

Memo on the round-table conference concerning the Independent Police Complaints Board, organized by the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union

18th December 2007

1. While there is a time limit of 30 days for lodging complaints regarding the ordinary procedure for complaints, there is a term of 8 days concerning the procedure of the Independent Police Complaints Board (hereinafter: IPCB). According to certain opinions, this divergence should be revised. At the same time it has been suggested that this difference causes no problem, since there is a possibility in the course of the procedure for the complainants who fail to comply with the 8-days-term to reach the IPCB. If the citizen lodges his/her complaint within 30 days, and the case falls within the competence of the IPCB, the complainant – after the call of the IPCB regarding the case – has the possibility to ask for the decision of the national high commissioner of the police on the complaint, following the investigation of the IPCB. In this way the complaints submitted after the 8-days-deadline can also reach the IPCB.

It has also emerged that the different time limits are functioning as a kind of filtering mechanism, which could be considered as reasonable, taking into account the restricted financial resources of the IPCB. However, it should be taken into consideration when determining the time limit that the complainants are often members of unschooled, unqualified social groups, and deciding whether there is a violation of a constitutional fundamental right or not, might prove to be an inextricable task for them.

2. The IPCB has 90 days for conducting the procedure, but the text of the law does not make it clear, what kind of investigative measures the IPCB is entitled to take in the course of the procedure, which is also problematic. In this regard, the wording of the Police Act¹ is the same as the wording of certain provisions of the Ombudsman Act², but some rights of the Ombudspersons are not appraised in the Police Act (e.g. requesting a hearing from the official in charge of the matter under investigation, demanding an inquiry conducted by the head of the body, requesting written declaration or explanation). Furthermore, since the national high commissioner of the police acts on the basis of the Administrative Procedure Act³ after the investigation conducted by the IPCB, he/she has to take all procedural measures which are necessary in order to clarify the facts of the case, even those, which the IPCB is not entitled to take. In this way there is the chance that the IPCB will have less information when formulating its recommendation concerning a certain case, than the national high commissioner of the police when deciding on it. Furthermore, the high commissioner has only 15+30 days for conducting the investigation, even though the cases in question are more sensitive, than the ones investigated in the ordinary complaint procedure (there is a 30+30 days term for concluding the procedure in the latter case).

1 Act XXXIV of 1994 on the Police

2 Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights

3 Act CXL of 2004 on the General Rules of the Administrative Procedure and Service



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According to the standpoint formulated in the conference, the National Police Headquarters – following the request of the IPCB – may collect evidences, and may ask for a report from the members of the official staff, just as it is a common practice regarding the procedure of the ombudsman.

It has also emerged that the IPCB's opinion constitutes a quasi expert opinion, which could be used by the National Police Headquarters in the course of its procedure. Regarding this possibility, the problem is that since the procedure of the IPCB does not fall under the provisions of the Administrative Procedure Act, the IPCB does not have the rights of an expert, for example cooperation is not compulsory for the parties effected by the procedure. It is also questionable if the IPCB has all the data and information necessary in order to act as an expert.

It is also possible that the recommendation of the IPCB could have two kinds of content:

- a) What is the IPCB's standpoint on the merits of the complaint on the basis of the information available?
- b) In the view of the IPCB, what kind of further procedural measures should be taken by the national high commissioner of the police in order to fully clarify the facts of the case?

Furthermore, in which way the minutes kept in the IPCB's hearings (if a hearing takes place at all) can be used in the course of the administrative procedure, is also a question, taking into account that there is no obligation of briefing on the side of the IPCB. Therefore, the organizational and operational rules of the IPCB should set out the same obligations concerning information, as the ones set out by the Administrative Procedure Act. Decision 50/2003. (XI. 5.) of the Constitutional Court on the investigation conducted by the parliamentary commissions is relevant in this regard. The final standpoint was that the minutes taken in the IPCB's hearings may be used as evidences in the course of the investigation conducted by the national high commissioner of the police.

In which phase of the ordinary complaint procedure may the case be transferred to the IPCB, is also a question, since the law does not provide any rule concerning this. The possible answers go as follows: in the first instance of the administrative procedure, in the second instance of the administrative procedure, or even in the course of the court proceedings. Most probably, the cases may be transferred solely in the course of the administrative procedure, but not in the course of the court procedure – however, a uniform answer is necessary in this regard.

3. It has been also disputed what the appropriate procedure is, if an act, being the object of a complaint, turns out to be a proven crime.

Questions:

- a) Is the IPCB obliged to report cases?

Taking into account that the members of the IPCB are not official persons, they are not obliged to report cases, subsequently, in the cases of a proven crime the IPCB should inform the complainant that he/she can initiate a criminal procedure by reporting the case, and informs him/her about the consequences of a false accusation.

- b) It is also a question whether the procedure of the IPCB shall be terminated if the object of the complaint is a criminal act at the same time, taking into account that the investigation falls under the exclusive competence of the prosecutor's office. The participants were not on the same opinion in this



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regard. The majority opinion seemed to be that the IPCB's procedure shall not be terminated in these cases, since the aim of the complaint procedure is to investigate whether fundamental rights have been significantly breached as a consequence of a measure taken by the police or the omission (breach of obligations) of it, while the aim of the criminal procedure is to investigate whether someone has individual criminal liability with regard to committing the crime. In this way it is possible that a police officer not identifiable because of not wearing the identification number has breached a fundamental right substantially, but the perpetrator could not be individually impeached, since his/her identity remained unknown. It is also conceivable that a concretely known perpetrator cannot be punished (e.g. because of putative legitimate self-defence), but his/her act breaches a fundamental right substantially. Some were on the opinion that the IPCB may conduct its own procedure in these cases. However, others were of the opinion that the solution above is not reasonable, arguing for the exclusive competence of the prosecutor's office in this regard.

c) The question emerged whether the initiating of a criminal procedure suspends the procedure of the IPCB or not. According to the majority opinion, the initiation does not suspend the IPCB's procedure, similarly as in the case of an ordinary complaint procedure. It is also a question whether the IPCB may overrun the time limit provided for conducting the procedure as a consequence of suspending its procedure. According to the law, this is not possible, however, no sanction exists for exceeding the time limit provided for conducting the procedure.

4. Whether the IPCB has competence to conduct general investigations, is also a question. (General investigation in this regard means an investigation in connection with the concrete complaint, but looking for system-level, structural problems, not aimed at reaching a decision regarding the individual complaint. According to the majority opinion, the competence for conducting general investigations may be derived from some of the provisions of the Police Act concerning competence (e.g. the IPCB proposes a recommendation, initiates the issuing of an order). At the same time, some doubted that the principle of "implied powers" may be applied in this case. However, the expediency of the solution above is not questionable, since the IPCB is similar to the institution of the ombudsman in the regard that it can formulate resolutions concerning the solution of system-level problems, by conducting general investigations and formulating recommendations.

As a consequence of the role of the IPCB described above, there are certain cases in which the concrete individual complaint is not pertaining to a significant breach of a fundamental right, but the cumulative effect of the similar cases may make the IPCB's action necessary (a high number of identical or similar complaints constitute a problem significant enough to make the investigation of the IPCB reasonable, e.g. identity checks seeming to be unwarranted). According to certain opinions, the individual complaint shall be investigated in the ordinary complaint procedure, while the IPCB has to deal with the general problem in a recommendation.

5. Concerning the substantive or slight extent of the violation of a fundamental right, it is also a question whether the IPCB is entitled to act solely regarding the breach of constitutional fundamental rights meant in a strict way (rights connected to persons), or concerning the breach of the so-called constitutional values (e.g. legal certainty, public order, public security) as well. The majority of the participants were apt to accept the broader interpretation, but there was no unity regarding the question.

It has been also emerged as a question whether solely the actual consequence of an infringement of a right shall be taken into account when setting out the substantive breach of a fundamental right, or



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the possible consequences thereof may be also taken into account (e.g. The police are alerted because of a scrimmage, and they do not send a unit to the spot. The question is, whether there is a difference concerning the decision on the complaint if the consequence of the scrimmage is only a slight injury, or e.g. a permanent physical handicap.) The majority opinion was that the actual consequences shall be taken into account when deciding upon whether the complaint shall be investigated in the ordinary complaint procedure or by the IPCB.

6. According to the Police Act, the IPCB is obliged to publish its recommendations concerning the certain cases while there is no such an obligation concerning the National Police Headquarters, which is also a problem. Furthermore, it is questionable whether an administrative decision may be published at all.

According to the opinion of the participants, the lack of obligation concerning publishing constitutes a problem because in case the decision of the National Police Headquarters diverges from the recommendations of the IPCB, the public will not be informed about the actual decision, although this information is also an objective of the legal institution. Furthermore, in this way, the standpoint of the National Police Headquarters and the detailed reasons for the difference of the opinions of the National Police Headquarters and of the IPCB cannot be followed. Therefore, the recommendation came into being that the extract content of the administrative decision reached by the national high commissioner of the police may be published by the IPCB along with its recommendation.

7. Concerning publicity, the following problem emerged: how should the IPCB communicate, how will the citizens know about this new legal institution?

The common standpoint was that besides the obvious ways of communication (leaflets, information charts in the clients' waiting room and short-term arrest room in the police buildings, etc.) the use of other methods is also reasonable, since the competence of the IPCB is basically weak, and it can only reach a real effect through publicity. Therefore, it is worth to set out in the organizational and operational rules who makes statements when meeting the press (who represents the IPCB), and it would be useful to enlist the contribution of the Parliament and the parliamentary commissions in this regard.



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