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International Conference
Human Rights and Police Behaviour
November 10th and 11 th, 2005, Lisbon

António João Varela Simões Monteiro

José Ferreira de Oliveira

Martin Kreutner

Inspecção-Geral da Administração Interna

S. R.

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

Inspecção-Geral da Administração Interna

TRANSLATION[*]

Original: Portuguese

FOREWORD

The International Conference “Human Rights and Police Behaviour” took place in the Calouste Gulbenkian Foundation, in Lisbon, on November 11-12, 2005.

It was organised and coordinated, with outstanding commitment and success by the Assistant Director of Public Prosecutions, Mr. José Vicente Gomes de Almeida, who was then acting as Inspector General of Home Affairs.

It was based on one of the five structural axes of the programme of the XVII Constitutional Government: “to raise the quality of our democracy, reinforcing the credibility of the State and the political system and turning the justice and security systems into instruments at the service of a total citizenship”.

I am sure that the work carried out during this conference has contributed to the implementation – in the thoughts but also in the action of the responsible officials – of the need, in the daily activity of the security forces and services, to find a balance between, on the one hand, an efficient police force and the guarantee of safety for all citizens and, on the other hand, the protection of the citizens against possible abuses of authority by police officers.

I think that police forces are, like school and the media, before everything else, a means of education and not of repression and that, in a truly democratic society, the trust in the professionalism, in the integrity and in the humanity of the police service constitutes an essential factor for the maintenance of democracy.

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

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It is important that the citizens see the police as a guarantee of their freedoms and rights, and not as a threat to their freedoms and rights.

In this scope, the IGAI will continue to be a pedagogically active factor.

This publication gathers the papers presented by the speakers during that conference.

The substantive quality and the structural importance of those papers do not need public praise or tribute. They speak for themselves.

To the persons – speakers, moderators and all those who contributed to the success of this conference and compilation and promotion of this publication – I wish to express the gratitude of the Inspectorate General of Home Affairs.

I am certain that, as referred by the Minister of State and Home Affairs, Mr. António Costa, “they strengthened democracy”.

Furthermore, I wish to express my deep appreciation to those who, beyond the words and intents, assert citizenship, becoming themselves, through their daily good conduct, militants of the human rights.

Lisbon, November 2006.

António Manuel Clemente Lima
Senior Judge
Inspector General of Home Affairs

2006/10/30

S. R.

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

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Your Excellency the Minister of State and Home Affairs
Distinguished Authorities
Ladies and Gentlemen

First of all I would like to underline and thank the presence of His Excellency the Minister of State for its inherent meaning and for the encouragement it gives to all of us in the sense of dignifying the police institution and defending the legitimate rights of the citizens.

In the name of the Inspectorate General of Home Affairs and in my own name I would like to express the gratitude and public appreciation for your presence.

To the distinguished Speakers and Moderators who, with great generosity, made themselves available, since the first time they were contacted, to share with us their views on the subjects to which we are all invited to participate.

To the Calouste Gulbenkian Foundation for making available this superb space and for the services accorded to us.

To the Bank *Caixa Geral de Depósitos* for its inestimable and generous contribution.

For their generous support we are also grateful and wish to make a public appreciation to the following entities: Town Councils of Almada, Cascais, Évora, Oeiras and Sintra; Luso-American Foundation; Orient Foundation; Eugénio de

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

Almeida Foundation; Salvador Caetano Enterprise; Society Finagra/Herdade do Esporão and TAP Air Portugal. We also want to thank the support given by the National Republican Guard and the Police of Public Security.

To all guests, our thanks for having accepted the invitation, which greatly honoured us.

The reason for the choice of the subjects to be dealt with in this Conference, wisely chosen by Mr. Rodrigues Maximiano, must be seen in the light of the initiatives that took place in the scope of the European Programme “Police and Human Rights” and were promoted, by the end of the last millennium, by the Council of Europe, regarding the need for a permanent reflexion on the universal values of the human rights and their specific incidence on police activity.

As a matter of fact, police work deals essentially with the freedom and dignity of the human being.

We all know that the most innocent situations of daily life, such as mere identity controls, traffic problems and conflicts between neighbours, may trigger disproportionate and unpredicted reactions with direct effects on the integrity and dignity, either of police officers or the concerned citizens, especially when evaluation mistakes are made regarding the associated danger or lack of communication.

It can not be denied that police officers are exposed to verbal and physical violence, generated by a shortage of civic education or the frustrations of citizens, in this global world in a vertiginous mutation in which the exercise of police duties is more and more complex, difficult, demanding, dangerous and, consequently, unpredictable.

Being the human rights at the centre of the normative framework of police activity, it is imperative that the oversight bodies show their concern and supervise their total observance by the officers that must, first of all, enforce the law and make others comply with it.

It is unquestionable that an independent oversight has the virtue of making authority match with the full exercise of citizenship, insofar as it preserves the police institution of ungrounded or fiendish suspicions, susceptible of undermining the citizens' trust in their police bodies.

Police oversight exists not to foil their action or stain their image but rather to ensure high patterns of quality in police action, strengthening thus the credibility and prestige of the police institution, i.e., to ensure after all the full exercise of fundamental rights by the citizens.

In this context, allow us to present two questions that, in our opinion, are at the centre of these issues:

To what extent can the external oversight of police activity constitute a factor of promotion of the values of human rights?

To what extent can the external oversight of police activity generate in police officers a culture of responsibility and, in the remainder citizens, a culture of respect towards the authority?

Your Excellency the Minister
Ladies and Gentlemen

One of the five lines of the programme of the XVII Constitutional Government is: "To increase the quality of our democracy, reinforcing the credibility of the State

and of the political system and turning the systems of justice and security into tools at the service of a full citizenship."

We are sure that from this conference will issue new and relevant contributions to the search of solutions that will make possible the improvement of the oversight mechanisms and, consequently, also ensure a better exercise of police activity, whose ultimate purpose will always be the full respect for the Law.

Thank you very much.

Lisbon, November 10, 2005
Calouste Gulbenkian Foundation
José Vicente Gomes de Almeida

2006/07/18

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MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

Inspecção-Geral da Administração Interna

TRANSLATION[*]

Original: Portuguese

The Human Rights as a component that provides the structure of police activity

Inspector General of Home Affairs, Mr. José Vicente de Almeida
Dear Authorities
Ladies and Gentlemen,

It is with great pleasure that I am here to discuss a subject that is a part of our daily life and which I consider to be of the utmost importance in a democratic State based on the rule of law.

I would like to begin by praising this initiative and to extend my greetings to the renowned experts who kindly accepted our invitation to share with us their knowledge and experience, thanking right now their availability and interest.

Ladies and gentlemen,

As we know, the human rights can only be fulfilled in an environment of peace and social order, conditions that depend on, in the last analysis, of police activity.

As a matter of fact, in democratic societies, police are in the first line of defence of human rights.

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

Whenever a police officer acts for the protection and defence of a crime victim, he or she serves the community, enforces the law, protects the human rights.

It is also true that, in a free and democratic society, the citizens expect the police to act based on the respect, safeguard and protection of the human rights.

To that purpose, the State entrusts police forces with a whole range of powers, whose exercise has a direct and immediate effect upon the rights and freedoms of the citizen, which can only be performed in a legal framework.

And this framework requires a delicate balance between the police duty to ensure public order and safety and the duty to protect the rights to life, freedom and safety of people.

When exercising the rights and freedoms constitutionally guaranteed, no one is subjected but to the limits foreseen by the law, with the exclusive purpose of promoting the acknowledgement of and the respect for the rights and freedoms of others.

And it is precisely in this framework that police, in their daily activity, must find, in a permanent way, the balance between the guaranty and the protection of human rights and the exercise of the legal power in the protection of the citizens, of the society and of the State institutions.

In the present Portuguese police system, the idea that the respect for the human rights does not constitute a limit to police efficiency, but rather a factor of reinforcement of that same efficiency, is already consolidated for a long time.

As a matter of fact, the violation of human rights contributes to the deterioration of the citizens' trust, which dissociates police forces from the community.

And a police that respect human rights are serving the purposes of the law. Their behaviour does not have to be based on fear or violence to be effective, but rather in their professionalism and the dignity of the human being.

And this because we can not forget that the respect for human rights in the scope of police activity raises the citizens' trust in police, which stimulates a better closeness. And that is essential to a better prevention and repression of criminality.

On the other hand, there are three presuppositions of police activity that consolidate a better guarantee of defence of human rights: representativeness, receptivity and answerability. Police must be *representative* of the community, *receptive* to its needs and *answerable* to it.

In Portugal, we think we are in the good path!

As a matter of fact, the Portuguese government put in its programme the fundamental principles of fulfilment of human rights and translated them into political objectives and measures in the areas of Home Affairs and Justice. Some of these measures include resources in training, improvement in the handling of firearms and fire techniques, to mention just a few.

With such measures we are certain to contribute to the improvement of quality of police service and, consequently, to a better protection and fulfilment of human rights.

Right now, allow me to emphasize the work developed by the IGAI during these last years.

This organism of external oversight of police activity has contributed, in a decisive way, to the improvement in the performance of the security forces and to the reinforcement of their sense of professionalism, having established itself as a true instrument of strengthening of democracy.

To conclude, I would like to wish that all debates that are going to take place in this conference will be enlightening and may contribute to supplement the integration of the values of human rights in police activity.

Finally a last word to the elements of the security forces and services that are here today: the profession you have chosen is a noble one and absolutely vital to society; accordingly, its performance in strict conformity to the law, with professionalism and impartiality, will certainly credit you with the recognition by society of the noble mission you carry out.

Thank you very much.

2006/10/26

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Police, Domestic Security and Human Rights: How to ensure a fair and efficient democratic control?

I – Preliminary issues

1. In the European public law of the last centuries, the word *police* ("Polizei", "police", "polìzia") is connected with a huge plurality of meanings.

The prevailing meaning in each era, if not to each author, has balanced between a concept of police that comprises, in its extension (*extensio*), all that part of social life that is subjected to the *immediate* power of regulation of the sovereign (Head of State, Executive, Public Administration) and another concept that includes, in its intention, all the *necessary* legal and factual powers to ensure public order and safety, anticipating dangers and removing situations that may or do affect the social "good order" ("bon ordre", "gute Ordnung").

What should here be understood by good order concerns, for some, only the material sphere of public life, their *external order*, i.e., the achievement of states of fact in the public spaces from which are absent all kinds of abnormal disturbs (riots, disturbances, noises, mobs, untidiness, commotions, landslides, collisions…); for others, the "good order" to which that concept of police refers also comprises, besides "street order", the "moral order", i.e., the ideal and moral sphere ("tranquilité matérielle et moralité publique"): the interest to be protected by the police is here extended to the respect for judgments of value deriving from the moral concepts prevailing within the community, which are

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considered as implicitly assumed, while expression of a common good, in police law[1].

2. The idea that the police correspond to a sector of social life that depends on the *immediate* regulatory power of the sovereign – Executive – is the base of the *Police-State* of the 1800s.

Here dominates the *reason of State*, according to which the Executive, impenetrable to the mediation of the parliamentary law, has the right, for itself and under its own authority, to adopt the solutions that, in its opinion, correspond in daily life to the requirements of the principle *"salus populi suprema lex est"*. The parliamentary law is not, in a word, neither *presupposition* nor *criterion* of police decisions: it is the sovereign who has a proper power to regulate all that (*ius policiae*, *Polizeigewalt*) – a power that is almost unlimited, except in what concerns the duty to respect acquired rights (according to the theory of the *iura quaesita*), based on which the sovereign can deal with, as Otto Mayer wrote, "from the most significant cultural, economic or politic interests to the most trivial issues"[2].

Such is the core of the meaning that the concept of police acquires in the 18th century. It does not merely designate the *situation of a good order* of the *polis* or political community; it rather reflects a *sovereign power* based on which the absolutist prince may regulate, through his officials and by means of binding orders, all social life of his subjects, imposing coercive or punishing sanctions.

[1] It is the idea approved by the *Conseil d'Etat* regarding the police interdiction of plays or films that are considered immoral (case *Société "Les Films Lutécia" et Syndicat français des producteurs de films*, December 1959, *apud* Long-Weil-Braibant, *Les grands arrêts de la jurisprudence administrative*, 1965, p. 472). It must be noted that Hauriou, in the 1919 edition of his *Précis de droit administratif et de droit public*, p. 464, confined police public order to the external material order: this is the one that must guide the police since the police can not attempt to reach what at a certain time was called *moral order* – the order in the ideas and feelings – pursuing moral disorders. If they tried to do so, they would immediately become inquisition and conscience oppressors because of the weight of their means of action.

[2] See Rogério Ehrhardt Soares, *Interesse Público, Legalidade e Mérito*, Coimbra, 1955, p. 54, which translates and quotes the above excerpt from Otto Mayer; and, on the notion of police, Catarina Sarmento e Castro, *A Questão das Polícias Municipais* (thesis discussion), Coimbra Editora (2003), pp. 21-104.

"*Police was the name used by the whole State Administration that exercised this police power*."[3]

3. The absolutist nature of police power is kept, to a large extent, in the reference framework of the *constitutional monarchy*. This happens thanks to the *monarchical principle* that, in this constitutional structure, shared with the *parliamentary principle* the legal grounds of the power of the State.

The safeguard of the monarchical principle is attributed, by Dietrich Jesch, to Article 57 of the Final Act of the Vienna Congress (1820), which states: *"Since the German Federation, with the exception of the free cities, consists of sovereign princes, the entire authority of the state must, according to the basic concepts provided thereby, remain united within the head of state, and the sovereign can be required to permit the constitutionally guaranteed assembly of the states of the land to participate only in the exercise of certain rights."* Besides, the *Charte constituionnelle* (1814) had already got back to the idea that *"l'autorité toute entière residat en France dans la personne du roi"* and the draft of the state constitution of 1816 for Würtemberg established that *"the king is the head of the State and detains all rights that constitute the power of the State, according to the provisions set forth in the constitution of the Land*"[4].

Anyway, the constitutional monarchy withdrew, in a general way, from the scope of the original powers of the Executive the interventions in the citizens' sphere that might affect their *liberty or property*: the acts of the Executive that touched those two fundamental rights did not derive from that monarchical principle; they were rather included in the *statutory reservation of the law* and could not, consequently, be exercised without a previous authorisation and regulation, in their essence, by a parliamentary statute. And the truth is that police measures reach, in general, the liberty and property of the citizens; so, to be coherent, they had to be based on a parliamentary law. In

[3] Volkmar Götz, *Allgemeines Polizei und Ordnungsrecht*, 13th edition 2001, p. 16.
[4] Dietrich Jesch, *Gesetz und Verwaltung*, 2nd. (1968), p. 76 *et seq*.

other words: *democratic principle*, which only this law can publicise, would also be indispensable to legitimate police measures.

However, disregarding this general clause, the legal doctrine that characterises the constitutional monarchy did not recognise the requirement of a legal basis for police interventions. Accordingly, in the transition form the 19th to the 20th century, G. Meyer still wrote: "the functions of the State police do not add up to a limited addition of established competencies. Police power is the right to confront the individual, in general, with the application of coercion whenever that seems necessary in the interest of good common order and security. For giving a concrete police order it is not necessary to have the authorisation of a law that enables the government to require the subject to do an action or commit an omission of a certain quality. In the general position of the police in a State based on the rule of law lies a legal ground that is enough to enact *all* police orders and prohibitions."[5]

Besides, Otto Meyer, although critical of the opinion of G. Meyer, also kept himself within the framework of the State based on the rule of law ("Rechtsstaat"), corresponding to the constitutional monarchy and its structural principle, the monarchical principle. According to Otto Meyer, police power is grounded, not in any power or privilege of the State, but in the *general duty of individuals – "a natural, evident, innate duty" – towards the community*. Based on this *general police duty*, the State based on the rule of law may, without denying its own nature, enact authorisations, seemingly unlimited, for the executive powers to promote the effective compliance with that duty by the citizens[6].

Contrary to the doctrine of Otto Meyer, the national-socialism returned, in what concerns the police, to the supremacy of the power of the State ("Herrschaft"). One of its supporters says: "there is no positive law from which we can trace the current competencies of the police. The police legal ground is plainly the essence of the sovereignty of the State and its representation

[5] See *Lehrbuch des Deutschen Staatsrechtes*, 5th edition, Leipzig 1899, p. 584.
[6] See *Deutsches Verwaltungsrecht*, I, 2nd. Edition (1914), p. 214 *et seq*.

through the *Führer* and chancellor of the Reich"; "if police tasks had to find their grounds in the law, then the law could describe, just imagine, the sense of the sovereignty of the State, shaping, namely, the essence of the people"[7]. Such a conception represents the complete triumph of the *"Führerprinzip"* in the field of police activity.

In this context, and having into account French and Italian authors[8], Denninger recognised in 1968 that the police legal grounds, in the German, French and Italian doctrines, still resided in the idea of the State based on the rule of law of the *constitutional monarchy*, i.e., in the idea that police, in this legal and cultural space, is shaped only by the idea of the State based on the rule of law and not also by the idea of democracy. The absence of a *democratic-liberal theory* for the police, according to Denninger, would have been the cause of harmful distortions of the legal principles in police practice[9].

4. The Constitution of the Portuguese Republic (CRP), since its first text (1976), defined two tasks for the police – to defend the democratic legality and to defend the interests of the citizens – which imply, because of their own nature, the implementation of the law and, in general, the compliance with the legal order (article 272). In other words, police activities must always have in mind the defence of the legal order and the safeguard of protected interests *through* the rights of citizens. So, from the functional point of view, the police show two faces: an *objective face* (safeguard of values, interests and principles, sustained by the legal order applicable in the area of jurisdiction of the State) and a *subjective face* (the protection of values and interests within the legal sphere of the citizens and protected as *rights* inherent to them)[10].

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[7] Quotation from W. Hamel (*Wesen und Rechtsgrundlagen der Polizei im nationalsozialistischen Staate*, 1937), *apud* Erhard Denninger, *Polizei in der freiheitlichen Demokratie*, 1968, p. 15.

[8] For instance, P. Bernard, *La notion d'ordre public em droit administratif*, 1962, an author who sees in the public order that must be defended by the police, not only a minimum standard of convictions and values but also *"la manifestation de l'élan vital de l'organisme social"*: "public order is the juridical instrument that allows the guidance of energies in accordance with the social aims and the protection of the common ideal", p. 278.

[9] *Idem*, p. 8 *et seq*.

[10] Catarina Sarmento e Castro, *idem*, p. 46 *et seq*.

Besides, paragraph 2 of article 272 sets forth the principle of legality regarding police measures. The authorities and police officers can only take measures, in compliance with those two constitutional functions, that are *typified in abstract* by the law. But the constitutional text also imposes that, when choosing the measure or measures to be used in each particular situation, only those strictly necessary must be used. This means: the police measures adopted in each case, besides being legal, must also obey the *proportionality principle* or the *ban on excesses*, i.e., they must be *technically* fit to achieve the purported aim and, among the available measures that are technically fit, those must be the less restrictive or with a lower social cost (economic, legal, moral, etc.).

Paragraph 3 of that same article refers to police activity when preventing crime, establishing in that field “the observance of the general rules governing the police” and the “respect for the rights, freedoms and safeguards of citizens”. Although this is a police activity for the prevention of *crimes* (i.e., serious ethical and legal offences), that activity does not allow police authorities to do anything they deem fit to achieve the purpose of safeguarding the democratic legality. On the contrary, they must comply with the *general rules governing the police* and respect the most important of the fundamental rights (the rights, freedoms and safeguards set forth in articles 25 to 49, of that first text, and the other fundamental rights of similar nature). In those general rules must also be included the *technical rules* that characterise police activity, which, through the expression “general rules governing the police”, are constitutionally established as legal rules (similarly to what happens to the technical rules that are included in the inappropriately called *technical discretion power*).

In the 1982 Constitutional revision, that paragraph 2 was amended and stated then that the police function now also comprises the “guarantee of domestic security”. And a 4th paragraph was added , subjecting to the general statutory reservation of the law the legal *regime* of the security forces and, at

the same time, imposing, for each one of them, a *sole organisation* for the whole national territory"[11].

In the line of these precepts, the Law of Domestic Security (LSI) defines today domestic security as "the activity developed by the State to ensure public order, safety and tranquillity, to protect persons and assets, to prevent criminality and to contribute to ensure the regular operation of the democratic institutions and the respect for democratic legality" (article 1, par. 1, of Law No. 20/87, dated 12/07/1987, as amended by Law No. 8/91, dated 01/04/1991).

Even regarding the protection of the utmost constitutional values – such as people's life and integrity, public harmony and democratic order – against particularly violent or highly organised forms of criminality (such as, for instance, sabotage, espionage or terrorism), the LSI and the statutes and organic regulations of the security forces and services clearly establish the framework of police measures that police authorities may apply, taking into account the corresponding rules of competency (articles 1, par. 3, and 16). Accordingly, contrary to the *principle of law* are the reactions that, in the face of new forms of extreme and indiscriminate violence, appeal to a police repression "at all costs", putting aside, if necessary, the best traditions that are kept in the culture of Human Rights, from which were born and on which are based the modern political constitutions[12]. The idea of democratic legality can not cease to prevail, also in this context, under penalty of triumph of those who persist in destroying, precisely by terrorism and violence, liberty and democracy.

In conclusion: among us and at the light of the CRP, it is obsolete to think of police today – i.e., the activity developed by the state to ensure public order,

[11] In the 4th Constitutional Revision (Constitutional Law No. 1/1997, article 108-10), the regime of the security forces began to integrate the *absolute reserve* of legislative competency of the Assembly of the Republic (article 164, subparagraph. u).

[12] However, the solemn law ("law in books") is not enough to ensure the effective respect for the fundamental rights when the pressing need to preserve the life of potential victims overlaps with the concern for the fundamental rights of "suspects". Against the principles, the constitutions, the conventions and the laws there is no shortage, everywhere, of cases of torture, brutal treatments, abuses of all kind, even in traditional democracies. Hence the reinforced need for finding fair and effective means of control to keep, in such adverse times, police behaviour within the limits of democratic legal order.

security and peace, to protect the rights of the citizens, to prevent crimes and to defend democratic legality – as an activity that is *exterior to and above* the Law or as a product of some primary, natural and evident power of the Executive (*ius policiae*). Also the police, in order to act, need to base that action on the democratic law – parliamentary law – or, at least in rules and principles that extract the necessary democratic legitimacy from it.

II – Of the inevitable existence of discretionary powers in police decisions

1. Police measures and the situations to which they are applicable must be, as far as possible, determined from the direct and simple interpretation of the law and according to what is strictly written there. Only comprehensible and accurate laws may satisfactorily fulfil the functions of *democratic legitimacy* of the officers and their actions, of *rationalisation and predictability* of the administrative behaviour and of *security in the legal traffic* and exonerate or reduce the uncertainties that upset everybody's life in the *administered societies* of our days. In this respect we may speak – and I have done it – about the *determinative principle of the paradigm of decision-making* of the Administration in a Democratic State based on the rule of law[13]. The requirement of the determinative principle reaches its maximum with the incrimination and punishment of crimes (*nullum crimen et nulla poena sine lege*) and with fiscal impositions (*nullum vectigale sine lege*).

But, on the other hand, that requirement, if generalised and with equal intensity regarding all sectors of the legal order, may render impracticable the process of *individualisation* of the Law and give origin to serious injustices. So, since the bottom of western culture, we are taught – it is the case of Aristotle

[13] A. M. Barbosa de Melo, *Introdução às formas de concertação social*, BFDC, Leaflet (Coimbra, 1984), p. 50 *et seq*, particularly footnote 68.

(5th Book on Ethics) – that the decider must improve the norm that is "*imperfect by reason of its abstract nature*". The *justice of the case* or equity (*epiqueia*) constitutes thus a kind of security valve against the strictness in the execution of the laws, inducing the deciders to "*modérer la loi en faveur de la loi même*" (Montesquieu).

Besides, one of the traditional techniques of legislative rule-making is that in which the legislator establishes programmes, guidelines, directions, more or less ductile or pliable (*normes souples, diritto mitte*), leaving to the deciders *in concreto* the "construction" of the case and its decision, in the light of this reference framework. The *administrative discretionary power* – or discretionary power of the Administration – is the exemplary expression of this creative freedom of the Administration and it is an expression which has the particularity that the mistakes of deliberation allegedly attributed to the administrative decider are, in principle, covered by a direct new deliberation by the administrative judges. This means that, in the scope of the discretionary power, the administrative authority has the power of saying the last word regarding the deliberation that was attributed to it or left to its deliberation by the law[14].

2. In what concerns domestic security, the capacity of prevision is highly limited. The game between offender and police, between situations of danger and police measures, often presents unexpected strokes. The offenders' techniques, their means and aims, change and also force the security forces to readjust their means and techniques. There are always new risks and measures to be implemented, different from the traditional ones.

Anyway, it would be an error to evaluate this dynamic as strange to the idea of a Democratic State based on the rule of law, as if the democratic order would correspond to a blocked society, "accomplished and stabilised", where

[14] The laws of domestic security often use *undefined concepts* (descriptive and based on values) that have, or may have, a practical effect parallel to that of the discretionary power. Here are some examples of article 5 of the LSI: the citizen's duty to comply with the authorities' legitimate orders and warrants and the duty of not *preventing the normal performance* of the competencies of officials and officers. As to the duties imposed to the officers, the most notorious examples can be found in the Code of Ethics of Police Service.

the legal positions to be protected were only those based on laws that are in force. When the citizen demonstrates in the streets without respecting all the prescribed forms or formulae, this does not necessarily means that he wants to place himself outside the legal order; it may only mean that he wants to modify some rules or laws that integrate that legal order at that given moment. Anyway, the protest and the criticism of citizens are a part of the democratic dynamics, assuming by principle a positive role in social evolution. If the political conflict, the fight regarding interests and opinions, are kept within the reference framework of global legal order, respecting it in its essential features, those demonstrations must be considered as legitimate demonstrations of the citizen's *status constituens* while an active member of his political community[15].

3. The activity of police operators, essential to the efficacy and efficiency of their missions in an open society and in constant change, requires as a necessary condition, first of all, a demanding *initial professional training* and a regular *continuing evolution* during all their active life.

Among the important elements regarding the learning process of the "laws and rules of the art" in issues of security, we may not forget the many concrete experiences concerning police behaviour in the corresponding time and place. I am sure that the knowledge of foreign experiences also has its role in the preparation of managers and officers of public security services; but the

[15] The idea of the *status constituens* comes from Denninger, *idem*,. p.33, following the theory of Georg Jellinek (*System der subjecktiven öffentlichen Rechte*, Darmstadt, 1963), according to which the fundamental juridical position of the citizens before the State is divided into four *status*: the *status negativus* (to exercise freedom), the *status activus* or *activae civitatis* (to participate in the formation of the will of the State), the *status positivus* (to share the actions of the State) and the *status passivus* (to obey the impositions of the State). Now, the *status constituens* (constituency position) differs from the *status activus* or *activae civitatis* of Georg Jellinek. The rights of the *status activus* (the right to vote, the right to have equal access to public functions, etc.) and the duties of that same *status activus* (the duty to serve in the military forces, the duty to testify, etc.) are rights and duties, granted or imposed, for participation in a Power of the constituted and materially established State, i.e., capacities that are attributed to the individual, which are outside his natural freedom and based on which the exercise of his political rights may take place. The *status constituens*, on the contrary, is the legally based capacity (and the ethic and social duty) that is given to the citizen, in his quality as a member of a group that is organised as a State, to collaborate in the daily integration of the group as a State and thus in the establishment of the contents of the Power of the State. But, refers Denninger, *status constituens* and *status activus* cross each other in their concrete legal modelling: the former also assumes elements of the *status negativus* while the latter does not.

closeness of the exemplary cases (good and bad), chosen to be the object of study and reflexion, assumes in this learning process a crucial importance since it concerns an activity eminently *located* and, for such reason, open to the influences of culture, way of being and psychology that are characteristic of the people.

On the other hand, the acquisition of the knowledge on how to do – *skill* – is not enough; we must also develop in the professionals responsible for public security the cult and the internalisation of the values of humanism and citizenship – *attitude*. In this set of values, a crucial role is played by the *human rights* and the idea of inviolability of the *human dignity* of *all* persons concerned by police acts (officers, victims of hazards, threats or violence, offenders of public order, mere spectators of police interventions, etc.). The special legal and human sensibility to those values by the operators of the security system seems to constitute the guaranty by excellence of "good administration" in the exercise of a public activity that often puts at risk the life of those who carry it out.

That is why professional training and evolution of security managers and officers require a special attention in every public policy in a Democratic State based on the rule of law. The required patterns of justice and efficacy of police acts will be easier and more safely achieved through training and evolution of the personnel than by any other way.

III – Of the modalities of control of the security forces and the limits of each one of them

1. From the previous paragraph II, it derives that it is in the professional training and evolution of the managers and officials of Public Administration that resides a first and fundamental modality of coordination and control of any type of administrative activity. We are referring to the control that is carried out by the

standardisation, either of the individual qualifications of the system operators, the working processes or even the results thereof[16].

As a matter of fact, the nuclear sense of the action of control does not consist in "surveying" someone who carried out, did not carry out or wants to carry out something. It rather consists in the objective assessment of the correctness or incorrectness of the activity carried out or in prospect. Such assessment presupposes the definition of a rational and legal pattern, plan or paradigm of the activity that is the object of control; subsequently, the correlation between this activity with such ideal pattern in order to detect the points of accordance and the points of divergence between one and the other; and, finally, an action with the purpose of correcting the established points of divergence[17].

The act of control, it must be noted, may occur, in general, *before*, *during* or *after* the performance of the activity, behaviour or act to which it is subjected. From there results the distinction, frequent in legal and administrative sciences, between *preventive* control ("Vorkontrolle"), *simultaneous* control ("begleitende Kontrolle", "control just in time") and *successive* control ("nachträgliche Kontrolle").

In this objective sense, which enhances in the act of control the comparative judgement between what is carried out and what should have been carried out, the *competent* professional of the security services has an irreplaceable role, either before, during or even after the action, in what

[16] Henry Mintzberg, *Estrutura e Dinâmica das Organizações*, Portuguese translation (1995), p. 23 *et seq*.

[17] See, for instance, Günter Püttner, *Verwaltungslehre*, 3rd. Edition (2000), p. 342 *et seq*. Looking at the control in this objective acception, Weihrich/Koontz, *Management: a global perspective*, 10th. Edition (1993), p. 578, considers that the basic process of control, wherever it may be found and whoever is being controlled, includes the three following steps: (1) establishment or definition of a standard, plan or pattern of action; (2) measures of execution of or compliance with that standard by the behaviour in appreciation; (3) correction of the established points of divergence. We must note that the word "control" ("contre-rôle") – today used in the great majority of the languages – has a French origin and it means exactly the act of verifying the document or paper of the accounts (the list of the accounts) ("rôle") which the payers (i.e., the tax collectors) during the "ancien régime" presented to whom it might concerned to obtain acknowledgment of their payment, Walter Krebs, *Kontrolle in staatlichen Entscheidungsprozessen*, 1984, p. 4, footnote. On the other hand, the control does not aim at confronting the behaviour to be examined, in its complete extension, with its pattern of reference. If it were so, the activity of control would imply a duplication of the activity that is the object of control. The act of control, quite differently, is limited to the performance of some tests that are considered fundamental for a sufficient evaluation of the examined behaviour.

concerns the control of compliance with the required patterns of behaviour *in casu*. We are facing a *diffuse control*, since its global operation concerns all system operators, and a *self-control*, insofar as it is the person behind the police action who carries out the control of his own actions[18].

The importance of building, within the plans of the law or the administrative use, the control of the security activities as expressions of the *idea of self-control* becomes clear to those who consider the data of experience, widely mentioned in relevant literature. On the other hand, the external control (or heteronomous), no matter how necessary it seems, is always perceived by those who are subjected to it as an interference, as a sign of mistrust and as a threat to their independence. Or rather: the external control does not unconditionally assure motivation for a good performance. On the other hand and *ex adverso*, the existence of the external control represents, for the average official, a useful tool of control to the recurring temptations of easy and minimal work[19].

The secret thus lies in the *art* of moulding the measures of control to the minimum required so that the activities will be actually supervised and their disadvantages the most possible attenuated.

2. Civil society can encourage forms of external control of the security activities, legally institutionalised in organisations of civic intervention to reassess police cases. The most interesting case is perhaps the CRBs (*Civilian Review Boards*) that, following police scandals in the 60s in the USA, were created by the local legislative bodies in many American cities.

[18] Following Püttner's suggestion, *idem*, p. 343, we may say that *preventive control*, as long as *self-control*, presupposes that the agent at least considers a proposal of decision or a provisional decision, in order to examine it prior to its execution or confirmation. On its turn, the *preventive control*, as long as *hetero-control*, happens, for instance, regarding previous authorisations by the commanding officer or the entity in charge, which are necessary to carry out an act or to exercise an activity, or even the previous consent of the Audit Court in matters of public expenses.

[19] Püttner, *idem*, p. 339. But, the author goes on, the lack of institutionally organised control or simply based on the operator's trust, also stimulates the average officials to easy and minimal performances; according to experience, only in relation to a few ideal officials is it possible to renounce the pressure resulting from the existence of a final control.

Their objectives are: (1) to keep effective discipline within police forces, (2) to arrange for a satisfying resolution of the citizens' claims against police officers, (3) to keep citizens' trust in the police and (4) to influence police managers, providing them with feedback from the citizens. In the 50 largest cities were identified, in 1992, three different types of CRBs: (1) those where the investigation of the facts belongs to the citizens, (2) those where the investigation of the facts is carried out by sworn officers, (3) and those where the investigation of the facts and the ensuing recommendations are made by citizens to the citizens who have the authority to pronounce the final decision[20].

Those initiatives were, almost from their beginning, badly received by police forces, who saw in them unjustified intromissions in their sphere of action. However, the number of cities with similar initiatives is growing. This may signify that the local legislative bodies, despite the failure of some CRBs, still consider them as efficient instruments of police control[21].

3. The judicial control is a form of external control, in principle repressive (*ex post*), depending on the initiative of the citizens or of the Prosecution Service and with a limited range.

Besides the structural reasons inherent to the Judicial Power, the unwillingness of the judges in entering this domain corresponds to the sensitivity and delicacy that usually surround the intervention of the courts of law in the activities regarding security. In fact, the problems raised here are easily transformed in subjects of political and partisan struggles and, on the other hand, the evaluation of the seriousness of the situations often depends on criteria that are clearly subjective. Hence the need for the administrative courts to use some moderation in examining the legality of police acts that are submitted to them and the provisions granted to the claimants[22].

[20] Larry K. Gaines/Victor E. Kappeler, *Policing in America*, 4th Edition, p. 287 *et seq*.
[21] As referred by Larry/Kappeler, *idem*, p. 289.
[22] Volkmar Götz, *idem*, pp. 129 and following; Georges Dupuis *et alii*, *idem*, p. 473 *et seq*; René Chapus, *Droit administratif général*, I (1997), p. 644 *et seq* and p. 703 *et seq*.

In this aspect, a special reference must be made to the case-law of the *Conseil d'Etat* (France) where the flexibility given to the powers of cognition and decision of the administrative judges changes, gradually, according to the legal questions that are at issue in the case.

The legal doctrine distinguishes there three jurisdictional trends, which are:

(1) *Maximum control*. This is the control that the *Conseil d'Etat* exercises when, in *periods of normality*, the public interest in the maintenance of order collides with the protection of the citizens' rights and freedoms. Here, the court sometimes even goes to the point of evaluating the very *opportunity* of the administrative decision.

In general, the judges verify all the *external legality* of the police act: the competence, the form and the procedure, the legality of the aim and the evaluation of the elements of fact and of law. In what concerns the facts and the aims, the court widely extends its powers of cognition: it verifies the *material accuracy* of the facts (for instance, the existence of a real threat of disorder) and their *legal qualification* (for instance, if the threat is sufficiently serious in the specific case in order to justify the adopted police measure), it decides if the chosen measure is *appropriate to the aim* and if it is the *least severe* from all the available measures, etc. This means: in the scope of police activity, the *Conseil d'Etat* follows, to the whole extension, the requirements that are inherent to the general proportionality principle.

On the other hand, in this same scope, the *Conseil d'Etat* also carries out, simultaneously with the litigation of annulment, the litigation of responsibility[23], either of the responsibility without guilt, connected to the risk or the objectively bad operation of the service, either of the responsibility based on plain guilt or on serious guilt. Besides, if the illegality committed by the police is considered as cause for annulment of the adopted police measure, the violation of the citizen's rights will be a "voie de fait" and will have thus, as a

[23] Georges Dupuis *et alii*, *idem*, p. 520 *et seq*.

consequence, that the common courts of law will be called to judge on the individual's claim, with *full jurisdiction* powers.

(2) *Minimum control*. This is the control of police acts committed in particular domains of a special dangerousness or of great interest to the State (the traditionally called high police bodies, police of foreigners, police of borders, police of foreign publications, etc.). Here the judges control the external legality of the police act, but they grant a great liberty to the police authority in what concerns the facts, accepting as good the assessments and qualifications made by this authority: they only check if the facts alleged by that authority do *materially exist*, or not, and if the authority committed *considerable* errors of appreciation.

We must note that, in areas previously subjected to minimum control, the *Conseil d'Etat* has recently begun to exercise a normal control. It happens when the measures of the police of foreigners have as object citizens of the European Community or when they affect citizens from other States who may invoke the European Convention for the Protection of Human Rights; the same happens regarding foreign publications since, after 1997, the case-law developed in the sense of granting more protection to public freedom (freedom of expression of one's thoughts), subjecting to maximum control the interdiction of sale of foreign publications coming from the ministry of home affairs.

(3) *Null control* (or very reduced). In parallel with legal texts that regulate situations of crisis, the case-law of the *Conseil d'Etat* allows, *in exceptional circumstances* (for instance, a volcano eruption), an extent of the administrative legality, which even considers as legal the derogations to the rules of competence, procedure and also to the rules regarding the contents of police measures. Such derogations would be seen, in normal circumstances, as indisputable violations of the individual freedoms.

The *principle of the state of necessity* – this is what we are talking about – is also foreseen by our laws, justifying the non compliance with the principles and rules foreseen by the Code of Administrative Procedure in situations of exceptional urgency and seriousness. Anyway, police measures in case of

necessity are legally controllable through the requirements inherent to the proportionality principle and always without prejudice to the right of the offended to compensation, according to the general rules of responsibility of the Administration (article 3, par. 2, of the CPA).

4. The parliamentary control of police activity will have a tendency to be restricted to the “cases” that have a greater echo in public opinion. A case that is silenced in the media, hardly will be brought to light in a parliamentary scope.

However, the instruments of parliamentary control of the administrative activity are multiple and various: questions to the government (oral and written); petitions, protests and complaints presented on the initiative of citizens (with examination in a commission and a debate in the plenary session); debates on politics and cases in the permanent commissions, namely in the Commission of Constitutional Affairs, Rights, Freedoms and Safeguards; debates with the presence of the government on issues of actual and urgent public interest; questions presented by the parliamentary groups (two for each group and legislative session); and so on.

This is a whole set of instruments that may be used for the control of cases and activities of the authorities and officers of the police and security forces. And, as a matter of fact, they often deal with denunciations of disrespect of citizens’ rights by police officers and authorities. But their efficacy depends, on the great majority of the cases, on purely political and occasional factors.

5. The function of the Ombudsman includes the defence of the rights, freedoms, safeguards and legitimate interests of the citizens in the scope of the activity of the public powers, namely in the scope of the central, regional and local public administration, the Armed Forces, the public institutes, the public enterprises and the providers of public services or exploration of goods of public domain (articles 1 and 2 of his *Statute*, established by Law No. 9/91, dated April 9, 1991). On the other hand, it is also part of citizenship the right to address to this independent organ of the State complaints regarding actions and omissions

committed by any public power, including of course the security officers and authorities (article 3 of the *Statute*). So, the external control over the security forces is also a part of the tasks that are incumbent on the Ombudsman[24].

In what concerns the Public Administration in general, the control of the Ombudsman is remarkably comprehensive and deep. *Comprehensive* because it covers the wrongs and illegalities committed by the administrative authorities, with a special emphasis on those that infringe the rights, freedoms, safeguards and legitimate interests of the citizens; and *deep* because it involves the evaluation of the operation of the organisms and officials of the Administration, either from a point of view of the legality or from a point of view of the opportunity, merit or "good administration". But it is a *weak* control, in the sense that the conclusions that may be reached by his Office do not have a decisive nature or binding force. At best, they are worth as recommendations (article 23 of the CRP and article 3 of the *Statute*). Their force comes from the prestige of this organism and its moral influence in active administration, and not from any co-active or binding effect attached to its pronouncements[25]. This does not mean that the Ombudsman's recommendations will be, in general, overlooked. The rate of acceptance of the recommendations made in 2004 (around 41.66%), for instance, may be considered reasonable, especially if we have in mind that those which were not accepted amounted to 12.5% and those which were waiting for an answer, at the date of conclusion of the Report, were 46.6%[26]. The efficacy of the recommendations is, thus, very far from being irrelevant.

The Ombudsman acts on his own initiative (approving inspections and studies) or based on complaints from citizens, either directly sent to him or addressed to the Assembly of the Republic and which the competent

[24] About this organism, see Fernando Alves Correia, *Do Ombudsman ao Provedor de Justiça* (1979), where, among other things, the author analyses, based on the 1976 and 1977 Reports, the activity of the Ombudsman during the two first years of his operation.
[25] Alves Correia, *idem*, p. 87 *et seq*.
[26] See paragraph 8 of the *Introduction* to the 2004 Report, whose author is the Ombudsman, who, nevertheless, regretted the slowness of the addressees (administrative entities and members of the government) in complying with the legal delay of 60 days to inform about their position regarding the recommendation (article 38 of the *Statute*).

commission decides to forward to his Office (article 251 of the *Regulations of the AR*). Very important in this mechanism of external control of Public Administration is the annual report that the Ombudsman presents to the Parliament and which, after being published in the *Official Journal of the Assembly of the Republic* and examined by the competent commission, is the object of debate in a plenary session (article 23 of the *Statute* and article 259 *et seq.* of the *Regulations of the AR*). In the collection of annual reports produced from 1976 to 2004, we can find a very rich compilation of cases of the activity of the Ombudsman on constructive criticism to the *bad administration*, either at State level or at the level of Local Administration, including the security forces. With relevance to the point of view discussed in this work are areas 5 and 6 of the Ombudsman's activities – the first, *"legal affairs, national defence, domestic security"*, the second, *"prison affairs, foreigners and borders police forces, rights, freedoms and safeguards"*. I remember, among other contributions, the *Report of the Prison System* (1996), the special reports on *Our prison facilities* – I (1996/1997), II (1999) and III (2003) – and also the many complaints examined over the years regarding the performance of the security forces, denouncing cases of police brutality (whose number, besides, decreased significantly in 2004)[27].

But the amount of the matters covered by the Ombudsman's intervention limits, in practice, the extent of his action in the domain of security issues. Although important and necessary in a Democratic State based on the rule of law, the Ombudsman's control does not exclude a systematic consideration of the experience of police and domestic security in the actual circumstances they face today to urge the cultural turn, in the relationship security forces / Human Rights, which we deem urgent everywhere and also in Portugal.

[27] As an example, see recommendation 3/B/04 on the very serious issue of provisional imprisonment in Portugal; *2004 Report*, p. 729 *et seq*.

Conclusion

All types of external control of police acts and activity play an important part in the struggle for a good administration in relation to the security and police activities in a Democratic State based on the rule of law.

However, it lacks among us an organism especially focussed on the gathering of information, the study and publicity of the risks and challenges, always new, which today face the activities of police and domestic security. In fact, it is necessary to consider exemplary cases, taken from the concrete experience of Portugal and Europe, which may help the elements of the security forces to exercise in a better way their competencies in the volatile contexts in which they daily perform their duties and might thus contribute to the development in Portugal of a *living culture of the Human Rights towards the activities of domestic security*.

Maybe this could be obtained by means of an agency, a commission or an organism with a simple structure, independent, established by the Assembly of the Republic or working there, with a multiple subject composition, with the power to promote studies in matters of domestic security and to keep informed of its works the specialised parliamentary commission (Constitutional Affairs, Rights, Freedoms and Safeguards), as well as the managers and responsible officials for the security politics of the country.

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The European Convention on Human Rights and the use of lethal force by police officers

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1. Introduction

This paper concerns the extent to which the European Convention on Human Rights (ECHR) affects the use of lethal force by police officers. Using what can be described as the ultimate power of the state – the deliberate infliction of death or serious injury on individuals – is reserved to the police and the military. It is, thankfully, a small part of the everyday work of the police, which is mainly concerned with the maintenance of public order in the broad sense, and the provision of public services. Still, such an ultimate power must be subject to limitations, and in Europe, the ECHR is the "ultimate limitation".

The ECHR is a treaty, the creation of an international organisation, the Council of Europe.[1] The parties to the Convention - now 46 European states -undertake to secure to everyone subject to their jurisdiction the fundamental rights set out in the Convention. The Convention establishes a court in Strasbourg (hereafter, ECtHR, or "the Court") which is competent to hear complaints from individuals, after they have exhausted domestic remedies in the state against which they bring a case.

The Convention and its additional protocols set out a number of the most basic human rights. Human rights are meant to limit the coercive powers of the state and there are obviously several articles in the Convention that are of relevance to police powers and operations. For example, powers of arrest are regulated by Article 5, surveillance powers are regulated by Article 8, the treatment of suspects in police custody is subject to certain minimum standards set out in Article 3, public order powers are limited by the freedoms of conscience and religion (Article 9), expression (Article 10) and demonstration (Article 11). However, the present paper will look at the extent to which Article 2, setting out the right to life, affects

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[1] The Council of Europe has many other activities relevant both to effectivizing, as well as controlling policing, e.g. the adoption of conventions dealing with terrorism and organized crime, the adoption of codes of ethics, the work of the Group of States against Corruption. (GRECO) the onsite monitoring of the Committee against Torture (CPT) etc. but the present paper will not look at these.

police powers and operations involving the use of potentially lethal force.

The protection of the Convention covers some 800 million people and the ECtHR adopts around 900 judgments per year. The Convention system is a subsidiary mechanism of protection to that provided by the national legal orders of the contracting parties. As with any system of law built upon the development of norms by means of adjudication, the "accident of litigation" is significant. The person complaining must show that he or she is a victim of an alleged violation of the Convention. Some potential issues, for a variety of reasons (lack of awareness of one's legal rights, resignation on the part of the victim, cost of litigation, poor legal advice etc.) never make their way through the mill of domestic courts and the admissibility procedures to a judgment on the merits.[2]

The only material remedy the Court can require for breach of the Convention is the award of monetary compensation (Article 41) but a negative judgment can also indirectly involve other obligations, in particular, law reform and/or the reopening of domestic proceedings.[3] The Court also has the power, which resembles that of a national constitutional court, to specify in general terms the legislative reforms which are necessary to correct a so-called "structural" violation of human rights.[4]

A judgment against the state can thus "return" to the national legal system for implementation. It is important to note that, while a judgment formally speaking only binds the respondent state (Article 46), in practice the ECtHR develops European legal principles by means of its case law. This is particularly so where the Court sits as a so-called "Grand Chamber" of 17 judges, which was the case in several of the police cases dealt with below. In any event, where the Court has stated that, e.g. legislation granting police powers, or a particular type of police practice, or an absence of legislative or administrative safeguards on such powers or practices violates the Convention, then in practice *all* the contracting states are under an obligation to make the necessary reforms to bring these laws and practices into compliance with the Convention. A failure to do so in a state will eventually lead to a judgment finding a breach of the Convention, and so responsibility for the state at international law.

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[2] Around 95% of all cases are dismissed at the admissibility stage. An important factor here is the requirement in Article 35 that a case be brought before the Court within 6 months of the final domestic decision.

[3] See Council of Ministers recommendation No. R (2000) 2.

[4] Committee of Ministers resolution, Res (2004) 3 "on judgments revealing an underlying systemic problem". *Broniowski v. Poland* No. 31443/96, 22 June 2004. All cases referred to are available at the Court's internet site (http://www.echr.coe.int).

Moreover, as the Convention has also been incorporated in the national law of all the contracting states, national courts and administrative agencies, including the police, are required to apply it, and to take account of the case law of the ECtHR. Failure to do so can thus also give rise to whatever remedies the national legislature has provided at national law, e.g. before police oversight bodies, ombudsmen, national courts (civil damages, proceedings for annulment of convictions, disciplinary proceedings against police officers etc.).

Having said this, the ECtHR was not established to "harmonize" the laws of the contracting parties, but only to state whether a state has violated its international law obligations under the ECHR. Thus, there is an important difference between the ECHR and the ECtHR, and the EU, and its court, the European Court of Justice (ECJ), even if the ECJ also tends to follow the judgments of the ECtHR. Unlike the ECJ, the Court has traditionally been reluctant to engage in any activity which can be attacked as "judicial legislation". This has meant, inter alia, that up until relatively recently the steps to be taken to bring law and practice into line with the Convention have not usually been explicitly spelt out in a judgment. However, this restrained approach is now changing under the combined pressure of the vast, and growing, case load of the Court and the need to be more pedagogical with legal systems which fall far short of the requirements of a *Rechtsstaat* and which need clear, not cryptic, guidance on what legislative changes are necessary. This development is particularly apparent in the policing cases dealt with below.

Nonetheless, the Court still cannot take a holistic approach to policing in the way a legislature can, laying down general rules as to police functions, police powers, the necessary internal and external controls over these and the available remedies against abuse of power. The particular facts of the case provide a strict procedural framework for the Court, a crucial difference between judicial and legislative power. An allegedly unsatisfactory police law or practice must be "fitted in" to a Convention right. Thus, such vitally important aspects of control as training of staff designed to foster democratic sensibilities and "rights awareness" and fiscal management can only indirectly be the focus of Court scrutiny.

The underlying assumption of the Convention is that respect for human rights is capable of being reconciled with good administration in general, in the case of the police in particular, with effective law enforcement. Conversely, that *lack* of respect for human rights by the administration undermines the legitimacy of the state. [5]

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[5] The extent to which law police "culture" perceives a tension or incompatibility

This is the theory. Like all professional groups – doctors, lawyers, university professors – the police consider that they know their own job best, and in practice, often consider that external review and criticism tends to be ill-informed, unrealistic or – at worst – would make their job impossible. The police are especially sensitive to criticism because they often have a difficult and even dangerous job to do. Courts and lawyers do not have to react quickly, with limited information, to deal with violent troublemakers on the street, or armed criminals. Instead, they come in after, usually long after, a disputed event and pronounce, in the calm and safety of the courtroom, whether the response was lawful or not. In the circumstances, it is easy to see how this can be resented. And if a national court is one step removed from reality, is an international court not two steps removed?

And is it appropriate for a treaty to emphasize the rights of suspects, rather than the need for people to obey the lawful commands of the police? Does it not lead to a hopelessly one-sided approach to speak about human rights without mentioning human duties?

These are reasonable points to make. But I think there is a value in a treaty laying down rights and not duties. Individuals naturally have moral and legal duties to one another, and legal duties to public authorities, e.g. a duty to comply with the lawful instructions of the police. However, at least as far as Western human rights conceptions are concerned, such legal duties should be seen as part of the context of certain human rights, e.g. the freedom of expression (ECHR Article 10) which can be limited "for the protection of the freedoms of others", or from freedom from arrest, (ECHR Article 5) which is limited by an exhaustive list of circumstances in which the state is entitled to arrest. If, on the other hand, "human duties" are given a separate existence, then they can easily become conditions to be fulfilled before human rights need to be respected. And, as only the state can oversee the fulfillment of such duties, then all one accomplishes by adding human duties is to give the state new, vague grounds for restricting human rights, on top of the grounds which already exist. [6] As will be shown below, these existing grounds for limitation of human rights – built in explicitly or implicitly to the different rights – are quite sufficient

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between the two is a large subject, more properly within the realm of legal sociology. However, the subject is vitally important, as legal standards only become meaningful when these are "internalized". For a useful discussion see, e.g. D. H. Bayley, Law Enforcement and the Rule of Law: Is there a trade-off?, 2 Criminology and Public Policy, 113 (2002-2003).

[6] One look at the states which regularly support this idea in the UN General Assembly should convince the reader that this is a not a good thing!

for securing a proper balance between respect for fundamental human values, and effective policing.

2. Police powers and the deprivation of life

Article 2 of the Convention provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Although there is no formal hierarchy of rights in the Convention, this right is regarded, not surprisingly, as a primary right. At the same time, the right to life is not, and cannot be, unconditional. Thus, Article 2 expressly provides for police/security operations that could result in loss of life. The wording of the article is wide enough to cover all types of police and military lethal force, from accidental killing of a violent drunk with a police baton to military operations involving the use of tanks, artillery, helicopter gunships etc.

However, the wording of Article 2 is only the starting point for understand the requirements it places on the police, and on police oversight bodies. It is the case law of the Court which is the key to understanding the Convention. This case law makes it clear that, for the article to be applicable, it is not necessary that the use of force actually results in death, simply that there is a real risk of death.[7] The Court has stated that the requirement that any use of force must be no more than "absolutely necessary" means that force must be strictly proportionate in the circumstances. In view of the fundamental nature of the right to life, the Court has also stated that the circumstances in which deprivation of life may be justified must be strictly construed. In particular, the legitimate aim of effecting a lawful arrest under subsection (b) can only justify putting human life at risk in circumstances of *absolute necessity* and that "in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not

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[7] See the *Makaratzis* case, below.

suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost". [8]

3. Article 2 and the planning of police operations

The first case in which the Court, sitting as a Grand Chamber, found a violation of Article 2 was *McCann and Others v. UK*[9] which concerned the killing of three IRA terrorists by British soldiers. Intelligence had been received that the IRA were planning explode a car bomb in Gibralter. The participants in the terrorist group were identified but the view was apparently taken that there was insufficient evidence on which to convict them. Instead, they were to be allowed to drive a car bomb across the border from Spain and then they were to be arrested some hours before they could set it off. An attempt was supposedly made to arrest the suspects, but all three made "threatening movements" and the team of soldiers shot all of them, shooting to kill. It was claimed later that the soldiers had acted in the belief that the terrorists were armed, that there was in fact a car bomb, that this was primed to go off, that the terrorists had a remote control device and that they were attempting to use it. Their actions were thus "in defence of others" (Article 2(2)(b)). It turned out that the suspects were only on a "reconnaissance operation". They were unarmed, there was no primed car bomb and that they had no remote control device. The Court found that the soldiers had had an honest, but mistaken belief, that it was necessary to kill the suspects. A narrow majority of judges on the Court (10:9) found a violation of Article 2 in that, even taking into account the terrorist context (i.e. the particular dangers involved in arresting suspected armed terrorists) the operation had been badly planned and implemented. There were a number of factors relevant to this decision. The authorities had had prior warning of the attack and time to plan their response, even if they were obviously not in possession of the full facts and had to work on the basis of hypotheses. The authorities had had the option of arresting them at the moment of entry into Gibralter. The conjectures on which the arrest operation had been based had been presented in intelligence briefings to the participating soldiers as certainties. This meant that the use of deadly force became almost inevitable, as the slightest movement on the part of the suspects would be interpreted by the soldiers as an attempt to detonate a suspected bomb. Finally, the soldiers had received no training in, or

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[8] See the *Nachova and others* case, below, paras 94-95. See also the European Code of Police Ethics, Rec (2001)10, adopted by the Committee of Ministers 19 September 2001, principles 35 and 37.

[9] 27 September, 1995, A/324..

instruction in, variable responses to situations which might call for the use of deadly force. To put it another way: the soldiers could either have arrested the suspects or fired at them until they were dead. In practice, the planning of the operation meant that the former option had been excluded.[10]

The *McCann* case is, unfortunately, especially relevant nowadays in certain countries, e.g. the United Kingdom, which have adopted a "shoot to kill" policy as regards terrorist suspects. The fanatic who wants to kill innocent people in an explosion and who may even be prepared to kill him or herself to do it puts a state's commitment to respect for human rights to test. The destructive power of even home made bombs in a confined area where there are many people (e.g. a train or subway) is great. And the spectre of terrorists obtaining a weapon of mass destruction undoubtedly alarms the public to the point where it might be willing to accept *any* measures against terrorist suspects. It cannot be denied that if a person is suspected of being a suicide bomber, or is suspected of being in possession of a remote control device connected to a bomb, then it will be very dangerous to the officers in the operation, or to members of the public in the vicinity, for the officers to try to arrest the suspect. However, the *McCann* case reminds us that one must always focus on the facts of the particular case: adopting a "policy" obviously risks creating a bureaucratic, routine type of response. The tragic killing of Jean Charles de Menezes in London following the suicide bombings there in July 2005 shows that mistakes are and will be made. *McCann* requires very strong evidence that a particular person is both willing and able to kill a large number of people, that this terrorist act is imminent and that, moreover, no other practicable options exist to remove this threat (e.g. acting when the person is not in possession of explosives, and/or waiting until the person is not in a highly populated area) before shooting to kill will be permissible, at the very least when there has been a minimum period of time in which to plan an operation.

The Court has reiterated the requirement that all operations which could involve the use of deadly force have to be carefully planned in later cases. The planning obligation is very important, as it incorporates Convention standards into decision-making.[11]

Andronicou and Constantinov v. Cyprus[12] concerned a domestic dispute in which an armed man had taken his girlfriend hostage in a flat. After fruitless negotiations, a team of Cypriot police stormed

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[10] These factors are discussed by the Court at, respectively paras 193, 205, 210 and 212.

[11] C. Warbrick, The principles of the ECHR and the response of states to terrorism, European Human Rights Law Review, 2002, p. 287 at p. 292.

[12] 9 October 1997.

the flat. The gunman fired a shot, and the police responded with 29 shots from automatic weapons, killing both the gunman and his hostage. An inquiry into the incident by the national authorities concluded that the violence used had been justified. By a slim majority (5:4), the Court found that the use of force in was ”absolutely necessary” and not a violation of Article 2. The operation was not carried out particularly well, but as in *McCann*, the Court was understandably reluctant to blame individual members of the security forces acting under threat to their lives in situations which call for split second judgments. Still, criticism could also be levelled against the planning of the operation. Why a different conclusion was drawn in this case compared to *McCann* is not entirely clear. One explanation could be the shorter period of time the Cypriot police had in which to prepare their operation. Another could be the greater risks involved in storming a confined place, in darkness.

The planning obligation has also arisen in other contexts. In *Ergi v. Turkey*, the Court, while implicitly accepting that security forces could ambush terrorists, insisted that such a measure be planned and implemented in such a way as to avoid or minimize, to the greatest extent possible, risks to civilians, including risks caused by probable counter-fire from terrorists caught in the ambush. In the event, it considered that the Turkish forces had not fulfilled this requirement and found a violation.[13] It is also necessary to plan (and naturally, implement) anti-riot measures in a way which minimizes risks of loss of life. In *Gülec v. Turkey*, which concerned a demonstrator killed by a bullet fired from an armoured vehicle, the Court criticised the fact that less lethal weapons were not available to the security forces to disperse the (admittedly) violent demonstration.[14] Such a duty will obviously partly depend upon the time the responsible commander has available in which to plan his or her response.

4. Article 2 and positive obligations to legislate and to train police

More recently, the Court has emphasized that it is not simply the operational commander who has an obligation to plan an operation so as to minimize the risk of causing fatalities. The legislature and executive have an obligation to put into place an adequate legislative and administrative framework to regulate the use of

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[13] 28 July 1998, at paras 79-81. See also *Ogur v. Turkey*, 20 May 1999.

[14] 27 July 1998. For a discussion of earlier Commission case law on this point, see D. J. Harris, M. O’Boyle and C. Warbrick, Law of the European Convention on Human Rights, 1995, pp. 53-54.

firearms by the police. The obligations the Court has set out in its case law are obligations of result, so no particular method, combination of safeguards or programme is required. Nonetheless, the Court's case law are not mere guidelines, as are other international instruments in the field, e.g. the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[15] but legally binding requirements.

But there is obviously a choice of means available to the legislature, and to police forces and police oversight bodies. Comparative experience has shown that a variety of different methods have been found to be useful in keeping police officers' use of force to a minimum which usually can also have the result of minimizing complaints made against the police. For example, an officer who has drawn or discharged a firearm can be required to file a report and submit his or her weapon to inspection (use of force forms). Police can be trained in a graduated response to threatening situations (use of force continuums), to avoid, where possible, escalation of violence.[16]

Training in restraint is especially important in view inter alia of the fact that the police– inevitably – have to take command in a confrontational situation and the fact that, as far as career prospects are concerned, a police officer who acts has done something which is easier to measure – and thus tends to be given greater weight - than a police officer who has refraining from acting. [17]

In *Makaratzis v. Greece*,[18] the applicant had driven through a red traffic light in the centre of Athens and then refused to stop at police signals. He had thereafter driven through or past two roadblocks,

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[15] Paragraph 9 of these provides "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Under paragraph 5 law enforcement officials shall "act in proportion to the seriousness of the offence and the legitimate objective to be achieved". Under paragraph 7 "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law" and national rules and regulations on the use of firearms should "ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm".

[16] For an interesting study of the Nordic police forces' use of firearms, see J. Knutsson (ed), Politiets bruk av skytevåpen i Norden, Politiehögskolan, Oslo, 2005. Thanks to Stig Ericsson for this, and other useful Nordic material.

[17] See Bayley, op. Cit.

[18] No. 50385/99, 20 December 2004.

crashing with other vehicles. The applicant alleged that he had done so in panic, scared that the police intended to hurt him. The police, on the other hand, suspected, on what the Court considered reasonable grounds, that the applicant was a dangerous criminal, possibly even a terrorist. A police chase ensued, in what can only be described as best Hollywood traditions, involving several different patrol cars, and off-duty policemen, and many shots were fired with a variety of different weapons, including submachine guns. Eventually, the applicant stopped his car at a petrol station, but locked the doors and refused to get out. The police officers continued firing, according to the government in the air, and according to the applicant, at the car. The applicant was eventually dragged out of his car and, as he was wounded in several different places, driven to hospital. Some of the police officers left the scene without revealing their identity and disclosing all necessary information concerning the weapons used. Only three spent bullets were collected, of all the rounds fired. The public prosecutor eventually brought charges against seven officers, but these ended in their acquittal. Given that not all the officers involved in the incident had been identified, the criminal court was unable to establish beyond reasonable doubt that the seven accused were the ones who had fired at the applicant.

The first question was whether Article 2 was applicable at all. The applicant was still alive, and the Court accepted the government's argument that the police had not actually intended to kill him. The Court had previously held that, where death does not result, it is only in exceptional circumstances that physical ill-treatment by police or soldiers will raise an issue under Article 2.[19] Nonetheless, without explicitly overruling this case law, the Court considered in the present case, that having regard to the degree and type of force used, the applicant had been the victim of conduct which, by its very nature, had put his life at risk (para. 55). At the time of the incident, 1995, the applicable legislation dated from the Second World War when Greece had been occupied by the German armed forces. This provided for very wide competence (indeed *no* responsibility) for use of firearms in certain given situations. This law had, however, been modified by presidential decree in 1991, stipulating that firearms were to be used "only when absolutely necessary and when all less extreme measures had been exhausted". Greek law did not contain any provisions regulating the use of weapons during police actions or laying down guidelines on planning and control of police operations. A law was later passed in 2003 regulating the use of firearms by the police. The Court considered that the "somewhat slender" legal framework applicable

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[19] See, e.g. *Illhan v. Turkey*, No. 22277/93, 27 June 2000, 7 EPL 505 (2001).

at the time of the incident "would not appear sufficient to provide the level of protection 'by law' of the right to life that is required in present-day democratic societies in Europe" [20]

As regards the actual operation, the Court stated that it was "struck by the chaotic way in which the firearms had actually been used by the police and serious questions arose as to the conduct and the organisation of the operation" (para. 67). The Court stressed its earlier case law that positive obligations should not be interpreted so as to place an unreasonable burden on the state, and considered that greater allowance should be shown in judging such unplanned operations (paras 69-70). Nonetheless, the Court considered that "The system in place had not afforded to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime … the police officers … enjoyed a greater autonomy of action and had been able to take unconsidered initiatives, which they would probably not have displayed had they had the benefit of proper training and instructions" (para. 70).

The most detailed statement to date of the duties of the legislature in this regard is in the recent case of *Nachova and Others v. Bulgaria*.[21] This concerned the killing on 19 July 1996 of two conscripts of Roma origin, absent without leave from their military unit. The Court stated that "the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident ... In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms not only on the basis of the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value".[22]

The Court noted that the then applicable Bulgarian regulations permitted lethal force to be used when arresting a member of the armed forces for even the most minor offence. Not only were the regulations not published, they contained no clear safeguards to prevent the arbitrary deprivation of life. Under the regulations it was lawful to shoot any fugitive who did not surrender immediately

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[20] Para. 62. Four judges in the majority (Costa, Bratza, Lorenzen and Vajić) did not consider that the framework as such was inadequate, but instead considered that a violation of the positive obligation to protect life could be founded only on the conduct of the operation,

[21] Nos. 43577/98 and 43579/98, 6 July 2005

[22] At paras 96-97.

in response to an oral warning and the firing of a warning shot in the air. The Court considered that "The laxity of the regulations on the use of firearms and the manner in which they tolerated the use of lethal force were clearly exposed by the events that led to the fatal shooting of Mr Angelov and Mr Petkov and by the investigating authorities' response to those events ... Such a legal framework is fundamentally deficient and falls well short of the level of protection "by law" of the right to life that is required by the Convention in present-day democratic societies in Europe."[23]

5. Article 2 and the requirement to investigate

From the perspective of police review commissions, oversight boards, ombudsmen and others charged with monitoring the police and investigating possible abuses of power, the most important aspect of Article 2 is the procedural obligation it impliedly sets out to investigate operations involving the use of lethal force.[24] The Court has developed this obligation from Article 2, together with the general obligation on all state parties under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention".[25] The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.[26]

The Court has set out this obligation in detail in the above mentioned *Nachova* case, and it is worth quoting this in extenso. "The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures … For an investigation into alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice … The investigation must also be effective in the sense that

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[23] At paras 99-101. See also the European Code of Police Ethics, Principle 29.

[24] Although senior ranks also have a responsibility to investigate. See paragraph 24 of the UN Principles which provides that "Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use."

[25] See e.g. *Çakici v. Turkey* [Grand Chamber], No. 23657/94, para. 86, ECHR 1999-IV.

[26] See *Anguelova v. Bulgaria*, No. 38361/97, para. 137, ECHR 2002-IV.

it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible … The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements and must apply a standard comparable to the "no more than absolutely necessary" standard required by Article 2(2) of the Convention. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness".[27]

Thus the investigation requirement entails the prosecution of a policeman who is suspected of having used excessive force.[28] An investigation should preferably be timely and a delayed investigation will seldom be "effective", e.g. because witness testimony will become less reliable. But the Court has previously been prepared to accept delays. For example in *Aytekin v. Turkey*, the Court accepted a two year delay in an investigation and prosecution of a fatal shooting.[29]

One important question is the relationship between investigation of a fatal shooting and the possibility to bring subsequent civil court proceedings for misuse of state power. Paragraph 23 of the UN Principles states that victims or their family should have access to an independent process, "including a judicial process." Article 13 of the Convention requires states to provide effective remedies before national authorities for all people who complain about violations of their Convention rights. In *Bubbins v. UK*, [30] the applicant's brother had been shot dead by the police at his flat following a siege lasting almost two hours. The deceased had appeared to aim a gun at one of the police officers and had not responded when ordered to drop it. A police officer had fired one shot, which had killed him. Only on very close examination of his weapon was it revealed to be a replica. The Court found that the normal English system for investigating deaths, a coroner's inquest conducted in public, was sufficient in the circumstances of the case to satisfy the investigation requirement. However, no judicial determination had

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[27] Nachova, paras. 111-113

[28] See *Yasa v. Turkey*, para. 98, *Ogur v. Turkey*, para. 88.

[29] 23 September 1998. The soldier responsible was convicted and given a minor prison sentence, and so the Court found that the applicant had not exhausted her domestic remedies.

[30] No. 50196/99, 17 March 2005.

ever been made on the liability in damages, if any, of the police on account of the manner in which the incident had been handled and concluded.
The Court has previously stated that in the case of a breach of Articles 2 and 3 of the Convention, compensation for the non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress.[31] In this case however, the applicant, even if ultimately successful in a civil action against the police, would have had no prospect of obtaining compensation for non-pecuniary damage since domestic law did not provide for these. On that account, it would also have been most improbable that she would have received legal aid to take civil proceedings. Thus, the Court found a violation of Article 13 of the Convention.

6. Article 2 and questions of proof

Claims have been made in the past that police involved in anti-terrorist campaigns occasionally "contract out" killings of suspects to private individuals, or in some other way participate in or facilitate such killings. Certainly as regards organised crime, and terrorism in particular, it has happened that sections of the security forces even in democratic countries, have been tempted to take the law into their own hands, bearing in mind the difficulties involved in producing admissible evidence in court. I will not go into this issue here beyond noting that in a number of cases where this has been an issue the Court has found that state involvement could not be proven beyond a reasonable doubt but nonetheless found violations of Article 2 because there was no, or no adequate, investigation following the killing.[32] The investigation requirement thus serves to mitigate the high standard of proof "beyond reasonable doubt"[33].
There is a special rule of presumption as regards deaths in police custody. The Court considers that where the events lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of death of a person within their control in custody, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation of, in particular, the causes of the detained person's death.[34]

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[31] Z and others v. UK, No. 29392/99, 10 May 2001

[32] E.g. *Kaya v. Turkey*, 19 February 1998, *Ergi v. Turkey*, 27 July 1998, *Yasa v. Turkey*, 2 September 1998 and *Tanrikulu v. Turkey*, 8 July 1999.

[33] These cases have usually also involved the adequacy of criminal prosecution of the alleged offenders.

[34] See in particular *Salman v. Turkey* [Grand Chamber], No. 21986/93, para. 100,

But what of the use of force outside of this context, e.g. in the situation of an attempted arrest, where the fact of police commission of a violent act is undisputed but the circumstances are? Here one should remember the subsidiary role of Convention protection. The Court does not normally substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them.[35] Thus, in *Klaas v. Germany*[36] the applicant had sustained injuries which were consistent with either her or the police officers' version of events. The national courts, however, found against her. In reaching the conclusion that she could have injured herself while resisting arrest and that the arresting officers had not used excessive force, the German courts had the benefit of seeing the various witnesses give their evidence and of evaluating their credibility. The Court considered that no material had been adduced in the course of the Strasbourg proceedings which could call into question the findings of the national courts and add weight to the applicant's allegations and accordingly ruled that no violation of the Convention had occurred.

More recently, in the *Nachova* case, the Court, sitting as a Grand Chamber on appeal from a chamber of the Court, examined the question of the burden of proof in the context of killings allegedly with a racist motive. Article 14 of the Convention prohibits discrimination, and it is possible to violate Article 14 in conjunction with substantive articles. There had been evidence of racism in the case, inter alia because one of the arresting officers had made racist remarks, and because of the fact that the investigation into the racist aspect of the case was severely deficient. The chamber had considered that the failure of the authorities to carry out an effective investigation into the alleged racist motive for the killing shifted the burden of proof to the respondent Government. The Grand Chamber, by contrast, considered that this would amount to requiring the respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. "While in the legal systems of many countries proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in respect of alleged discrimination in employment or the provision of services, that approach is difficult to transpose to a case where it is alleged that an act of violence was racially motivated."[37] The Grand Chamber however, went on to find the authorities failed in their *procedural* duty under Article 14

ECHR 2000-VII.

[35] See, e.g., *Edwards v. UK*, 16 December 1992, A/247-B, para. 34.

[36] 22 September 1993, A/269, para. 30.

[37] At para. 158.

of the Convention taken together with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events.

7. Concluding Remarks

As mentioned, the police have a difficult, and sometimes dangerous and thankless job to do. Case law emphasizing the human rights of suspects, and placing corresponding demands on police, can easily be resisted by police officers on the street who consider it to be unrealistic, or uninformed.

Where law reform is made to bring national law or practice in line with international standards, there is a real risk that this is only cosmetic. That senior officers have mastered the rhetoric of human rights does not mean that human rights are being respected by the rank and file, let alone that the rank and file actually believe that respect for human rights is important. The impact of even national case law, indeed, even of statute law, on policing should not be taken for granted, especially in "transitional" states, moving from a system of authoritarian to democratic governance. In authoritarian societies, the main purpose of the police is population control. With a transitional society, the focus is shifted more to public order and crime control. However, the policing assistance such transitional societies receive from democratic states is often motivated by the interests of the latter in containing the threat which can be posed to their own societies from the "export" of organized crime. If even the donors place the emphasis on effectiveness in policing, other values – democratic control and respect for human rights – are easily lost.

Reforms made in the field of policing or security can naturally be wholly or partially blocked by vested interests in society, political infighting or bureaucratic resistance. The more closed an area is to public scrutiny, the more chance there is of such resistance succeeding. It is evident that in this area the law can serve, and has on occasion served, as a facade, concealing more or less serious divergences in practice. In particular, case law can be responsible for maintaining a gap between ideology and law/legal practice.[38] Moreover, it is foolish to believe that human rights problems are merely "educational" i.e. a simple matter of bringing international and national rights standards to the attention of police officers. Thus, one should certainly not automatically assume that Court case law disproving of a particular law or practice will be implemented

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38 There are many studies on the law and police "cultural resistance". See, e.g, D. Dixon, Law in Policing, Oxford UP, 1997.

wholeheartedly. Even if it is, it should be remembered that the Court's case law constitutes only minimum European standards.
But having said all that, adherence to these minimum standards is an important part of the legitimacy of the police. To be "successful," the police in a democratic state have to be not simply "effective" in the narrow sense of catching criminals and preventing crime, but also legitimate, accountable and professional.[39] Only with the support of the public can the police succeed in their tasks. There is a relationship between these three concepts and true "effectiveness" in a democratic state, in fact, is not possible, or desirable, in the absence of these wider factors. The case law of the Court does not place unreasonable demands on the police. Compliance with this case law contributes to accountability and professionalism, which in turn contributes to the legitimacy of the police.

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[39] I take this terminology from M. Caparini and O. Marenin (eds), Transforming Police in Central and Eastern Europe: Process and Progress, Lit Velag, Münster, 2004.

CONTROLLING THE POLICE:
THE AMERICAN EXPERIENCE

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This conference is dedicated to addressing human rights and police behavior. It appears that to some extent, a majority of the conference participants reside in countries where there is some form of centralized body or monitor that is responsible for examining breaches of ethical and legal standards by police officers. No such body exists in the United States The United States Constitution incorporates federalism whereby certain powers are vested with the states. One such power is law enforcement. Second, I would note that the concept of human rights in policing is somewhat foreign to American police departments. This is not to say that we are not interested in police behavior or attempting to control it. We simply do not use the language of human rights, but consider inappropriate behavior individualistically and as a violation of law, ethics, or policy. We do attempt to control police aberrant behavior, but at a local, decentralized level.

Before discussing the various control mechanisms and their relative proficiency, it is important to provide a description of the American policing system. The American system is unique in that it encompasses large numbers of federal, state, and local agencies. Although the "system of policing" is designed to facilitate cooperation and coordination, it best can be described as a "non-system" whereby the various agencies most often work independently and often without coordination and in conflict with other agencies. Conflict often arises over scarce resources and interpretations of jurisdictional authority. There is substantial jurisdictional overlap among the many local, state, and federal agencies.

There are approximately 17,770 local police agencies, 49 state police agencies, and approximately 200 federal agencies with some measure of police powers (Hickman and Reaves, 2002). The local agencies are housed in city or county governments. Although many are quite large with New York City's 40,435 police officers being the largest, the vast majority are quite small with less than ten or fifteen officers. The states have implemented a number of training and operational requirements, but the existence of a large number of jurisdictions results in substantial variance in local law enforcement. Variation is attributable to local control and politics whereby local governmental officials attempt to influence law enforcement policies to satisfy the needs of various constituencies. This usually results in the problems of some groups receiving greater attention than others, and in the most extreme cases, police corruption whereby politicians determine who will be arrested and who will not be arrested. Local control often has a significant impact on police priorities and operations.

As noted there are 49 state police agencies. Every state with the exception of Hawaii has either a state police or highway patrol. The primary difference between a state police and a highway patrol is the state police organizations generally have jurisdiction or authority over all

areas and criminal offenses within the state. The highway patrols, on the other hand, have jurisdiction or authority over state property and state and federal highways. In those states having a highway patrol, the sheriff's department generally has primary jurisdiction over non-incorporated areas – lands outside cities.

Although almost all federal cabinet-level departments have agencies with some form of police authority, the vast majority of federal law enforcement agencies are housed in the Departments of Justice and Homeland Security. The Department of Homeland Security was created in 2003 when a number of agencies were transferred to Homeland Security other federal departments (see Gaines and Kappeler, 2005). A significant ill-organized federal bureaucracy was created. Hurricane Katrina demonstrated that the new department overall lacks the ability to respond to natural disasters, and the same perhaps can be inferred for significant acts of terrorism. It also demonstrated that Homeland Security based law enforcement agencies' operational effectiveness likely have not achieved optimal levels since the transfer.

For the most part, individual federal agencies are not given broad police powers, but are empowered to enforce specific federal statutes. Today, many of the federal agencies have shifted focus and are more concerned with potential acts of terrorism than with the traditional crimes they have been charged to enforce. Some would argue that this has created a void, which ultimately, results in an increase in a variety of crimes and an increased workload on state and local agencies.

The war on terrorism has substantially affected programmatic innovations in law enforcement. Historically, the federal government has played a key role in state and local law enforcement by funding research and innovative strategies through block and competitive grants. These grants essentially provided financial incentive for police agencies to innovate. For example, the Violent Crime Control and Law Enforcement Act of 1994 resulted in over $1 billion in federal monies being made available to state and local law enforcement. Part of the monies was used to add 100,000 additional police officers at the state and local levels. For the most part, these monies have been re-routed into the war on terrorism, and this reallocation has impeded local law enforcement's response to traditional crime.

To summarize the American policing system, it can be said that it is an amalgamation of agencies with minimal coordination. Control is imposed by respective police organizations and governments, and therefore, is somewhat haphazard with various agencies utilizing different control mechanisms. This system substantially complicates understanding police deviant behavior problems. There are over 17,000 police agencies with some being more effective than others at controlling behavior. Moreover, control problems may be endemic in some departments, but not in others. Thus, there is a mix of control problems nationally with no unified response to them.

POLICE CONTROL AND DEVIANT BEHAVIOR PROBLEMS

Before discussing the various control mechanisms used by American police, the various behavioral problems should be noted. An understanding of the types, scope, and range of existing problems should provide a foundation by which to construct a more effective control system.

Behavioral problems range from the benign, goldbricking or work avoidance, to criminal behavior, police corruption. The following provides a listing and discussion of the general categories of deviant and behavioral police problems.

Goldbricking or Work Avoidance

Normally, one might conjecture that work avoidance does not meet the criteria for a discussion on human rights and policing. However, two points should be considered. First, when the police fail to provide adequate services, generally their nonfeasance is not equally distributed across all ethnic and social groups, but rather, some groups receive fewer services and less protection under the law. Second, Wilson and Kelling's (1999) broken windows philosophy has been the underpinning of community policing in the United States. Broken windows merely notes that if small problems are left unresolved, they ultimately lead to more significant problems, and this thesis may have application to controlling police behavior. Minor failures on the part of officers may lead to or cause more significant behavioral problem when left unattended. Police inattention to duty and responsibility may be a very slippery slope where minor infractions ultimately lead to more aggravated violations.

Two aspects of work avoidance require elaboration. One form of work avoidance is where officers tend to put forth as little effort as possible. This usually begins to occur at the mid-point of officers' careers and continues until retirement. This is not to say that all officers go through this career stage, but certainly, large numbers do. Many have been passed over for promotion or have been stuck in assignments for long periods of time that are perceived as being undesirable. They are not motivated. They see themselves in dead-end jobs through no fault of their own. They tend to be call-takers responding to calls exerting the minimum amount of effort.

A second form of work avoidance is where officers prioritize tasks to the detriment of other tasks. For example, young officers tend to emphasize law enforcement or crook catching tasks and do not see other responsibilities, service, as being important. Consequently, they spend all their time trying to make arrests, no matter how trivial the offense, and exert minimum effort on other types of activities. These officers tend to be public relations problems incurring large numbers of citizen complaints.

Obviously, work avoidance results in decrease productivity and inhibits a department's ability to respond to a variety of community problems. It has substantially reduced departments' ability to fully and successfully implement community policing, especially when officers reject non-law enforcement activities. Generally, departments attempt to combat work avoidance problems through accountability and supervision, which are only marginally successful in many instances.

Sexual Misconduct

There are several behaviors that constitute police sexual misconduct. They include: (1) nonsexual contacts that are sexually motivated, (2) voyeuristic contacts, (3) contacts with crime victims, (4) contacts with offenders, (5) contacts with underage females, (6) sexual shakedowns,

and (7) citizen-initiated sexual contacts. McGurrin and Kappeler examined 66 newspapers from across the United States and found over 700 cases of police sexual misconduct. Many of the cases were for rape and sexual assault. Maher (2003)investigated police sexual conduct in the St. Louis, Missouri area by surveying and interviewing officers from several departments. He found that officers believed the problem to be prevalent and departments were doing little to curb it.

It seems that various forms of police sexual misconduct are ingrained in the police culture with some departments' culture and administration less restrictive or less prone to act than others. Police sexual misconduct is countered or reduced through strong departmental policies, supervision, and the investigation and adjudication of complaints. It seems that in many departments these control mechanisms have failed or have not been implemented properly.

Abuse of Authority

Barker and Carter (1994) have defined abuse of authority as "any action by a police officer without regard to motive, intent, or malice that tends to injure, insult, tread on human dignity, manifest feelings of inferiority, or violate an inherent legal right of a member of the police constituency. Abuse of authority occurs when officers misuse their power and authority. Forms of abuse include physical abuse where a citizen endures some form of physical trauma, psychological abuse which includes harassment or verbal assault, and legal abuse where a citizen's legal rights are trampled. Abuse of authority, especially rudeness and the absence of probable cause, are the most common complaints lodged by citizens against the police.

Departments have policies regulating how officers should use or apply their authority. Areas such as rudeness, demeanor, probable cause, and use of force are generally addressed in these policies. However, officers have substantial discretion in applying the law making it difficult to promulgate restrictive policies and to control officers when applying the law. Mechanistic control cannot be enacted. Thus, legal or ethical transgressions sometimes cannot be differentiated from officer discretionary behavior.

Use of Excessive Force

Police use of excessive force although not a common complaint, it does occur with some frequency. Although national statistics are not available, there have been some studies examining the problem. For example, Barker (1986) examined police deviance in one southern city, and officers reported that approximately 40 percent of their fellow officers were engaged in police brutality. If 40 percent of officers use brutal tactics when dealing with suspects or citizens, the instance of excessive for very likely is much higher. Essentially, excessive force is using more force than is necessary to consummate an arrest or effectively deal with a citizen. Thus, excessive force can include touching, grabbing, or pushing a citizen when the citizen is not physically resisting the officer's directives. Inappropriate use of deadly force is also considered excessive force.

There are several control mechanisms used to curb excessive force: policies, supervision, and investigations of citizen complaints. Police departments depend on two policies to control

excessive force. First, many departments have adopted policies requiring officers to report instances where some form of force is used. The form generally requires information regarding the suspect and his or her level of resistence, the amount of force used, and any injuries sustained by the officer and suspect. This often results in officers taking a more judicious approach when dealing with citizens since it results in a permanent record of encounters. Compliance is generally quite high since officers risk disciplinary action if they fail to complete the report.

Second, departments have policies detailing when officers can use force and the level of force that can be applied. Departments most commonly use some form of a use of force continuum (UFC). The UFC provides categories or levels of suspect or citizen resistence and provides officers with acceptable force responses. Its purpose is to prevent officers from escalating their level of force beyond that which is required. The UFCs begin with verbal orders as the minimum level of force and ascend to the use of deadly force, depending on the situation.

Police Corruption

Police corruption encompasses a range of deviant or illegal behaviors and almost always involves police officers who have gone "bad." Examples of corrupt behavior includes crimes such as: bribery, extortion, robbery, burglary, larceny, and narcotics violations. Corrupt behavior includes those behaviors where an officer has violated the law for personal gain. Narcotics related corruption is the most common, but other forms are quite prevalent.

We do not know how much police corruption exists. However, a review of national newspapers at about any point in history will result in numerous corruption related exposes. Some departments have experienced a disproportionate amount of corruption relative to other departments, and it is presumed that some departments have more problems and less control over their officers than others. Most departments will spare no effort or expense to investigate these cases once they come to light. However, it is questionable if departments exert substantial effort in attempting to uncover corruption.

METHODS FOR CONTROLLING POLICE BEHAVIOR

Many countries have implemented centralized offices that are responsible for monitoring and investigating police transgressions. This is not the case in the United States. Controlling police behavior has essentially been entrusted to police administrators and state and local units of government. As such, police agencies have implemented a variety of control mechanisms. There is no one mechanism that achieves maximum control. Police departments consequently implement a matrix of overlapping control mechanisms. As problems are identified, departments generally alter current control mechanisms or implement additional ones. Some of the control mechanisms are implemented to address specific problems, while others are implemented to maintain global control over officers.

Police Candidate Screening and Selection

Perhaps the first line of defense when controlling the police is effective police candidate

screening and selection (Gaines et al., 2003). If morally and ethically sound, competent candidates are employed, it reduces the probability of future behavior problems. Unfortunately, police selection is more of an art than a science. The precision of any police selection system is questionable. In the United States there is no standardized selection process or criteria. Different agencies use various standards. Some departments employ sophisticated selection systems, while other departments use only rudimentary procedures. Police departments employ the background investigation, the polygraph examination, and psychological screening as the primary methods of deselecting unfit candidates.

In many cases, background investigations are haphazard or not comprehensive whereby candidates with past transgressions are allowed to enter police service. Also, standards are imprecise. For example, there is substantial variability across departments in terms of the types and amount of drugs that can be consumed prior to application. Although the polygraph examination is quite common, it is not used by a number of departments. Even when it is used, its accuracy is dependent upon the operator's technical and investigative expertise. Finally, there are no standards for psychological screening. Specific tests and passing criteria generally are set by the psychologist who administers the tests. Thus, a candidate may fail the psychological test in one department, but pass it in another.

There are too few longitudinal studies examining the traits or characteristics of successful police officers relative to unsuccessful or terminated officers. Although police officer entry testing is fairly sophisticated using numerous tests and examinations, there is a paucity of validity studies showing the types of candidates are most successful during their careers. For example, are there differences in terms of background, aptitude, or psychological composition of successful officers as compared to those officers who encounter disciplinary problems during their careers? Current efforts tend to be haphazard based on "professional judgments."

Training

Police training to a large extent is modeled after the military where trainees are indoctrinated and taught specific skills. Most training includes a high percentage of time devoted to activities such as report writing, driving, firearms, physical fitness, and self-defense tactics. When cognitive skills are taught, the instructional method often centers around rote memory with little emphasis on analysis or critical thinking. Birzer (1999) notes that this format emphasis mastery and obedience but fails to encourage effective learning that supports the police mission, especially when dealing with complex human problems.

Police administrators and trainers must recognize the limits of training. Too often they see training as a "silver bullet" that solves their performance and personnel problems. They fail to recognize that training does not eradicate many of the cultural norms that are counter to police training and procedures. A number of departments have superficially addressed this issue through field officer training programs where newly hired officers are mentored by veteran officers. These programs are just as problematic as training in the classroom since they too are often haphazard using few standards or benchmarks.

Promulgation of Policies and Procedures

Police departments have a massive number of policies and procedures that are used as the primary mechanism for controlling police behavior. There has been a substantial amount of cross-fertilization of policy formulation whereby agencies share policies with each other. Additionally, some states have provided departments with model polices, and state and national accreditation programs have contributed to model policies or consistency across departments. However, there remains substantial variation across policies. Departments, unless required as a part of their accreditation process, do not routinely review their policies for gaps or problems. Consequently, many departments have policies that do not serve as effective control devices, especially in problem areas such as abuse of authority, use of force, arrest, transportation of prisoners, or interactions with citizens.

Supervision

The primary function of supervisors is to ensure that subordinates follow departmental policies and procedures (Peak, Gaines, and Glensor, 2004). This is supposed to be accomplished by supervisors backing officers on calls and reviewing their work. Here, supervisors mentor officers providing them guidance, and when there are failures, initiate some form of corrective or disciplinary action. Supervisors essentially serve as the primary mode of control in American police departments.

However, supervision often is uneven and ineffective. For example, Engel (2001) studied police supervisors and identified four distinct types: traditional, innovative, supportive, and active. Traditional supervisors are enforcement oriented and expect officers to produce large numbers of citations and arrests. They essentially are bean counters. Innovative supervisors are outcomes oriented. They are not interested in numbers, but nurture officers encouraging them to effective respond to citizen problems. Supportive supervisors tend to be "good old boys," and emphasize getting alone with subordinates. They see their role as protecting officers from unfair management practices. Finally, active supervisors are little more than glorified police officers. They tend to emphasize police work and consider supervision as a secondary responsibility.

Each of these types has some deficiencies. The point is, most supervisors although expected to be the primary mechanism for controlling police behavior, do not function as such. They tend to adhere to a pattern that often neglects some of their most important responsibilities. A significant portion of this problem is attributable to poor promotion procedures, a lack of training for supervisors, and a failure by middle managers to hold their supervisors accountable.

Internal Affairs Investigations

The most common disciplinary procedure used by American police departments is the internal affairs unit. The internal affairs unit generally is responsible for investigating any complaints of police wrongdoing. Internal affairs can receive complaints from citizens or from departmental personnel. When a supervisor or commander places a charge against a subordinate, the internal affairs unit performs an investigation. Complaints or charges placed by departmental

personnel generally are given more credence as compared to complaints lodged by citizens.

In fact, departments historically have used two guises to reduce the number of complaints lodged by citizens. The first guise is that when citizens lodge a complaint, they are instructed that if the complaint is found to be false, they can be charged with filing a false police report, a misdemeanor. Since citizens often do not trust the police, many opt to not file the complaint. Second, citizens may be asked if they want to file an unofficial or official complaint. The citizens are instructed that unofficial complaints are handled informally by the erring officer's commanding officer, while official complaints are investigated by the internal affairs unit and may entail a number of meetings and hearings. Since citizens likely want to avoid additional inconvenience, they often opt for the informal proceeding. The citizen then meets with the officer's commanding officer who listens to the complaint and often advises the citizen that he or she ensure that the incident does not occur again. Once the meeting is over, the commanding officer may or may not discuss the infraction with the officer since the complainant has been satisfied by the commander's assurances.

The investigation of complaints, especially those from citizens, is also problematic from an investigatory standpoint. Too often investigators work to prove a complaint to be unfounded as opposed to judiciously investigating the complaint. Here, several tactics can be used. Investigators may look for inconsistencies in the complainant's account, and when inconsistencies occur, the complaint is ruled unfounded. Internal affairs investigators often scrutinize complainants' information more closely than the testimony of the accused officer. A second tactic is to fail to contact all the witnesses thus reducing the preponderance of evidence for a given case and increasing the probability that the decision will be in favor of the officer. In some cases, the investigating officer may use departmental policies to clear an officer. Here, if the officer followed policy, then the complaint cannot sustained regardless of the degree to which a citizen may have been aggrieved. The letter of the law supersedes the spirit of the law.

Once the complaint is investigated, the internal affairs unit makes a recommendation to the adjudicating authority, usually the chief of police. Internal affairs units seldom have the authority to enact disciplinary action. When an officer has been found to be in violation, the internal affairs investigator can mediate the severity of the discipline by the tone and content of the report. Even though disciplinary action is taken, it may not fit the crime so to speak.

Many internal affairs operate professionally and strive to provide citizens with some measure of justice. However, others are less concerned with justice than with protecting the image of the department and its chief. Police executives have a vested interest in minimizing disciplinary problems since lapses of discipline are often used to criticize the chief, and in some cases terminate him or her. Such pressures have an impact on the wherewithal a department has when investigating complaints.

Citizen Oversight

Citizen oversight has been used by a number of departments, but for the most part, it has been on an experimental basis. Generally, a government entity will impose citizen oversight in

the aftermath of a police scandal. In many cases, they have been short-lived and are abolished once consternation within the community has subsided. Moreover, there is substantial variability in how these mechanisms operate. Essentially, the complaint investigation process consists of four steps: (1) soliciting and obtaining the complaint, (2) investigating the complaint, (3) recommending a disposition or outcome, and (4) adjudicating the complaint. Seldom does a citizen oversight commission have responsibility for all four steps. These commissions are most commonly involved in step one. They frequently are not involved in step two as a result of a lack of investigative expertise, members' unfamiliarity with police procedures, and a lack of personnel or resources. They sometimes are involved in step three, but their role is often more advisory or they make recommendations that may not be followed by the adjudicating authority. They commonly are not involved in step four since these procedures are commonly established by statute or ordinance. Some citizen oversight commission serve to review police internal affairs investigations. Once an investigation is completed, the commission reviews the results and recommendations and issues a report.

There are several problems associated with citizen oversight. First, and foremost, conflict develops between the police department and its personnel with the commission or external body. The police see the commission as usurping their authority. The police argue that the commission and its staff do not possess the expertise to investigate police maters. Second, the police often see these commissions as being anti-police. The perception is that the commission places greater credibility in citizen accusations than in police accounts of incidents that are reviewed. Third, when such commissions exist, it to some extent relieves police administrators of the responsibility for investigating complaints and ensuring that policies are followed. Some administrators abdicate their control responsibilities to the detriment of the department (Walker and Bumphus, 1992).

Early Warning Systems

A number of departments have adopted early warning systems (EWS). EWS essentially are monitoring departmental devices whereby individual officer activities are monitored on continuous basis (Walker, Alpert, and Kenney, 2000). The department identifies variables to be included in the system. They generally include: (1) at-fault auto accidents in a police vehicle, (2) citizen complaints, (3) incidence of use-of-force and (4) sustained disciplinary actions. If an officer exceeds the established threshold of occurrences during an established time frame, the officer's file is reviewed. The reviewer will look for patterns and possible problems. The system is meant to be proactive whereby problem officers can be identified and corrective action taken before major problems develop. A reviewer may recommend that an officer receive additional training or closer supervision should there be a suspicious pattern of behavior.

There obviously is resistence on the part of officers to EWS, but they do have the potential to correct minor problems before they become major issues, especially if they are administered correctly. There must be constant monitoring and action when thresholds are met if the system is implemented correctly. Any degree of slippage would somewhat negate the system's overall effectiveness. Moreover, the outcomes when using the system should constantly be compared with the incidence of disciplinary problems to ensure that the thresholds are valid.

Audio and Video Surveillance

An increasing number of departments are installing some form of video or audio monitoring systems to capture police encounters with citizens. Video monitoring is accomplished by installing in-car video cameras that are activated anytime an officer stops or encounters a citizen or is involved in some type of call. Although resisted by line police officers, it has resulted in more effective control of police officers and citizens. Police officers, aware of the monitoring, tend to refrain from language or actions that my incite the citizen or be interpreted as unprofessional behavior or outside the boundaries of policies and procedures. The tapes also can be used to exonerate officers when citizens file complaints against officers.

Audio monitoring essentially operates the same way. Here, officers are issued audio tape recorders and are instructed to tape all encounters with citizens. Audio monitoring is a fairly effective, less expensive alternative to video monitoring. Audio tapes can capture the essence of any encounter.

The primary problem with audio and video surveillance is expense. Video cameras are quite expensive to install, especially in a large fleet of vehicles. Maintenance of the tapes can also be expensive. For example, the Knoxville, Tennessee Police Department installed video cameras in their cars. Their policy was that the cameras would be activated and remain on at all times during a shift. Once installed, the Tennessee Attorney General rendered an opinion that the tapes should be retained indefinitely. Consequently, the department now has thousands of tapes in storage. The Riverside, California Police Department implemented a system using digital video cameras and suspect encounters were stored on a departmental computer. This substantially reduced storage problems, but it did result in additional personnel to edit and download the retained video.

There has not been any research on audio or video surveillance to determine if it reduced citizen complaints, but there is substantial anecdotal evidence where police administrators note that the number of complaints have been reduced, and they note that the investigation of citizen complaints has become much easier and straightforward.

IMPEDIMENTS TO CONTROLLING THE POLICE

The previous sections outlined a variety of control mechanisms used by American police departments. Control, however, is not implemented in a vacuum. There are a number of factors or forces that serve to impede or reduce the amount of control exerted in a given police department.

Police Culture

Researchers have long recognized the existence of a police culture (Banton, 1964; Cain, 1973). Some of the attributes of this culture or world view are bravery, autonomy, secrecy, isolation, and solidarity (Gaines and Kappeler, 2005). The police tend to view the world as a we-them proposition (Skolnick, 1966), which is the result of a socialization process that begins with

the training academy. Not only do police officers isolate themselves from the citizenry, they also see supervisors and managers as the enemy (Reuss-Ianni, 1983). Thus, officers develop norms and values that often are counter to the community and administrative expectations, which result in resistence to change and control.

Administrators in many departments have little success in penetrating the police subculture. What administrators envision occurring at the line level often is quite different from what actually occurs. Since police officers have substantial discretion, they are able to pursue their own goals and objectives, which are not necessarily congruent with departmental goals and objectives. As administrative directives flow down through several layers of bureaucracy, management and supervisory levels, the directives become diluted and in some cases ignored. Thus, in order to be successful, control and accountability must be exerted through each bureaucratic level within the department. This is not easily accomplished and is rather labor intensive. In many instances, administrators use "management by exception," and only address the most critical problems allowing less pressing issues to slide. Even when successful, administrators constantly face slippage problems where corrected procedures revert back to previous nonconformance. Control becomes a constant, relentless battle.

Police Unions

Although police unions are charged with protecting officers' rights and to improve working conditions and benefits, they essentially serve as a formalized structure of the police culture. Many, if not the overwhelming majority of unions assist officers who are charged with disciplinary infractions. Some police unions will fight and appeal even minor disciplinary actions such as a written reprimand. The idea is to make all disciplinary actions as contentious, time consuming, and costly as possible. The ultimate goal of the union is to not necessarily clear the officer or ensure that justice prevails, but the union's logic is that if disciplinary actions become demanding and arduous, the department and the government entity are less likely to pursue disciplinary action (Gaines et al., 2003). The union attempts to beat down their opponents.

This process often results in fewer disciplinary actions. Departments and elected officials become wary of media exposure and negative public relations as a result of disciplinary action. It also results in a slippage in terms of discipline and control. Administrators are less likely to charge officers, especially for minor infractions. Administrators are also more likely to plea bargain often meting out less severe sanctions for more grievous infractions.

Politicians

Politicians or elected officials often undermine police control. Elected officials often solicit the support and endorsements of police unions or fraternal organizations. They perceive that such endorsements play well with the general public during elections. Thus, they often pander to police officers when administrative controversies arise. For example, in San Bernardino, California, the chief recently instituted a policy whereby officers were required to complete use-of-force reports anytime officers used force. The city attorney opposed the policy noting that he did not believe the department had any use-of-force problems. The city attorney

announced his candidacy for mayor a few weeks later, and the police union promptly endorsed him. The city attorney essentially undermined the chief's ability to exert control in the department.

Another example recently came to light in Los Angeles, California. An examination of filings by the Los Angeles District Attorney, prosecutor, showed that the office filed charges on only 25 percent of cases involving officer misconduct while filing in 75 percent of non-police related felony charges. Some of the police related cases where the district attorney did not file included a case where a deputy sheriff was accused of lying on the witness stand, another officer was accused of stealing $6,000 from a jail inmate, and other officer was accused of having sex with an inmate in a jail closet (Pfeifer, 2005). Even if police administrators judiciously pursue disciplinary violations, their efforts are sometimes thwarted by the criminal justice system.

Inconsistent Community Expectations

A final impediment to controlling the police is community expectations. Communities consist of a number of constituent groups, each with its own expectations for the police. These constituent groups are often differentiated by race and social class. When cases of police abuse of authority or excessive force become public, there are often different reactions within a given constituency. White middle and upper class citizens often do not condemn such actions. They see the police as protecting them and their property from the many criminals in the community. They believe that the police must sometimes take extra-legal measures to accomplish this task. On the other hand, minorities and the lower class often see themselves on the receiving end of the police misconduct.

When an abuse or excessive force case becomes public, the community's gentry often support the police. In some cases, they contact politicians and attempt to exert some measure of influence in support of the police. Such actions tend to negate the wrong and result in less pressure on the department to take corrective actions that would prevent future infractions. Essentially, politicians do not like sailing against the wind.

CONCLUSION

This paper examines the American experience in attempting to control the police. The American experience is somewhat unique since there are numerous police agencies, and there is little consistency in how departments and government entities attempt to exert control with control efforts and mechanisms constantly changing. There seems to be greater effort immediately after some scandal. Moreover, there are a number of effective impediments to exerting effective control over police behavior.

It seems that we know more about police misconduct than we know in terms of curbing or controlling it. But one thing is clear, effective control can only be exerted through a matrix of several control mechanisms. There are no silver bullets. Additionally, control mechanisms must be constantly monitored and evaluated, something that occurs rarely, if they are to function properly. They cannot be evaluated on the number of cases that are successfully prosecuted, but

rather the primary evaluation criterion should be the lack of disciplinary problems over time. There are numerous impediments to exerting control in a police organization, but administrators must be more responsible and accountable. They must see control and a function that dictates the eventual success or failure for a department.

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S. R.

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

Inspecção-Geral da Administração Interna

TRANSLATION[*]

Original: Portuguese

Subject: "Understanding Police Oversight"

As a very brief introduction to the subject of this panel, which I was given the honour of coordinating, I just would like to call your attention to five thesis which I consider fundamental to situate the communications we are about to hear.

First, we must have in mind that the deep reasons of police behaviour do not lead only to a level of execution that we could call technical, but rather, in a more fundamental and primary way, to a more general and shared political culture of the society to which each police institution belongs. Police action triggers different voices even within the same political tradition; the more so, if we put ourselves in a broader perspective, putting face to face different cultures of evaluation of the competencies of the State and the public powers in the crucial sphere of coercion.

Second, we can not forget that police action lies in the sphere of trust that is granted to the very act of constitution of the political power, in accordance with the great contractual speeches to which contemporaneous republican and democratic traditions are always referring. The main incentive for a responsible use of legitimate violence by police forces lies in that capital of trust that was entrusted to them by the citizens.

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

Third, the action of police forces shows, in a clear way, what we may regard as the double fragility of the human condition. As a matter of fact, police coercion is meant to defend law-abiding citizens against those who, violating all legal and moral limits, invade their property sphere and even their physical integrity. However, as we are reminded by James Madison in *The Federalist*, the task of good constitution and good government is a double one: on the one hand, it aims at the protection of each citizen against the potential assault of all kinds of factions (mainly of the majority factions who pretend to replace the law itself) that threaten individual rights; but, on the other hand, it must protect the citizens against the abuses of the government itself. And often it is here that lies the bad root of police misconduct.

Fourth, using an expression that John Rawls takes from Jean Bodin, we could say that in a “well-structured society” police action should be completely in accordance both with the spirit and the letter of the law. That relation to the law is, in fact, what distinguishes power from violence, as stressed by Hannah Arendt in an interesting and classic essay on violence. Power does not require justification, contrary to violence which is situated in an instrumental framework of relation between means and ends. But power requires legitimacy. And that legitimacy lies in the laws as the expression of a permanently renewed social contract. Police action must be guided by the regulatory light that is only spread and allowed by laws.

Fifth, we must stress the relation of reciprocal reaction between police action and legal framework, including the noble constitutional sphere in what concerns the fundamental human rights. This is confirmed, in the European case, by the important role played by the European Convention on Human Rights, which was even included in Part II of the recently discarded Treaty establishing a Constitution for Europe. In the case of the USA, the most powerful example of this reciprocal action is the famous *Miranda Warning*, well known of us all by means of the movies that come from the other side of the

Atlantic. As a matter of fact, the reading of the rights by police authorities, before any arrest, mandatory since 1966, gave a new force to the Fifth Amendment to the North-American Federal Constitution.

Finally, I think that, as citizens, we must resist the tendency to transform police bodies into scapegoats of all political and social evils of our communities. However, we must never give up the idea (and practice) that a better police behaviour constitutes a decisive step towards the process that can lead us to a better society.

Viriato Soromenho Marques

2006/08/02

S. R.

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

Inspecção-Geral da Administração Interna

TRANSLATION[*]

Original: Portuguese

HUMAN RIGHTS AND POLICE BEHAVIOUR
AN EXPERIENCE THAT LASTED 9 YEARS[**]

"Portugal is a sovereign Republic, based on the dignity of the human being and the will of the people, and committed to building up a free, fair society that unites in solidarity." Article 1

The police shall have the functions of defending democratic legality and ensuring domestic safety and the rights of the citizens." Article 272, para 1

Constitution of the Portuguese Republic

The democratic states based on the rule of the law have developed, in a way that has been increasing from day to day, systems of full achievement of citizenship and intransigent defence of human rights, the same happening with international organisations and NGOs.

Modern times have stressed a great reflexion on the way policing control is carried out, particularly when such activity involves a violation of the citizens' rights.

The classic control systems – judicial control, internal inspection services, Ombudsmen - do not seem to give an adequate answer to the problems of

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

[**] This speech is based on the one presented on June 26, 2004, in Toronto, Canada, at the CACOLE International Conference "Many Voices: Communities and Civilian Oversight".

police violence and misconduct, nor to the improvement of the relationship police/citizen, which necessarily appears in a potential situation of conflict created by the duality: authority of the state/freedom of the citizen.

In 1996, Portugal initiated a different and complementary experiment in the field of the systems of policing control. Such a system, developed by the IGAI, has appealed to the curiosity of the several countries and organisations we have visited and where we have explained our activity. It is a new road, the one we are talking about in this conference, which has potentiality, in a clear improvement of quality of police action in order to respect the citizens' right to dignity and freedom, in order to defend human rights.

The Inspectorate General of Home Affairs (IGAI) was created by Decree-Law No. 227/95, dated September 11, 1995, later amended by Decree-Law No. 154/96, dated August 31, 1996, and Decree-Law No. 3/99, dated January 4, 1999.

The implementation of the IGAI did not take place until February 26, 1996, date on which its Inspector General was appointed to office, starting its activity from ground zero.

This implementation corresponded to the requirements of the Programme of Action of the XIII Constitutional Government, specifically its point II – Home Affairs, 2 – Safety of Citizens, subparagraph (k):

> *"Implementation of institutional solutions and proceedings in order to ensure, in the area of Home Affairs, a more effective control of law enforcement practices, defence of the rights and legitimate interests of the citizens and restoration of legality."* (DAR, II Series A, No. 2, page 26(7), November 8, 1995)

Judging from the legal text that created the IGAI – Decree-Law No. 227/95 – it corresponded, in the scope of Home Affairs and the activity of domestic security, to the *"pressing need to endow the Ministry with an inspection and supervision service, especially intended to exercise the control of legality, the defence of the citizens' rights and a quicker administration of disciplinary justice in the socially most relevant situations"*.

Comparing the preface of Decree-Law No. 227/95 to that of Decree-Law No. 154/96 – the legal text that amended the original that establishing the implementation of the IGAI – we observe that, in order to achieve such goals, the IGAI followed, within the limits of its legal structure, a special model aimed at flexibility and high quality practices,

This explains why, from the very first legal text on, the emphasis was placed on the specialities and flexibility of its staff, from whom great maturity and professional expertise is required, i.e. persons who are *"…highly qualified and with the credibility for the exercise of the delicate tasks attributed to the IGAI, performing them with exemption, independence, neutrality, dedication and self-sacrifice"*.

Developing this conception, Decree-Law No. 154/96 expresses that *"the government considers it to be a service of the utmost importance for the defence of the citizens' rights and support the dignity of police forces, which may be included in the governmental policy aiming at the establishment of greater and better security measures for the population"*.

With the implementation of the IGAI, Portugal now has a complex and additional control system of its security forces.

As it is, both the civil police, i.e. the Police of Public Security, and the paramilitary police, i.e. the National Republican Guard, are subjected to their own systems of internal control, each one with its own inspectorate general.

Regarding the external control of police activity, the Portuguese model relies on an Ombudsman, elected by the Parliament, and another control in the criminal area, which is carried out by the courts of law, namely by the Director of Public Prosecutions. There is another external control on the behaviour of police forces, of a preventive nature and concrete action regarding discipline, which is carried out by the IGAI, whose Inspector General is appointed by the Minister of Home Affairs, to whom he answers, and has complete operational autonomy.

To make a short characterisation of this Inspectorate General, we may say that it is a high-level inspectorate, with technical and administrative autonomy and its own budget.

The IGAI is directed by an Inspector General, assisted by two Deputy Inspectors General, and has a department of internal affairs for monitoring and control of its operation, whose director answers to the Inspector General.

According to the law, the Inspector General and the two Deputy Inspectors General, as well as the Director of Internal Affairs, can be judges or public prosecutors. The Inspector General must be a Senior Judge or an Assistant Director of Public Prosecutions.

In its organic structure, the IGAI has an inspection and control service, scheduled for twenty-two elements who are recruited for a period of three years among civil servants from the most different areas connected with inspective activities, such as criminal investigation, legal matters, civil service and/or commanding or management positions in the scope of the security forces.

This board of inspectors do not build up any professional career in the IGAI. They perform their functions, on assignment, appointed by the Minister on recommendation of the Inspector General.

Their appointment is temporary and, according to the law, they must have worked as public prosecutors, judges, revenue inspectors, civil police officers, senior civil servants, paramilitary police officers and criminal police officers.

According to this model, only the Minister can appoint the inspectors, but always on the recommendation of the Inspector General, which means a model in which the inspectors answer to the Inspector General for their work and have his total confidence. The Inspector General answers to the Minister, who appointed him in a joint decision with the Prime Minister for an established period, and the Minister answers to the Parliament.

The IGAI also has a Nucleus of Technical Support, formed by elements from several areas of knowledge such as law, linguistics, anthropology and sociology, and also an administrative and general support division.

Essentially, the IGAI is a high-level inspectorate, whose activity focus on all the services that depend on or are supervised by the Minister of Home Affairs, as well as local governments, private security companies and fire departments.

It is responsible for the insurance of the respect for the laws in force in order to guarantee the good operation of the services, the defence of the citizens' legitimate interests, the safeguard of public interest and the re-establishment of law and order.

In the scope of its activity in the fields of inspection, control and investigation, the IGAI carries out ordinary and extraordinary inspections and audits for assessment of efficacy. It also analyses complaints, disputes and denunciations

for violations of the law. It may start investigation proceedings on its own initiative and, by ministerial decision, inquiries and disciplinary procedures into the conduct of members of the security forces that may violate the citizens' fundamental rights.

Its intervention being highly selective, the IGAI only deals directly with the more serious procedures, such as ill-treatment, torture, assault and death of citizens by police officers, and keeps a close watch on the less serious procedures initiated by the internal services of the police forces.

In this field, the Regulations of Inspection and Control Actions, Regulation No. 10/99 approved by Ministerial Decision dated December 21, 1998, establishes, in its Article 2 – Granting of investigative competence:

> *"Whenever, by action or omission committed by officers of the security forces and other services included in the IGAI's scope of competence, results a violation of someone's personal property, namely death or assault, or there is evidence of serious abuse of authority or damage to property, those security forces and services must immediately notify, by fax, the Minister of Home Affairs of the facts and wait for the decision concerning the opening of disciplinary procedures."*

The IGAI is also competent to carry out studies and present proposals for the improvement of quality in police action and technical support to the Minister, particularly with regard to the replies to requests for clarification presented by national and international organisations of defence and protection of human rights, namely Amnesty International and the Committee for the Prevention of Torture.

The IGAI is not competent to carry out criminal investigation. It must immediately inform the Director of Public Prosecutions of all situations that come to its knowledge that may constitute a criminal offence and cooperate with

the criminal investigation authorities to obtain evidence, whenever requested to do so.

It is important to explain that the Portuguese system applies the principle of autonomy of the disciplinary proceedings *vis-à-vis* the criminal proceedings, considering the difference of the violated interests, without prejudice to the principle *non bis in idem*.

Accordingly, the same fact may be subjected to both appraisals, which allows the disciplinary justice to be swift and efficient without prejudice to the criminal justice.

In its activity, the IGAI is governed by the principle of legality and rigorous objectivity of criteria.

When the IGAI intervenes in a disciplinary investigation, on its own initiative or by ministerial order, the competence to conduct the investigation that belonged to the police force in whose ranks the officer works is immediately transferred to the IGAI. The power to impose a sanction belongs to the Minister of Home Affairs, who has the final decision based on the IGAI's proposal.

This corresponds to a procedure that is completely independent from police forces. It has been considered efficient and highly reputable by public opinion and the media.

Following this line of operation, the aims and strategies of its Plans of Activities will always consider the issues of police behaviour regarding citizenship and the nucleus of fundamental rights.

The quality of police action implicitly includes this nucleus because if security forces will have a better performance, the rights of the citizens will be better

assured and the quality of life will also be better since security is one aspect of that quality of life.

Security is a condition for the exercise of freedom. It can not be in conflict with freedom, repressing it.

In the scope of this experience, the IGAI has been systematically carrying out actions meant to ensure the intransigent defence of the citizens' fundamental rights, human rights and implementation of actions aiming at the improvement of quality in police action.

For nine years, the IGAI maintained its preventive action regarding police action, particularly in the fields of detention of citizens and respect for their dignity, and developed inspective action with previous notice in order to assess not only the respect for the law by the officers of the security forces but also their working conditions, either physical, material or personal, always trying to make a diagnosis of the organic structures of the organisations, their disciplinary and disciplining systems and professional careers.

One of the strategic aims of the IGAI was to make an in-depth analysis of issues such as training, teaching, police schools and evaluation proceedings.

After the implementation of the IGAI, the police school curricula also began to put a significant emphasis on human rights and a new long-distance training system, by means of videotapes, was put into operation.

Also the quality in and of police action constituted a chief strategic goal.

In this field, the IGAI started in 2001 a systematic practice of organising conferences with the presence of highly reputed persons in this area, namely resorting to international invitations, in order to stimulate the reflection and the

debate on police training, particularly on the role of police officers in contemporary and future society.

Thus, between 2001 and 2004 several conferences were held on “Police Training”, “The New Legal System for Children and Youths”, “Analysis of Criminal Data and Economic Criminality”, “The Legal System of Protection of Personal Computer Data – Reflex on Police Activity”, “Direction of the Inquiry and Criminal Investigation”, “General Rules on Police” and “The Legal Framework of Municipal Police Forces”.

Still in the scope of the goals, the IGAI organised in 1998 an International Seminar entitled “Human Rights and Police Efficacy”, in 2001another International Seminar entitled “Cultures and Security – Racism, Immigration, Youth in Group” and, in 2003, a third international Seminar entitled “The Use of Firearms by Police Officers”.

Still in this area, the IGAI presided at the organising commission of the week “Police and Human Rights”, an initiative of the Council of Europe that took place in Portugal from October 28 to November 2, 2000 (seminars, lectures, conferences, bibliographic and documentary exhibitions, cultural events).

Currently – and in this framework is included this seminar – the IGAI participates with other partners, in the scope of the European Union countries, in a process of external oversight of police activity of what may become an European police force and has a very dynamic role in an European Union project for Brazil having in mind the implementation of Police Ombudsmen in all its states.

In the domestic field, the IGAI also seeks to develop, in a decisive way, inspection actions and control activity in the financial area since the finance of

security forces by taxpayers imposes the correct use and management of the public funds.

Another goal of its Plans of Activities is to assess the human resources and their management, by police forces.

During its activity, the IGAI has always endeavoured to establish international contacts with similar foreign organisations and keeps regular contacts with Amnesty International (AI), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Association for the Prevention of Torture (APT), immediately answering their requests of information following concrete incidents involving police forces.

Besides the interventions in Canada (CACOLE), in the USA (IACOLE) and in Europe, the IGAI was also present in Brazil, at the International Seminar “Police, Society and Democracy – Challenges for the 21st. Century”, which took place on April 24-25, 2000, and in 2001, also in Brazil, at the International Seminar “Police and Democratic Society – Challenges for the 21st. Century”.

Still in Brazil, the IGAI was present in Porto Alegre in 2002 and presented a communication during the International Seminar in the scope of the Second World Forum entitled “The Democratic State Based on the Rule of the Law and Police Organisations”.

In that same year, the IGAI presented a communication during the first international conference on external oversight of police activity, held at the University Cândido Mendes, in Rio de Janeiro, Brazil.

During its activity, it is also the IGAI’s duty and constant concern to follow up the compliance with the recommendations of the European Committee for the

Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the several orders issued by the Minister of Home Affairs.

In another field, which we repute of the utmost importance, the IGAI has been developing a selective control over the sector of private security companies and the respect for the laws which regulate the operation of bars and night-clubs.

The investigatory proceedings are governed by law and, when concluded, proposals are submitted for ministerial decision. From that ministerial decision an appeal to the courts of law is possible in what concerns disciplinary matters.

Now that I am reaching the end of my speech, I must briefly refer, in concrete, what constitutes, in my opinion, the most visible feature of the IGAI's activity.

It is evident that the first priority of the IGAI's intervention has been in the field of the defence of the fundamental rights of the citizens, characterised by systematic preventive actions in police units and precincts with detention zones. These actions were carried out without previous notice and at any time, either during the day or during the night.

We may say that these actions, in conjunction with rapid disciplinary procedures and investigations carried out by the IGAI, led to the almost total disappearance of police violence inside police units and precincts and to the complete eradication, in these areas, of deaths caused by police officers.

In what concerns another aspect, the dignity of the detainee, the IGAI managed to visit all units and precincts in the country that have detention zones. That goal was achieved in 1998 and a total of 700 to 800 units and precincts were visited at random.

As a result of that action, as soon as 1997 about 100 detention areas were closed because they did not have the minima conditions of dignity and, during 1997 and 1998, the IGAI proposed the shutting down or urgent repairs in about 60 police units and precincts.

Still in this field, and thanks to the IGAI that elaborated it, by ministerial decision came into force, in May 1999, the Regulations on Material Detention Conditions in Police Premises, which define the areas of the cells, the characteristics of the premises, beds, light conditions, sanitary facilities, floors, and so on, as well as the proceedings regarding detainees.

These regulations are observed in the construction of new premises and have led to repairs in the old ones, whenever possible.

There is a concern regarding the eradication of suspension points inside the cells to prevent the suicide of detainees and the elimination of sharp surfaces in which the detainees may inflict themselves injuries. Whenever one of these situations occurs, the IGAI immediately starts an investigation.

Also as a result of the IGAI's activity, there is compulsory registration of detainees, the communication, by fax, of any detention to the Public Prosecutor's Office and the detainee is informed of his right to contact a lawyer, to ask for a doctor and to make a phone call.

There was an effort to develop the implementation in police practice of the United Nations General Assembly's Resolution No. 43/173, dated December 9, 1988, which approved the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**.

In this line of concerns and on the initiative of the IGAI, the author of the project, a law on the use of firearms by police forces was introduced. This law corresponds to the international texts on the subject.

The IGAI also gave its contribution towards the elaboration of the Code of Conduct for the Portuguese Security Forces, applicable to the civil and paramilitary police forces, now in force.

We may assure that the feeling of impunity regarding police misconduct, a reality at the beginning of the external oversight system, no longer exists.

On the other hand, the cases in which deaths have occurred as a result of police intervention, usually with the use of firearms in a pursuit of an offender, were **5** in **1996**, **1** in **1997**, **4** in **1998**, **4**, in **1999**, **3** in **2000**, **3** in **2001**, **5** in **2002** and **6** in **2003**.

In **2004**, and for the first time since the beginning of the IGAI's activity, **there was no case of death of a citizen in Portugal by reason of the use of a firearm by a police officer**.

During this year, and according to elements collected by the IGAI, we have already **3** deaths resulting from the use of firearms by officers of the security forces, **1** case in the civil police (**PSP**) and **2** in the paramilitary police (**GNR**).

These numbers do not necessarily mean that there was a blameable conduct by police officers. They are only facts.

All this takes place in a universe of 46 thousand police officers for a population of about 10 million inhabitants.

Still in what concerns the transparency of police intervention, it is now mandatory that all citizens be notified of the disciplinary consequences of their complaints, which was not a routine practice.

In other fields, the IGAI developed a number of activities with the purpose of improving the quality of police action, either by means of seminars as mentioned above, or introducing some changes in school curricula, or even carrying out audits and studies on the organisations and their officers, namely of a sociological nature, regarding the use of alcohol and drugs, the analysis of complaints, stress factors deriving from police activity, police violence and violence towards police officers, etc.

Another important activity, under a different perspective, comprises the financial audits carried out by the IGAI.

The objectivity of the IGAI's activity is widely recognised by better judges than us, namely Amnesty International. That is clear from its 1999 Report and the references in its 2000 Report, namely to the elaboration of a Code of Conduct for the Security Forces and the proposed measures to fight police violence through video record systems in units and precincts.

A concrete reference is made, in this last Report, to the positive contribution of the IGAI towards the control and supervision of the activities of the civil and paramilitary police forces.

Also in its 2002 Report, Amnesty International makes another reference to the intervention of the IGAI in 11 cases with the imposition of disciplinary measures in 3 of them.

This Report mentions the satisfaction for the creation of the IGAI and the work it has been developing. It esteems however that the IGAI is not an independent organ of external oversight of police activity.

This international view of the problem corresponds to the understanding that independence signifies non-dependency regarding the executive power; accordingly, organisms of external oversight that depend on the parliaments, organs of political power, are considered independent because they do not depend on the executive.

Also in the lot of worries concerning the problems in Portugal, in July 2001 Amnesty International mentions the IGAI as an external oversight organism especially concerned with human rights.

Amnesty International continues to pay a special attention to the work developed by this Inspectorate General as we can see in its 2004 Report.

Similarly, also the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, namely in its Report published on July 26, 2001, regarding its visit to Portugal on April 19-30, 1999, recognizes the IGAI's activity as clearly positive.

That Report refers the IGAI's Information/Proposal No. 16/97 to the Minister of Home Affairs concerning the proceedings to be adopted by the security forces when taking suspects to the units or precincts for identification, namely that their stay there can not exceed e hours and that their registration in the corresponding book is compulsory. The Minister accepted that proposal by decision dated July 7, 1997.

In the Report regarding his visit to Portugal that took place on May 27-30, 2003, the Commissioner for Human Rights of the Council of Europe, who made a point of having a meeting with us, enhances the role played by the IGAI.

A special enhancement is also made to the IGAI's work, in a very clear way, in the positive recommendations for the year 2004 made by the United Nations Commission on Human Rights regarding the third periodic Report on Portugal on the implementation of Article 40 of the International Covenant on Civil and Political Rights.

Finally, the USA Department of State's Reports regarding the situation of human rights in the world have been referring the IGAI since 1999, i.e., the work we have been developing since 1998.

The IGAI and its activity are analysed in the scope of a chapter on Respect for the Integrity of the Person, including Freedom.

In my opinion, if you allow me, the Inspectorate General of Home Affairs constitutes, for Portugal, an organ of external oversight that is very important in a Democratic State based on the rule of the Law with responsibilities in the improvement of quality of police action.

The Supreme Court of Justice pronounced a judgement in which we may read: "We may even say that the barometer of a true democratic state lies in the manner in which its police forces act towards its citizens." From its creation, the IGAI has been implementing the principle according to which, from the point of view of citizenship, the security forces are expected to act with quality and efficacy but that efficacy of the security forces has, as cause and limits, the fundamental rights of the citizens.

One of the main features of a Democratic State based on the rule of law is the existence of power control mechanisms and, accordingly, also of police activity. The Portuguese experience, the IGAI's experience, in the scope of the society in which it operates is, allow me to say it, clearly a positive one

My final remark to you is that police behaviour in its relationship with the citizen has changed; the speech and practice of respect for human rights has spread and the sensation of opacity, impunity and unquestioning regarding security forces is over.

Citizens have the chance to see that the situations which involve officers of the security forces are clarified with objectivity, firmness and exemption and that the IGAI works, following its criteria of activity, also as an instrument that ensures the quality of police action.

The Democratic State based on the rule of the law is imposing and developing itself.

Being the control of the exercise of power the essence of democracy, it is essential to carry out the external control of police activity, which constitutes the necessary condition to ensure the authority of the security forces.

The organs of external control, by reason of their detachment from police forces and their credibility near the populations, constitute a guarantee both to the citizens and to police officers that mistakes will be mended and the proceedings will respect the fundamental rights of the citizens, with total transparency.

In modern times and in democracy, the external oversight of the exercise of power is essential to ensure that this is substantially the exercise of the democratic power with full respect for the citizens' fundamental rights, assuring

high levels of domestic security and the exercise of freedom, leading thus to the improvement of the quality of life.

The better the policy and the more righteous and qualitative police action are, the better the conditions for the exercise of citizenship.

I reaffirm, as the essential point, that the citizens' fundamental rights are the *raison-d'être* of the police and their efficacy, but that efficacy is limited by those same rights.

The firm political support of the IGAI and its project is essential to protect human rights and to develop and improve the Portuguese democracy.

I will not finish without transmitting my concern for the fact that, since February of this year, no one has been appointed as Inspector General of Home Affairs by the socialist government that won the elections held in February.

This emptiness and this omission objectively contribute to the feebleness of the IGAI and the Portuguese project, internationally recognised as essential to the modernisation of the police and the defence of human rights in our country.

Thank you very much.

Speech made at the Seminar "Human Rights and Police Behaviour".

Lisbon, November 10, 2005.

António Henrique Rodrigues Maximiano

2006/04/04

Translation
Original: Portuguese[*]

Ouvidoria de Polícia[1]: controlling activities of police behavior[2]

José Francisco da Silva

1- Introduction

The consolidation of forms of public security respectful of citizens' rights, especially in countries which have recently gone through periods of autoritarism, is an issue to be widely debated, mostly because the police, throughout these periods, acted as defensor of the state, whereas the protection and rights of citizens were neglected. Those were times where very serious violations of human rights were practiced by the state itself.

The security of citizens is, in itself, a question that includes fundamental rights and guarantees and not their limits. Therefore, when dealing with a kind of public security respectful of citizens' rights, we talk about the core of social policies and the institutional perfectioning of agencies that take care of law enforcement. It is fundamental to rethink the role of and the conditions in which the security forces are inserted in our society.

When the redemocratization process initiated, mainly in Latin America, the hope that the times of impunity and violence would cease echoed through these societies. Nevertheless, some factors contributed to the fact that the violent practices by state agents continued to exist.

In many places there was no change in security organizations personnel, what made them keep on working using the same methods, since they were used to maintain the public order using violent ones which were common at the time of the dictatorship, in spite of the new reality of the new-born democracy. Besides, traditionally, the operators of the public security system have been protected from external investigations and believe that it is not necessary to render account of their conduct before courts or other civilian authorities. The effect of these deep-rooted habits and the authoritarian legacy are remainders of security and police agencies immune to the efforts of the civil society to clarify their actions.

In order to solve these issues, it is necessary, undoubtedly, that the most various segments of the society make an effort, it is of utmost importance that the leading politicians do not connive with such state of violence and impunity.

Both in more mature democratic societies and in younger ones, citizens make increasingly pressure on the police for them to not only control crime, but to treat everyone fairly and respectfully. The challenge put is to create practical mechanisms for citizens to

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[*] This English version of the speech was provided by the author.
Translation: Cristiane Kaitel and Herman Nébias Barreto

[1] *Ouvidoria de Polícia* is a term to designate a governmental agency to oversight police forces, similar to a police ombudsman agency.

[2] This text was produced with the participation of Juliana Maron, Miriam Cristina Santos and Edmilson Pereira Júnior from the Núcleo de Ensino, Pesquisa e Extensão da Ouvidoria de Polícia de Minas Gerais [Center for Education, Research and Extension of the *Ouvidoria de Polícia* of Minas Gerais].

be effectively able to control and influence the way that the police exercise their power to arrest, interrogate and make use of lethal or non-lethal force.

In Brasil, when the National Constituent Assembly was installed, there was an attempt to search for the Constitutions of Portugal and Spain for inspiration, which had created control mechanisms for the police activities right after the fall of the authoritarian regimes of Franco and Salazar. The National Constituent Assembly rejected the amendment that proposed the creation of the Popular Defensor in our country. Corporate lobbyists from the Federal Audit Court and the Public Prosecutor rose against the creation of the brazilian Ombudsman, with arguments varying from the burden of creating one more office in the country, to the statement that the jurisdictional control enables bigger guarantees to the citizens[3]. As a consequence to the action of these forces in the Assembly this accomplishment was postponed.

After the promulgation of the Federal Constitution in 1988, the Human Rights National Program attempted to establish instruments of democratization with effective participation of the government and the civil society. The first item of the Proposal of Governmental Actions referred to "public policies for protection and promotion of human rights in Brasil". Among various proposals to be implemented in a short term, there is the one to "incentive the creation of *Ouvidorias de Polícia*, with representatives of the civil society, with autonomy for investigating and controlling".

Despite this recommendation, it was only in 1995 that the first *Ouvidoria de Polícia* was created by the government of the state of São Paulo. Since then, this pioneering experience has served as a base to similar initiatives in other states of the Federation. Pará was the second brazilian state to have an Ombudsman in charge of controlling the police. The *Ouvidoria* of the Public Security System of Pará came into being by the state law n. 5.944/96 and the nomination of the *Ouvidora*[4] took place in June, 1997. Then, the *Ouvidorias* of Minas Gerais (1997) and of Rio de Janeiro (1999) were created. Following the creation of these first four *Ouvidorias,* the National Forum of Police Ombudsmen was installed, having been created by Presidential Decree, on 1st of June, 1999.

Nowadays there are fourteen (14) *Ouvidorias* installed in Brazil, in the states of Bahia, Ceará, Espírito Santo, Goiás, Mato Grosso, Minas Gerais, Pará, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina and São Paulo.

The brazilian *Ouvidorias* are, in general, autonomous agencies, independent in relation to the police corporations, although there are some linked to the state departments in charge of public security. Nevertheless, it is not part of their attributions to conduct investigations on the complaints received.

[3] See Marcos J. T. do Amaral, "O Ombudsman e o Controle da Administração".
[4] *Ouvidor/Ouvidora* refers to the head of the *Ouvidoria de Polícia*.

The main goal of the *Ouvidorias* is to control police activities, through the receiving and referring of suggestions, compliments and complaints of police misconduct, turning themselves into a communication channel between the population and the public power.

The *Corregedorias de Polícia* – organs for the internal controlling of police activities – are to undertake the investigations and in charge of establishing the administrative penalties. When there is indication of crime, the procedure must be referred to the Military or Civil Justice, according to the case.

At the end of the investigations, the *Ouvidorias* are informed about their results and may refer it to the Public Prosecutor, if there are indications of crime by the officer, which were not duly examined by the Department of Internal Affairs, according to the assessment of the *Ouvidoria*.

Nevertheless, it is increasingly evident that besides receiving, referring and monitoring, the *Ouvidorias* must take on the responsibility of evaluating trends in police misconduct and suggesting solutions against them.

If the *Ouvidorias de Polícia* only stick to the receiving of complaints and the monitoring of the proceedings made by the *Corregedorias de Polícia*, they remain linked to the idea that the punishment of officers due to non-ethical behaviour is enough to obtain the wider impact of hindering other officers' misconduct and of improving the corporations. If, on the other hand, in addition to this task , they incorporate a more general approach, working on the identification and resolution of systematic problems related to administration, supervision and training, among other questions causing or perpetuating misconduct, the results for an improvement of the delivering of services by the officers would be more efficient.

This does not mean to neglect the complainants or the complaints made - since they are a fundamental part of the work of the *Ouvidoria*, which was born with the task to listen to any citizen's complaints relating to police activity - but to make good use of these very cases, taken as a whole, in order to assess and monitor the police actions and to contribute to their improvement.

Therefore, it is the fundamental role of the *Ouvidorias* to work on the perfectioning of the services delivered by the police to the population, promoting research, lectures, seminars and presenting recommendations to conduct the public security policy. They should also participate in the educational process of officers, permanently offering them, inside the police academies, courses on democracy, human rights and the role of the police in the society.

II – The *Ouvidorias de Polícia* of Minas Gerais

The *Ouvidoria de Polícia* of Minas Gerais was created by the state law n. 12.622 of September, 1997 (altered by the state law n. 12.968/98). The former sets the competence of the *Ouvidoria*:

I- To listen to complaints, made by any person, directly or through organs of support and defense of the rights of the citizen, including civil police officer or military police officer or other public employee, of irregularity or abuse of authority commited by their superior or police agent, be it civil or military;

II- To receive complaints of alleged arbitrary, dishonest or indecorous act, commited by public employees allocated in a public security organ;

III- To verify the pertinence of the complaint and propose the necessary measures to repair the irregularity, illegality or proved arbitrarity;

IV- To propose to the competent organ the establishment of administrative process, inquiry or action to investigate the administrative and civil accountability of the public agent and present to the Public Prosecution, in case of indication or suspicion of crime;

V- To propose to the State Secretary for Public Security and to the General Commander of the Military Police the necessary and useful measures to perfect the services delivered to the population by the Civil and Military Police;

VI- To promote research, lecture or seminar on themes related to the police activity, making arrangements to publicize their results;

VII- To maintain, in police schools and academies, permanently, courses on democracy, human rights and the role of the police.

Sole paragraph – the *Ouvidoria* is to observe secrecy of the identity of the complainant when requested, and to assure him/her protection if necessary.

Nevertheless, since the state law n. 15.298 of 6th of August 2004, that creates the *Ouvidoria-Geral* of the State of Minas Gerais, the *Ouvidoria de Polícia* has been part of the structure of the former. The *Ouvidoria-Geral* is an autonomous organ, directly linked to the Governor of the state, aidding the Executive Power in controlling and perfectioning public services and activities, in addition to having administrative, budgetary and financial autonomy, also in its technical decisions.

Art. 9 of the above-referred law establishes that the *Ouvidor de Polícia* be chosen among citizens of more than thirty-five years of age, with spotless reputation and indicated through a list of three names elaborated by the State Council for the Defense of Human Rights, for a term of two years, one reinvestment allowed.

In order to conduct their activities the majority of the brazilian *Ouvidorias* are faced with structural problems and lack of qualified personnel. This had been the situation of the

Ouvidoria de Polícia of Minas Gerais until the Project for the Strengthening of the *Ouvidoria*, approved for financing in 2003, by the National Office of Public Security of the Ministry of Justice, in tune with the National and State Plans for Public Security, enabling the *Ouvidoria* of Minas Gerais to enhance the services delivered to the population. Among the actions foreseen in the Project are those turned to improve the infra-structure, through the purchase of furniture and equipment, as well as the appointment of their own personnel. In this Project the development of researches and courses were also planned.

Once there was a more adequate working structure, actions towards the technical improvement of the services delivered to the population were initiated. A reassessment of the act of listening by the *Ouvidoria* was implemented through an action named "A arte de ouvir-dor". Through this action, the *Ouvidoria*'s technicians and clerks were interviewed in order to produce an understanding of the institution's functioning. The necessity for a better qualification of the act of listening was realized, it must be differentiated and not omit information or be based on inferences. Following this action, the restructuring of the complaining sector was implemented, with the creation of the Psychology Center, working side by side with the Social Services Center.

The analysis of the information gathered throughout years of activity of this *Ouvidoria* made it possible to realize that the access to the *Ouvidoria* had been extremely confined to the capital of the state and its metropolitan area. In this sense, taking the *Ouvidoria* to the countryside was made necessary. An action named "Ouvidoria Itinerante" was initiated, with the goal of enabling the access of those who did not have the means necessary to make complaints without the shifting of the services provided by the *Ouvidoria* to the proximity of their residence. Nevertheless, these visits appointed to the need of amplification and decentralization of the *Ouvidoria*, which leaded to the creation of regional offices. Besides, the very law creating the *Ouvidoria* had already established the need to install centers of the *Ouvidoria* in other municipalities. This need becomes understandable if we take into account the extension of the state of Minas Gerais, 588,4 thousand square kilometers, which represents 6,9% of the brazilian territory (8,5 million square kilometers) comprised of 18,9 million inhabitants (2004), distributed in 853 municipalities.

The implementation of the regional offices is being done in partnership with the institutions of higher education, city halls and organizations in defense of human rights, taking into consideration the existence, in the cities chosen, of battalions and police stations. In order to easy the access for the majority of citizens, the cities selected are reference in the region of the state where they are located: Contagem, Diamantina, Ipatinga, Juiz de Fora, Montes Claros, Poços de Caldas, São João del Rei, Teófilo Otoni and Uberlândia.

To make the services of the *Ouvidoria* even more accessible to the public, the "Disque-Ouvidoria" [Toll-free number] was created, where the citizens may make complaints through a free-of-charge phone call, from any part of the state. The web site www.ouvidoriadapolicia.mg.gov.br was also implemented, where one can find all information on the activities developed by the *Ouvidoria*, its trimestrial and annual reports of activities, in addition to enabling the making of complaints through the Internet.

Nevertheless, as formerly said, it is not enough that the *Ouvidoria* receives complaints, refers them for investigation by the *Corregedorias de Polícia* and the Public Prosecutor and monitors the results. It is necessary to take a step forward. The society expects and demands something further concerning the performance of the *Ouvidorias*. The production of studies, researches, courses and lectures is a very recent activity in the *Ouvidorias*, since these activities are necessary for making preventive and pro-active work.

Besides serving as a base to improvement in the delivery of security services to the population, studies and researches help in the refinement of the work of the *Ouvidorias de Polícia*. The research "Avaliando a Ouvidoria de Polícia de Minas Gerais: A visão do denunciantes"[5] [Evaluating the *Ouvidoria de Polícia* of Minas Gerais: the point of view of the complainants], with the goal of studying the image and the evaluation the complainants have of this organ, pointed out, in its conclusions, the necessity of altering some of the procedures conducted by the *Ouvidoria*.

In relation to the evaluation of the work done by the *Ouvidoria*, the most influential element in the perception of the organ's work by its users is whether there is punishment on the accused officer: when the complainant is informed of the existence of punishment the average score given to the *Ouvidoria* almost doubles in relationship to when he/she knows there was no punishment. The work of the *Ouvidoria* is, therefore, assessed according to criteria that surpass its attributions, since the conduction of investigation and punishment is beyond this organization's competences. We will deal with the question of investigative and punitive capacity further on.

The fundamental suggestions the complainants offer are centered in an improvement of efficiency and swiftness in the resolution of complaints. On the other hand, many of them defend a strengthening of the institution and a closer follow-up and protection of the very complainant.

The main conclusions of this research may be translated into three recommendations, which certainly apply not only to the *Ouvidoria* in Minas Gerais, but also as guidance for the work of the others:

a) there is the need of better publicizing the role of the *Ouvidoria* and the limitations of its work, in order to not create false expectations and to diminish the frustration caused on the complainants due to its incapacity of producing results that, in fact, are mainly out of its reach;

b) the *Ouvidoria* will always be assessed, at least partially, based on the final results of the complaints. That means, the assessment of the institution will depend, fatally, on the degree the complaints are clarified and the police officers punished, even though this does not exclusively or fundamentally depend on it;

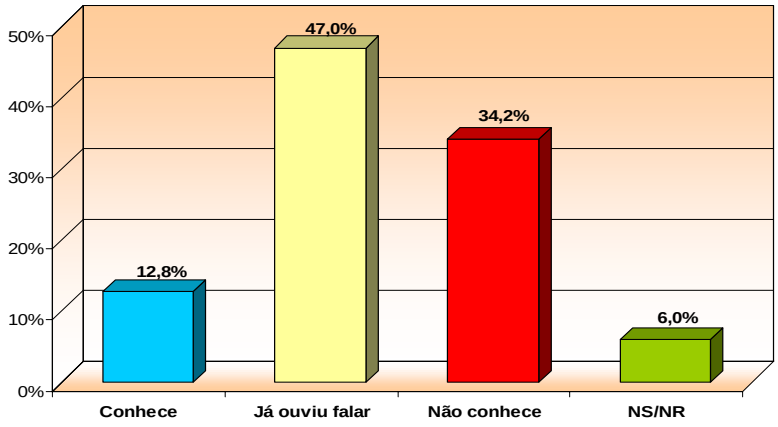
[5] This research was conducted by the Núcleo de Ensino, Pesquisa e Extensão da Ouvidoria de Polícia de Minas Gerais [Center for Education, Research and Extension of the *Ouvidoria de Polícia* of Minas Gerais], under coordination of Prof. Ignácio Cano. The Report thereof is at disposal for consultations on the site: www.ouvidoriadapolicia.mg.gov.br .

c) it is necessary to improve the communication with the complainant to inform him/her of the processing of the case and its final solution. This will raise his/her satisfaction and improve the institutional assessment, decreasing the feeling that the complaint has been in vain.

The measures relating to the better enlightenment of the role of the *Ouvidoria* to the complainant at the moment of the complaint, as well as the adoption of methods to constantly inform him/her concerning the steps which he/she is going through in the procedure were adopted after the presentation of the results of the referred research.

Associated with this study, it was attempted to measure the population's knowledge about some institutions linked to public security, through the research "O que a população pensa da Ouvidoria" [What the population thinks of the *Ouvidoria*]. In order to do that, a research was conducted, using quantitative methods, through *survey*, with a random sample of citizens coming from various cities in the metropolitan area of Belo Horizonte; as well as qualitative methods, through Focus Group, with people said to be victims of police abuse or to have a relative/friend that had been victim of such a fact. The data collected confirm the statements we already had concerning the small knowledge about the *Ouvidoria* and its role, and point to important elements present in the society's imaginary about the police institutions.

GRAPHIC 01: Knowledge about the *Ouvidoria de Polícia*



Legenda:

Conhece – know of

Já ouviu falar – have heard of

Não conhece – do not know of

NS/NR – do not know/did not answer

Other researches were conducted through the Projeto de Fortalecimento [Strengthening Project], but because they refer more specifically to aspects of the police activity they will be dealt with in the next topic.

Nowadays the Project "Formas de influência social sobre a função policial: do policiamento comunitário ao controle sobre a polícia" [Forms of social influence on the police role: from community policing to police oversight] is being conducted. It was approved by the National Office of Public Security and financed by the National Fund of Public Security in 2004. This project aims to contribute to the formation of a culture of human rights, active solidarity and social peace; to touch and move towards the historic-social leading role of the direct operators (civil police officers, military officers and military firefighters) and indirect ones, member of the public security municipal councils, of the community council of children and adolescent rights, community leaders and the technical staff of the *Ouvidorias de Polícia* in Minas Gerais; to cooperate with the construction of a new police, a police aware of the importance of their symbolic-pedagogic dimension as promoter of citizenship, human rights and peace, a carrier of self-esteem and dignity conferred by the exercise of serving the community, a community to which they must guarantee security inside the boundaries of democracy.

The base to the Project is the offering of a total of ten qualification courses, which have the aim to reach a total of 1000 participants, among which are the direct operators of public security, members of Community Councils of Public Security and other organizations in defense of human rights. Each course is made of three units, the first one having as goal to provide the direct and indirect operators of public security with room for interaction and joint reflection in search and construction of solutions to common problems, favoring the construction and the consolidation of brazilian democracy; the second one having as goal to qualify of the participants to contribute to the self-management and self-sustainability of the communities to which they belong, having as supporter and facilitator a project of peace culture; and the third one having as goal to offer an introduction to the concept and the practices of community policing, in addition of amplifying, to the participants, the capacity of reality interpretation and of understanding the issue of criminality in the state of Minas Gerais in general and specially in the several municipalities participant to this very program, in addition to providing them with knowledge about the mechanisms of internal and external control of police activities.

Through the offering of the above-described courses is the attempt to incentive the creation of bonds between the police and the community, mainly, bringing them closer together so that the violence and criminality problems, as well as police misconduct be discussed and that joint solutions be found. The adopted perspective is such that so it will be easier to overcome problems encountered by both.

Along these lines, the *Ouvidoria de Polícia* makes a contribution to the educational process of the police officers and strengthens the community's capacity to articulate itself, to know their rights and to become active in controlling the police activities. This is without a doubt the role of a *Ouvidoria de Polícia* in search of deviance prevention and not only its punishment.

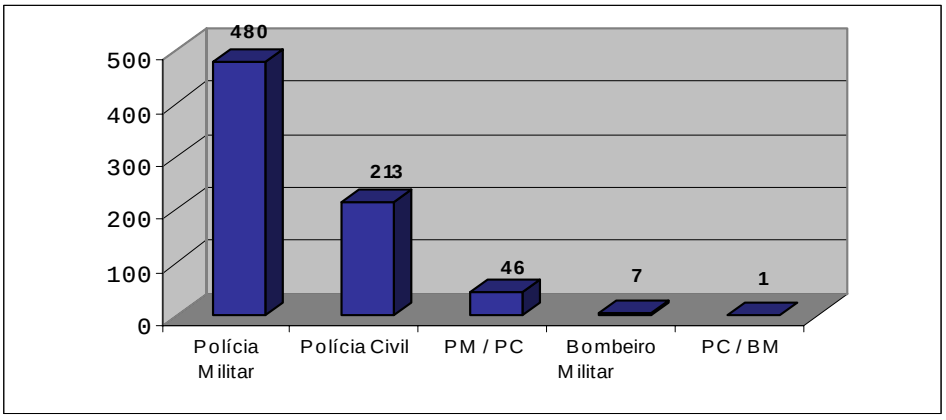
Despite the efforts made by the *Ouvidoria de Polícia*, we move on to the next topic to point out in which form the police in the state of Minas Gerais has behaved in the routine of their work, as of the information gathered and produced by the researches conducted and the complaints received by the *Ouvidoria*.

III- Police Activities in Minas Gerais

The *Ouvidoria de Policia* has as a duty to externally control the activities of the Civil and Military Police and the Military Fire Brigades. Nowadays the state of Minas Gerais has a contingent of 8.983 civil officers, 37.890 military officers and 4.211 military firefighters.

As of the total of this contingent we may verify the indicators for defendant per corporation, in the year 2004.

GRAPHIC 02: Complaints per Corporation – year 2004



Legenda:

Polícia Militar (PM) – Military Police

Polícia Civil (PC) – Civil Police

Bombeiro Militar (BM) – Military Firefighter

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

The Federal Constitution of 1988, in its art. 144, paragraphs 4 and 5, defines the attributions of the Civil and Military Police and the Military Fire Brigades:

§ 4 – It is incumbent upon the civil police, directed by career police commissioners and except for the competence of the Union, to exercise the functions of criminal police and to investigate criminal offenses, with the exception of the military ones.

§5 – It is within the competence of the military polices the ostensive policing and the maintenance of the public order; it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense.

This way, the criminal inquiries or investigation of criminal offenses, which the Civil Police is in charge of, has the goal to: "a) identify the author of the crimes; b) collect evidence (incrimination) against the known offenders and c) know and follow the movement of professional criminals, of the low and high organized criminality." (SILVA, 2003, p. 100)

The ostensive policing – prevention and police repression – is responsibility of the Military Police and part of the belief that the visibility of the police would hinder criminal actions. The visibility would be the main element in the preventive work, because it would diminish the opportunities to perpetrate an offense. The Military Police, therefore, is characterized by its uniforms and symbols, enabling more notoriousness, being more frequently present on the streets and in contact with the population.

The Military Fire Brigade takes actions of search and rescue, prevention and fire combat, rescue of accident victims and civil defense, that means, help to the population in situations of major nature calamities.

According to the above-written definitions, one may realize the difference in activities conducted by each corporation. As of these activities one may expect difference in behaviour by police officers according to their routine tasks.

Since the Military Police is responsible for ostensive policing it is to be expected that, due to their larger contingent and more direct contact with the population, there be a bigger chance of misconduct in delivering their services. Nevertheless, although the military police officers receive a higher number of complaints, as to be seen in GRAPHIC 01, if we consider the contingent, the rate of defendants in the Civil Police is higher.

CHART 01: Defendants according to the police contingent in each corporation – 2004

Corporação	Denunciados	Efetivo	Denunciados / 1.000 Agentes
Polícia Militar	1.066	37.890	28,1
Polícia Civil	440	8.983	49,0
Corpo de Bombeiros Militar	9	4.211	2,1
Total	**1.515**	**51.084**	**29,7**

Legenda:

Corporação – Corporation

Denunciados – Defendants

Efetivo – Contigent

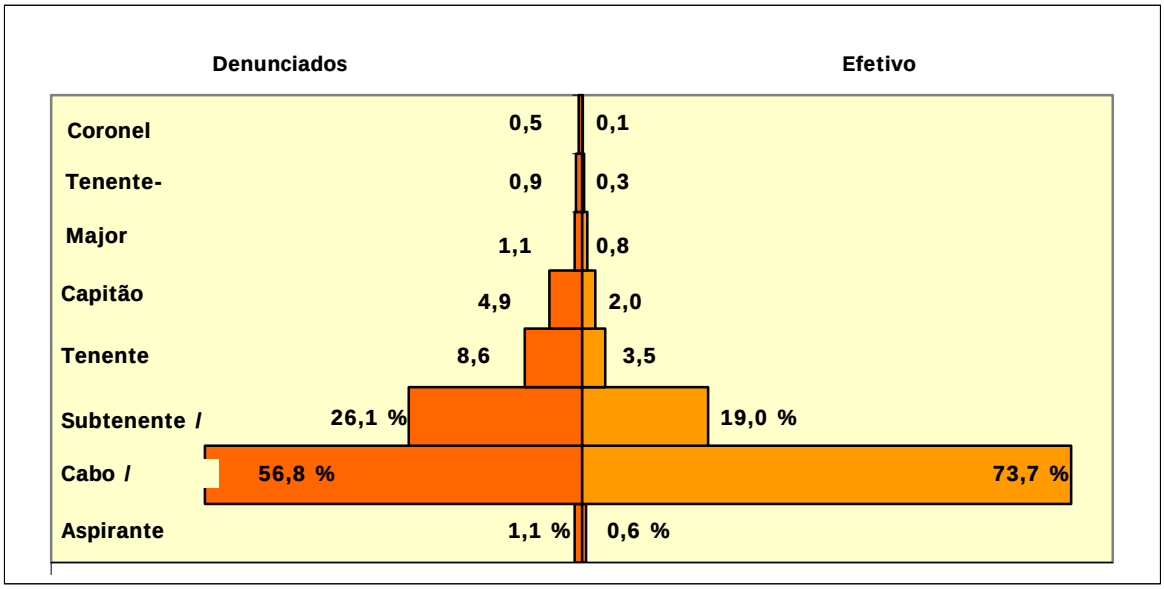
Agentes – Police Officers

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

We may establish a relation between this information and our country's recent past, because, on one hand, the application of violent methods to collect criminal evidence, the ill-treatment of prisoners, among other deviances and crimes, and on the other hand, the suspicion regarding the population and the defense habit of the state in detriment of civil rights were common practices in the police.

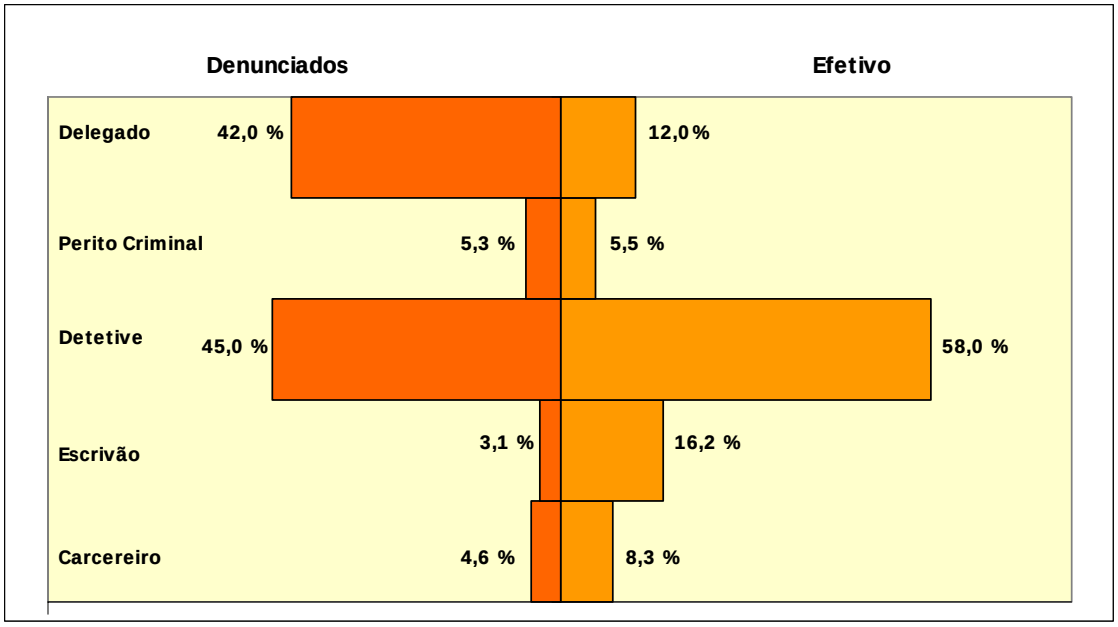
Observing the distribution of the defendants according to the rank in each institution a different situation is also to be found than the one expected. The higher ranks are over-represented in number of defendants in relation to the contingent, although the line officers numerically receive more complaints, in both civil and military corporations, the latter including the fire brigade.

GRAPHIC 03: Graphic of distribution of military police officers who are defendants in comparison to the contingent of each rank – year of 2004



Source: NEPE / Ouvidoria de Polícia de Minas Gerais

GRAPHIC 04: Graphic of the distribution of the defendants in the year 2004 in comparison to the contingent of each carreer



Source: NEPE / Ouvidoria de Polícia de Minas Gerais

This factor is amazing, taking into account that the higherly ranked police officer is responsible for disciplining his/her subordinates as well as for being their role model.

Concerning the nature of the complaints in the *Ouvidoria de Polícia* in Minas Gerais, it is to be verified that the type “Abuso de Autoridade – Agressão” [Abuse of Authority – Assault], is the most common (32%). One may also bring to attention the types “Abuso de Autoridade – Prisão” [Abuse of Authority – Arrest] (11,2%) and “Abuso de Autoridade – Outros” [Abuse of Authority – Others] (19,7%), in addition to “Lesão Corporal” [Physical Harm] which shows in 21,6% of the registered complaints. CHART 02 shows the distribution of types of complaints in the years 2003 and 2004. It is necessary to bring out that each complaint may be classified in more than one nature, according to the reported facts.

CHART 02: Classification of complaints according to the nature of the transgression and the percentage in relation to the total of complaints, to the years 2003 and 2004[6]

Nature of complaint	2.003		2.004	
	N	%	N	%
Abuse of Authority - Assault	283	42,1	246	32,9
Abuse of Authority – Arrest	97	14,4	84	11,2
Abuse of Authority - Others	206	30,6	147	19,7
Threat	202	30,0	209	28,0
Concussion / Extortion	29	4,3	19	2,5
Corruption	14	2,1	39	5,2
Duress	41	6,1	51	6,8
Duress and/or Abuse of Authority	28	4,2	62	8,3
Unjust Enrichment	10	1,5	16	2,1
Larceny byTrick	3	0,4	5	0,7
Lack of Policing	3	0,4	10	1,3
Physical Harm	164	24,4	161	21,6
Murder	30	4,5	45	6,0
Disciplinary Infraction	325	48,3	192	25,7
Bad Quality of Service	85	12,6	95	12,7
Negligence	62	9,2	59	7,9
Peculation	11	1,6	7	0,9
Violation of Duty and Betrayal of Trust	62	9,2	34	4,6
Assault with Intent to Commit Murder	14	2,1	10	1,3
Torture	43	6,4	56	7,5
Discrimination	7	1,0	8	1,1
Drug Traffic	7	1,0	11	1,5
Arbitrary Violence	0	0,0	8	1,1
Abuse of Power	0	0,0	34	4,6
Forced Disappearance	0	0,0	3	0,4
Others	113	16,8	111	14,9
Total	**1.839**	**273,3**	**1.722**	**230,5**

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

[6] The types “Violência Arbitrária” [Arbitrary Violence], “Abuso de Poder” [Abuse of Power], and “Desaparecimento Forçado” [Forced Disappearance] were added to this classification in the year 2004 and therefore do not show in the numbers for the year 2003.

The complaints made in the *Ouvidoria* in Minas Gerais may be compared with the complaints received in the *Ouvidorias de Polícia* in Rio de Janeiro and in São Paulo, pointing out differences in the behavior of the police officers in various brazilian states. In São Paulo, the major number of complaints received against military police officers refers to the committing of murders, representing 18% of all complaints from 1995 to 2004. In Rio de Janeiro complaints referring to extorsion and lack of policing are predominant.

Sketching the general profile of the victims, in the year 2004, one notices that they are male (72,8%), single (53,9%), have an income of up to five minimal salaries (87,8%) and have a level of education up to completed primary school (50,1%). In relation to race/color, which is self-declared, "pardos" [mulatto people] make 41,6%, white 35,1% and negros 23,3%. Consequently, we realize that the victims of police misconduct are, in their majority, people with low purchasing power and low level of education. This information makes it evident that the lowest *strata* of the population continue to be the most likely to suffer abuse. Historically, these are the very segments with fewer resources to ensure their rights, from what one realizes the relevance of the *Ouvidoria* for them.

In search of capturing the perception the population has of the police corporations, as well as of other organs linked to the Public Security System, the research "O que a população pensa da Ouvidoria" [What the population thinks of the *Ouvidoria*], conducted in June, 2004, with a total of 851 interviews, asked the interviewee to assess these institutions. The results to this questioning may be demonstrated through the following chart.

CHART 03: Assessment of the Institutions of the Public Security System

Institution	Great/Good	Regular	Bad/Lousy	NS/NR	TOTAL
Military Firefighters	83,10%	8,50%	2,90%	5,50%	100%
State Judges/Justice	36,80%	27,90%	13,80%	21,50%	100%
Military Police	35,60%	36,90%	24,70%	2,80%	100%
Public Prosecutors	35,50%	26%	15,40%	23,10%	100%
Civil Police	30,30%	42,80%	22,70%	4,20%	100%

Except for the Fire Brigade, segment to which an aura of heroism is attributed in relation to the other police institutions, the data pointed towards the predominance of a fairly negative image.

Besides, the research inquired the interviewees in respect to the degree of reliability on these very organs and the results are quite worrying, as to be verified in CHART 04.

CHART 04: Degree of reliability on the Institutions of the Public Security System

Instituição	Nota Média	Confiança Total/ Confiança	Nem confiança, nem desconfiança	Desconfiança/ Desconfiança Total	NS/NR	TOTAL
Bombeiros Militares	8,4%	82,20%	9,60%	4,80%	3,40%	100%
Juízes de Direito / Justiça	5,9%	37,00%	25,00%	22,00%	16,00%	100%
Policiais Militares	5,8%	35,80%	27,10%	20,10%	17,00%	100%
Promotores de Justiça	5,4%	39,70%	28,00%	30,80%	1,50%	100%
Policiais Civis	5,2%	34,90%	29,60%	32,90%	2,60%	100%

Legenda:

Nota média – average grade

Confiança Total/Confiança – total trust/trust

Nem confiança, nem desconfiança – neither trust nor distrust

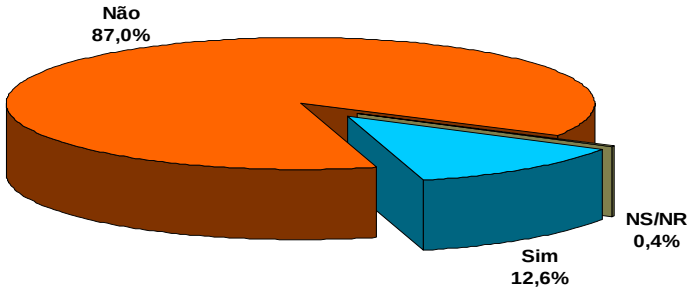
Desconfiança/desconfiança total – distrust/total distrust

NS/NR – do not know/did not answer

What can be noticed is that the population has low reliability on the institutions of public security, what contributes to increasing the feeling of insecurity.

This study allowed us to infer that the impact caused by news on deviations and police misconduct interferes in the evaluation of the police by the citizen in such a way, that the citizen, even though not directly suffering any type of violation, tends to assess the police institution negatively, based on the information he/she receives in the most various ways. This may be observed through GRAPHIC 05.

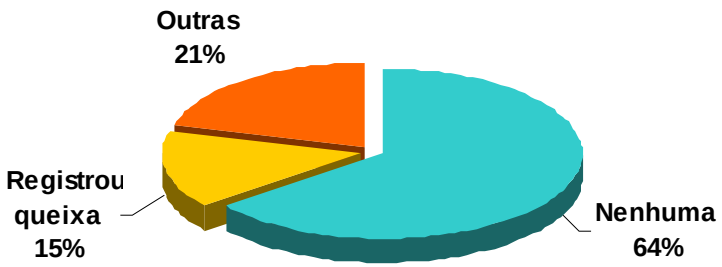
GRAPHIC 05: Have you ever been a victim of violence, corruption or abuse of authority by the police?



Legenda: *Não* – no *Sim* – yes

Those who affirmatively answered the question of whether to have been a victim of any police misconduct, were asked about the measure taken and the results are as follows.

GRAPHIC 06: Measure taken after having suffered any type of violence, corruption or abuse of authority by the police



Legenda:

Registrou queixa – pressed charges

Outras – other

Nenhuma – none

The answers to this question demonstrate that only a small part of the police misconducts are brought to the knowledge of the police controlling organs, as the *Ouvidoria* or the *Corregedorias* or the Public Prosecutor themselves. A recurrent problem faced by scholars who deal with the issue of violence and criminality is the under-reporting of crimes, especially of those referring to the institutional violence. The crime rate known by the authorities are evidently inferior to what in fact took place, because not every case is registered by the victims before the organ responsible. Apart from this problem, which is common to information on crime, in relation to the complaints against police officers there are other relevant factors, as, for example, the ignorance by the population about the *Ouvidorias* and other adequate channels for the reception of the complaints, in addition to the fear of reprisal.

In order to understand what makes the police have a deviant behaviour, the *Ouvidoria de Polícia*, in partnership with the Fundação de Amparo à Pesquisa de Minas Gerais – FAPEMIG, has conducted the research "Fatores que interferem no desvio de conduta dos policiais de Minas Gerais." [Factors that interfere on the police misconduct in Minas Gerais][7].

[7] This research is coordenated by Professor Luiz Alberto Oliveira Gonçalves, with the participation of Paola Bonanato, Tânia Maria Ricas, Herman Nébias Barreto, Edmilson Pereira Jr., Giuliano Augusto da Gama Silva and Herbert Márcio Penido.

This research aims to analyze the impact of different factors, already brought about by the theories that explain the deviant social behaviors, specifically police misconduct.

Although this research has not yet been concluded, the frailty of the police institutions may be emphasized as possible factor of influence towards the police misconduct, there is an institutional crisis therein which causes the inefficiency in exercising internal controlling over their contingent. In fact, one observes the difficulty the very police organizations face in controlling its members' actions, due to the excessive number of administrative appeals allowed in the process to punish a police officer. In the state of Minas Gerais, according to the principles stated in the Military Police Ethics Code, it may get to the elevated number of six appeals in only one case.

Another factor to be considered is what we may call "crime learning" or "differential association". This aspect would accentuate the influence of the environment over the misconduct, in other words, it emphasizes the fact that the criminal act is learned in the interaction with other individuals who have already practiced or do practice them. Taking this aspect into consideration, it would be very important to understand in what way the very police organization would contribute in the "building" of criminals. This factor must be thoroughly verified, but some information produced by the complaints to the *Ouvidoria de Polícia* offer some indication that certain battalions or police stations are target to a bigger number of defendants and complaints, according to what may be noticed in the following charts.

CHART 05: Defendants and complaints made to the mostly targeted battalions in the capital, metropolitan area and countryside – 2004

Department	Defendants	%	Complaints	%
Capital				
22º BPM - Belo Horizonte	79	*24,3*	32	*21,3*
13º BPM - Belo Horizonte	55	*16,9*	29	*19,3*
1º BPM - Belo Horizonte	51	*15,7*	20	*13,3*
16º BPM - Belo Horizonte	34	*10,5*	18	*12,0*
5º BPM - Belo Horizonte	33	*10,2*	13	*8,7*
Subtotal	252	*77,5*	112	*74,7*
Metropolitan Area				
18º BPM - Contagem	45	*38,5*	22	*37,9*
6ª CIA Ind - Vespasiano	25	*21,4*	9	*15,5*
33º BPM - Betim	21	*17,9*	11	*19,0*
2ª CIA Ind - Ribeirão das Neves	10	*8,5*	7	*12,1*
7º CRPM - RMBH	6	*5,1*	3	*5,2*
Subtotal	107	*91,5*	52	*89,7*

Countryside				
19º BPM - Teófilo Otoni	29	*15,7*	16	*16,8*
10º BPM - Montes Claros	17	*9,2*	7	*7,4*
15º BPM - Patos de Minas	14	*7,6*	5	*5,3*
31º BPM - Conselheiro Lafaiete	13	*7,0*	7	*7,4*
26º BPM - Itabira	10	*5,4*	6	*6,3*
Subtotal	83	*44,9*	41	*43,2*

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

Analysing the chart above, we may verify that there is a concentration of complaints in a relatively small number of battalions and independent companies and that this trend prevails, over all to the Capital and metropolitan area.

In the Capital, the mostly targeted five battalions are responsible for 74,7% of the total of complaints received, 22° BPM alone with 21,3% of the complaints.

In the metropolitan area of Belo Horizonte this situation is accentuated even further, with two battalions and three independent companies answering to 89,7% of the complaints. The 18° BPM – Contagem alone accounts for 37,9% of the complaints.

In the countryside, despite being less concentrated, there is a significant representativeness (43,2%) in five battalions, the 19° BPM – Teófilo Otoni alone with 16,8% of the complaints.

CHART 06: Defendants and complaints made to the mostly targeted police stations in the capital, metropolitan area and countryside – 2004

Department	**Defendants**	***%***	**Complaints**	***%***
Capital				
DEOESP - Dep. Estadual de Operações Especiais	24	*19,2*	3	*4,2*
DI - Divisão de Crimes contra o Patrimônio	23	*18,4*	10	*14,1*
Seccional 01ª - Centro	10	*8,0*	6	*8,5*
DI - Departamento de Investigações	9	*7,2*	8	*11,3*
DETRAN - Dep. de Trânsito de Minas Gerais	7	*5,6*	7	*9,9*
Subtotal	73	58,4	34	*47,9*
Metropolitan Area				
Seccional 08ª - Betim	13	*28,9*	8	*26,7*

Seccional 06ª - Contagem	9	*20,0*	6	*20,0*
Seccional 36ª - Barreiro	9	*20,0*	4	*13,3*
Seccional 10ª - Ribeirão das Neves	4	*8,9*	4	*13,3*
Seccional 11ª - Santa Luzia	4	*8,9*	3	*10,0*
Subtotal	39	*86,7*	25	*83,3*
Countryside				
05ª DRSP - Governador Valadares	25	*21,7*	11	*15,7*
49ª DRSP - Itabira	8	*7,0*	4	*5,7*
29ª DRSP - Sete Lagoas	7	*6,1*	4	*5,7*
08ª DRSP - Montes Claros	7	*6,1*	6	*8,6*
12ª DRSP - Ponte Nova	6	*5,2*	2	*2,9*
Subtotal	53	*46,1*	27	*38,6*

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

It may be noticed, that also in relation with the Civil Police, there is a concentration of complaints and defendants in certain Police Stations. The metropolitan area concentrates the biggest number of complaints in a small number of police stations: 83,8% of the complaints are directed to only five police stations, among which the 8ª Sectional Police Station in Betim alone with 26,7% of the registered complaints before the *Ouvidoria*.

In the countryside, the 5ª Regional Police Station of Public Security in Governador Valadares alone accounts for 15,7% of the complaints.

In relation to the Military Fire Brigades, in the year 2004, the *Ouvidoria de Polícia* received only eight complaints, of which four are directed to the 1° BBM and one to the 2° BBM, both in Belo Horizonte. In three of them, the complainants were not able to inform which Brigade they were referring to.

Concerning the nature of complaint, the "Infração Disciplinar" [disciplinary infraction] stands out, being the core of four cases. Following, the complaints of "Ameaça, Má qualidade do Atendimento" [threat, bad quality of services] and "Negligência" [negligence] make two cases each. The low number of complaints against military fire fighters is explained by the very nature of their work, characterized by direct contact to the population only in critical moments.

Another factor yet to be observed refers to personality deviance. Deviant behavior is motivated by aggressive impulses and instincts potentized by the very police activity. In order to comprehend the significance of such factor, the comparison between police officers who commit misconducts and their admissional psycotechnical exams has been made, observing above all those who were incorporated to the police force through judicial orders that annulled the psychological test.

CHART 07: Results to the Psychological Exam undertaken by Admitted Military Police Officers between 1994 and 2002 – Minas Gerais

Results to Psychological Exam	Absolute figures	Percentual (%)
Indicated	3.073	29,15
Indicated with restrictions	2.107	19,99
Counter-indicated	1.901	18,03
Eliminated	3	0,02
Not verified	3.459	32,81
TOTAL	**10.543**	**100**

CHART 08: Incidence of counter-indicated Military Police Officers after their psychological exam, admitted between 1994 and 2002 – Minas Gerais

Year	Frequency
1994	631
1995	691
1996	168
1997	2
1998	11
1999	26
2000	-
2001	-
2002	372
TOTAL	**1.901**

Source: Research data.

Obs.: (-) corresponds to zero registrations.

From 4008 counter- indicated and indicated with restrictions between 1994 and 2002, 47,4% were admitted by judicial order. The study tries to analyze whether those counter- indicated and indicated with restrictions are among those who committed crimes and misconducts.

The qualitative stage concluded in the research "O que a população pensa da Ouvidoria" [What the population thinks of the *Ouvidoria*], through the Focus Group technique, showed that the participants believe the bad selection of police officers to be a major factor causing misconduct, because it ends up putting inapt professionals out on the streets, with no conditions to deal with situations of tension inherent to the job. This is an interesting element because it points towards a point of view, among those interviewed, that a lot of misconducts are due to individual behavior. In fact, when we recall data from the

Ouvidoria itself, we realize there is a concentration of complaints of misconduct against some police officers.

The results of this research are expected to be out soon.

Another important research conducted by the *Ouvidoria de Polícia* and which is able to clearly show something about the behavior of the police officers in Minas Gerais is the "Estudo da Letalidade das Intervenções Policiais de Minas Gerais" [8] [Study on the Lethality of Police Interventions in Minas Gerais]. Its goal is to gather facts on cases in which police officers have wounded or killed civilians through the use of firearms, or oppositely, were wounded or killed the same way, in the years 2002 and 2003.

It was found that, in the two reference years of the research, there was a total of 490 cases in which firearms have been fired, involving military or civil police officers or firefighters, during duty as well as off-duty. Among those cases, 32% took place in Belo Horizonte, capital of the state; 24% in the metropolitan area of Belo Horizonte and 44% in the countryside of the state.

As for the cases gathered, there were a total of 270 wounded opposers and 151 of them killed. The term "opposers" refer to civilians that went into situations of confrontation with the police, regardless of their motivation.

Although the period of reference in this study is different, we may compare these data with the information recently released on the states of São Paulo and Rio de Janeiro, between the years 1999 and 2004. During this period, 4755 people were killed in confrontations with the police in Rio de Janeiro and in the same period, in São Paulo, 5134 people were killed. It is worth bringing out, that the population of São Paulo is approximately two times bigger than the population of the state of Rio de Janeiro, and that the statistics on São Paulo incorporates most deaths occurred when off-duty.

It is verifiable therefore, that although the number of dead and wounded by firearm in Minas Gerais is high in comparison with the international context, it is not one of the most alarming rates in comparison with the other brazilian states.

The same is to be seen concerning the number of wounded and dead officers by means of firearm, since it is a high rate in relation to the international context, and a low rate considering the brazilian context. Adding civil and military officers there is a total of 111 wounded and 48 dead in the state of Minas Gerais.

Nevertheless, the growth of the numbers of dead and wounded not only among officers but also among opposers in the year 2002 and 2003 is quite worrying, as shown at CHART 09.

[8] This research has not yet been concluded, considering that, all data given are partial.

CHART 09: Number of people involved, dead or wounded in confrontation with firearms in the years of 2002 and 2003

	2002	2003	Total
Involved			
Military Police	374	479	853
Civil Police	6	48	54
Opposers	336	554	890
Wounded			
Military Police	52	49	101
Civil Police	1	9	10
Opposers	121	149	270
Dead			
Military Police	12	22	34
Civil Police	2	12	14
Opposers	55	96	151

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

Analyzing the cases in relation to the type of policing being made at the moment in which the firearms were fired, from both sides, it is shown that the majority of police officers were conducting their activities of routine policing (71,2%). It is relevant to observe that in 17,3% of the cases, on the other hand, it took place while the police officers were off-duty.

CHART 10: Types of Policing

Type of Policing	Figures	%
Routine/Ordinary	349	71,2
Special Operations	12	2,4
Off-duty	85	17,3
Gig	4	0,8
Other	16	3,3
Not known	24	4,9
Total	**490**	**100,0**

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

Concerning the type of action in which the police officer was involved, it is emphasized that in 26,9% of the cases a suspect was being approached and in 23,5% the police officers were received with gun shots when answering a call or when patrolling a certain area.

CHART 11: Type of Action the Police Officer was involved

Type of action	Figures	%
Flagrante Delicto	94	19,2
Seizure in the name of the law	6	1,2
Approach of a suspect	132	26,9
Was received with shooting	115	23,5
Participation/ involvement in fighting and quarell	23	4,7
Other	86	17,6
Not known	34	6,9
Total	**490**	**100,0**

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

Crossing the information referring to the cases in which there were deaths with the type of policing, it is to realize that most of the so-called opposers (62,7%) died as the police officers were conducting activities of routine policing, in other words, answering calls, in the patrolling of certain areas or other pertinent activities to the police functions. On the other hand, 70,8% of the police officers died while off-duty.

It is also necessary to bring about the fact that off-duty police officers have killed 36 people through the means of firearms, as shown at CHART 10.

CHART 12: Number of civil and military police officers and opposers killed according to the type of policing

Type of policing	Officers	%	Opposers	%
Routine/Ordinary	8	16,7	94	62,7
Special Operations	0	0,0	7	4,7
Off-duty	34	70,8	36	24,0
Gig	0	0,0	3	2,0
Other	4	8,3	3	2,0
Not known	2	4,2	7	4,7
Total	**48**	**100,0**	**150**	**100,0**

Source: NEPE / Ouvidoria de Polícia de Minas Gerais

After analyzing all this information gathered, it was recommended to the Commanders of the Police Corporations that a more intense training to the restrictive use of firearm (defensive shot) be adopted, due to the elevated rate of cases detected in which police officers have accidentally wounded themselves in the handling of an instrument of work, the firearm. Besides, after realizing the growing number of wounded and dead between the years of 2002 and 2003, the need to create a surveillance system on the victimization of police officers and civilians in confrontation was verified. In order to

implement this tracking, it was suggested that all these cases be notified to the *Ouvidoria de Polícia*. Another recommendation made refers to the need to create mechanisms of support for the officers involved in a situation of danger, offering them then better working conditions.

The use of firearm by the police must be based on the criterion of proportionality, that means, on the prohibition of excess or on the principle of minimal intervention, being its use only legitime when at the same time *adequate* to the purpose aimed; *necessary*, in which there are no alternative less dangerous means than the firearm; and *proportionate* – in strict sense – not causing damage to the fundamental rights of people that would be notoriously excessive in relation to the benefits reached. Considering those criteria, the need to monitor the situations in which the police use the firearm was verified.

As of the recommendations of the "Estudo sobre letalidade da ação policial no Estado de Minas Gerais" [Study on the lethality of police action in the state of Minas Gerais], the Colegiado de Corregedorias dos Órgãos de Defesa Social, [Collegiate of Internal Affairs of the Social Defense Organs], where the *Ouvidoria de Polícia* of Minas Gerais has a seat, issued the resolution 01/2004, that establishes the mandatory character of the providing, to the *Ouvidoria de Polícia*, of data gathered from the records on homicides and physical harms involving police officers.

The researches conducted demonstrated the importance of sistemizing information related to the area of public security as a whole, in order to come up with a more efficient planning of actions, offering subsidies to guide the qualification and educational processes of the direct operators in public security.

Besides, the construction of a new model of policing based on the defense of human rights, shared task of the different levels of Government, of the organized civil society, of the police corporations themselves, and, without a doubt, of the *Ouvidorias de Polícia*, depends not only on the overcoming of the deep scars left by the dictatorial period but also on the investment on the education, qualification and training of the police forces.

The democratization of the public security depends on the need of creating interaction mechanisms with the population, with the organized civil society, among the different police corporations, with the universities and institutes of education, among other organizations.

IV – Proposals and conclusions

The execution of the work of external control of police activities must be increasingly based on the deep knowledge of the action context of the police, in the construction and analysis of detailed information that allow the Ouvidorias de Polícia to make suggestions for the development of public security policies, besides contributing for the educational process of police officers capable of working efficiently within the

boundaries set by human rights principles. In addition it is essential that the Ouvidorias acquire more autonomy to fulfil their activities, evident the need of institutional strengthening of Ouvidorias de Polícia in at least two fronts.

First of all, the Ouvidorias need material conditions: infrastructure and personnel. In order to achieve this goal it has been essential the fact that the National Public Security Plan reckons the making and strengthening of the organs of internal affairs and external control of the police forces in its guidelines. The existence and good peformance of the Ouvidorias constitute one of the factors that interfere in the allocation of resources to the states, what represents another incentive for the creation and strengthening of the Ouvidorias de Polícia.

Another very important aspect for this institutional strenghtening is the funding by the European Union through the Institutional Project of Support to the Special Office of Human Rights in Brazil, whose goal is to contribute for the consolidation of democratic accountability of brazilian police forces, particularly, regarding the respect of human rights and the reduction of violent methods in the maintenance of order and public security. This important project will allow us to provide the Ouvidorias of the country with technological resources and equipment, in addittion of the qualification of their staff.

Lastly, the Ouvidorias de Polícia are in need of legislative measures to acquire the status of functional independence, understood as liberty of action within the limits of their attributions; administrative independence due to the need of personnel of their own; financial independence, with specific budgetary provision. If not the extremely complicated task of preserving and defending human rights become quite ardous.

Only after the forty-five federal constitutional amendement on 8 December, 2004 that states that the human rights treaties and international conventions approved by the National Congress are equivalent to constitutional amendments, the Ouvidorias were incorporated in our constitutional text, since as said before they had been excluded by the National Constituent Assembly in 1988. However, only the Ouvidorias of the Judicial Power and of the Public Prosecution are included through the above-refered amendment. The Ouvidorias de Polícia continue to be ignored by the federal constitutional text.

Since the Ouvidoria de Polícia do not have a legal status within the Federal Union, the states have created this organs. Theres is a multiplicity of formats what could be prevented if there were general norms concerning the mode of selection and dismissal of the ouvidor, duration of the term, atributtions and powers, among others. This way it will be necessary to “fight for a good cause” in order to give to Ouvidorias de Polícia a more effective legal status to deal with the controlling of police activities.

Furthermore it wil be necessary to find legal means to give the Ouvidorias de Polícia investigative powers in order to increase the eficciency of its work. The complete dependence on the investigative procedures conducted by the Corregedorias prevents even the verifying the pertinence of complaints and critics sent to the Ouvidoria de Polícia of Minas Gerais, attributtion stated in the state law n.15.298/2004. Without the possibility of conducting investigations the autonomy of the Ouvidoria de Polícia is doomed, presenting a

a challenge to be faced by the social and political organizations, but mainly by the National Forum of Ouvidores.

Even thought the scenario is still far from ideal, regarding both the commitment of police corporations to human rights principles and pratices and the capacity of the Ouvidorias de Polícia to apropriately do their job – due to the limitations already discussed, the advances achieved are evident. When we observe history what remains is clear, as Roger Lane says, “what is has not always been like that and does not need to be this way”. The cultural and institutional changes sometimes happen less quickly then we would like it to, but certainly if we commit ourselves to a better future so it will be.

Independent Police Complaints Commission (England and Wales)

New System

The new Independent Police Complaints Commission (IPCC), which started work in April 2004, evolved from a series of previous systems and followed several reports and studies which highlighted the need to move from a supervisory role to a greater independent function in relation to police complaints and conduct issues in England and Wales. These reports included:

- The Scarman Report - The Brixton Disorders 10-12 April 1981;
- The Home Affairs Select Committee - 16 December 1997;
- The Stephen Lawrence Inquiry - February 1999, recommendation 58; and
- An Independent Police Complaints Commission, - James Harrison and Mary Cunneen, Liberty, April 2000.

The IPCC replaced the Police Complaints Authority (PCA) which was first set up by the Police and Criminal Evidence Act 1984. The new system has changed the way complaints against the police are investigated and was part of a wider package of measures brought in by the Government in the Police Reform Act 2002. The aim of the new system is to raise standards of complaint handling and investigations into misconduct across all forces in England and Wales, as well as to boost public confidence in the police service as a whole

IPCC Structure

The IPCC was set up by statute and its independence is set out in legislation and has therefore been guaranteed by Parliament itself. The IPCC is a national organisation that is regionally delivered across England and Wales. This is achieved by having four regional offices:

- London – London and South East England
- Cardiff – Wales and South West England
- Coalville – Central England
- Sale – Northern England

Nick Hardwick is the Chair of the IPCC, and he was appointed by Her Majesty the Queen, following recommendation by the Home Secretary. The IPCC's Deputy Chair, John Wadham was appointed by the Home Secretary. They are responsible for setting direction and policy, and for overseeing the Commissioners. They are the final authority for IPCC decisions. The Chair has ultimate responsibility for the oversight (or guardianship) role of the IPCC and for increasing confidence in the system with external stakeholders.

The IPCC have 15 Commissioners who by law must not have a police background. The Commissioners are the public face of the IPCC and are accountable for its work; they are also public appointees, appointed by the

Home Secretary for a period of five years with the possibility of a further five year extension. The Commissioners are responsible for the governance of the IPCC as a whole, guardianship of the complaints system, as well as the strategic direction and final determination of individual cases. They each have responsibility for overseeing the complaints process in designated forces in England and Wales.

The Chair, Deputy and Commissioners all have security of tenure and the process of their appointment (or dismissal) is set out in the legislation.

Area the IPCC covers

The IPCC powers apply to all Police Forces in England and Wales (currently 43) and cover both police officers and police staff. There are:

- 141,000 Police officers,
- 6,000 Community Support Officers,
- 11,000 Special Constables
- 71,000 Police Staff.

These officers and staff serve the population of England and Wales which is currently 53 million.

The IPCC power applies to police conduct and misconduct but has no responsibility for direction and control (allocation by the police about deployment of resources or general policies). The legislation requires all forces in England and Wales to automatically refer serious incidents (called mandatory referrals) to the IPCC.
Mandatory Referrals include:

- death or serious injury
- serious assault
- serious sexual offence
- serious corruption
- serious discriminatory behaviour on the grounds of race, sex, religion
- other serious cases

The Commissioner for the force where the incident occurred will decide whether the incident should be independently investigated. The duty on the IPCC to consider whether an investigation should be undertaken does not in fact require a complaint to be made and is initiated by the duty on the police to refer cases involving death or serious injury to the IPCC under the Police Reform Act 2002, Schedule 3, paragraph 4(1)(a). The IPCC also has the ability to call in and independently investigate issues of serious public concern. This is not solely based on the seriousness of the incident but how it affects public confidence in the police service.

Aims of the IPCC

Increasing confidence in the police complaints system through setting standards is part of the aim of the IPCC. The IPCC have just created Statutory Guidance which came into effect on 1st December 2005. This guidance sets out legal standards around the handling of complaints by police forces.

Previously to the IPCC's creation, serious incidents were investigated by an external police force to that in which the incident occurred but still by other serving police officers. This approach came into criticism as it was felt that this could lead to bias due to the lack of independence in the investigation.

"The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."
R v Secretary of State for the Home Department ex parte Amin, October 16, HL, 2003 Lord Bingham at para 32.

With the IPCC independently investigating serious incidents this leads to increased openness and will help to bring justice for all as the investigation will be impartial investigated by an independent body. As external forces no longer investigate serious incidents this reduces the demands made on frontline policing and means that these resources can be fed back into operational policing.

As the IPCC investigate the most serious incidents, recommendations are also made on police practices. These recommendations can identify learning that needs to be fed back into operational policing. Ensuring that forces learn from these lessons can increase public confidence in the police service. This learning becomes vital in preventing deaths in custody.

New Powers

The IPCC can direct that the investigation into an allegation of police misconduct is carried out in one of the following ways

- **Independently**
- The IPCC have their own trained investigators (now over a hundred staff) that can carry out an investigation. These investigators have the same powers as police officers which include access to police premises, all documents and evidence and they take over the investigation as soon as possible. The majority of these IPCC investigators (70%) have never worked for the police.
- **Managed**
- The IPCC have direction and control of the investigation and the investigating officer is a member of IPCC staff but the investigation is

actually carried out by police officers usually from a different police force than the one where the incident occurred.

- **Supervised**
- The IPCC agree the appointment of an Investigating Officers from a police force and the terms of reference for the investigation is agreed with the Commissioner. The staff carrying out the investigation can either be from the same force or an external force. There are criteria under which the complainant can appeal to the IPCC should they be dissatisfied with the outcome of a supervised investigation.
- **Local Investigation**
- The investigation is carried out by the police force where the incident occurred. This level involves no IPCC involvement during the investigation stage. There are criteria under which the complainant can appeal to the IPCC about the outcome of a local investigation or the non-recording of the complaint by the police.

These different levels of investigation ensure that the response to an incident is proportionate and allows the IPCC to remain involved in a case during its investigation but not using its own resources.

The following criteria are used in deciding how the case is investigated:

- Seriousness of incident
- Potential for significant public concern
- Potential for significant impact upon the well being of communities
- Likely impact on the trust in police at the local or national level.

However, each case is unique and will need to be assessed individually and on its own merits. It is therefore impossible to set down prescriptive guidelines, but it is important that the IPCC approach is consistent nationally.

The IPCC's ability to respond effectively will be a major factor in determining the nature of the IPCC's involvement in a case. In many cases the true significance of the case will not be immediately apparent; it may often be therefore that a case is supervised or managed for the first 24 hours and then a decision is taken to switch to a different level of involvement when the position is clearer.

The IPCC will keep under constant review the classification of investigations in order to maximise our effectiveness.

Case study: The Fatal Shooting of Jean Charles de Menezes

- Jean Charles de Menezes shot dead by armed police on 22 July shortly after boarding a train in Stockwell Underground Station

- Initial reports that unnamed deceased was a suspected suicide bomber followed by acknowledgment by police on 23 July that Mr de Menezes was a Brazilian national with no links to previous bomb attacks

- All incidents involving the police where there has been a fatality must be referred to the IPCC – the London Metropolitan Police Service (MPS) resists this initially but ultimately agrees to hand the matter to the IPCC

- In August confidential information relating to the investigation is leaked to a television station

- In the succeeding days further information emerges and widespread concern is expressed in the media about how the case has been handled by the police and the IPCC – most notably by Mr de Menezes' family and lawyers and campaigners representing them

- The IPCC asks Bill Taylor, a former senior police officer and Inspector of Police in Scotland, to conduct an investigation into allegations that the confidential information came from a source in the IPCC

- The main IPCC investigation into Mr de Menezes' death was concluded at the end of 2005 and the report was sent to the Crown Prosecution Service to decide whether any of the police officers will be prosecuted for a criminal offence.

IPCC 230106

S. R.

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA

Inspecção-Geral da Administração Interna

TRANSLATION[*]

Original: Portuguese

The changing process in police forces: the Portuguese case and its effects in the redefinition of good police practices

Introduction

The several studies on Policing[1] show that police organisations have been integrating, for the last few years, new practices in order to give a new response to crime and insecurity, to the consolidation of democracy and citizenship, to the management of public expenses, in a search for more efficiency, efficacy and accountability.

Hence we may state that good police practices are not solely restricted to the bunch of measures whose aim is to ensure the respect for the individual rights consecrated in the national and international juridical texts, but that they also include those measures that meet the real needs of security of the citizens, that stress the transparency and excellence of public service, that are efficient and ethically irreproachable[2].

[*] Translated by Maria da Conceição Santos, Senior Technician at the IGAI.

[1] Namely some juridical and sociological studies published in Portugal, Spain, France, Canada and England to which we had access.

[2] In the scope of the theme police and human rights and under the auspices of the programme "Police and Human Rights 1997-2000" of the Council of Europe, a guide was elaborated in 2000, by an informal working group, which allows police forces to understand in what measure their professional practices respect and promote the democratic rules and values consecrated by the Convention. This document includes a schedule with a description of actions (in the framework of staff, training, management, operations, structures, responsibilities), tests and indicators that make possible to evaluate the way in which human rights are being implemented. See Ministère austrichien de l'intérieur (2000), La Police dans une Société Démocratique – La police: Championne des Droits de l'Homme.

It is a fact that the main national and international juridical texts consecrate, either implicitly or explicitly, the need to integrate human rights in police practice. Many of those texts, namely the Portuguese Constitution, the Code of Criminal Procedure, the Code of Ethics of Police Forces, the Regulations of the Material Conditions of Detention in Police Premises[3], the United Nations Code of Conduct for Law Enforcement Officials of 1979, the Declaration on the Police and the European Code of Police Ethics of the Council of Europe, establish a set of imperatives, advices and suggestions which must be observed by police forces in order to respect the democratic values and the human rights.

We may say that nowadays the legal texts in force are enough to support a change in the sense of the implementation of new global police practices. Accordingly, the great challenge lies not so much in the elaboration of new legislation, but rather in the effective integration of human rights and the concepts of quality and excellence in the daily activity of police forces. That concrete assimilation requires, thus, some work regarding the different components of formal and informal structures of the organisation, from the operation to the recruitment, training, management, structures and responsibilities. This is about to include police activity within its own triple dimension – cultural, normative and inter-relational – and, accordingly, to find the formulae for the change. We must bear in mind that this task is also influenced, to a greater or lesser extent, by external factors and entities, particularly by political power, citizens, external services of inspection and audit, rival police forces, and so on.

We may still say that the reform challenge, in the sense of the introduction of new police practices, is not so much based on the diagnosis of

[3] See Order No. 8684/99, issued by the Minister of Home Affairs, published in the Official Gazette, II Series, No. 102, of May 3, 1999.

problems, but rather on the process and contents of the change. As a result, in order to choose the methodology that is more suitable to a changing process, we must understand the police as a rational and professional structure. Besides, it is imperious to know the processes and the contents of the change, i.e., how to change and what to change.

This is what we intend to do, in an analytic way, in the first part of this paper. In the second part, we will analyse, in the light of the concepts dealt with in the first part, the changes introduced in the police system, particularly in the civilian police force (PSP), during the last ten years.

Part I – Understanding the police changes

A – Reflecting upon police structure and activity for a better definition of good police practices

Police corps, because they have the power of the monopolistic exercise of lawful violence, are, in Weber's conception, one of the primary elements of rationality of modern states. It seems thus to make every sense that police organisations be based on solid structures, very close to the unpolluted models. In abstract terms, we may say that police institutions, due the specificity of their mission defined as a "mechanism of distribution of coercive force, non negotiable, at the service of an intuitive understanding of the demands of a

situation" (Bittner, 2003: 60)[4], presuppose a rationality, such as defined by Max Weber[5] and Taylor[6].

Reality is however very different and the empirical observations show that police work is not a totally prescribed activity. The organisational actors enjoy an important margin of manoeuvre in their daily action (Gatto and Thoenig, 1993: 20). The several studies about the police (in the fields of political science, criminology and sociology of organisations) show that what was supposed to be an "unpolluted" model of organisation, governed by clear prescriptions, is after all formed by a complex web of formal and informal connections among the internal actors, the *stakeholders* (politicians, staff, unions and private bodies), and the citizens. We may say that police organisations, because they comprise those intrinsic and extrinsic dynamics, are the generators of rationalities that go beyond the institutional framework and the normative interests. For this reason, notwithstanding the acknowledgment that police activity has multiple facets, it is, consequently, out of the question the thesis that defends the simple idea of police corps as pure instruments (Mann, 1994: 435-436).

Police activity, besides being a profession that develops its own interests, is also subjected to a strong influence of the political and societal environment, for the obvious reason that it depends, administratively, on the political power and is at the service, in interaction, of the community. Those ties may give

[4] The Canadian criminologist Jean-Paul Brodeur (1994), despite recognising the importance of the acception, considers that the theory of Egon Bittner does not know the diversity of the social functions guaranteed by the police and that it is established on the base of urgency, reaction and political intervention criteria, being thus omissive regarding an important part of police activity, ignoring furthermore three important areas of their activity such as information, prevention and proactive actions.

[5] To whom a bureaucratic organisation must be bound by norms and regulations; based on a systemic division of work; whose posts are established according to a hierarchic principle; with norms and technical rules established in accordance with each function; where the officers selection is made according to each one's value; based on the separation between owners and managers; which requires resources free from any external control; and which is characterised by the professional standards of their officers (Bilhim, 2001: 42).

[6] To whom efficacy in the work was obtained by the definition of scientific methods, which should also be used for the selection of workers.

origin, in a negative perspective, to practices that go against the human rights and lead to the instrumentality of the public force. Being aware of this reality, societies have institutionalised solutions to prevent and fight these problems, namely external solutions, at the level of democratic control and accountability, and internal, namely the reinforcement of organisational maturity of police corps. We must note that, in this last case, that the more the professional culture and police elites (management, unions and representative organizations) are structured, the higher will be the level of performance regarding the protection of persons and property and the resistance to a certain instrumentalism deprived of ethical references.

The empirical works on police activity are unanimous in recognising that the professional culture, the formal and informal interactions that are created inside the police organisation and the contacts with the citizens (the customers) generate an important degree of institutional autonomy, secrecy and aggressiveness in police action. The role of the citizens, as witnesses and victims, plays, in this matter, a fundamental part (Black, 2003). The several studies underline the importance of a specific culture inside the Police, where mistrust, the feeling of a deep incomprehension between police and citizens and the secrecy govern like a process of defence against a society that is seen as hostile and menacing.

The vehicle of internal solidarity, the intellectual traditionalism and the aggressiveness are often seen as the only solutions to keep the cohesion and impose the respect for the authority (Westley, 1970, Monjardet, 1996: 156-157).

The different analytic visions enhance the difficulty of assuring, in the field, an efficient control of police officers by the hierarchy, in the sense that being police activity in the field the result of an informal and constant process of selection of the tasks and the way of acting, the hierarchy, reportedly rigid, has a non-continuous nature, being often absent (Reiss, 1968, Monjardet, 1994:

394). We observe, in the decision process, a kind of inversion of the role of the hierarchy, where the incident, the unforeseen and the sensitive decision came from the lower level of the hierarchy. Accordingly, the administrative supervision is largely dependent on the information given by the very actors and thus the success of the reforming measures depends almost always on the will of those same actors (1997: 92-93).

We must however recognise that not all police activity is similar. It spreads, *grosso modo*, for three distinct areas of police production. We have thus a branch of public order, criminal investigation and public security. Each of those branches is subjected to supervision, dynamics and different processes that have an influence upon the internal and external behaviours, creating, necessarily, specific cultures and groups within police organisations. This triple division of police activity leads to an emergent debate around the aim and the tasks that are inherent to the police mission.

We have three different conceptions regarding the role of the Police. On the one hand, those who defend that the police are at the service of the population, being thus polyvalent and preventive. A kind of fire-fighter. On the other hand, those who defend a merely juridical conception of police work, devaluating the police prevention and social support functions. We have yet the police of the order at the service of the political power, i.e., the public force, instrument of the State to wipe social conflicts out when they cause an alteration in public order.

We must also refer that some theories try to enclose police organisations on basic models, trying to find a support for their structures and practices within their own legal, political and social systems where there are integrated. There would thus be an Anglo-Saxon police model, with greater social concerns, and a European-Continental police model, with less social concerns and more political concerns, being thus, this last model, subjected to a greater

instrumentalism (Reith, 1952; Bayle, 1992, 2204). In the authoritarian regimes is mainly in force a police model of surveillance, characterised by its centralised structure and by the priority that is given to public order. In the democratic societies that are still very little opened to citizenship, there would be a police model of a legal nature, with a centralised structure and an organisation and tasks perfectly established by norms, non discretionary. And, finally, in a democratic society totally opened to citizenship, we would find a police model of public service, characterised by being decentralised and close to the community (Wilson, 1968).

B – The process and the contents of change, having in mind good police practices

The inclusion of good police practices in police action and in police corps may result from a changing process of a strategic or incremental nature, macro or micro. However, so that the change may include the various organisational dimensions, it must comprise three fundamental elements, i.e., the context (internal and external analysis[7]), the contents and the process.

The changing context[8] is given by means of diagnosis. Accordingly, the external context of police reforms concerns the dynamics of society, politics and technology, which pushes the organisation in the sense of the change. Regarding the internal context, it concerns the very organisational actors, their specific culture, the organisational structure and the operational performance. We must bear in mind, as referred by Bernoux (1985: 201-206), that all change

[7] It may be done in accordance with the SWOT (Strengths, Weaknesses, Opportunities, Threats) technique of analysis (Tavares, 2004: 121).

[8] So, the diagnosis to the organisational context, both exogenous and endogenous, must result from the acknowledgment of the need to change the action and organisational capacities, the strong and weak points, the threats and the readjustment of the resources in order to optimise the critical factors of success (Bilhim, 2001: 420).

is only accepted insofar as the actor of the change considers he has a chance of winning something with the process.

The factors that press police forces in the sense of a change present different natures. We must enhance the need to improve the model of State through the implementation of action and control measures of police practices, having in mind the reinforcement of democracy and, especially, human rights; the compulsory duty to make amends to the lack of efficacy of the traditional model of police in order to give an answer to crime and insecurity; to fight the excess of bureaucracy or the lack of it[9]; the need to correct procedures that are not so transparent as they ought to be, through a new accountability; the compulsory need to reduce the distance of police forces in relation to the citizens, reinforcing thus their legitimacy and their subjection to strong financial restrictions.

Knowing the general factors that put restrains to changes, we must choose the contents of the change, i.e., we must decide what changes to make. These changes may focus, for instance, on the organisational structure (including the normative system), on police practices, technologies, behaviours and culture. In what concerns the changing process, all theoretical frameworks adopt the system of phases, steadiness, communication and leadership as the basic elements of the changing process. In this scope, the several authors defend that an efficient changing process requires, namely, that we begin by mobilising the organisational actors through a joint analysis of the problems, continuing that process through the development of a shared vision on how to organise and manage the problems; by encouraging the consensus about what we want to change, training people for the action and instigating the cohesion (Bilhim, 2001: 425).

[9] In the sense that a better bureaucracy and more ethical principles of public services are needed (Mozzicafreddo, 2003; Pitschas, 2003).

We know that the new paradigms that give form to the contents of the reforms of public organisations, i.e., their structures and practices, appeared as a criticism to the bureaucratic model[10] and can be accommodated in two great management currents, named the *New Public Management*[11] and the *Reinventing Government*[12]. These two movements include, namely, management tools of the private sector and the idea of transforming the users of public services into costumers. Within these movements, new strategies and management tools have emerged, from which we must make a special reference to the search for excellence, the management by objectives and the management of performance, the management of total quality, the organisational reengineering (Chiavenato, 2000: 663-669). These new paradigms brought a revolution to the structures, practices and inter-relations between the organisational actors.

Just like the other public organisations, also police corps have been, during the years, incorporating new rationalities without being immune to these new theories of management. By the end of the 70s and beginning of the 80s, the Weber's or Taylor's police model, known as professional police model[13], is put into question (Trojanowicz and Buquereaux, 1994; Normandeau and

[10] Accused of refusing the face-to-face; of closeness and lack of communication; of giving too much attention to the rules, leaving aside the efficacy; of an attitude of taking away responsibility; of lack of initiative; of lack of flexibility and adaptation; of difficulty in the management of change; of the excess of control *a priori*; of taking away responsibility from the hierarchy, of the immediate management, in prejudice of foreseen management.

[11] The *New Public Management* is the name given to a set of doctrines that appeared by the end of the 70s in the Anglo-Saxon countries, whose prime idea is to consider that the management in the private sector is superior to that of the administration in the public sector (Hood, 1991).

[12] The management movement known as the *Reinventing Government* is based on the idea that it is necessary to reinvent the Public Administration in order to face the excess of bureaucracy, creator of perversions and inefficacies. Its theoretical support is the book by David Osborne and Ted Gaebler (1992) entitled *Reinventing Government – How the entrepreneurial spirit is transforming the public sector*.

[13] Characterised by scientific accuracy and professionalism, as forms of safeguarding police forces from political influences and put a stop to a high level of corruption in police corps. The main criteria for the assessment of police productivity are the number of solved processes, the number of denunciations presented to the police and the response time taken by police to answer the calls from the public (Normandeau and Leighton, 1992). This model was born in the late 19th century, early 20th century, in most Westerns countries as a response to corruption problems resulting from the close relationships between the police and the world of politics, the low salaries, the lack or insufficiency of technical and training resources.

Leighton, 1992). That questioning results, on the one hand, from the excessive importance ascribed to the technological factor and the lack of capacity to provide an answer[14] to an increasing search for security caused by a growing feeling of insecurity[15]. The technological factor is pointed out as having contributed to the detachment and isolation of police institutions from the citizens, which ended up in an emergent crisis of efficacy and legitimacy of the said model (Bayley, 1994). However, we must also not forget the emergence of racial disorders in some North American cities in the 80s, reinforcing thus the need for a greater closeness between the police and the community.

It was in Anglo-Saxon countries, around the 80s, and only later in the Continental European countries, that the first models of policing appeared, i.e., community policing and problem oriented policing. These paradigms incorporate what we may call the new policing practices. Community policing[16], according to Skogan, "far from being restricted to a mere tactical plan, implies the reform of decision making processes and the emergence of new cultures within police forces. It is mainly an organisational strategy, which redefines the objectives of police action in order to guide the future development of police services" (Skogan, 1998: 113-114).

Problem oriented policing is based on the book by Herman Goldstein (1990) and the work of the Police Executive Research Forum, lead by William Spelman and John E. Eck (1986; 2000). This new concept appeared as a critical response to community policing (Brodeur, 1998: 286). We may say that it

[14] A study carried out in the North American town of Kansas City between 1972 and 1973 showed that random motorised patrols have little dissuasive effect upon possible offenders (Kelling and al, 1991).

[15] The studies carried out in most Western countries, namely in France, Spain and Portugal, show that insecurity is one of the main worries of the populations.

[16] Community policing is based on the organisational decentralisation and reorientation of patrols, in order to make easier the communication between the police and the public; it presupposes an orientation in the sense of a police action centred in and directed to the resolution of problems; it compels police forces (from the moment they ascertain the local problems and their priorities) to be attentive to the citizens' demands; it means to help the neighbourhoods to solve by themselves the problems of delinquency, due to community organisations and programmes of crime prevention (Skogan, 1998: 113-114).

is about an expertise[17] policing, in the line of community policing, but comprising a more proactive and preventive action, in which the community is "invited" to participate[18] through the creation of partnerships. This new strategy ascribes a primordial importance to the nuclear areas of police activity, implying consequently organisational and procedural changes (Goldstein, 1990: 32). The problem oriented policing model requires new professional skills, demanding an organisational change, namely at the level of the human and material resources management, imposing a modern police manager who will adopt a management style characterised by flexibility, leadership, communication and a deep professional commitment (Murphy, 1998: 238).

To these new models is often wrongly associated an idea of zero tolerance police practices. These practices are based on the assumption that the fight against the most serious criminality must begin by the repression of the smallest offences or breaches of public order, according to the famous theory of the broken windows by Wilson and Kelling[19] (1982).

The paradigms we have just briefly mention are included in what some actors call proactive police management, presenting the following common points: their aims focus on the prevention of crime; they require a strong support by the police and social community; they are based on modern bureaucracy and supervision and control techniques; they are based on multi-disciplinary teams; they use the modern techniques of internal and external communication, supported by the new technologies; they integrate the new models of planning and funding; they ascribe a great importance to strategic planning techniques;

[17] According to Goldstein (1990), problem oriented policing has two main purposes: first, to find out and analyse the causes of the problems that have an incidence over criminality; second, to develop efficient actions to solve, in a permanent way, those problems.

[18] An example of these groups are the Committees of Public Security, created by the Quebec Sûreté.

[19] James Wilson and Georges Kelling (1982) put in evidence the reciprocity link that exists between delinquency and the feeling of insecurity through the introduction of a third element, called "broken windows". If a small disturbance is not controlled or repressed in due time, we can enter a spiral of social fall, from which results the feeling of insecurity and the weakness of informal social control, which turns these factors into a stimulus for the practice of more serious criminal activity.

they use strategy and management by objectives, consulting all partners; they optimise modern technologies and rely on the model of leadership (Thibault, Lynch and Mcbride, 1998: 11).

We can not ignore, however, that the introduction of the modern police practices, shaped by the models above mentioned, have been the object of critical considerations. One of them concerns the issue of the difficulty of defining the result indicators based on the results socially produced, such as crime and insecurity, mainly due to their uncertainty and ambiguous nature, which makes them difficult to measure. Another criticism speaks of the import of client's terminology to the police area, pointing out that despite the fact that police action is characterised by the capacity to exercise coercive power it makes no sense to treat the offenders or prisoners as clients (Crawford, 1998). The last criticism concerns the modality of zero tolerance, mainly due to the ethical drifts that usually result from its application. We can not forget that its implementation in New York, as noted by Loic Wacquant (2000), brought to gaol hundreds of beggars and other homeless persons only because of their condition, in a process that was called the criminalisation of misery. Besides, as noted by Peak, Gaines and Glensor (2000: 228), the complaints against the police by abuse of authority increased more than 50 percent in the period comprised between 1990 and 1997.

This proves that not all practices that seek a new efficacy are friendly to human rights.

Part II – The Portuguese case: the incorporation of new police practices

For the last ten years we have been watching the incorporation, in Portugal, of reformative measures that have, almost all of them, a micro nature

and that fall upon the material and technical structures of the organisations and their practices. We do not ignore that, in parallel and in another dimension, are on the way some processes of strategic change and of a cultural basis, namely as a result of the institutionalisation of initial training structures in the Police of Public Security (PSP), in the National Republican Guard (GNR) and in the Criminal Police (PJ), which began in the 80s, and from which we can point out the High Police School (nowadays High Institute of Police Sciences and Domestic Security), in the case of the PSP, and the Institute of Police and Criminal Sciences, in the case of the PJ.

A – The security policies between 1995 and 2005: the political agenda of security

In 1995, public security was the motto of the political party campaign that later would form the government. The government promised the proximity of the police towards the citizens; the creation of municipal police forces and the so-called municipal security councils[20]; the creation of an Institute of Police Sciences and Domestic Security; the launch of an integrated policy of delinquency prevention through the creation of partnerships; the updating of the statutes of the security forces in the sense of studying thoroughly the civil values of those police institutions. We may say that from that moment the security forces were put on the political agenda and there was a way for changes.

The first changes began with the matter of the training of the security forces. In that sense, in 1997 a working group was created to establish and

[20] This is an organism based on partnerships, created by Law No. 33/98, dated July 18, 1998. It is a municipal entity with consultative, communications, information and cooperation functions in matters of security. It must, namely, advise on the evolution of the levels of criminality within the municipal area, on the legal number of security forces and their operational capacity in the municipal area. This council is formed by the mayor, who presides, the member of the local government in charge of security matters, the representatives of organisms of social service, representatives of economic associations, unions and a group of citizens to be chosen by the municipal assembly. This law was never regulated.

follow up a continuous training programme, at a distance, especially for the security forces. In 1998 this group was institutionalised as the so-called Consultative Council for Training of the Security Forces and Services[21] (CCFFSS). This council worked as a mission group with the purpose of assisting the minister regarding the implementation of the global training plan; the improvement and conciliation of the training plans and processes of the security forces; the planning of training of security forces and services staff and corresponding assessment. In practice, this service centred its activity on the continuous training of the agents and officers of the security forces, having into account the emptiness that was present there. Besides the training programme at a distance that was meant to all officers of the PSP and GNR, a total of 48,000 police/military officers, the consultative council developed a set of professional training actions in various thematic areas, such as leadership, relationship with the press, insecurity (…).

The training at a distance was the most visible initiative, allowing the provision of all precincts and units with audio-visual equipment, approaching training themes in the scope of professional ethics, namely the modules of fundamental rights, patterns of action, protection and support to immigrants and ethnic minorities. We may add that the initial training contents were too pragmatic and very little in accordance with the effective needs of police forces.

In the scope of this council, three working groups were formed in 1998 who proposed changes at the level of the recruitment and selection processes of the security forces, training and community policing[22]. From this work resulted, namely, some curricular changes in the study plans of the courses for the agents and officers of the PSP and GNR (in an attempt to introduce a training based on pedagogic objectives – most school trainers received the

[21] Ministerial Order No. 78/98, dated July 7, 1998.

[22] Group No. 1 was directed at the analysis of functions, features of the categories, recruitment and selection; Group No. 2 was directed at the curricular development of training; and Group No. 3 was directed at community policing.

training course for trainers); actions of awareness regarding community policing; besides the elaboration of a study about the profiles of authority agents.

However, during this period the training structures of the police did not incorporate the necessary changes.

Besides training, which is seen as one of the main measures of modernisation of the security forces, we must also point out the implementation of a set of measures of a normative nature, in the line of modernisation of the system and of the police organisations. We must refer the nomination of a civilian as police director[23]; the institutionalisation of the Inspectorate General of Home Affairs, which pointed out gaps regarding procedures, means and practices in the security forces, namely in the field of human rights[24], allowing the improvement of police methods and practices; the normative establishment of the PSP as a civilian force[25]; the norms for the exercise of union freedom in the PSP[26]; the implementation of a disciplinary statute for the GNR, no longer subjected to the norms of military discipline; the adoption of a code of ethics of police service for the security forces (PSP and GNR)[27], applying thus to the national legal system of policing the Declaration on the Police (Resolution of 1979 No. 690 of the Council of Europe) and the European Code of Police Ethics (Recommendation adopted by the Committee of Ministers of the Council of Europe, dated September 19, 2001).

[23] Amendment introduced by Decree-Law No.2-A/96, dated January 13, 1996.
[24] According to its former Inspector General, Mr. Rodrigues Maximiano, the implementation of the Inspectorate General of Home Affairs, besides having created and implemented a new speech in the leadership of the security forces more in the sense of citizenship and respect for people's rights, contributed to a whole set of actions, from which we must refer, namely, the elaboration of new disciplinary regulations for the GNR; the change of curricula and the ways of training the security forces; the support in the training at a distance; the calling of attention for important issues made to the responsible leaders of the security forces in international seminars held to discuss several issues regarding police problems.
[25] Law No. 5/99, dated January 27, 1999.
[26] Law No. 14/2002, dated February 19, 2002.
[27] Order of the Council of Ministers No. 37/2002, dated February 28, 2002.

We must point out, in the scope of these changes of a political nature, the institutionalisation of the programme “Safe School”. This is a security programme aimed at the school community, especially the children, with a great success near this social group. The programme “Security for the Elder”, addressed to a more senior and unprotected group. The project “Safe Business”, addressed to businessmen and the programme “INOVAR”, especially addressed to crime victims. This last programme intended to qualify and specialise the security forces regarding the attention given to crime victims, leading to the creation, in almost all precincts and units of the PSP and GNR, of rooms especially conceived to receive the victims in an environment with privacy and confidential conditions, namely victims of domestic violence.

The criticism is generally addressed to the process of implementation of certain measures since the initial political speech of mistrust towards the institutions lead to the understanding that some of those measures were against a part of the structure of high commanding officers. Besides, it had little or no participation at all of police corps, which contributed to its closure and little effort regarding the process of change. We must also mention the lack of diagnosis and trusted evaluation processes.

B – The new police practices: contributions and initiatives for the change

As a final goal, police reforms intend to change police practices of officers who work in the field and that, as we have already said, is not done only with normative changes; it requires, necessarily, an intervention at the level of the culture and the relations between organisations.

As we have seen, police organisations receive a great influence from the environment, either political or social, but they also express the several dynamics which generate within themselves as a profession.

From the standpoint of an active observer, we may say that for the last ten years a lot has been done in the sense of change.

Starting with the Inspectorate General of Home Affairs (IGAI) in the process of modernisation of police forces and, especially, in the introduction of new friendly human rights police practices. We may say that the institutionalisation of the IGAI in 1995 introduced a practice of inspections of an operational nature in the security forces, which was, until then, almost unknown.

To understand the role played by the IGAI in the process of change of the police forces it is necessary to have in mind the political and social contexts within which it was institutionalised and the charisma of its first Inspector General. The several factors played an important role in its fast normative and relational integration. The political context regards the political project that was announced and the expectancies created within the security forces in 1995, i.e., when the XIII Constitutional Government was designated. The social environment was dominated by some aggressiveness and accusations (some of them true and others without grounds) of police practices that violated human rights and were spread mainly by the new private television stations with the resource to polemic news and programmes, generating thus a climate of hostility towards the security forces and, by consequence, the closure of the institutions. The charisma and leadership of the Inspector General have contributed for a rapid external projection of the IGAI. This projection was felt in several fields but what was fundamental was the way he initially created a set of expectancies with his speech, breaking organisational taboos and thus reaching the lowest ranks of the hierarchical pyramid and some younger officers of the security forces which agreed either with the denunciation that was made against the culture, practices and needs of the security forces or the reflexive challenge that was made to police corps. That attitude however was also seen, by some sectors of the police institutions, as a threat to the organisational cohesion.

There is no doubt that the role played by the IGAI through its inspections, namely those without notice, and the quick and reliable investigation of denounced cases of police brutality in the precincts and units of the PSP and GNR, led to the establishment of conditions for the reinforcement of the police image near the OCS and the citizens.

Other missions and inspections carried out by the IGAI had a direct or indirect influence in the decisions taken within the security forces in the sense of the implementation of new police practices, from which we must refer, namely, the closure and alteration of some detention areas in the precincts and units of the PSP and GNR that did not respect the minima conditions of material safety to receive the detainees. This practice resulted in the elaboration of the Regulations of the Material Conditions of Detention in Police Premises[28], which implements procedures that must be followed regarding the detainees, the administrative control and the technical requirements (sizes, materials, equipments,...) in the detention areas. The provision of precincts and units of the PSP and GNR with fax machines for quick communication of detention to the public prosecutor's department, the books for the registration of detainees and other documents of administrative control of paperwork. The closure of some precincts and units because they did not have the minima conditions of operation nor to receive the public.

However, the absence of a true strategy for the area of public security, to which was not alien the fact that, during the last ten years, there were six ministers in the Home Affairs, led to the verification that many cases of inefficacity are still to solve.

[28] Approved by Order No. 8684/99, dated May 3, 1999, issued in the Official Gazette (II Series), No. 102, of May 3, 1999.

During the last ten years, also the very institutions incorporated, on their own initiative and with more or less promptness, practices that are in the line of the process of modernisation and improvement of professionalism. We must refer, in this context, some measures that we consider of the utmost importance regarding the PSP.

The PSP approved a set of Norms of Permanent Execution on the Limits to the Use of Coercion Means[29]. This document, addressed to the operational staff, defines what is understood by coercion means and low lethal potentiality, enumerates the juridical principles to which their use is subjected, defines the levels of threat and, consequently, establishes the levels of force (very low, low, medium and high). Defines, enumerates and establishes the procedures for the use of the coercion means of high and low lethal potentiality. It also establishes the technical procedures that must be observed by the Police in the case of escapes, pursuits and when trying to stop motor vehicles, establishing in its point 3 of chapter 4 that “during car pursuits it is forbidden, as a norm, to use any kind of firearm”. As a consequence of this document, since the date of its entry into force a course began to be taught on Police Intervention Techniques and Shooting to around 5,500 police officers. In this context, we must refer the efforts made by the police in order that all their elements go to the shooting training. As a result, every year around 90 percent of all police staff is submitted to training in special shooting; each element shoots, in average, 36 rounds, either in mobile shooting facilities (a truck that goes to all units of the country) or fixed police shooting facilities or facilities lent by the Army.

We must point out, for its importance, the implementation of a new structure of criminal investigation[30] (equal for the whole country), from January 2004, which consolidated an effort in the specialisation of police investigation

[29] NEP No. DN/DEPCOM/01/05, issued in the O.S. No. 14 I Part B, dated 16/06/2004.
[30] According to the Law of Organisation of Criminal Investigation, approved by Law No. 21/2000, dated August 10, 2000, which extended the competencies of the PSP in the field of criminal investigation.

for about 1,700 police officers[31] through a course in techniques of criminal investigation during the years of 2001 and 2002[32]. We can not ignore, however, that this structure, including 1,800 officers, was formed either by elements that had already functions of criminal investigation or by others recruited in police precincts, which meant, in this last case, a transfer of personnel from regular duties of prevention and security to functions of criminal investigation.

Also the promotion based on curricular evaluation and the assessment of performance, introduced between 2002 and 2004, breaking the paradigm of seniority, marked a turning point in the institution.

As we have already mention, the implementation of new human rights efficient and friendly practices has a lot to do with the social enrichment and development of the police. In this field, the recruitment, initial and continuous training, leadership and the new technologies play a crucial part. In what concerns the initial and continuous training, some important steps were taken, needing, however, to be improved. Between 1998 and 2002 some changes were made in the curricula of the courses of initial training for the lower ranks, with a special emphasis on the components of citizenship and human rights. Some curricular modules were introduced. Almost all police trainers followed the training course for trainers, being thus able to follow a new methodology of training based on pedagogic objectives. We must note that the Police High School was, at a national level, the first institute conferring a degree to introduce in its curricula a class of Law, Freedoms and Guarantees with a schedule of 90 hours per year.

In what concerns the qualification of the elements, the inclusion of new police personnel during the last ten years allowed the increase of the level of

[31] Around 1,800 police officers are now part of the present structure of criminal investigation, representing 8.4 percent of all personnel with police functions.
[32] In our opinion, a normative consolidation of a structure of criminal investigation, at a national level, is still lacking.

school qualifications, so that nowadays almost 50 percent of all personnel has 11 e 12 years of school studies. The rate of female employment grew around 4 percent between 1997 and 2003, being now around 11 percent of all personnel.

The qualification of responsible officers has also improved, during the last years, in a significant way. It is enough to mention that, during this period, the senior officers graduated from the Police High School have been posted in most of the commanding post and senior management (commanders, directors of departments and divisions) in the central and regional services of the PSP; thus, the average age of officers in commanding post has passed, in less than ten years, from 55 to 40 years.

The new technologies at the service of the PSP, and particularly the Strategic Information Service (SEI) that is being implemented in the PSP, represent a critical factor of success for the future of the institution and, particularly, of police practices since it incorporates management tools at communication, information and audit level. The INTRANET(S), for instance, that exist in each of the police regional services (commands) allow the creation of internal information and communications platforms, of training and internal debate at all levels of the hierarchy, allowing thus to increase the level of participation in some decisions, a kind of active citizenship.

There is no doubt that the die is cast and all conditions gathered for a more extended changing process.

Conclusion

In a systemic view, we consider that the Police Reform in Portugal, in the sense of the incorporation of new practices, either with the purpose of preserving human rights, or the searching for a new efficacy, must be included in a more enlarged context of modernisation of the security and justice systems, Public Services and the very State. We share the opinion of Prof. Juan Mozzicafreddo (2000), according to whom the simple operation of the State and its Services, based on pure criteria of efficacy and guidance for the citizen, is not, in itself, a signal of its good operation. Applying this precept to security and police, we may say that it is not enough to improve the performances of the organisations, individually considered, when the security system may cause inequalities at the territorial and statutory levels (namely as a result of differences in the democratic participation process, social development of the organisations, training and working conditions).

We also consider that the good police practices must be based on an ethical dimension. It must be taken into account that police ethics is not a mere instrument of discipline, nor a system of control and repression of unacceptable behaviours, but rather a process of reflection that has into account the values and the purposes of action and, for that reason, they may help police officers to understand the demands of ethical order imposed on them.

The good police practices must incorporate an ethical-moral value that meets the true purposes of action. We may say that good police practices can not only be seen in function of the results and the performance; it is important to know the purposes sought from those actions, i.e., the subjective character of the action.

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Greeting Address

5th International Conference

of the European Union's

PMIBs & ACAs

Lisbon, 11-12 November 2005

by

Martin Kreutner

Co-Chair of the network *European Partners Against Corruption*

'Corruption itself may be a substitute for reform
and both corruption and reform may be substitutes for revolution.' [1]

Mr. Chairman,
Dear colleagues and friends,
Ladies and Gentlemen,

On behalf of our network *European Partners Against Corruption*, first of all let me warmly thank the organizers for hosting this 5th conference, for the hospitality we have been experiencing, and for all the efforts you have been taking to make us feel comfortable on the one hand and to achieve professional results on the other. The latter is the reason we all come here for, yet, the seeds for such results are also laid in a sphere of dedicated and well-thought organizational circumstances. So, once again, my warmest thanks to our Portuguese hosts and the committed personnel of IGAI.

Dear colleagues, let me outline just a few thoughts on our topic and the recent developments.

At a time when Europe is uniting, when politics are in a state of flux, especially in many regions of our New European Neighbourhood, and against a backdrop of generalized globalization that defies boundaries, the states and institutions of the European community are also confronted by multiple novel challenges and demands.

In a postulated Area of Freedom, Security and Justice intensified attention must thus be paid to threats which - in a passive sense - contradict the comprehensive goals, or which strive to counteract the relevant national and supranational institutions. In an active sense, the task is to strengthen support for collective efforts to attain these goals through enhanced coordination and cooperation. The fight against corruption stands, in the context of a modern, overarching concept of security ("societal security"), as an essential challenge for all democratic states, notably for those in transition. Accountability, legitimacy and strict obedience of the law on the part of

[1] S.P. Huntington, 2002: 257

law enforcement entities represent essential foundations for the stability of states and for a peaceful society.

We all know that on the initiative of the Belgian EU-Presidency in 2001 - Mr. André Vandoren, to be precise, whose best regards to the participants of this conference I have the pleasure to submit to you -, delegates from the national Police Monitoring and Inspection Bodies met for the first time in Brussels for what was then an informal exchange of experience. Further meetings took place in 2002 and 2003, in The Hague (at Europol) and in Luxembourg, respectively.

A new dimension was created at the fourth such meeting, which took place in Vienna in November 2004. Here, for the first time, in addition to the Police Monitoring and Inspection Bodies (PMIBs), other national Anti-Corruption Agencies (ACAs) were also invited and the gathering, on Austrian initiative, together with the partner states Belgium, Finland, Hungary, Luxembourg, Portugal and Slovakia, received support from the European Commission in the framework of the AGIS-Programme. The most important outcome of this three-day conference was certainly the unanimous adoption of a joint Declaration, the Vienna Declaration 2004, on combating corruption and on possibilities for strengthened intra-European collaboration in this field. This common declaration founds a broad and lasting basis for both our current inter-agency cooperation and for relevant future developments. It was adopted, inter alia, that by effective operational cooperation, promotion of opportunities, joint working, sharing of good practices and development of common professional standards, we - the heads and key representatives of the national Police Monitoring and Inspection Bodies and Anti-Corruption Agencies - aim to improve the fight against all types of corruption, especially corruption and any (criminal) misbehaviour in the law enforcement entities. This can be achieved by a wide spectrum of means, multilateral agreements on cooperation etc. between Member States / units and third countries / units being only one. As a recent example, it is my pleasure to inform you that on the initiative of Hungary in May this year, the organizations of Croatia, Romania, Serbia-Montenegro and Slovakia agreed on further enhancing their co-operation within the so-called Central European Forum of the PMIBs, the Austrian Federal Bureau for Internal Affairs having joined in August. This Forum is based upon and in the framework of the a/m Vienna Declaration and should help to facilitate

further enhancement of inter-agency collaboration also with neighbouring countries to the EU.

Furthermore, I am pleased to inform you that we are already working on the second edition of our so-called "Contact Catalogue" compiling the contact details and other core pieces of information on the EU's national PMIBs and ACAs. Update forms have been distributed to you, and we would like to request all of you to inform us on any potential changes. This, of course, can and should be done likewise at any time during the year by simply contacting our office. Our website, www.epac.at, has been operational since the beginning of this year and will remain supported by the Austrian organization. As far as the Secretariat is concerned, the Belgian Comité P as well as the Austrian Federal Bureau for Internal Affairs, BIA, have volunteered to further provide these tasks jointly until further notice.

In the already mentioned Vienna Declaration it has been stressed that our organizations would welcome the idea of a more formalized European Anti-Corruption Network based upon the existing structures, and that they would welcome appropriate steps in this direction by incoming Presidencies of the European Union. As Austria is going to hold presidency in the first half of 2006, I am glad to inform you that the national and transnational fight against corruption will be one of the focal points of interest of this chairmanship. Various initiatives concerning this have been prepared: one of these will be the proposal for a Council Decision for setting up the European Anti-Corruption Network. This future network should be, in essence, based upon the already existing structures of our *European Partners Against Corruption* and should further enhance anti-corruption efforts on an inter-agency basis. More detailed information will be provided to all of you in due time. As another key initiative Austria is planning to hold the first ever Ministerial Summit on corruption and fraud in the EU in the second half of its Presidency. This important political project is strongly supported by the UK Minister of Health as representative of the present Presidency as well as the Finish Minister of Justice (Finland being the incoming Presidency after Austria's chairmanship). So, by invitation of this troika representing distinguished ministers of different pillars, it is intended to bring together political decision-makers of various geographical and professional backgrounds and to offer them a forum for discussing possibilities on combating

corruption and fraud in a holistic and comprehensive approach. This ministerial summit will hopefully initiate a lasting and successful political process representing a major step forward in tackling this phenomenon.

Dear colleagues and friends, following the discussion in Vienna last year as well as at this conference we will invite interested delegates to meet - on a voluntary basis - as a subgroup and examine ways how parties to this association can best advance the direction of our EPAC network. What we should not forget, though, is the fact that in full knowledge of the different competencies, tasks and structures of the EPAC members, and under the general agreement on the necessity to keep the existing network operable and successful, as well as on the basis of the unanimously adopted Vienna Declaration, we should rather stress the important points and interests we have in common than potential distinctions.

Having said this, let me conclude quoting UNSG Kofi Annan: "It is widely understood that corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organized crime, terrorism and other threats to human security to flourish. [...] It creates discrimination between the different groups in society, feeds inequality and injustice, discourages foreign investment and aid, and hinders growth. It is, therefore, a major obstacle to political stability, and to successful social and economic development."

It is thus certainly safe to argue that by fighting corruption we considerably contribute to the realization of both a prosperous Area of Freedom, Security and Justice for Europe and the United Nations Millennium Development Goals for the entire globe.

Last but certainly not least, I would like to thank you all for your gratifying cooperation, your constructive input and the collective commitment. A special thank, though, goes once again to our Portuguese hosts and the dedicated personnel of IGAI.

We are looking forward to our future cooperation as well as to the 6th International Conference of the PMIBs and ACAs of the EU Member States, which our Hungarian

partner organization, the RSZVSZ, has generously agreed to host in Budapest in November 2006.

Thank you very much.