EXPERT WORKSHOP

“POLICE COMPLAINTS MECHANISMS: ENSURING INDEPENDENCE AND EFFECTIVENESS”

Strasbourg, 26-27 May 2008

REPORT
Opening the Expert Workshop the Commissioner for Human Rights, Thomas Hammarberg, explained that four recent developments persuaded him of the need to initiate discussion on police complaints:

- a request for advice from Poland;
- a positive impression of the new Garda Síochána Ombudsman Commission on his November 2007 visit to Ireland;
- the number of European Court of Human Rights judgments on excessive use of violence by law enforcement officers; and
- recommendations by the Committee for the Prevention of Torture.

The Workshop was organised for the purpose of bringing together representatives of police, police complaints organisations, prosecuting authorities, government departments, NGOs and academics to discuss the different types of police complaints systems in Europe. The Commissioner pointed out that in a democratic society there must be accountability and effective investigation of complaints in order for trust and confidence to exist between the police and public. He stressed that the solution to the problem is not to stigmatize the police, and the overarching objective is to improve policing standards.

In the opening session the European Court of Human Rights Section Registrar, Lawrence Early, outlined the duties the caselaw of the European Convention on Human Rights imposes on states to investigate complaints against the police. Five principles of effective complaints investigations were identified:

- **INDEPENDENCE**: there should be institutional and hierarchical and practical independence in police complaints investigations;
- **ADEQUACY**: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- **PROMPTNESS**: crucial for maintaining trust and confidence in the rule of law;
- **PUBLIC SCRUTINY**: accountability is served by open and transparent procedures and decision-making;
- **VICTIM INVOLVEMENT**: in order to safeguard his or her legitimate interests.

Committee for the Prevention of Torture member, Alčeš Butala, reinforced the importance of these principles, which serve as an evaluative framework for visits and are prominent in policy recommendations to states.

The main issues discussed in the four sessions of the Workshop - on independence and effectiveness, role of the prosecutor, establishing new mechanisms and concerns with discrimination - relate to these principles.

**INDEPENDENCE**

1. **Independent organisation**

   Nobody spoke against independent complaints organisations. Representatives of non-police complaints organisations from Belgium, Northern Ireland, Ireland, Hungary and England
and Wales informed the meeting of the different models operating in their jurisdictions. Representatives from Denmark and Poland referred to the police complaints systems in their jurisdictions and the interest in reform and the introduction of greater independence.

Belgian Standing Police Monitoring Committee member, Gil Bourdoux, outlined how Committee P, as it is known, deals with complaints as part of its broad oversight responsibilities for policing. The Chairman of the Independent Police Complaints Commission of Hungary (created in 2007), Jenő Kaltenbach, spoke of the absence of a democratic tradition in his country, discriminatory practices against the Roma people and the slow progress towards independent organisation. Gérard Greneron, Secrétaire Général of the Conseil Europeen Syndicats de Police (CSEP), expressed his concern that the creation of independent organisations should not serve to stigmatise the police.

2. Trust and confidence

The Police Ombudsman for Northern Ireland, Al Hutchinsson, emphasised that trust is key to police complaints. He stated that the entirely independent system in Northern Ireland demonstrates what is required where there has been a complete break down in trust between communities and the police and the lengths required to restore confidence.

Securing and maintaining trust and confidence is important for the general public, complainants and police officers, and it is important to ensure that all stakeholders’ interests are protected and represented.

3. Can police investigate the police?

This is an old conundrum that has been at the heart of discussion for many years. It used to focus on the effectiveness of police compared with non-police systems. Since the introduction of independent systems in many jurisdictions the debate has now moved forward to ask whether non-police organisations should employ former police officers and/or rely on seconded officers to investigate complaints. Discussion in the Workshop focused on the need for police investigative expertise and the financial costs of training investigators/seconding officers. The consensus was that a mixture of police and non-police investigators is necessary, particularly until an esprit de corps for complaints investigators is established.

The Irish practice of employing experienced police officers from overseas was outlined by Carmel Foley, Commissioner of the Garda Síochána Ombudsman Commission. It was also mentioned that investigators from Ireland, Northern Ireland and England and Wales work together, which suggests that pan-European co-operation between police complaints organisations is feasible in the future.

4. Accountability of independent organisations

Several issues were discussed under this heading, including whether a single ombudsman or a group of commissioners should be responsible for complaints investigations, selection procedures and accountability mechanisms. There was no apparent consensus and questions were raised with the independence of elected commissioners or those appointed by a
government Minister who is generally responsible for policing responsibilities (compared with Belgium’s Committee P, which is answerable to Parliament). There was unanimity that there should be no political interference in police complaints procedures.

The answerability of a police ombudsman or complaints commissioners appears to be a neglected area of policy development, and accountability seems to focus solely on the need for transparency and openness. In the absence of clear principles, police officers and the general public are quite entitled to ask why the police should be held accountable to unaccountable political appointees.

5. Resources

Effective police complaints systems are expensive. Rough estimates of costs per head of population were given for the independent organisations operating in Northern Ireland (over 6 Euros), Ireland (about two-and-a-half) England and Wales (less than one) and Hungary (0.005). In addition, significant police resources are devoted to internal complaints and discipline departments.

6. Police reaction

The Commissioner of the Garda Síochána Ombudsman Commission stated that police officers officially welcomed the Commission but there was resistance from some to its operation in practice, and the Chairman of the Independent Police Complaints Commission of Hungary stated that police officers reacted negatively to the introduction of independent complaints investigations. Statistics presented by the Police Ombudsman for Northern Ireland, in contrast, reveal that 70% of police officers are satisfied with the organisation increasing to over 90% for officers who spoke to an investigator.

7. Practical independence

Discussion in the Workshop focussed on practical problems connected with institutional and hierarchical independence. Comparatively little time was devoted to principles of independence and impartiality in the conduct of investigations. Practical independence is fundamental to the operation of fair and effective complaints systems, and there was some discussion on adherence to such principles when looking at post investigation procedures and safeguards for complainants.

ADEQUACY

8. Can regular public prosecutors prosecute the police?

Legal Advisor to the Norwegian Bureau for the Investigation of Police Affairs, Guro Kleppe, and Chief Public Prosecutor for the Swedish National Police-Related Crimes Unit, Kristian Augustson, outlined how specialist police prosecution units operate in their respective jurisdictions. These are not complaints organisations and primarily deal with criminal investigations and prosecutions of police officers. Their institutional design is to ensure practical independence and protect against the possibility of biased decision-making.
by prosecution and police officials who work closely together on standard criminal cases. As such, they represent a different type of model to internal police and independent complaints systems which refer substantiated complaints to public prosecutors for decisions on criminal proceedings.

9. Should police be subject to special prosecution rules?

Strong arguments for special rules include the need to reassure communities that the police are accountable and, particularly in cases where the evidence is highly contested and the credibility of witnesses is an issue, it is in the public interest for the courts to decide if the police exceed their powers. Powerful counter-arguments are that it is particularly unfair to police officers to apply different standards and against the constitutional principle of equality before the law.

Another question to consider is whether prosecutors bring too many cases to trial. In Sweden there is a 34% acquittal rate for police officers compared to about 10% for standard criminal trials. This may also be due to the unwillingness of courts to convict police officers for cultural or political reasons rather than on evidential grounds. If this is the case, then carefully prepared prosecutions and more frequent appearances of police officers before the courts will contribute to a shift in attitudes and challenge any impression of impunity.

PROMPTNESS

10. The importance of prompt and expeditious procedures was stressed in the Committee for the Prevention of Torture presentation. Prompt responses to allegations of ill-treatment send a clear message to police officers that they cannot behave with impunity, and attempts by their colleagues to conceal their misconduct will not be tolerated.

PUBLIC SCRUTINY

11. Is independence sufficient to meet the public scrutiny requirement?

Trust in public officials is essential for fair and effective delivery of services irrespective of organisation membership, and openness and transparency are core principles of accountability. An example of good practice is the Norwegian system of providing reasons for all decisions in connection with criminal proceedings against police officers, irrespective of whether the decision is to prosecute or not. An example of poor practice was given by the National Co-ordinator of the Gay Police Association of the United Kingdom, Vic Codling. A police service in England and Wales chose not to disclose 22 recommendations made following substantiation of a homophobia complaint.

VICTIM INVOLVEMENT

12. Barriers to victim participation

Several points were raised under this heading. Anita Danka, representing the European Roma Rights Centre, drew attention to the difficulties NGOs face when attempting to
influence policy and practice on behalf of their members. Giancarlo Cardinale, lawyer for the Secretariat of the European Commission against Racism and Intolerance (ECRI) outlined the difficulties complainants face when challenging racist police misconduct and the developing ECHR caselaw in this area. The National Co-ordinator of the Gay Police Association of the United Kingdom suggested that failure to address homophobic police behaviour towards colleagues is unlikely to encourage lesbian, gay, bisexual and transgender complainants to participate in the complaints process.

13. Procedural misconduct

Nasrin Khan, Legal Advisor for the Organisation for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights pointed to problems with ineffective criminal and complaints investigations into allegations of racist discrimination. Rachel Neild, Senior Advisor to the Open Society Justice Initiative, attached major importance to maintaining accurate records of complaints into allegations of discrimination on grounds of ethnicity, gender, age and sexual orientation. ECRI recommends that legal advice and psychological support are available to victims of police racism in order to encourage them to come forward in its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

GENERAL

14. Democratization and modernization in Eastern and Western Europe

Workshop Rapporteur, Graham Smith, commented that at various times in discussion mention had been made of the differences between policing and police complaints systems in Eastern and Western Europe. These differences can be misleading if they are considered solely in terms of the ‘democratization’ of former Communist states. Major reform of police complaints systems in England and Wales, Northern Ireland and Ireland have all been in the context of wider far reaching police reform programmes. These reforms, including the rapid growth of private policing services, extend across much of Europe and have been carried out in the name of ‘police modernization’. It is not that clear what distinguishes democratization in Eastern Europe from modernization in Western Europe. There is a need to guard against arrogance and complacency and the belief that complaints reform is something that is only of relevance in post-Communist states. This is particularly the case at a time when counter-terrorism measures have been recently introduced in Western European states that interfere with a wide range of human rights and are likely to give rise to further complaints against the police.

15. International initiatives

Nicholas Long, Commissioner of the Independent Police Complaints Commission of England and Wales, spoke about two international initiatives. He is the Convenor of the steering group for the International Network for the Independent Oversight of Policing (INIOIP) and member of the organising committee for an international conference to be held in Manchester, England, between the 19th and 21st November 2008, hosted by the European
Partnership Against Corruption (EPAC). Anyone interested in further details contact Nicholas Long.