight bodies.”

In most democratic societies, accountability for front-line police activities has rapidly gained importance. Although hard statistics seem to be missing, there appears to be a general decline in violent encounters between police and public (Marx, 1998). Generally, amongst police officers, there seems to be a growing awareness and an emerging ethos of crowds policing. The policing of protest, for instance, has become more neutralized and is perceived less so as the protection of the political order. However, in several countries it is still standard practice to fire or to charge into crowds.

The emerging police ethos which Marx addresses is based on a number of pillars. One of these is that police organizations have become more reflexive, smart and professional about their role and the expectation thereof. Crucially, police officers regard themselves as servants of the law, not as a private army, and their “primary allegiance is to the law.” This however, may be a very Anglo-Saxon view of policing, which runs counter the military style of policing. Marx discerns another pillar in the emergence of the police ethos, which is that police organizations have moved beyond a simply law-regulated type of action into a more tactically organized bureaucracy, with room for professional discretion throughout the blue ranks. For instance, there are now reference frameworks which standardize large-scale public order policing actions. And thirdly, not only has the policing of public order become a lot more pragmatic, the police has also gained far more knowledge and understanding of the motivations of crowd behaviour and group psychology. In other words, the policing of public spaces has undergone rapid professionalization. Moreover, the complaints venues have increased and citizens have developed a more critical attitude to violent or aggressive police action. There are indications that this trend has translated itself in a rising number of complaints against the police (see also Smith, 2004: 24)

Several academic studies indicate that police organizations prefer internal accountability procedures for public order action (but also for matters related to integrity and criminal investigation). Typical for most police organizations is the internal discipline, hierarchy, as well as the collegial loyalty. In other words: in most police organizations the ranks tend to be pretty well closed. This implies that in the course of our report, we will have to disentangle the different cases, contexts, terms of engagement and practices.

European countries show a very diverse pattern when it concerns the organization of their accountability systems in general, as well as their police organizations (see e.g. Smith, 1991). For instance, while a country like The Netherlands has a single but de-concentrated police force which is organized in 25 semi-autonomous police regions, Italy has at least five police forces that play a significant role in the public arena, each of them falling under a different political authority.

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4 There is a wealth of literature on internal accountability procedures for internal (integrity) cases within police organizations, varying from the use of violence to misuse of competencies, and ranging from orienteering to disciplinary and penal procedures, e.g. Terry Lamboo, “RIO: zonlicht op integriteit”, in Tijdschrift voor de Politie, nr. 7/8, July/August 2008.
as well as jurisdiction. There is also a rich variety in police complaints procedures (Smith, 2004: 15), in transparency, reporting procedures against police officers who have performed in a negligent or unlawful manner. Roughly, when it concerns external review procedures with a civilian element, there are three models (Smith, 2004: 17; see also Goldsmith and Lewis, 2000):

- Civilian review model: investigation, adjudication and recommendation of punishment
- Civilian input: the recording and investigation of complaints
- Civilian monitor: oversight of police complaints administration

The diversity is vast. For instance, whilst in The Netherlands an elaborate complaints procedure has been brought into being, coupled with the presence of a Bureau of Internal Investigations (BIO) in all police forces, Denmark still has to organize such a process and felt prompted to do so after four lethal killings by police last year. Academic experts like Timmer (2007) also note that police organizations register the use of violence insufficiently or incompletely, as is also noted by Smith (2004: 22). Compared to other European countries, the United Kingdom is well-advanced, with the publication of its reports on the Internet. But most police forces (some of whom have a military unit, like the mobile units in The Netherlands) only submit a record about “charges” that have taken place, without a detailed account of the number of police officers, the kind of material which was used, the number of individual encounters etc. Hence, details of these confrontations only come to light either through individual complaints lodged by victims of police violence, and by the media, which is often called the “fourth pillar” of democracy (National Democratic Institute for International Affairs, 2005: 34; Skolnick and Fyfe, 1993: 81). Lethal killings are generally well-reported but usually handled through an internal procedure. If a police officer is threatened or in danger, he or she is allowed to use violence against that individual (provoked violence, monopoly of violence).

Strikingly there seems to be an absence of an international comparative study on external oversight mechanisms for public order police actions. Moreover, there are several questions and ambiguities. First, there is no clear delineation between police (mis-)conduct in public order policing and criminal investigation (COT, 2002: 11). Second, there is not always a clear distinction between criminal liability procedures and civil liability procedures against police officers, but generally, “if there is evidence that a criminal offence has been committed” (Smith, 2004: 20), an investigation report will be forwarded to the prosecution authorities. Third, there is often an overlap or interrelationship between internal disciplinary procedures and external criminal or civil (e.g. through an Ombudsman) procedures. Fourth, it is hard to pinpoint either political or administrative responsibility for violent police action (Muller, 1998: 85). In some countries like The Netherlands, there are no local or regional accountability procedures for a municipal council to hold the mayor to account, and hence there is a democratic deficit when it concerns external political oversight on public order policing. Last but not least, the emergence of private security control makes it harder to isolate the responsibility for riot and crowd control from the activity of the public police force. In some instances, private stewards performed semi-policing tasks far outside a (football-) stadium, which raised accountability issues (see e.g Bezuyen, Van Duin and Overdijk, 1998: 83; Stenning, 2000). Several police forces in West Europe, notably in the United Kingdom and The Netherlands, militarized their capacity to deal with public order, which Rob Reiner has called the development of the “3d force” (Skolnick and Fyfe, 1993: 85). This police capacity is characterized by dense cordons of police, eyeball-to-eyeball, aggressive arrests, the drawing of truncheons, mounted police, and paramilitary units traveling in vans.

In a social-psychological academic study on the policing of crowd events (such as football matches, demonstrations with an inclination of violent behaviour), Cronin and Reicher (2006: 175) established that police officers (in the British context) are “deeply concerned about their accountability in a variety of audiences, both internal and external to the police force”, and moreover that “different audiences pressure them to act in different, and sometimes contradictory, ways.” (ibid). “Moreover, with escalating conflict, the balance of accountability moves increasingly in the direction of undifferentiated intervention against crowd members.”(ibid). The authors also established that senior police officers are just as concerned
with an internal inquiry as well as with an external inquiry (Cronin and Reicher, 2006: p. 184). Moreover, police officers tended to be rather concerned about the accountability to their peers, i.e. fellow senior officers (id: 185). “Being in control” is regarded as the most important issue. But junior officers tend to be more focused on the avoidance of injury to front line officers.

An instructive finding is that external accountability concerns may lead commanders “to delay the use of repressive tactics”, and that internal accountability concerns may lead them to further endorse such tactics (id: 186). Hence, the “overall balance of accountability concerns was clearly such as to limit intervention” (id: 186). This study is very much telling about the way (later) accountability reporting becomes professionally internalized in the decision-making on strategies. The researchers established that group motivation was a dominant factor: “concerns about accountability to junior officers were discussed entirely in terms of how to get command strategies delivered to a maximum effect. (id: 191). Much of the crowd policing is related to inter-group psychology: commanders were concerned to “get crowd members to act in terms defined by the police” (id: 191); “(…), as soon as there is any violence in the crowd, it is always arguable that escalation is inevitable and hence the police can never be unequivocally held to account for having inflamed the situation, regardless of how they acted. Whatever the case may be, the implications are serious.: (id: 192); “(…) officers are acutely aware of the need to show the public that the police are not responsible for initiating violence..” (id: 193). Not analyzed by these researchers, but deemed to be of vital importance in view of accountability for public order policing, is the role of the media, who are seen as “a vital source of oversight”, e.g. the use of filming or video-recording by citizen-observers.

The question is whether and to what extent some of the quoted research findings would apply to different encounters in other cultural contexts, in different phases of public order control (pre-conflict and pre-escalation intervention, intervention during the height of the riot, and post-escalation intervention), by different law enforcement traditions. Anecdotally, a senior carabinieri officer from Italy confided to one of the authors that in Napoli, during popular demonstrations, women form the frontline to make it more difficult for carabinieri officers to intervene. It is just an example that also communicative action is one of the many type of interventions that can be used by law enforcement bodies to seek to de-escalate the conflict.

Public order policing: types of encounter and a rough inventory of well-know cases (Crisis Onderzoeks Team, 2002).

- Provocations, Flash mobs, Explosive Myths
- Demonstrations

A well-known case in The Netherlands is the demonstration of a group of about 20,000 juveniles in 1993 in The Hague against the budget cuts that had been announced by the Minister of Education. The demonstration culminated in a confrontation between the demonstrators and the police: 35 demonstrators were admitted to hospital for treatment to their injuries; two police officers were wounded; 53 people were arrested; 50 people were summoned; and 19 people were eventually convicted and had to serve a prison sentence. Initially, the relevant authorities were of the opinion that it was premature to draw conclusions before the internal evaluation had been concluded and before the analysis of complaints via the State Investigation (Rijksrecherche), Ombudsman or via the regular complaints procedure had been completed. The mayor of The Hague was however prepared to pull in an external expert, which took place ten days after the event (Crisis Onderzoek Team, 1993). Individual police officers had used excessive violence (id. 98); the City of The Hague, police and National Ombudsman received 54 complaints. Most of these concerned the massive presence of the police in the public sphere, as well as the line-up, the attitude and the action by the Mobile Unit and the arrest team. The police dealt with the complaints by via the complaints inspector and two senior police officers. The complainants were to be approached personally by the police. Mayor and chief of police discussed the response to each and every individual complaint. A definitive...
response to the complainants was to be given after the finalization of the investigation by the The Hague police force and an external expert (id: 25ff).

- Sectoral demonstrations (farmers, constructors, transport)
- Political Protest (e.g. foreign embassies, pro-hunting): Della Porta and Reiter 1999
- Riots, also with a transnational component
- Football matches (vandalism, throwing stones at police, demolition of trains and buses, throwing fireworks into the stadium) (Auditteam Voetbalvandalisme, 2004).
- (Obstructive) activism (e.g. environmental pressure groups, animal rights activism)

Phases of intervention

- Non-conflict phase:
  - Risk-assessment, intelligence-wing of the police; indications of danger and estimated seize of crowd population and trouble makers within; group psychology (e.g. the presence of so-called pathological characters); reduction of uncertainty, worst case versus best case scenarios, forward and backward mapping
  - Operational preparation: consideration of tactics, simulation
  - Involvement of private agents (stewards in football stadiums)
  - Involvement of local partners (multi-lateral policing)
  - Prevention of violent encounters (e.g. through selective admission stadiums)
  - Co-optation with potential dissidents
  - Identification of tolerance limits

- Pre-conflict
  - Discussion of strategies (separation, isolation of trouble-makers, physical or geographical dispersion, ring-fencing).
  - Prevention of escalation, pacification (Adang et al, 2007)
  - Contacts with fans

- Conflict
  - Critical phase
  - Selective intervention: preventive searching of people
  - Provocation (use of violence): who?
  - Tactics (e.g. friendly but firm)
    - Negotiation
    - Physical dispersion, filtering, but also tunneling
  - Confrontation
    - Intimidation: Blue wall, use of horses, armed vehicles, jeep sections
    - Forcing people to leave premises
    - Use of dogs
    - Use of tear-gas
    - Charges and water canons
    - Warning shots

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5 For the report by the Independent Police Complaints Commission (England and Wales) see: http://www.ipcc.gov.uk/index/resources/evidence_reports/investigation_reports/parliament_square.htm
vii. Use of batons, shields
viii. Use of fire-arms, shooting at people

- Post-conflict
  - Taking stock (injuries or even fatalities, material damage, communication, information technology)
  - Evaluation; internal reporting; has the risk been adequately assessed and has there been sufficient capacity and material resources?
  - Communication to the media
  - Identification of suspects of violence: criminal investigation (mention sms-search among football population)
  - Explanation and justification of strategies and tactics; external (formal) reporting when necessary

Rules of Engagement

The standards for which the police are held to account are very important. This applies to commander’s standards (operational tactics) as well as to legal standards. The difference with a military organization is that a police organization, police commanders do not always know what is happening at the front lines as their police officers are acting in ones and two’s (Stone, 2005: 2)

“When police must resort to violence they should use only appropriate violence as authorized by the law. In cases of excessive use of violence or abuse of police powers, police officers must be made subject to the courts as would any other citizen.” important is the monitoring and transparency of the use of violence and monitoring in practice (reporting on the use of violence), rules for the use of weapons and promoting human rights within the police.

Police and Community Partnerships

“The foundation of a positive relationship for the police and its community is to practice respect for the citizens whom they serve on a day-to-day business. Hence the importance of inculcating the police culture with good practice and promoting Police-Community partnerships are of great importance.” This affects the public standing of the police, and increases the importance of best practices in good communication and co-production.

- Are citizens encouraged to submit complaints about (violent or excessively aggressive behaviour) by the police?
- What is the nature of the complaints against the police?
- How can the attitude or response of the police to citizens’ complaints be characterized? (responsiveness of the police organization)
- How are evaluations of use of violence debriefed and implemented within the police force (learning effect).
- Are there examples of police-community co-operation initiatives in view of public order control?
- What about public trust? The public should not only trust the police but also the competence and neutrality of the police oversight body itself.

Examples of “Successful” Cases

A successful form of public order policing is when crowds and police act in a peaceful and co-existent manner, without the occurrence of violence, injuries or even fatalities. But how does the “customer” (being the police authority, the public or the member of the crowd) also regard public order policing as successful if there was a different pattern?
### 3. Police Oversight in the European Union, an Overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Does the National Ombudsman deal with complaints against the police?</th>
<th>Is there a specialised body that deals with complaints against the police?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Belgium</td>
<td>No, the Belgian Federal Ombudsman transfers all complaints against the police to the &quot;Comité P&quot;</td>
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<td>Bulgaria</td>
<td>Yes - On 16 April 2007, BG Ombudsman signed a Cooperation Agreement with the BG Minister of Interior on cooperation, info sharing, joint actions related to the investigations carried out by the ombudsman and the follow-up to his inquiries.</td>
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<tr>
<td>Cyprus</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Czech Republic</td>
<td>Yes, the Czech Ombudsman can deal with complaints against the police, except in situations where the police are conducting investigations in criminal proceedings.</td>
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<tr>
<td>Denmark</td>
<td>Yes</td>
<td>Yes - but an individual first has to complain to the assistant public prosecutor (Denmark has six), and then one can complain against his/her decision to the &quot;police complaint commission&quot; (there is one for each assistant public prosecutor).</td>
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<tr>
<td>Estonia</td>
<td>Yes</td>
<td>No</td>
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<td>Finland</td>
<td>Yes, both the Parliamentary Ombudsman and the Chancellor of Justice can deal with administrative complaints against the police. However, the Ombudsman is considered more specialised in police matters.</td>
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<tr>
<td>France</td>
<td>No - mais le MdR peut saisir la CNDS de son propre chef.</td>
<td>Yes - Commission nationale de déontologie de la sécurité: la saisine de la CNDS n'est pas directe (la réclamation doit être transmise à un député ou à un sénateur de son choix. Le Premier ministre, le Médiateur de la République, le Président de la Haute Autorité de lutte contre les discriminations et pour l'égalité (HALDE), le Contrôleur général des lieux de</td>
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6 Prepared by the Office of the European Ombudsman. The full correctness of the overview can not be guaranteed. See also EPAC: EU's National Police Oversight Bodies and Anti-Corruption Authorities, [www.epac.at](http://www.epac.at). This overview is far from complete. It is not clear what criteria have been used in selecting the bodies and authorities. Some are independent oversight mechanisms (e.g. the Irish Police Ombudsman). Others are what seem to be government inspectorates. National ombudsmen are not mentioned at all and not even all the existing special bodies (f.e. in France, Malta, UK etc).
<table>
<thead>
<tr>
<th>Country</th>
<th>Question</th>
<th>Answer</th>
<th>Details</th>
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<tbody>
<tr>
<td>Germany</td>
<td>Yes, police matters normally fall within the competence of the different &quot;Länder&quot;. Therefore, the regional Committees on Petitions or Ombudsmen deal with them. There is also a federal police with certain specific competences (what used to be the &quot;Grenzschutz&quot; or border patrol). The Committee on Petitions of the Bundestag (Federal Parliament) deals with complaints against this federal police.</td>
<td>No</td>
<td>privation de liberté et le Défenseur des enfants peuvent, de leur propre chef, saisir la Commission. <a href="http://www.cnds.fr/">http://www.cnds.fr/</a></td>
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<td>Greece</td>
<td>Yes</td>
<td>Yes - Police Department of Internal Affairs</td>
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<td>Hungary</td>
<td>Yes</td>
<td>Yes - New &quot;Police Complaints Body&quot; since 01/01/2008, which also has the competence to deal with complaints against the police. The President of this body is Mr Kalpen Bach - <a href="mailto:Bach@kalpenbachonline.hu">Bach@kalpenbachonline.hu</a> - no address or website available yet.</td>
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<tr>
<td>Ireland</td>
<td>No</td>
<td>Yes - The &quot;Garda Síochána Ombudsman Commission&quot; deals with complaints against the police (or Garda) in Ireland. <a href="http://www.gardaombudsman.ie">http://www.gardaombudsman.ie</a></td>
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<td>Italy</td>
<td>No ombudsman at national level</td>
<td>No</td>
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<td>Latvia</td>
<td>Yes, but only complaints about maladministration</td>
<td>Yes, there is an independent office within the police that deals with complaints against individual policemen <a href="http://www.vp.gov.lv/?sadala=418">http://www.vp.gov.lv/?sadala=418</a></td>
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<td>Lithuania</td>
<td>Yes, the Ombudsman can deal with cases against the police, when the complaint concerns bureaucracy, maladministration</td>
<td>Yes Lithuanian citizens have several choices to complain against the police: Territorial Police Institution like for e.g. Vilnius City Police Headquarters; Police Department under the Ministry of Interior; Inspector General's Division under the Ministry of Interior; If the above-mentioned institutions fail to help, a person can file a complaint to an ombudsman institution or appeal to the court.</td>
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<td>Luxembourg</td>
<td>Yes</td>
<td>Yes - Inspection générale de la police <a href="http://www.igp.public.lu/">http://www.igp.public.lu/</a></td>
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<td>Malta</td>
<td>Yes - if the complainant does not receive a satisfactory reply from the independent police board or no reply at all, the complainant could contact the MT Ombudsman who, at his own discretion, could help the person obtain a reply or an answer to his complaint.</td>
<td>Yes - Independent Police Board. Address: P.O Box 21, Rabat Malta. (no email address yet)</td>
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<tr>
<td>The Netherlands</td>
<td>Yes</td>
<td>No. The law foresees that the National Ombudsman is the body for complaints against the police.</td>
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<tr>
<td>Poland</td>
<td>Yes</td>
<td>Yes - The Department of Complaints in the Office of the Chief of the Police <a href="http://www.policja.pl/portal/pol/49/606/KONTAKT.html">http://www.policja.pl/portal/pol/49/606/KONTAKT.html</a></td>
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<td>Portugal</td>
<td>Yes</td>
<td>Yes - Inspeção-Geral da Administração Interna - <a href="http://www.igai.pt">www.igai.pt</a></td>
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<td>Romania</td>
<td>Yes</td>
<td>No</td>
<td></td>
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<tr>
<td>Country</td>
<td>Competence</td>
<td>Specialised body for complaints about crimes of policemen:</td>
<td>Internet:</td>
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<tr>
<td>Slovakia</td>
<td>Yes, the Slovak Ombudsman can deal with complaints against the police, except for complaints relating to the decision-making powers of police investigators (i.e. in criminal proceedings).</td>
<td>Ministerstvo vnútra Slovenskej republiky/Ministry of Interior of the Slovak Republic Sekcia kontroly a inšpekčnej služby/Section of Control and Inspection Service</td>
<td><a href="http://www.minv.sk/skis/index.html">http://www.minv.sk/skis/index.html</a></td>
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<tr>
<td>Slovenia</td>
<td>Yes, as the last instance</td>
<td>Yes - The complaint should first be submitted to the Complaints Section of the Police and Security Directorate, then to the Ministry of Interior who issues the final decision which may be challenged before the Ombudsman.</td>
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<td>Spain</td>
<td>Yes, the national Ombudsman is competent to deal with complaints against the national Police (Policia nacional). However, if legal proceedings are pending, the Ombudsman will suspend all action until the judgement. As regards Pais Vasco and Catalunya, citizens can submit their complaints to the regional Ombudsmen who are competent to deal with them in view of the fact that in those regions the Police is not 'national' but 'regional'.</td>
<td>No</td>
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<tr>
<td>Sweden</td>
<td>Yes</td>
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4. Questionnaire

In addition to the above overview a questionnaire was sent out to all the Ombudsmen in the European Union with the following questions:

I. If a national Ombudsman is **not competent** to deal with complaints against the police, please provide us with concise information about the role and procedures of the existing alternative police oversight mechanism(s) in that country.

II. In case the national Ombudsman is **competent**, please answer the following questions:

1. What is the formal mandate of the Ombudsman with regard to police matters? Are any changes in the mandate currently being discussed?
2. Does another procedure exist that can (or must) be used for making a complaint against the police before turning to the Ombudsman? If so, please provide us with a concise description of this procedure (e.g. is it internal or external, dependent or independent, is it obligatory to follow this procedure first or may the ombudsman be approached directly etc.).
3. How many police-related complaints did the Ombudsman deal with in 2003, 2004, 2005, 2006 and 2007 (in actual numbers and as a percentage of the total workload)?

4. What proportion (as a percentage) of the police-related complaints were considered unfounded and what proportion were held to be justified in 2003, 2004, 2005, 2006 and 2007.

5. Please describe the content of the complaints in general: e.g. arrest and detention, unauthorized entry, search of houses and cars, handcuffing, blindfolding, use of violence, use of firearms, use of dogs, conditions of police cells, treatment of suspect etc. Please indicate (i) which categories of complaints are most frequent and (ii) possible shifts/trends in the distribution of complaints.

6. Do structured contacts exist between the ombudsman and the authorities responsible for the police (e.g. minister, head of the police force, etc.)? If so, what is the content of these contacts?

7. What is the impact of the ombudsman as a police oversight mechanism in general? Are reports and recommendations of the Ombudsman followed by other actions, e.g. in the political arena? Please provide a short description of some recent leading cases which are illustrative for the ombudsman’s work on the police in each country.

Not all ombudsman offices responded. The researchers received answers from Austria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Malta, The Netherlands, Romania, Slovakia, Sweden and Northern Ireland (18 out of 27).

The Italian answer was short: Italy does not (yet) have a national Ombudsman and the regional and local ombudsmen do not have any competence towards the police. A specialised body is lacking as well. The only “oversight mechanism” is judiciary control.

On the federal level Germany does not have an Ombudsman institution either. Instead, Parliament, the Bundestag, has established a permanent committee to receive complaints, the Petitions Committee. All the parliaments in the 16 States, the Landtage, have similar petitions committees. In addition four States have established Ombudsman Offices as supplement to the Petitions Committees. Furthermore the German Bundestag has a military ombudsman, known as the Parliamentary Commissioner for the Armed Forces. The Petitions Committee of the German Bundestag is responsible only for the “Bundespolizei” in former times named “Bundesgrenzschutz” but not for the “normal” police. In cases concerning the work of the “normal” police the Petitions Committee of the German Bundestag has to refer the complainant to the States (Länder).

In contrast to other Ombudsmen systems the German Petitions Committees confine themselves to incoming complaints or requests. They do not make inquiries on their own initiative, nor are inspections part of their regular work.

Below, in chapters 5 and 6 the reports of the other Member States which answered the questionnaire are represented in a slightly abbreviated fashion. The following chapters end with discussion and analysis (chapter 7) and some conclusions from the overview and the reports (chapter 8).

### 5. National Ombudsman not competent

Specialised bodies with exclusive competence exist in Belgium, France, Ireland, the UK and Northern Ireland.

**France**

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7 Letter of the Regional Ombudsman for Lombardia who is the coordinator of the regional ombudsmen in Italy.
In France the National Commission for a Security Code of Conduct (in French: Commission Nationale de Déontologie de la sécurité - CNDS) is the specialised body that deals with among others complaints against the police. It is an independent administrative authority established by the Law of June, 6th, 2000.

The “Commission Nationale de Déontologie de la Sécurité” is charged with ensuring that people carrying out security operations on the territory of the Republic abide by ethical standards, behave professionally and respect a code of conduct. The Commission is composed of 14 members, appointed for a period of 6 years non-renewable. The Commission is neither a court nor a disciplinary committee. It wants to embody a place of recourse and control. It may be addressed by any person, French or foreign, who has been a victim of or a witness to facts which they consider to be a violation of the Code of Conduct, committed by one or several persons carrying out security activities on the national territory such as:

- public authorities (national police, national gendarmerie, prison services, customs authority, municipal police, rural policemen and forest wardens), or
- private sector organisations such as security firms (guarding, surveillance, transport of money and valuable goods).

The Commission can not be addressed directly. A complainant has to go through another institution in order to deliver his/her complaint (a deputy or a senator). However, the Prime Minister, members of Parliament, the Mediator of the Republic and the “Défenseur des enfants” (Protector of children’s rights) can refer cases on their own initiative.

The Commission has the power to inform the “Procureur de la République” (the Public Prosecutor) when the Commission considers that the facts deal with a criminal offence, and it can propose to the Government any modification to the existing legislation or regulation in its fields of competence.

The Commission presents a public report to the President of the Republic and to Parliament once a year.

Ireland

In Ireland the Garda Síochána Ombudsman Commission (usually abbreviated to GSOC or Garda Ombudsman Commission) is responsible for the receipt and investigation of complaints about gardaí (Irish police officers) or incidents where it appears the conduct of a garda (individual police officer) warrants attention. If GSOC receives a complaint/referral of a matter from the Garda Commissioner it can investigate the matter via informal resolution, allowing a garda investigator to examine the matter or investigate the incident itself using its team of independent investigators. GSOC does not punish/prosecute gardaí, such action is the function to the Garda Commissioner or Director of Public Prosecutions as relevant.

1. formal mandate

The statutory functions and powers of GSOC derive from the Garda Síochána Act 2005. The formal objectives and functions of the Garda Ombudsman Commission are:

1. To ensure effective, efficient and independent investigation of complaints about alleged police misbehaviour; and

2. To promote public confidence in the process for resolving complaints.

GSOC has no disciplinary or prosecutorial role. Where it appears that the conduct of a garda amounts to a breach of the Garda Síochána (Discipline) Regulations 2007\(^8\) or a breach of any criminal legislation GSOC prepares a recommendation for the Garda Commissioner and Director of Public Prosecutions respectively who make decisions in respect of disciplinary or action of prosecution.

GSOC performs all of its work in an independent fashion, the Commissioners are appointed by the President of Ireland on the nomination of the government and following agreement by the Oireachtas (the Irish parliament). GSOC’s investigators use police-like powers which can be checked by the Irish High Court.

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GSOC has requested 11 legislative changes from the Minister of Justice which would have to be passed by the Oireachtas. The more significant of these are arguably that:

1. GSOC be allowed to lease back investigations to the Garda Síochána to undertake, while GSOC would still have ownership of the complaint;
2. Introduce the power for GSOC to conduct a preliminary examination of all matters it receives;
3. Introduce an entitlement for GSOC to publish the results of investigations.

Some interest groups have expressed concern with the first of the changes above in the belief that police should not be involved in investigating any complaints about colleagues.

2. other procedures
When a person decides to ‘formalize’ a complaint about a garda, they are faced with two options either:

a. Make contact with the garda station for the area and try and resolve the matter through local intervention using the appropriate local level line manager (e.g. a Sergeant, Inspector, Superintendent or Chief Superintendent in terms of increasing rank); or
b. Make a complaint to GSOC.

The local intervention procedure is internal to the Garda Síochána. If, however, either the garda or complainant does not agree to the procedure the complainant can ask to have the matter referred to GSOC. The local intervention procedure is not obligatory and indeed as only 18% of complaints come from garda stations, it is most likely that most complainants do not avail of local intervention before making a complaint to GSOC.

3. number of complaints
While the Ombudsman Commission was appointed in 2006, it opened for business (receipt of complaints) on 9th May 2007. It received 2,084 complaints to 31st December 2007 and has received over 1,400 complaints in 2008.

4. outcome of the complaints
As above, GSOC has only been operational since 2007. In 2007, of the complaints received, GSOC deemed just over 45% admissible and just over 26% inadmissible.

5. content of complaints
Currently GSOC is only able to report on allegation types, and it noted in its Second Annual Report that abuse of authority, discourtesy and neglect of duty made up the biggest categories of misbehaviour (47%, 24% and 3% respectively).

6. contacts
There are numerous fora through which GSOC has ongoing contact with senior management of the Garda Síochána and the Department of Justice, Equality and Law Reform. The latter is the central government department to which GSOC has the strongest connection, as per the Act. A separate Consultative Group was established in 2006 and met twice in 2007, the summary contents of the meetings are outlined in GSOC’s Second Annual Report. The Group is composed of GSOC, the Irish Human Rights Commission, an academic representative in the form of a staff

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11 The Garda Síochána Complaints Board (GSCB) was responsible for the examination of complaints about gardaí between the years 1986 and 31st December 2007. The GSCB received 1,175, 1,232, 1,173 and 1,350 complaints in 2003, 2004, 2005 and 2006 respectively.
member from NUI Galway, the Garda Síochána and the representative associations of garda rank and file. GSOC has also met with the Garda Síochána’s Strategic Human Rights Advisory Committee, established as a result of the Garda Síochána’s self-commissioned human rights audit conducted by Ionann Consultants.13 The Act provided for the signing of protocols on operation matters between GSOC and the Garda Síochána. This document, dealing with the management of incident scenes and media relations and available on GSOC’s website, is a conduit through which the separate roles of each service can be recalled and the ongoing relationship between them maintained and developed. GSOC must also account to the Minister for Justice, Equality and Law Reform in respect of its accounts and activities on an annual basis but also on a two-yearly basis through publication of a formal report.

7. impact
Given its relatively short life, most commentary to date has focused on comparisons of its powers to its forerunner the GSCB (Conway, 2004; Griffin, 2007; Vaughan, 2005; Walsh 2004a; Walsh 2004b).14 However, more up to date accounts are beginning to emerge and these have taken issue with GSOC’s slow pace of progressing complaints in the first 12 months of operations15 and requests to leaseback complaints to the Garda Síochána. Oversight bodies such as the Irish Council for Civil Liberties, Amnesty International and the Office of the Ombudsman have also taken issue with GSOC’s limited release of statistics relating to complaints. The Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg, meanwhile has noted that GSOC is something of a model for other countries16. Finally, most recently three Irish NGOs working in the area of human rights have criticized GSOC’s proposed leaseback of low-level complaints to the Garda Síochána for investigation and limited remit17.

Northern Ireland
Also in Northern Ireland the Police Ombudsman has sole competence and responsibility for police complaints within the boundaries of Northern Ireland, acting under the authority of the UK Parliament.18

1. formal mandate
The formal mandate of the Police Ombudsman is to exercise my powers in such a manner as to secure i) the efficiency, effectiveness and independence of the police complaints system, and ii) the confidence of the public and the police in that system. The primary legislation is the Police (Northern Ireland) Act 1998. The results of a 5-year statutory review are being considered by Government and will be the subject of public consultation. Any recommendations will be to either strengthen powers, or improve effectiveness.

2. other procedures
No other procedures exist, but in addition to the requirement for all public complaints to be received or forwarded to the Police Ombudsman, the Secretary of State, Chief Constable, Policing

15 Garda Ombudsman Commission Must be Properly Resourced. Available at www.sinnfein.ie/news/detail/26128
18 Further details can be found at www.policeombudsman.org
Board, Director of Public Prosecutions and Coroner have a statutory right to forward complaints for investigation. Additionally, the Police Ombudsman has the power ‘in the public interest’ to investigate on his own initiative any matter he deems in the public interest.

3. number of complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/2003</td>
<td>3214</td>
</tr>
<tr>
<td>2003/2004</td>
<td>2978</td>
</tr>
<tr>
<td>2004/2005</td>
<td>2885</td>
</tr>
<tr>
<td>2005/2006</td>
<td>3140</td>
</tr>
<tr>
<td>2006/2007</td>
<td>3249</td>
</tr>
<tr>
<td>2007/2008</td>
<td>3081</td>
</tr>
</tbody>
</table>

4. outcome of the complaints

Complaint Closure Types 2000/01 – 2006/07:
- Outside Remit: 11%
- Ill-founded: 9%
- Withdrawn by Complainant: 8%
- Non co-operation: 37%
- Informal resolution: 11%
- Not Substantiated: 17%
- Action Arising: 2%
- Substantiated: 1%
- All other: 5%

Complaint Closure Types 2007/2008 (format changed somewhat):
- Outside Remit: 8%
- Ill-founded: 12%
- Withdrawn: 10%
- Non co-operation: 28%
- Informal resolution: 11%
- Investigation: 28%
- All other: 4%

Of those 28% referred to Investigation: 76% were closed as not substantiated; 18% were substantiated with specific action recommended; 6% were substantiated but no specific action required.

In comparison: non co-operation reduced from 62% in 2000/01 to 28% in 2005/06, and it was 28% in 2007/08.

5. content of complaints

Failure of Duty is the most common (40%), followed by Oppressive Behaviour (35%) and Incivility (14%). Failure of Duty has increased over the 7 years that the Office has been in operation; Oppressive Behaviour has reduced from about 50% to 35%.

6. contacts

Structured functional (day-to-day working) contacts exist and because the Office is statutorily independent, they exist in the form of formalized meetings. The Police Ombudsman is required to report annually to the UK Parliament, and functionally reports through the Secretary of State for Northern Ireland, but without any direction and control from the Secretary of State. The Office is administratively accountable to Parliament and its Committees, through the Secretary of State.

The Policing Board exists as an Independent Body to provide governance and accountability without direct Ministerial direction to the police, therefore our Office liaison is with the Policing Board to provide trending and tracking information on police complaints to the Board, to assist in their governance function. Concurrently, the same information is provided to the

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19 Often a complaint contains several allegations
7. impact
Evidence is mounting that this form of independent police oversight has an impact, in the following manner: complaints are generally trending downward; independent public surveys indicate that awareness of the Police Ombudsman’s Office is at 90%, and confidence in the Office to be impartial is in the mid-80% level. Similar surveys of the Police Officers who have been subject of investigations is in the 70% range – all surveys indicate increasing confidence trends over the years. However, a survey of the general police population was recently conducted that indicated entrenched attitudes from some police groups, against independent oversight and public complaints, indicating there still needs to be confidence building work in some police groupings. Confidence of the public in policing continues to trend upward, although there are other factors at work such as the Belfast Peace Agreement and the subsequent policing reforms.

All recommendations are followed up for actions taken. Recommendations are the subject of a review panel, and the Policing Board and Secretary of State received all copies of the Ombudsman reports. In these manners, the reports are acted upon. In addition, specific policy and practice investigations are conducted and published. A recent publication was a study on the use of handcuffs. The investigation of the Omagh bombing and Operation Ballast (loyalist paramilitary gang murders with allegations of police collusion) are two high profile cases.

6. National Ombudsman competent

As the overview reveals in a majority of Member States the national Ombudsman is the competent authority to deal with complaints against the police. Some exemplary reports are presented here.

Austria

1. formal mandate
The Austrian Ombudsman Board’s (AOB) formal mandate concerning the police is actually the same as its general task: “Under the Austrian Federal Constitution the Ombudsman Board is entrusted with the task of examining all alleged or presumed grievances arising in connection with the public administrative system”.

2. other procedures
The Austrian law provides a lot of different procedures in legal matters which the police is involved in: law on road traffic, arms, data security, penal action etc. In all those areas there are different procedures and also different authorities. Nevertheless, whenever a complainant will not take recourse to (other) legal remedies he may ask the AOB for immediate intervention.

3. number of complaints
In the years 2006 and 2007 there were approximately 70 complaints against the police (of 4,515 in total in 2006 and 4,118 in 2007).

4 and 5. outcome and content of the complaints
Statistical data are not available.

6. contacts
Structured contacts between the Ombudsman for the police and the responsible authorities do exist. There are constantly meetings where recent cases are discussed.

See the website for a listing of cases and research conducted by the Ombudsman’s Office http://www.policeombudsman.org/
7. impact
Many cases of misconduct of the police in the daily contact with citizens can be and have been clarified and led to steps towards improvement. Often the involved official have got instruction for a better conduct or even structural advancements can be seen after intervention of the AOB. This takes place although the police has the possibility to deny the mistake. In regard to resolve crucial legal questions the AOB has an even stronger position which strengthens its good cooperation with the police all the more. In recent cases the AOB had to assert that misconduct of the police not seldom has its roots in the lack of personnel, particularly in the capital of Vienna. Another quite spectacular recent investigation is about the treatment of animal protection activists during house searches in the light of proportionality.

Denmark

1. formal mandate
According the Ombudsman Act, the jurisdiction of the ombudsman extends to all parts of the public administration. The Danish police are a part of the public administration, just as other public authorities. The competence of the ombudsman to deal with complaints against the police thus has the same extent and limitations as the competence to deal with complaints against other public authorities. The ombudsman does not have a special mandate towards the police. The ombudsman also has a mandate to inspect detention cells and waiting rooms in police stations.
There is not currently any discussions regarding a change in the mandate.

2. other procedures
Complaints against the police can concern the administrative law or the behaviour or conduct of the police. According to the Ombudsman Act, a complaint against a decision which may be appealed to another administrative authority cannot be lodged with the Ombudsman until that authority has made a decision on the matter.
a. When complaining against administrative decisions (for example the grounds for stopping an investigation, or a denial of the right of access to documents) the complaint must be lodged with the police in the first instance, and appealed to the Public Prosecutor as the second instance. The Director of Public Prosecutions acts as a supervisory authority that can intervene when necessary, but the complainant does not have a right to have his/her complaint tried there. When the administrative possibilities of complaint have been exhausted, the complainant can lodge a complaint with the ombudsman.
b. When the complaint regards the behaviour or conduct of police personnel, the Public Prosecutor investigates the complaint as the first instance authority. When receiving the complaint, the Public Prosecutor is obligated to notify the Police Complaints Commission (Politiklagenævnet) which deals with complaints about police behaviour and follows the Public Prosecutor’s investigation of the complaint. The Public Prosecutor is also obligated to notify the Police Complaints Commission when making essential decisions during the investigation. The Police Complaints Commission can make the Public Prosecutor initiate an investigation or make the Public Prosecutor undertake certain additional investigations. When the Public Prosecutor has finished investigating a complaint, the Public Prosecutor must make a statement about the handling of the case and make a decision concerning the outcome. The Police Complaints Commission can state its view on the case and can appeal the decision of the Public Prosecutor to the Director of Public Prosecutions.
c. If the complaint regards a criminal matter, the Public Prosecutor can initiate a criminal investigation. The complaint will be dealt with in court which is outside the ombudsman’s jurisdiction, leaving him incompetent to deal with the complaint. Administrative decisions during the investigation can be separated from the case and will have to follow the procedure mentioned above under a.
3. number of complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Actual number</th>
<th>Percentage of total workload (rounded numbers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003:</td>
<td>256 (of 4298 in total)</td>
<td>6%</td>
</tr>
<tr>
<td>2004:</td>
<td>212 (of 4093)</td>
<td>5%</td>
</tr>
<tr>
<td>2005:</td>
<td>269 (of 4266)</td>
<td>6.5%</td>
</tr>
<tr>
<td>2006:</td>
<td>227 (of 4110)</td>
<td>5.5%</td>
</tr>
<tr>
<td>2007:</td>
<td>277 (of 3976)</td>
<td>7%</td>
</tr>
</tbody>
</table>

4. outcome of the complaints

The complaints are not assessed as unfounded or justified by the Danish ombudsman. A number of complaints are rejected for different reasons – often due to unused channels of complaint, as mentioned above. After dealing with a complaint, the ombudsman may find no grounds for criticizing the authority in question, or the ombudsman may express his view on the matter by criticizing the authority or recommending that certain changes be made. Below it is shown how many of the total amount of the police-related cases that were rejected, and the outcomes of the cases that were dealt with in full.

<table>
<thead>
<tr>
<th>Year</th>
<th>Rejected</th>
<th>Without criticism/recommendation</th>
<th>With criticism/recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003:</td>
<td>207</td>
<td>35</td>
<td>14</td>
</tr>
<tr>
<td>2004:</td>
<td>145</td>
<td>49</td>
<td>18</td>
</tr>
<tr>
<td>2005:</td>
<td>196</td>
<td>57</td>
<td>16</td>
</tr>
<tr>
<td>2006:</td>
<td>157</td>
<td>53</td>
<td>17</td>
</tr>
<tr>
<td>2007:</td>
<td>206</td>
<td>50</td>
<td>21</td>
</tr>
</tbody>
</table>

5. content of the complaints

Because of the above-mentioned possibilities of complaining and appealing a complaint, many problems are solved internally in the system before the ombudsman is involved. Most complaints regard administrative issues and not the more behavioural examples mentioned in the request.

6. contacts

There are no structured contacts between the ombudsman and the authorities responsible for the police.

7. impact

In general, the ombudsman institution influences the society in three ways. First of all, the ombudsman has a preventive effect on the public authorities. Secondly, the ombudsman develops – to some extent – new ethical guidelines, so-called good administrative behaviour. And thirdly, the ombudsman solves a number of conflicts between a citizen and an authority.

Estonia

1. formal mandate

According to the Chancellor of Justice Act the Chancellor of Justice (who fulfils the functions of an Ombudsman) can deal with complaints against the police. And he has done that, e.g. disproportional use of force or handcuffs, problems with dissemination of personal data in press-releases, improper conduct of disciplinary proceedings against policeman etc. The Chancellor of Justice carries out also inspections to arrest-houses. However, it must be mentioned that Chancellor of Justice cannot initiate or carry out criminal proceedings or misdemeanour procedures on its own. When the Chancellor of Justice receives a complaint/information with references to a possible criminal case or misdemeanour, the complaint and other materials have to be forwarded to police or the prosecutor's office.
Finland

1. formal mandate
According to the constitution of Finland the Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights.

So, police authorities fall under the mandate of the Ombudsman. The Ombudsman can, for example, order pre-trial investigation to be carried out or bring a charge in a court of law. An investigation by the Ombudsman (in police and other matters) may also lead to reprimand or so called opinion of the Ombudsman.21

The Ombudsman of Finland also monitors the use of the secret surveillance measures by the police.

2. other procedures
There are two supreme oversight authorities of legality in Finland, the Chancellor of Justice and the Parliamentary Ombudsman.

Their tasks and powers are largely the same. Both oversee the legality of the actions of authorities and officials including police authorities. The Chancellor of Justice also oversees the actions of lawyers.

In principle, a complaint can be made either to the Chancellor of Justice or the Ombudsman. However, small differences in the division of tasks between them determine which of them ultimately investigates a complaint.

The Chancellor of Justice does not oversee the Defence Forces, the Border Guard or peacekeeping personnel. Nor does he oversee prisons and other institutions where people are confined against their will. He has no duty to oversee the legality of various forms of deprivation of liberty, such as arrests, remands in custody or imprisonment. All of these matters come under the Ombudsman's oversight. Therefore the Chancellor of Justice refers complaints concerning them to the Ombudsman.

3. number of complaints
2003: 394 police complaints out of 2504 (15, 7 %),
2004: 423/ 2949 (14, 3 %),
2005: 498/ 3350 (14, 9 %),
2006: 595/3662 (16, 2%)
2007:554/3436 (16, 1%).
Total number of police related complaints in above years is 2464 out of total number of complaints received 15 901 (15,5 %).

4. outcome of the complaints
2003: unfounded: 253 prosecution: 0 reprimand 4 opinion 78
2004: unfounded: 276 prosecution: 0 reprimand 12 opinion 84
2005: unfounded: 349 prosecution: 0 reprimand 6 opinion 71
2006: unfounded: 387 prosecution: 0 reprimand 3 opinion 87
2007: unfounded: 321 prosecution: 0 reprimand 1 opinion 33

21 For details consult the Ombudsman Act of Finland, see website: www.oikeusasiames.fi
5. **content of the complaints**
Most often police complaints relate to the carrying out of the pre-trial investigation or to the decision regarding pre-trial investigation (e.g. improper reasoning of the decision regarding pre-trial investigation). Use of the coercive measures (e.g. home search) by the police is also a common reason for a complaint. No cases regarding use of firearms, use of dogs or blindfolding.

6. **contacts**
The Ombudsman and the management of the police try to meet at least once a year to discuss relevant matters. On staff level there are working contacts with the police on a regular basis. Once a year the police management provides a report to the Ombudsman on the use of secret surveillance measures.

7. **impact**
The study of the impact of the Ombudsman institution was published on 29 November 2007. The impact of the decisions of the Ombudsman, for example among police authorities, was found high.\(^{22}\)

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**Greece**

1. **formal mandate**
The mission of the Greek Ombudsman is to mediate between the public administration and private individuals, in order to protect the latter’s rights, to endure the former’s compliance with the rule of law, and to combat maladministration. In this sense, the Greek Ombudsman’s mandate includes the oversight of the police. However, no special or extended jurisdiction over the police is provided for in the Greek Ombudsman’s constituting law. No changes to the Greek Ombudsman’s mandate are currently being discussed.

2. **other procedures**
The Hellenic Police has its own internal procedures and internal audit bodies, which are responsible for the investigation of citizens’ complaints regarding violations of their constitutional rights by police officers. It is not obligatory to follow this internal procedure before filing a complaint with the Greek Ombudsman. In some cases, however, it is suggested that the concerned person should address his/ her complaint to the police first.

3. **number of complaints**
2003: 144 police-related complaints,
2004: 119,
2005: 151,
2006: 192,

4. **outcome of the complaints**

<table>
<thead>
<tr>
<th></th>
<th>Unfounded</th>
<th>Held to be justified</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>43.75%</td>
<td>56.25%</td>
</tr>
<tr>
<td>2004</td>
<td>31%</td>
<td>69%</td>
</tr>
<tr>
<td>2005</td>
<td>42.4%</td>
<td>57.6%</td>
</tr>
</tbody>
</table>

\(^{22}\) For more information on impact research, see the web-page – www.oikeusasiamies.fi/english - with a summary of the activities of the Ombudsman in 2007. At page 30 the chapter “What impact does the ombudsman’s work have”. On impact on individual police case see page 41 (Actions of the police in conjunction with “Smash Asem” demonstration).
<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>18.3%</td>
</tr>
<tr>
<td>2007</td>
<td>34.69%</td>
</tr>
</tbody>
</table>

5. **Content of the complaints**
Content of the complaints in general: arrest and detention, unauthorized entry, search of houses (violation of residence asylum) and cars, use of violence, conditions of police cells, treatment of suspect, maltreatment during the stay in the police station for ascertainment/identification and arbitrary police controls. Most frequent categories of complaints are these related to the arrest and detention (23%) and the use of violence (21%).

6. **Contacts**
For the investigation of a police-related complaint the Ombudsman follows the usual procedure that exists for the investigation of any complaint regarding the public sector. In that sense, there are structured contacts between the Ombudsman and the authorities responsible for the police. However, there are some wider forms of direct co-operation of the Ombudsman with the police, such as the training seminars on specific human rights topics that senior investigators of the Greek Ombudsman provide to police officers. Another indicative example of this co-operation was the joint preparation and publication of a brochure outlining the code of conduct of police officers during the Olympics Games of 2004 in Athens.

7. **Impact**
The Greek Ombudsman does not function as a general police oversight mechanism. In 2004 a special report concerning the disciplinary-administrative investigation of charges against police officers was published, which contained a number of proposals and recommendations by the Ombudsman to the police. In spite of the efforts made by the Ombudsman, the number of citizens’ complaints against police officers remains at a high level and his proposals and recommendations have only been partially adopted.

**Hungary**

1. **Formal mandate**
According to paragraph 1 Section 16 of the Act on the Parliamentary Commissioner for Civil Rights:
‘Anybody may apply to the ombudsman if in his judgement the proceedings of any authority (paragraph (1) of Section 29) or organ performing a public service (hereinafter together ‘authority’) caused impropriety relating to the fundamental rights of the petitioner, provided that he has exhausted the available possibilities of administrative legal remedies – except for the judicial review of administrative decisions – or that no legal remedy is ensured for him.’

Section 29 of the same Act stipulates:
‘(1) For the purposes of this Act – with the exception of those listed in paragraph (2) – an authority shall be:
...
d) a law enforcement organ;
...
No changes in the mandate are being currently discussed.

2. **Other procedures**
The police system has also its own internal procedures. According to the Ombudsman Act (see above) anybody may apply to the ombudsman provided that he has exhausted the available possibilities of administrative legal remedies.
3. number of complaints
2003: 113
2004: 125
2005: 113
2006: 122
2007: 120

4. outcome of the complaints
2003 rejection 62% termination 13% investigation 25%
2004 rejection 54% termination 14% investigation 24%
2005 rejection 65% termination 11% investigation 24%
2006 rejection 72% termination 7% investigation 21%
2007 rejection 61% termination 10% closed investigation 20% ongoing 9%

5. content of the complaints
2003-2004: police measures (such as house raid), on-the-spot fine,
2005: police control, law enforcement measures, lengthy proceeding (the number and proportion
of complaints concerning police procedures increased),
2006-2007: police-measures (such as arrests, raids), on-the-spot fine, application of coercive
measures, procedures relating to demonstrations and “disco raids”.

6. contact
Direct daily co-operation and professional contact do not exist between the Ministry of Justice and
Law Enforcement and the Ombudsman’s Office.

7. impact
In general the recommendations of the ombudsman are accepted.

Latvia

1. formal mandate
According to the Law on the Ombudsman the Ombudsman is competent to deal with complaints
against the police. However there may be some restrictions with regard to criminal procedures. In
accordance with the Law on Criminal Procedure all the materials during pre-trial investigation are
confidential and only particular persons (the Ombudsman is not one them) may get access to
materials of a criminal case. Nevertheless after finishing the investigation the Ombudsman has
no restrictions to read and use materials of a criminal case

2. other procedures
There are two kinds of police forces in Republic of Latvia: state police and municipal police.
Complaints concerning any violation (disciplinary, administrative, criminal) of rights from the part
of the state police are dealt internally within the Internal Security Office of the State Police (ISO).
The ISO is subsidiary only to the Chief of the State Police. If a person is not satisfied with the
outcome of the investigation, he/she may complain to the prosecutor.
There is no special institution which is dealing with issues concerning complaints on municipal
police. Dependent on the substance of the complaint there are two possible investigation
mechanisms:
   a. if the violation may be punished disciplinary a person should complain to the chief
      of each particular municipal police and then he/she may appeal to the mayor of
      each particular municipality,
   b. if the violation may be punished in accordance with the Criminal Law (for
      example, inhuman treatment), then a person should submit a complaint in an
      ordinary procedure – to the State Police (but not within ISO) and then eventually
      an appeal to the prosecutor.
Although a person is obliged to use aforementioned mechanisms before complaining to the Ombudsman, the Ombudsman may accept complaints directly in cases of possible violation of Article 3 of the European Convention on Human Rights.

3. number of complaints
2003  total number of complaints: 4769 from which police related complaints:128 (2,68%). Complaints on State police: 46 (0,96%) and complaints on municipal police: 82 (1,72%).
2004  total number of complaints: 5092 from which police related complaints: 89 (1,75%). Complaints on State police: 79 (1,55%) and complaints on municipal police: 10 (0,20%).
2005  total number of complaints: 5589 from which police related complaints: 106 (1,90%). Complaints on State police: 97 (1,74%) and complaints on municipal police: 9 (0,16%).
2006  total number of complaints: 5443 from which police related complaints: 120 (2,20%). Complaints on State police: 110 (2,02%) and complaints on municipal police: 10 (0,18%).
2007  total number of complaints: 5122 from which police related complaints were: 274 (5,35%)23.

4. outcome of the complaints
2003  unfounded: 96,88% justified: 3,12%
2004  unfounded: 93,26% justified: 6,74%
2005  unfounded: 86,79% justified: 13,21%
2006  unfounded: 91,67% justified: 8,33%
2007  unfounded: 55,47% justified: 44,53%

5. content of the complaints
Most of the complaints are on conditions in police detention centers, i.e., lack of a yard for outdoor exercises, lack of toilet facilities in the cell, lack of daylight and ventilation etc. During the year there are only a few complaints which relate to the violations from part of police in detention centres and during interrogations, i.e., use of physical and moral violence (example, beatings, threats to the security of the family or a particular person). In such cases all the material is submitted to the ISO for investigation. These complaints are rarely justified.

6. contacts
The Ombudsman has contacts with all state institutions. In particular, there is very good cooperation with the Ministry of Justice, the Ministry of Internal Affairs, the Head of the State Police and the General Prosecutor.
There are several types of contacts: written recommendations, meetings and discussions on particular issues which are important for all institutions involved, participation in working groups and training for staff of the State police (this was an initiative of the State police itself).

7. impact
The recommendations made by the Ombudsman are usually taken into account and implemented.
It happened once that two investigations in the same case – one carried out by the Ombudsman office and the other carried out by the ISO – were contradictory. At the end of its investigation the ISO found no violation of human rights. The Ombudsman office concluded that the investigation carried out by the ISO was not thorough and objective. After publication of conclusions and recommendations, the Head of the State police invited the Ombudsman to prepare and conduct lectures on human rights, paying particular attention to prohibition of inhuman treatment and investigation methods of such allegations.
In the next year the Ombudsman is planning to make a research on the efficiency of the investigation methods of the ISO, to publish report and to conduct meetings on possible solutions.

23 There are complaints concerning violations from police and prison officers. We don’t have separate statistical data on police related complaints in the year 2007.
Lithuania

1. formal mandate
The Ombudsman investigates complaints against police officials' abuse of office, bureaucracy or any other violations of human rights and freedoms in the sphere of public administration. Currently there are no discussions regarding the mandate and no changes are foreseen.

2. other procedures
Before addressing the ombudsman there is no need to apply to any other institution. However, a person can address the Internal Research Unit of a Territorial Police Station, the Internal Research Unit of a Police Department or the Inspector General at the Ministry of Interior. One can also make an appeal to the court.

3. number of complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of Complaints</th>
<th>Percentage</th>
<th>Number of Decisions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>169</td>
<td>9%</td>
<td>total</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>211</td>
<td>11,5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>315</td>
<td>16%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>548</td>
<td>19%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>256</td>
<td>10,5%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. outcome of the complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Founded</th>
<th>Unfounded</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>54%</td>
<td>47%</td>
</tr>
<tr>
<td>2004</td>
<td>34%</td>
<td>39%</td>
</tr>
<tr>
<td>2005</td>
<td>23%</td>
<td>47%</td>
</tr>
<tr>
<td>2006</td>
<td>30%</td>
<td>51,5%</td>
</tr>
<tr>
<td>2007</td>
<td>33%</td>
<td>50%</td>
</tr>
</tbody>
</table>

5. content of the complaints
In the previous years the largest volume of complaints considered to be justified were regarding conditions of the police cells. People also complain about different unlawful actions of the police officials, e.g. use of violence, violation of human rights in the course of transportation of detainees from one place to another, failure to observe official ethics. In recent years the number of complaints regarding conditions of the police cells is going down, because under the initiative of the Ombudsmen this problem got high attention from the State and the conditions in the police cells are gradually improved; although, the situation still needs improvement. There are quite a number of complaints regarding improper delays of the pre-trial investigation, unauthorised use of special measures and physical coercion, irregular use the police detention facilities an the improper application of regulations of the Code of Criminal Procedure.

6. contacts
There are structured contacts with the Inspector General, Police Department, and heads of the police stations. The cooperation involves sharing of information about investigations performed as well as combined efforts to find solutions to different problems.

7. impact
Investigations performed by the Ombudsman and his recommendations help to improve the public administration of the police system and to prevent possible violations of human rights and freedoms in the future. The recommendations passed by the Ombudsman in case of necessity are discussed at the Parliamentary Committee on Human Rights. The reports are discussed in the above-mentioned committee and in the Seimas (Parliament) itself. In general the ombudsmen are backed and supported in the political arena.
Malta

1. formal mandate
The Ombudsman does not have a specific mandate regarding police matters. His mandate emerges from the general provisions of the Ombudsman Act, which refer to all those government entities that fall within the Ombudsman’s jurisdiction. No changes are being discussed. It is important to note that the Ombudsman’s competence over police matters is not absolute, because under the Police Act a Police Board was set up to review police matters. In fact the Ombudsman tends to refer complainants to this Board.

2. other procedures
The Ombudsman requires that a complainant exhausts his ordinary remedies before seeking his intervention (subsidiarity). As a minimum, the Ombudsman requires that the prospective complainant has written to the Commissioner of Police about his grievance and allowed him a reasonable time in which to consider his grievance and reply.

There also exists an internal complaints procedure, apart from the Police Board (the latter being an external complaints mechanism). As stated above, the Ombudsman tends to refer cases to the Police Board. However, if the complainant is dissatisfied with the service received by the Police Board, or with the outcome, he may revert to the Ombudsman. As regards the internal complaints procedure, complainants are encouraged to make use of it, but it all depends on the case.

3. number of complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Workload (cases received)</th>
<th>Actual no of Police-related cases received</th>
<th>Percentage of the total workload</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>595</td>
<td>5</td>
<td>0.84%</td>
</tr>
<tr>
<td>2004</td>
<td>647</td>
<td>26</td>
<td>4.02%</td>
</tr>
<tr>
<td>2005</td>
<td>581</td>
<td>16</td>
<td>2.75%</td>
</tr>
<tr>
<td>2006</td>
<td>567</td>
<td>18</td>
<td>3.17%</td>
</tr>
<tr>
<td>2007</td>
<td>660</td>
<td>27</td>
<td>4.09%</td>
</tr>
</tbody>
</table>

4. outcome of the complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Unfounded cases (%)</th>
<th>Justified cases (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2004</td>
<td>70.8%</td>
<td>29.2%</td>
</tr>
<tr>
<td>2005</td>
<td>76.5%</td>
<td>23.5%</td>
</tr>
<tr>
<td>2006</td>
<td>76.5%</td>
<td>23.5%</td>
</tr>
<tr>
<td>2007</td>
<td>72.4%</td>
<td>27.6%</td>
</tr>
</tbody>
</table>

5. content of the complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Nature of Complaint (only repeated claims mentioned)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>□ Lack of action (2 complaints)</td>
</tr>
<tr>
<td>2004</td>
<td>□ Unjust towing of car (4 complaints)</td>
</tr>
<tr>
<td></td>
<td>□ Refusal of permit (3 complaints)</td>
</tr>
<tr>
<td></td>
<td>□ Lack of reply (4 complaints)</td>
</tr>
<tr>
<td>2005</td>
<td>□ Delay in investigations (3 complaints)</td>
</tr>
<tr>
<td>Year</td>
<td>Complaints</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
</tr>
</tbody>
</table>
| 2006 | Lack of action (2 complaints)  
Unfair towing (3 complaints)  
Request for license (2 complaints)  
Unjust contravention (3 complaints)  
Unprofessional treatment (2 complaints)  
Inconvenience caused by neighboring garage (2 complaints)  
Lack of action taken (2 complaints) |
| 2007 | Lack of reply (5 complaints)  
Inconvenience caused by commercial premises (2 complaints)  
Lack of action taken (5 complaints)  
Unfair treatment (3 complaints)  
Promotion to Sergeant (3 complaints) |

6. contacts
There are no structured contacts between the Ombudsman and the authorities responsible for the Police, in the sense that there exists no schedule or timetable of talks, meetings, correspondence etc. On the other hand, the Ombudsman is in ongoing communication with the Commissioner of Police, as with all of the government entities that fall within the Ombudsman’s jurisdiction. This enables the Ombudsman to resolve matters on a case-by-case basis.

7. impact
As the above statistics reveal, the Police occupy a very small part of the Ombudsman’s workload. The nature of complaints received by the Ombudsman reveals that the Ombudsman’s role as a police oversight mechanism is, in practice, limited. This is mostly due to the existence of internal complaints’ handling mechanisms and the existence of the Police Board.

The Netherlands
The Netherlands is a country with a hybrid oversight authority, consisting of decentralized executive bodies that co-ordinate with local councils of citizens in providing police oversight; the rules are however set by the national legislature (National Democratic Institute for International Affairs, 2005: 17). The (independent) National Ombudsman principally deals with public complaints about central government, however as we speak, the National Ombudsman released a very critical report about 800 preventive arrests which took place before a football match between Ajax and Feijenoord on 23 April 2006 (Nationale Ombudsman, 2008). In the Dutch system, which is characterized by a mix of control mechanisms, the mayor hires, fires and promotes police, and s/he is accountable to the municipal council. This arrangement has been subject to criticism however, given the democratic deficit in which the mayor of the largest municipality in a police region is also the administrative authority of the regional police force; hence, democratic accountability in smaller municipalities suffers from a deficit. The central government holds a more limited number of responsibilities for the police, but civil disaster or serious disorder incidents are an exception to this rule.

1. formal mandate
The competence of the National Ombudsman to deal with complaints against the police is explicitly based on the National Ombudsman Act.

2. other procedures
According to the General Administrative Law Act in conjunction with the Police Act a complainant has to follow the internal complaint procedure with the police first before he can submit his complaint to the National Ombudsman. The decision in the internal procedure is taken by the Head of the police region. For certain categories of complaints an advisory opinion of an independent complaints committee is obligatory.
3. number of complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Police-related complaints</th>
<th>Percentage total workload</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>1059</td>
<td>11.7%</td>
</tr>
<tr>
<td>2004</td>
<td>843</td>
<td>8.9%</td>
</tr>
<tr>
<td>2005</td>
<td>930</td>
<td>9.1%</td>
</tr>
<tr>
<td>2006</td>
<td>974</td>
<td>7.5%</td>
</tr>
<tr>
<td>2007</td>
<td>918</td>
<td>8.3%</td>
</tr>
</tbody>
</table>

4. outcome of the complaints

Only since 2007 complaints are recorded as (in part) founded, (in part) unfounded or no opinion.

- 2003: 151 reports
- 2004: 172 reports
- 2005: 115 reports
- 2006: 130 reports

5. content of the complaints

The complaints concern: treatment of the suspects, use of handcuffs, arrest and detention, use of violence, use of dogs, refusal of notifications, poor information, search of houses, medical care and poor quality of police investigations. In particular, due to its zero tolerance policy the standard use by the police of handcuffs increases. In his annual report 2007 the National Ombudsman noted that the attitudes within society are becoming increasingly confrontational. The National Ombudsman takes the trend in relations between the public and the police as an indicator in this respect. The relationship is particularly sensitive because of the unilateral powers of the police to use appropriate force. Research reveals a growing confrontation between the police and the public over the last 25 years. In today’s more individualised society, a more vocal public is ready to stand up to police authority and is less tolerant about the police use of coercive powers. At the same time, research by the Ombudsman reveals that the police are exhibiting less patience. Where officers used to allow citizens to have their say, they are less likely to demonstrate a responsive attitude. There is greater emphasis on enforcement.

6. contacts

Structural contacts exist in the form of visits of the National Ombudsman and his staff to the 26 police regional forces (two regions a year) and regular visits of staff members to the police regions. Once a year the National Ombudsman and his Deputy are present at a meeting of all the chief constables. Each police region has an ombudsman liaison officer. There is an annual meeting with all the liaison officers.

7. impact

The reports of the National ombudsman are authoritative. His recommendations are almost always followed up for action taken. Important reports are presented to the Ministers responsible for the police and to Parliament which often invokes a political discussion. Sometimes the Ombudsman recommends successfully to amend the existing legislation or to introduce new legislation (for example with regard to handcuffing in police cells, handcuffing of non-suspects and blindfolding).

Poland

Regarding civilian review of policing activities, Poland has a similar system to Sweden (see below), but the institutional process and authority differ (National Democratic Institute for International Affairs, 2005: 12). Poland has an ombudsman also who is the nominated Commissioner for Citizens’ Rights Protection (CCPR), who takes actions, such as bringing cases to the appropriate
tribunal. Its support from Parliament is apparently less strong than in the Swedish case. The CCPR typically has a legal background and has staff who are specialized in several ministerial areas, such as finance or security. The CCPR is elected by the Sejm for a four-year term, and this has to be approved by the Senate. The mandate of the CCPR is based on the constitution, guaranteeing civil rights and social justice to the citizens. The CCPR investigates and reports on violations of the constitution, however, like the Swedish ombudsman, there is no power to change the public agency. Cases may be brought to the Constitutional Tribunal or the Supreme Administrative Court (National Democratic Institute for International Affairs, 2005: 14).

**Romania**

1. **Formal mandate**
   Founded by the Constitution of 1991, reviewed in 2003, the People’s Advocate Institution has as main role the defence of the individuals’ rights and liberties in their relationships with the public administrative authorities. Since 2004, individuals complaints regarding a possible violation of fundamental rights and freedoms by the Police bodies are examined and solved within a specialized department “Army, Justice, Police, Penitentiaries”, coordinated by a deputy Ombudsman.

2. **Other procedures**
   The Act on the organization and functioning of the People’s Advocate sets out the complainant’s obligation to bring proves of the delay or refusal of the Public administration authority to legally solve his/her complaint. Hence, before turning to the People’s Advocate, the petitioner has to notify the police body on the infringement of his/her rights.

3. **Number of complaints**
   2006: 74 police related complaints of 6407 complaints in total
   2007: 62 police related complaints of 6919 complaints in total
   (in 2003-2005 no registration on administrative bodies)

4. **Outcome of the complaints**
   Statistical data are not available

5. **Content of the complaints**
   The main matters submitted to the People’s Advocate related to police activity were the following: the activity of community public services for passport issuing and registration; the activity of community public services for people registration; the activity of traffic police; the activity of investigation police.

6. **Contacts**
   Performing an efficient communication with the public authorities is one of the permanent preoccupations of the People’s Advocate Institution. Good cooperation relationships have been developed with the Romanian Police that proved seriousness, promptness and professionalism in its answers formulated at the People’s Advocate requests. Very efficient is the ongoing exchange of information on the specialty topics, developed between the police officials and the representatives of the People’s Advocate Institution resulting in the attendance of seminars and debates, communication of reports and other informative materials.

7. **Impact**
   Experience shows that the police authorities (territorial units of police, General Inspectorate, Internal Affaires and Administrative Reform Ministry) have been receptive to the actions initiated by the People’s Advocate in order to solve the complaints.
**Slovakia**

1. **formal mandate**
   According to Article 3 section 2, of the Act on the Public Defender of Rights "The competence of the Public Defender of Rights shall not apply to...decision powers of the Police Corps investigators....".
   Since the general mandate of the Public Defender of Rights (Ombudsman) is restricted to the investigation of cases of alleged violation of fundamental rights and freedoms only (not just any case of violation of legal regulation, or cases of maladministration), in practice, complaints concerning the police are forwarded to the prosecution (as a supervisory body) or are dealt with within the internal complaints mechanism of the Police Corps structure. The Public Defender of Rights is informed on the outcome of the investigation of the matter by the respective bodies in writing (obligation set by the law).

2. **other procedures**
   There is no obligation on the side of the claimant to use other procedures before turning to the Public Defender of Rights.

3. **number of complaints**
   Unfortunately, the statistical method applied in the office of the Public Defender does not provide these data. However, the office of the Public Defender has cross-selected the data in their system and the number of the cases against the police is indeed insignificant (some 2 to 10 police related cases per year; total number of cases addressed to ombudsman ranges from 2500 to 3500 per year).

4. **outcome of the complaints**
   No data available, see question 3.

5. **content of the complaints**
   Unreasonable delay of investigation is the most frequented subject of the complaints referred to the Public Defender of Rights. Very few (if any) cases relate to other police activities.

6. **contacts**
   No, not in any other formalized form. The relationship is based on the provisions of the law and ad hoc contacts established during the investigation of a particular case.

7. **impact**
   No specific information.

**Sweden**

Sweden is internationally renowned for having one of the most successful police oversight mechanisms (National Democratic Institute for International Affairs, 2005: 12f). Its Parliament depends on an ombudsman to provide oversight of all public agencies. The office of the Swedish ombudsman is partially independent of the Riksdag (Swedish Parliament), there is a strong relationship between oversight activities of that office and follow-up action by Parliament. Inside the institution of the Swedish ombudsman, there are four officers (usually with a legal background), including the chief; these officers are elected by consensus in Parliament for a four-year term. The ombudsmen may take complaints directly from the public, relating to all public agencies including the security forces and law enforcement agencies, and initiate cases. The reports go to the Parliament, hence there is no competence for the Ombudsman to force change upon the relevant public agency. The Parliament may initiate change, and it may forward cases of wrongdoing to administrative or criminal courts.

The Swedish Parliamentary Ombudsmen provided the following statistical information.
Own initiative investigations
1 July 2004-30 June 2005:
Police related: 20 (of 78 in total)
Closed without final criticism: 4
Admonitions or other criticism: 14
Prosecution or initiative to disciplinary procedure: 1

1 July 2005-30 June 2006:
Police related: 8 (of 75 in total)
Closed without final criticism: 1
Admonitions or other criticism: 6
Prosecution or initiative to disciplinary procedure: 1

1 July 2006-30 June 2007:
Police related: 7 (of 83 in total)
Closed without final criticism: 1
Admonitions or other criticism: 4
Referred to other agencies: 2
Prosecution or initiative to disciplinary procedure: 0

Complaints
1 July 2004-30 June 2005:
Police related: 524 (of 5563 in total)
Dismissed: 206
Referred: 10
No criticism: 264
Admonitions or other criticism: 24

1 July 2005-30 June 2006:
Police related: 539 (of 5865 in total)
Dismissed: 219
Referred: 11
No criticism: 265
Admonitions or other criticism: 44

1 July 2006-30 June 2007:
Police related: 588 (of 5563 in total)
Dismissed: 220
Referred: 19
No criticism: 296
Admonitions or other criticism: 53

Presentation of Police Oversight Mechanisms: Ombudsmen and their Competencies

7. Discussion and Analysis

“Major differences between police complaints and action processes, and their functions, make objective assessment of their relative merits problematic” (Smith, 2004: 25), but a balance between access to justice, vindication, compensation and accountability are restorative elements and leading principles for the police accountability.

The Transnational Dimension

To the extent that police co-operation has been subject to internationalization, it has mainly developed on the side of intelligence-gathering and has hence been ‘non-operational’. In other
words, in the majority of cross-border policing cases (think of a controlled delivery, a hot pursuit, an international (parallel) investigation, intelligence-exchange) coercive powers are not used by intergovernmental agencies such as Interpol or Europol, but by the national police forces. However, there is a growing trend of public order policing acquiring a more transnational dimension. Examples are the gradual formation of a Benelux police force, which has triggered joint patrols and joint policing of mass gatherings, but also joint training and joint simulations. The relatively new Prüm Treaty, which is a successor to the Schengen Implementing Agreement, makes it possible to develop international public order policing. Think also of the recently developed EU crisis management system and the ATLAS network, as well as the international cooperation in view of European sporting events such as football championships and the policing of European summits. To many, “Genova” and “Potsdam” are still fresh on peoples’ minds. Moreover, there is increasing operational co-operation between law enforcement organizations and border control agencies at the external border of the European Union.

Hence, the “operational” or “executive” competence is coming into sight, which includes the potential use of coercive powers and weapons. At this moment, there is no single external oversight mechanism for this kind of transnational executive policing. International organizations such as the European Court of Justice, the European Parliament, the European Ombudsman cannot scrutinize any actions in the realm of public order policing. Only the European Convention of Human Rights, the Code of Conduct for Law Enforcement Officials of the UN General Assembly (17 December 1979) and the European Code of Police Ethics of the Council of Europe might have relevance for this newly emerging field of activity, but this remains subject to further (empirical and legal) research.

8. Conclusions

From the Overview it appears that only in Italy an external (and internal) complaint mechanism competent to deal with complaints against the police is lacking. In all other Member States of the European Union police oversight mechanisms are available. In a majority of Member States the national Ombudsman is competent to deal with police complaints. Other Member States have created specialized bodies with sole competence and responsibility for police complaints: Belgium, France, Ireland, United Kingdom and Northern Ireland. To complicate the picture, sometimes two independent oversight mechanisms are available: in Finland (the Parliamentary Ombudsman and the Chancellor of Justice with largely the same tasks and powers) and in Malta (the Ombudsman and an independent Police Board; both are competent, although the Ombudsman tends to refer cases to the Police Board).

A striking outcome of the questionnaire concerns the difference in numbers of police related complaints between specialised bodies and national Ombudsmen. The actual number of complaints in relatively small countries as Ireland and Northern Ireland with specialised bodies exceeds by far the numbers in all others Member States in which Ombudsmen with a general mandate are competent to deal with police complaints. This result seems to indicate that a specialised body (a Police Ombudsman) attracts greater public awareness than a general Ombudsman. Nevertheless, such a conclusion needs further research. Differences in mandate could play a role. A preceding (obligatory) internal procedure may screen and select the complaints and diminish the actual number of complaints with the Ombudsman, while in Ireland most complainants do not use the internal procedure and an internal complaint procedure is absent in Northern Ireland.

\[24\] Data about Cyprus are regrettably lacking in the Overview and in the answers to the questionnaire. 

\[25\] Public awareness of the Police Ombudsman in Northern Ireland is 80%!

\[26\] See for example the Danish report: “…many problems are solved internally in the system before the ombudsman is involved”.

\[27\] 18% only.
According to the answers to the questionnaire there are striking differences in mandates as well. A broad mandate is applied by the specialised Police Ombudsmen such as in Ireland and Northern Ireland. The national Ombudsmen normally do not have a special mandate towards the police. They are competent concerning the public administration and therefore for the police as well while the police is part of the public administration. Within this general mandate the police is mentioned explicitly only in Hungary and The Netherlands. Normally, the mandates of the national ombudsmen are broad as well and include legality, maladministration and fundamental rights. “Human Rights Ombudsmen” such as in Hungary, Romania and Slovakia apply a more limited mandate: to the investigation of cases of alleged violation of fundamental rights and freedoms only. This limited mandate most probably accounts for the (very) low number of complaints in Romania and particularly in Slovakia (“insignificant”). The low number of complaints in these Member States may also be explained by the totalitarian past of the countries, which has made it more difficult to activate the civil society. Our assumption is that citizens are still afraid to complain about the police, fearing – rightly or wrongly - harassment from the side of the enforcement authorities. This assumption also merits more empirical testing.

A mandate limited to ethical standards, professional behaviour and a code of conduct is applied in France.

From the answers to the questionnaire it appears that the external oversight (by an Ombudsman or a specialised body) is often preceded by an internal complaint mechanism. Sometimes it is mandatory to follow this procedure first. In other instances the ombudsman or the specialised body may be approached directly. According to the answers to the questionnaire obligatory internal complaint procedures exist in Denmark, Hungary, Latvia, Malta, The Netherlands and Romania; non obligatory in Austria, Estonia, Greece, Ireland, Lithuania, and Slovakia. The internal complaint mechanisms are rather differently organised: from simple notification to the appropriate level within the police (Ireland, Lithuania, Malta, Romania) to a full procedure (Greece, Slovakia) which often includes a more or less independent complaint commission/body as well (Denmark, Hungary, Latvia, The Netherlands). In Latvia and The Netherlands the Ombudsman explicitly takes the quality of the internal procedure into account, as well as its thoroughness and objectiveness.

As far as the answers to the questionnaire indicate the annual workload of police complaints within an Ombudsman’s office, the percentages of police complaints are relatively small: Austria (1.6%), Denmark (6-7%), Finland (14-16%), Latvia (2-5%), Lithuania (9-19%), Malta (1-4%), The Netherlands (7.5-11.7%) and Sweden (about 10%). Again, the prior mandatory internal procedure with an independent complaint commission in Denmark, Latvia and The Netherlands may be an explanatory factor concerning the differences. The Maltese Ombudsman tends to refer all complaints to the independent Police Board.

The content of the complaints differs as well. Rather comparable are Ireland (abuse of authority, discourtesy and neglect of duty) and Northern Ireland (failure of duty, oppressive behaviour and incivility). In Finland most complaints relate to pre-trial investigations and the use of coercive measures. Also in Greece the most frequent categories of complaints are related to arrest and detention and the use of violence. In Hungary coercive measures and the lengthy proceedings constitute the main categories. In general, the behavioural aspects of police work are the main grounds for complaints.

28 In France the specialised body (CNDS) can not be addressed directly either, but this has to do with the fact that a complainant has to go through another institution in order to deliver his complaint (a deputy or a senator).
29 Article 3 ECHR cases excluded.
30 Although the Ombudsman himself will refer the complaint to the internal complaint mechanism of the police.
But remarkably, in Denmark due to its internal procedure most complaints regard administrative issues only and not the more behavioural aspects. The same is true for Latvia; the behavioural aspects are mainly dealt with by the Internal Security Office. On the other hand, although a well regulated internal procedure exists in The Netherlands, the complaints with the Ombudsman concern typically behavioural aspects: treatment of the suspects, use of handcuffs, arrest and detention, use of violence, use of dogs, refusal of notifications, poor information, search of houses, medical care and poor quality of police investigations.

The figures on the outcome of the complaints are difficult to compare. In all EU Member States (that answered the questionnaire) only a minority of the complaints are actually subjected to an investigation, which means that a high percentage is waived from the procedure. A majority is considered inadmissible for a variety of reasons. Again, of the investigated cases only a minority is considered well-founded and the majority unfounded.

From the answers to the questionnaire it appears that in a majority of EU Member States (which responded to the questionnaire) regular contacts with the police, the minister(s) responsible for the police, the public prosecutor and others relevant bodies exist (Austria, France, Ireland, Northern Ireland, Finland, Greece, Latvia, Lithuania, The Netherlands and Romania). Against this background it is remarkable that Denmark, Hungary, Malta and Slovakia answered that there are no structured contacts between the ombudsman and the authorities responsible for the police.

Whether or not these structured contacts have an influence on the effectiveness of the ombudsman needs further clarification while the question on the impact of the ombudsman or specialised body as police oversight mechanism resulted in socially desirable answers. In general, the recommendations of the Ombudsman or the Police ombudsman are almost always followed up for action taken. The researchers noted with interest Thomas Hammarberg’s remark that the Irish Garda Ombudsman Commission is something as a model for other countries.31

Based on the results of the questionnaire and their comparative research the researchers conclude that an ideal police oversight mechanism consists of an independent specialised Police Ombudsman with a broad mandate and sole competence and responsibility for police complaints, preceded by a well-structured mandatory internal complaint procedure with an advisory independent complaint commission.

In general, the ideal Police Ombudsman has excellent working contacts with the police, the Minister(s) responsible for the police and other relevant bodies. According to the researchers the ideal Police ombudsman organises and maintains a network of liaison officers within all police departments.

Throughout this comparative report, we have identified a number of comparative research questions for the future: 1) measuring the effect of international police ethics codes on operational law enforcement; 2) analysing the difference between civil complaints about types of alleged police misconduct; 3) the level at which civil societies are ready to submit complaints about alleged police misconduct.

An external and independent civilian oversight agency may be more accessible to the public. Hence, we conclude this paper with a quotation from Skolnick and Fyfe (1993: 228): A civilian review agency “will generate legitimate complaints from apprehensive complainants who might otherwise have been reluctant to complain to a police officer in a department’s internal affairs unit.”

Bibliography


