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**OPINION OF THE COMMISSIONER FOR HUMAN RIGHTS**

**CONCERNING INDEPENDENT AND EFFECTIVE  
DETERMINATION OF COMPLAINTS AGAINST THE POLICE**

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## Executive Summary

An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service.

Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment.

A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against.

A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services.

The European Court of Human Rights has developed five principles for the effective investigation of complaints against the police that engage Article 2 or 3 of the European Convention on Human Rights:

- **Independence:** there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
- **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:** the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
- **Public scrutiny:** procedures and decision-making should be open and transparent in order to ensure accountability; and
- **Victim involvement:** the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

These five principles must be adhered to for the investigation of a death or serious injury in police custody or as a consequence of police practice. They also provide a useful framework for determining all complaints. Best practice is served by the operation of an Independent Police Complaints Body working in partnership with the police.

The Independent Police Complaints Body should have oversight of the police complaints system and share responsibility with the police for:

- visibility and oversight of the system;
- procedures for the notification, recording and allocation of complaints;
- mediation of complaints that are not investigated;
- investigation of complaints; and
- resolution of complaints and review.

The expectation that criminal or disciplinary proceedings will be brought against a police officer against whom there is evidence of misconduct is an important protection against impunity and essential for public confidence in the police complaints system. The prosecution authority, police and Independent Police Complaints Body should give reasons for their decisions relating to criminal and disciplinary proceedings for which they are responsible.

## 1. Introduction

1. In recent years the European Court of Human Rights, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Commissioner for Human Rights have identified problems with the way complaints against the police are handled. The jurisprudence of the European Court of Human Rights is quickly evolving on police misconduct and the absence of effective investigations and remedies. The CPT has found it necessary to make recommendations on combating police impunity for ill-treatment and misconduct following visits to various member states. Similarly, the Commissioner has reported allegations of police misconduct and impunity and made recommendations in support of independent police complaints mechanisms in some member states.
2. In order to develop greater understanding of police complaints the Commissioner organised two workshops in May 2008 regarding the independence and effectiveness of complaints mechanisms and the manner national human rights structures handle complaints against the police.<sup>1</sup>
3. In accordance with the mandate of the Commissioner for Human Rights to promote the awareness of and effective observance and full enjoyment of human rights in Council of Europe member states as well as to provide advice and information on the protection of human rights (Articles 3 and 8 of Resolution (99) 50 of the Committee of Ministers), the Commissioner issues this Opinion concerning independent and effective determination of complaints against the police.

## 2. Definitions

In this Opinion the following definitions apply.

4. **Police** refers to traditional police forces or services and other publicly authorised and/or controlled services granted responsibility by a State, in full adherence to the rule of law, for the delivery of policing services. While private institutions, a private security company for example, may also provide policing services, this Opinion is not intended to apply to such organisations.
5. **Policing services** refers to the responsibilities and duties performed by the police to protect the public, including:
  - preserving the peace;
  - enforcing the law;
  - preventing and detecting crime;
  - protecting human rights.

Such services should be delivered in accordance with principles of fairness, equality and respect for human rights.

6. **Complaint** refers to a grievance about a police service or the conduct of a police officer that has been made known to the appropriate authority, which may be the police service concerned or an independent police complaints body. This Opinion principally applies to complaints made about the conduct of police officers. Complaints made about policing standards, operational instructions or the policy of a police service will be referred to in this Opinion as 'service complaints' in order to distinguish them from conduct complaints. In recognition of the importance attached to service complaints, particularly with regard to the expectation that all complaints will be taken seriously, handled appropriately and for the purpose of lesson-learning,

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<sup>1</sup> Expert Workshop 'Police complaints mechanisms: ensuring independence and effectiveness', Strasbourg, 26-27 May 2008, and Workshop 'Complaints against the police – their handling by the national human rights structures', St. Petersburg, 20-21 May 2008. The latter workshop was organised under the framework of the Joint European Union – Council of Europe Programme 'Setting up an active network of independent non judicial human rights structures', referred to as 'The Peer-to-Peer Project'.

reference will be made in this Opinion to service complaints where relevant to the maintenance of public trust and confidence in the police complaints system.

7. In the event that Article 2 of the ECHR, the right to life, or Article 3, the prohibition of torture, inhuman or degrading treatment or punishment, is engaged, the jurisprudence of the European Court of Human Rights requires that an investigation will be carried out irrespective of whether or not a complaint is made against the police. In this Opinion a serious incident of this type will be referred to as a complaint that must be investigated in accordance with the five ECHR principles of effective police complaints investigation.
8. **Five ECHR principles of effective police complaints investigation** - independence, adequacy, promptness, public scrutiny and victim involvement - refers to requirements developed in the jurisprudence of the European Court of Human Rights for the investigation of serious incidents involving the police that engage Article 2 or 3 of the ECHR (see below, Paragraph 30).
9. **Complainant** refers to a person who has made a complaint against the police or a person who did not make a complaint but was a victim, or in the case of death, the bereaved, in a serious incident following which the police or independent police complaints body conducted an investigation as if a complaint had been made.
10. **Independent Police Complaints Body (IPCB)** refers to a public organisation that has responsibilities for handling complaints against the police and is unconnected to and separate from the police.
11. **Police complaints system** refers to the operational framework for handling complaints against the police in all of the stages of the complaints process:
  1. visibility and accessibility of the system: concerning the promotion of public awareness and ease with which a complaint may be made;
  2. notification, recording and allocation: concerning the way in which complainants are received, complaints recorded and determination of the appropriate procedure for handling different types of complaint;
  3. mediation process: concerning the way in which complaints that are not investigated are handled;
  4. investigation process: concerning the way in which complaints that are investigated are handled;
  5. resolution: concerning the outcome of a complaint as the result of an investigation; and
  6. review procedures: concerning the complainant's right to challenge the way in which their complaint was handled or the outcome of their complaint.
12. **Determination of a complaint** refers to the progress of a complaint through all administrative non-judicial proceedings, culminating with any recommendation made to a criminal prosecuting authority or police service. This Opinion does not apply to the holding of any judicial or fact-finding tribunal in connection with criminal or disciplinary proceedings against a police officer that may arise as a consequence of a complaint.

### 3. Delivery of policing services: general principles

13. There is broad international agreement on the administration of the police and the delivery of policing services.<sup>2</sup>

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<sup>2</sup> See, for example, Council of Europe, *European Code of Police Ethics*; Council of Europe Committee for the Prevention of Torture, *The CPT Standards*, Chapter IX. Combating Impunity; United Nations, *Code of Conduct for Law Enforcement Officials*; Council of Europe Joint Informal Group on Police and Human Rights, *Policing in a Democratic Society: Is your police service a human rights champion?*; Organization for Security and Co-operation in Europe, *Guidebook on Democratic Policing*; United Nations International Police Task Force, *Commissioner's Guidance for Democratic Policing in the Federation of Bosnia-Herzegovina*.

14. Several factors contribute to the position of the police as a high profile and respected public institution:
  - delivery of core public services;
  - high frequency of interactions with the public;
  - intensive crime prevention, public safety and criminal investigation information campaigns and appeals for public support and assistance;
  - network of local police stations/premises; and
  - maintenance of close connections with local communities.
15. In the interest of independent, impartial and effective delivery of policing services, and to protect against political interference, the police are granted a wide degree of discretion in the performance of their duties.
16. For the purpose of performing their duties, the law provides the police with coercive powers and the police may use reasonable force when lawfully exercising their powers.
17. As society has become more complex in recent decades, and as scientific and technological knowledge have advanced, the special powers available to the police for the purpose of performing their duties, and their capacity to intrude in people's lives and interfere with individual human rights, have increased.
18. Adherence to the rule of law applies to the police in the same way that it applies to every member of the public. There may be no attempt to conceal, excuse or justify the unlawful exercise of coercive or intrusive powers by a police officer by reference to his or her lawful recourse to coercive and intrusive powers. Police ethics and adherence to professional standards serve to ensure that the delivery of police services is of the highest quality. There can be no police impunity for ill-treatment or misconduct.
19. As police powers have increased so too has the expectation that police services will conform to principles of democracy, accountability and respect for human rights; namely, as written in the Preamble to the United Nations *Code of Conduct for Law Enforcement Officials* - 'every law enforcement agency should be representative of and responsive and accountable to the community as a whole'.
20. A network of administrative, political, legal and fiscal regulatory mechanisms operates in the interest of achieving a democratic, accountable and human rights compliant police service. A fair and effective police complaints system is an essential component of such a regulatory network, and statutory IPCBs have been established in a number of jurisdictions around the globe in recent years to oversee the administration of the complaints process.

#### **4. The purpose and nature of a police complaints system**

21. Policing services are closely associated with disputes between individuals and groups of people and their resolution. Police practice is, therefore, liable to error and misunderstanding. Reflective police practice, including a willingness to address grievances and acknowledge mistakes at the earliest opportunity and learn the lessons from complaints, enhances police effectiveness and public trust and confidence in the police. A responsive and accountable police service that is demonstrably willing to tackle public concerns will also be better placed to secure public trust and confidence in its ability and commitment to prevent crimes and abuses of power committed by police officers.
22. The principal purposes of a police complaints system are to:
  - address the grievances of complainants;
  - identify police misconduct and, where appropriate, provide evidence in support of
    - i. criminal proceedings,
    - ii. disciplinary proceedings, or
    - iii. other management measures;

- provide the police with feedback from members of the public who have direct experience of police practice;
  - facilitate access to the right to an effective remedy for a breach of an ECHR right as required under Article 13 of the ECHR;
  - prevent police ill-treatment and misconduct;
  - in association with the police and other regulatory bodies, set, monitor and enforce policing standards; and
  - learn lessons about police policy and practice.
23. All complaints, including service complaints, provide police services with opportunities to learn lessons directly from the public and serve as important indicators of police responsiveness and accountability to the community.
24. For the prevention of police ill-treatment and misconduct to be effective all grievances against the police, including service complaints, need to be handled by appropriate means. Complaints, and the way in which they are handled, need to be differentiated according to the seriousness of the allegation and the potential consequences for the officer complained against.
25. The police complaints system should operate in addition to, and not as an alternative to criminal, public and private legal remedies for police misconduct.
26. There are four principal types of complaint against the conduct of a police officer concerning allegations of:
- misconduct from which issues of criminal culpability arise;
  - violation of a fundamental human right or freedom;
  - misconduct from which issues of disciplinary culpability arise; and
  - poor or inadequate work performance.
27. Procedures for less serious complaints should not be so bureaucratic that a potential complainant may be deterred from making a complaint. If criminal proceedings or disciplinary action arise as a consequence of a complaint there must be sufficient safeguards in order to protect the rights of the police officer complained against.
28. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services.

## 5. Independent Police Complaints Body

29. An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.
30. Five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the ECHR:
1. **Independence:** there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;<sup>3</sup>
  2. **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;<sup>4</sup>

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<sup>3</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007; *Bati v Turkey* (Application nos. 33097/96 and 57834/00), Judgment 3 June 2004.

<sup>4</sup> See, for example, *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgment 6 July 2005; *Aksoy v Turkey* (100/1995/606/694), Judgment 18 December 1996.

3. **Promptness:** the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;<sup>5</sup>
  4. **Public scrutiny:** procedures and decision-making should be open and transparent in order to ensure accountability;<sup>6</sup> and
  5. **Victim involvement:** the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.<sup>7</sup>
31. Articles 2 and 3 of the ECHR are fundamental provisions and enshrine basic values of the democratic societies making up the Council of Europe.<sup>8</sup> There are two principal purposes of the five ECHR effective police complaints investigation principles. On the one hand, they have been developed to ensure that an individual has an effective remedy for an alleged violation of Article 2 or 3 of the ECHR.<sup>9</sup> On the other hand, the principles are intended to protect against violation of these fundamental rights by providing for an investigative framework that is effective and capable of bringing offenders to justice.<sup>10</sup>
32. The minimum requirement is that a member state must ensure arrangements are in place to comply with the five principles in the event that Article 2 or 3 of the ECHR is engaged. In furtherance of this aim the CPT has strongly encouraged the creation of a fully-fledged independent investigative body.<sup>11</sup>
33. More broadly, the five principles also serve as helpful guidelines for the handling of all complaints. The existence of an independent police complaints body (IPCB) with comprehensive responsibilities for oversight of the entire police complaints system will reinforce the independence principle. Practices are suggested in this Opinion in support of a human rights compliant police complaints system which will allow for appropriate and proportionate responses to all complaints.
34. Primary legislation should provide for the operation of an IPCB with general responsibilities for oversight of the police complaints system and express responsibility for investigating Article 2 and 3 complaints in accordance with the ECHR independence principle. Arrangements in the form of, for instance, secondary legislation, regulations, statutory guidance and protocols, will be required to enable the police and IPCB to work together in partnership and ensure that all complaints are handled fairly, independently and effectively.
35. The institutional design of IPCBs established in a number of jurisdictions in Europe in recent years has taken the form of specialised ombudsman institutions or, alternatively, standing commission structures. The appointment of a Police Ombudsman or a Police Complaints Commission, comprising a number of commissioners co-ordinated by a Chairman, are each capable of overseeing a fair, independent and effective complaints system. The United Nations *Principles relating to the status and functioning of national institutions for protection and promotion of human rights* (Paris Principles) are also relevant in gauging the independence and functioning of IPCBs. Naturally, the constitutional arrangements and policing systems, along with historical, political and cultural influences, prevailing in each member state will play a major part in determining the institutional arrangements for an IPCB.
36. The IPCB must be transparent in its operations and accountable. Each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.<sup>12</sup>

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<sup>5</sup> See, for example, *Isayeva v Russia* (Application nos. 5794/00, 57948/00 and 57949/00), Judgment 24 February 2005; *Aydin v Turkey* (57/1996/676/866), Judgment 25 September 1997.

<sup>6</sup> See, for example, *Ognyanova v Bulgaria* (Application no. 46317/99), Judgment 23 February 2006; *Chitayev v Russia* (Application no. 59334/00), Judgment 18 January 2007.

<sup>7</sup> See, for example, *McKerr v UK* (Application no. 28883/95), Judgment 4 May 2001.

<sup>8</sup> See, for example, *McCann v UK* (17/1994/464/545), Judgment 20 February 1995; *Selmouni v France* (Application no. 25803/94), Judgment 28 July 1999.

<sup>9</sup> See, for example, *Salman v Turkey* (Application no. 21986/93), Judgment 27 June 2000, § 123.

<sup>10</sup> See, for example, *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgment 6 July 2005, § 110.

<sup>11</sup> *The CPT Standards*, Chapter IX., § 38.

<sup>12</sup> See, for example, *Khan v UK* (Application no. 35394/97), Judgment 27 June 2000, § 46.

37. Sufficient public funds must be available to the IPCB to enable it to perform its investigative and oversight functions. IPCB investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations.
38. The IPCB should be representative of a diverse population and make arrangements to consult all concerned in the police complaints system. These include complainants and their representatives, police services and representative staff associations, central and local government departments with policing responsibilities, prosecutors, community organisations and NGOs with an interest in policing.
39. The IPCB should respect police operational independence and support the head of police as the disciplinary authority for the police service. There should be adherence to a clear division of responsibility between the IPCB and the police with full co-operation from the police, which will help maintain high standards of conduct and improve police performance.
40. The IPCB should have responsibility for the investigation of complaints in which:
- Article 2 or 3 of the ECHR is engaged; or
  - an issue of criminal or disciplinary culpability arises.
- In addition, the police may voluntarily refer complaints to the IPCB; the member of Government with responsibility for policing may require the IPCB to conduct an investigation into a policing matter where it is considered to be in the public interest to do so; or the IPCB may call in for investigation any policing matter where it is considered to be in the public interest to do so.<sup>13</sup>
41. The police should have responsibility for the investigation of complaints in which:
- Article 2 or 3 of the ECHR is not engaged;
  - no issue of criminal or disciplinary culpability arises; or
  - the IPCB refers responsibility for the handling of a complaint to the police.

## 6. Operation of the police complaints system

### 6.1 Visibility and accessibility

42. The police and IPCB should share responsibility for the visibility and accessibility of the police complaints system. The police service's high profile and frequent interactions with the public place it in the ideal position to promote public awareness of the complaints system, as overseen by the IPCB.
43. Examples of good practice include:
- provision of information about complaints on police publicity materials;
  - prominent display of complaints information in all police premises, particularly in custody areas;
  - all persons detained in police premises to be informed in writing of how to make a complaint on their release;
  - when on duty police officers to carry 'complaints information cards' that may be given to members of the public who express dissatisfaction with the police;
  - display of police complaints information in public spaces controlled by criminal justice agencies, including prosecution, probation, prison and court services; and
  - display of police complaints information in public spaces that do not come under the umbrella of the criminal justice system, including community, advice and welfare organisations.
44. In the performance of their duties police officers come into frequent contact with people from all types of background and the status of a potential complainant may have a bearing on whether or not they have the confidence to engage with the complaints system. Access to the system

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<sup>13</sup> See, for example, *Acar v Turkey* (Application no. 26307/95), Judgment 8 April 2004, § 221

should be through the police or IPCB. A range of methods should be available which facilitate access for the confident complainant who is fully aware of their right to complain and wishes to deal immediately and directly with the police. The complainant who lacks confidence and would prefer to seek advice and not have direct dealings with the police should also have full and complete access to the complaints system.

45. Complainants should be able to nominate a legal representative, agent or third party of their choice to act on their behalf in all aspects of their complaint. In order to safeguard his or her legitimate interests, financial assistance for legal advice and representation should be available to the complainant.
46. Access to the police complaints system, either by the complainant or his or her nominated representative, may be by a number of methods, including:
  - in person at police premises, either on the occasion that gave rise to the complaint or subsequently;
  - by telephone call to the police or IPCB;
  - by facsimile to the police or IPCB;
  - by letter to the police or IPCB; or
  - electronically, by email or the World Wide Web, to the police or IPCB.
47. Police personnel, who deal with general enquiries from members of the public in the reception area in police premises or on the telephone, should receive training and be able to give basic advice on the complaints system.

## **6.2 Notification, recording and allocation**

48. All deaths and serious injuries suffered in police custody or in connection with the delivery of policing services must be referred as soon as possible to the IPCB to record.<sup>14</sup>
49. The IPCB must have powers to immediately proceed with an investigation into an incident involving death or serious injury in the absence of a complaint or the consent of the victim or, in the case of death, the bereaved.<sup>15</sup>
50. Potential complainants and their nominated representative who choose to make their complaint in person or by telephone should be treated with respect and welcomed by the police and IPCB as citizens performing a civic duty.
51. Notification of a complaint may be to the police or the IPCB.
52. All complaints should be recorded by the IPCB. All complaints made to the police should be forwarded to the IPCB to be recorded.
53. Allegations of ill-treatment or misconduct made to a judicial officer should be recorded and referred to the IPCB to record.<sup>16</sup> The same applies where credible evidence is available to a judicial officer.
54. Where allegations have been made of ill-treatment or misconduct, or credible evidence is available, to a criminal justice practitioner<sup>17</sup> or a medical professional, he or she should be encouraged to refer the matter to the IPCB to record.
55. The police should be able to deal with complaints on notification, pending recording by the IPCB, which:
  - are of a category that the police have responsibility for handling; and
  - the complainant wishes the police to handle without the involvement of the IPCB.

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<sup>14</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 339.

<sup>15</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 339.

<sup>16</sup> See, for example, *The CPT Standards*, Chapter IX., § 28.

<sup>17</sup> See, for example, *Aksoy v Turkey* (100/1995/606/694), Judgment 18 December 1996, §§ 56 and 99.

56. The IPCB should be responsible for categorising complaints and determining the procedure for handling them. Examples of allocation decisions when recording a complaint include:
- take no further action on grounds that the complainant did not have just cause to complain;
  - take no further action on the instruction of the complainant;
  - define the complaint as a service complaint and refer to the appropriate authority;
  - confirm the police decision to deal with the complaint pending referral to the IPCB;
  - if made in connection with outstanding criminal proceedings, consult with the investigating authority responsible and determine whether the allocation decision should await the conclusion of those proceedings;
  - refer to the police for mediation;
  - refer to the police for investigation; or
  - refer to an IPCB investigator.

### **6.3 Mediation process**

57. A grievance that a practitioner may consider to be trivial may cause distress to a member of the public. The way in which such complaints are dealt with is likely to influence public trust and confidence in the police complaints system and the police.
58. Police officers routinely address grievances during their encounters with the public without the need for a complaint to be made. This may be by way of an explanation, acknowledgement of a different point of view or an apology. Where a relatively uncomplicated misunderstanding or breakdown in communication between a police officer and member of the public gives rise to a complaint it may not be necessary for the police or IPCB to undertake a lengthy and expensive investigation. Moreover, investigation is unlikely to meet the complainant's expectation that their uncomplicated complaint will be quickly resolved in a simple and straightforward manner. Provision should be made for such complaints to be resolved through mediation or a less formal mechanism.
59. The police officer with responsibility for handling a complaint determined appropriate for mediation will need to make arrangements to gather information about the complaint and how the complainant and officer complained against wish to proceed, and, if required, appoint a mediator.
60. Examples of how a mediated complaint may be satisfactorily resolved in a timely fashion with the agreement of the complainant and the officer complained against include:
- by letter to the complainant by a senior police officer providing an account for the action complained of and, if appropriate, an apology;
  - by meeting between the complainant, with nominated representative present, and a senior police officer;
  - by offer of an *ex gratia* payment; or
  - by arrangement of a meeting between the complainant and the officer complained against, with representatives present if requested, convened by a senior police officer or an independent mediator.
61. A complainant should have the right to challenge the way in which his or her mediated complaint was handled or resolved by the police by way of appeal to the IPCB.

### **6.4 Investigation process**

62. In addition to the requirement that Article 2 and 3 complaints must be investigated in accordance with the five ECHR effective police complaints investigation principles, the jurisprudence of the European Court of Human Rights also provides useful guidelines for all of the stages of the police complaints process.

## Independence

63. The existence of an IPCB with comprehensive responsibilities for oversight of the entire police complaints system makes an important contribution to the independence principle. IPCB responsibility for recording and allocation of the procedure for handling a complaint is fully compliant with the expectation that in addition to practical independence there should be a lack of institutional or hierarchical connection between investigators and the officer complained against.<sup>18</sup> Established criteria will be required to determine who is to be responsible for the investigation of a complaint and who is to carry it out.
64. The seriousness of a complaint, in terms of the complainant's experience, the consequences for the officer complained against and the public interest, play an important part in determining who should have responsibility for an investigation.
65. Resources will be a factor in determining which organisation, the police or IPCB, should carry out the investigation and bear most of the costs.
66. Examples of arrangements for IPCB and police co-operation in accordance with the independence principle, seriousness of the complaint and resource management implications, include:
  - IPCB to have responsibility for the investigation of a complaint carried out by IPCB investigators in which Article 2 or 3 of the ECHR is engaged;<sup>19</sup>
  - IPCB to have responsibility for the investigation of a complaint that may be carried out by IPCB or police investigators in which an issue of criminal culpability arises;
  - IPCB or police may have responsibility for the investigation of a complaint that may be carried out by IPCB or police investigators in which an ECHR right or freedom, except Articles 2 and 3, is engaged or an issue of disciplinary culpability arises;
  - a complaint alleging poor or inadequate police performance, if appropriate for investigation, to be the responsibility of the police and carried out by police investigators;
  - IPCB to have responsibility for the investigation of an incident, recorded in the absence of a complaint, which may be carried out by IPCB or police investigators.

## Adequacy

67. The adequacy principle has been developed to ensure that police complaints investigations are effective and capable of bringing offenders to justice.
68. Adherence to the rule of law requires that a complaints investigation into the conduct of an officer must be carried out in accordance with the same procedures, including safeguards for the officer complained against, that apply for a member of the public suspected of wrongdoing.
69. Requirements of a thorough and comprehensive police complaints investigation include:
  - taking a full and accurate statement from the complainant covering all of the circumstances of their complaint;<sup>20</sup>
  - making reasonable efforts to trace witnesses, including members of the public<sup>21</sup> and police officers,<sup>22</sup> for the purpose of obtaining full and accurate statements;<sup>23</sup>
  - where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards,<sup>24</sup> and not allowing them to confer with colleagues before providing an account;
  - making reasonable efforts to secure, gather and analyse all of the forensic<sup>25</sup> and medical evidence;<sup>26</sup>

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<sup>18</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 325.

<sup>19</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, §§ 337 - 340.

<sup>20</sup> See, for example, *Cobzaru v Romania* (Application no. 48254/99), Judgment 26 July 2007, § 71.

<sup>21</sup> See, for example, *Ognyanova v Bulgaria* (Application no. 46317/99), Judgment 23 February 2006, § 110.

<sup>22</sup> See, for example, *Velikova v Bulgaria* (Application no. 41488/98), Judgment 18 May 2000, § 79.

<sup>23</sup> See, for example, *Assenov v Bulgaria* (90/1997/874/1086), Judgment 28 October 1998, § 103.

<sup>24</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 330.

<sup>25</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 329.

<sup>26</sup> See, for example, *Aksoy v Turkey* (100/1995/606/694), Judgment 18 December 1996, § 56.

- pursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint<sup>27</sup> or uncritically accepting evidence, particularly police testimonies,<sup>28</sup> against a complaint;<sup>29</sup>
- investigating complaints of police discrimination or police misconduct on grounds of race,<sup>30</sup> ethnicity, religion, belief, gender, gender identity, sexual orientation, disability, age or any other grounds; and
- in recognition of the difficulties involved in proving discrimination investigators have an additional duty to thoroughly examine all of the facts to uncover any possible discriminatory motives.<sup>31</sup>

### Promptness

70. The promptness principle stresses the need for timeliness and that fair and effective complaints investigations must be undertaken promptly and expeditiously.<sup>32</sup> Delay may result in the loss of crucial evidence and failure to conduct an adequate investigation.<sup>33</sup>
71. Failure to conduct a complaints investigation in a prompt and reasonably expeditious manner may give the appearance that there is a reluctance to investigate or of collusion between investigators and officers complained against to conceal wrongdoing.<sup>34</sup> Delay may be unfair to the officer complained against and amount to an abuse of process, which may result in failure to bring an offender to justice despite the existence of incontrovertible evidence against him or her.<sup>35</sup>
72. The promptness principle plays a crucial part in preserving trust and confidence in the rule of law and upholding the core policing principle that police officers are accountable to and protected by the law throughout the police complaints process.
73. Adherence to the promptness principle is served by:
- timely implementation of notification, recording and allocation procedures;
  - full police co-operation with the IPCB in the investigation of complaints, particularly to preserve the evidence following serious incidents and when police officers are on the scene before IPCB investigators;<sup>36</sup> and
  - timeliness in the conduct of a thorough and comprehensive investigation and the determination of a complaint.

### Public scrutiny

74. The purpose of the public scrutiny principle is to achieve accountability in practice as well as theory. The confidential and sensitive nature of police complaints investigations needs to be taken into consideration and the degree of public scrutiny that is required may vary from case to case.<sup>37</sup>
75. The public scrutiny and victim involvement principles are closely connected. There should be a presumption that reports and other documents will be disclosed, particularly to the complainant. Disclosure of documents which explain the reasons for a decision may help dispel any concern

<sup>27</sup> See, for example, *Aydin v Turkey* (57/1996/676/866), Judgment 25 September 1997 § 98.

<sup>28</sup> See, for example, *Kaya v Turkey* (158/1996/777/978), Judgment 19 February 1998, § 89.

<sup>29</sup> See, for example, *Cobzaru v Romania* (Application no. 48254/99), Judgment 26 July 2007, § 72.

<sup>30</sup> See, for example, *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgment 6 July 2005, §§ 162-168; and recommendation by the European Commission Against Racism and Intolerance concerning complaints alleging racial discrimination, *General Policy Recommendation No. 11, On Combating Racism and Racial Discrimination in Policing*, § 51.

<sup>31</sup> See, for example, *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgment 6 July 2005, §§ 160-164.

<sup>32</sup> See, for example, *Ognyanova v Bulgaria* (Application no. 46317/99), Judgment 23 February 2006, § 114.

<sup>33</sup> See, for example, *Aydin v Turkey* (57/1996/676/866), Judgment 25 September 1997 § 108.

<sup>34</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 330.

<sup>35</sup> See, for example, *Bati v Turkey* (Application nos. 33097/96 and 57834/00), Judgment 3 June 2004, § 147.

<sup>36</sup> See, for example, *Ramsahai v The Netherlands* (Application no. 52391/99), Judgment 15 May 2007, § 338.

<sup>37</sup> See, for example, *Isayeva v Russia* (Application nos. 5794/00, 57948/00 and 57949/00), Judgment 24 February 2005, § 213.

that there is impunity for police wrongdoing.<sup>38</sup> In some cases, following death or serious injury in custody for example, it may be necessary to hold a public inquiry before a judicial officer,<sup>39</sup> or hold a police disciplinary hearing in public.

76. Without access to reports and documents after completion of the complaints process complainants may be denied the opportunity to challenge the way in which their complaint was handled or resolved.<sup>40</sup>

### **Victim involvement**

77. The victim involvement principle, by ensuring the complainant's participation in the investigation, serves to safeguard his or her legitimate interests in the complaints system.<sup>41</sup> In order to facilitate the involvement of a complainant, without prejudicing the interests of an officer complained against, the IPCB or police officer responsible for handling a complaint should arrange to liaise with the complainant. The complainant should be consulted and kept informed of developments throughout the determination of his or her complaint.<sup>42</sup>
78. It is important that the victim involvement principle is meaningful and effectively applied and not empty and rhetorical. The interests of the complainant, who may have been traumatised by their experience, lacks confidence or does not understand how the police complaints system works, are not safeguarded if he or she has difficulty communicating with the police or IPCB about his or her complaint. Victim support and counselling should be available to help traumatised complainants cope with their ordeal throughout the determination of their complaint. Legal advice and representation should be available to complainants to ensure that his or her interests are effectively safeguarded.<sup>43</sup>
79. Adherence to the victim involvement principle, particularly when legal representation is available, will provide a complainant with the opportunity to scrutinise proceedings and challenge unfair and ineffective practices. It will also enhance independence by ensuring that the complainant's interests are not marginalised by the interests of a powerful police service.

## **6.5 Resolution and review**

80. In completion of the investigation report the IPCB or police investigators responsible must exercise independent and impartial judgment in resolving the complaint and determining whether or not it has been upheld on the evidence. If the complainant challenges the way in which his or her complaint was handled or the outcome there should be a right of appeal to the IPCB if investigated by the police, and by way of judicial review if investigated by the IPCB.
81. After resolution of a complaint five principal courses of action may follow:
- no further action;
  - criminal proceedings may be brought against a police officer;
  - disciplinary proceedings may be brought against a police officer;
  - police management may take informal action against an officer; or
  - changes may be made to policing practice in consideration of the lessons learned.
- The complainant should be informed in writing and orally of the resolution of his or her complaint.
82. The expectation that criminal or disciplinary proceedings will be brought against a police officer against whom there is evidence of misconduct is an important protection against police impunity,<sup>44</sup> and essential for public trust and confidence in the police complaints system.<sup>45</sup> Police

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<sup>38</sup> See, for example, *McKerr v UK* (Application no. 28883/95), Judgment 4 May 2001, § 338.

<sup>39</sup> See, for example, *Edwards v UK* (Application no. 46477/99) 14 March 2002, § 84.

<sup>40</sup> See, for example, *Oğur v. Turkey* (Application no. 21594/93), Judgment 20 May 1999, § 92.

<sup>41</sup> See, for example, *Güleç v Turkey* (54/1997/838/1044), Judgment 27 July 1998, § 82.

<sup>42</sup> See, for example, *Edwards v UK* (Application no. 46477/99) 14 March 2002, § 84.

<sup>43</sup> See, for example, recommendation by the European Commission Against Racism and Intolerance concerning complaints alleging racial discrimination, *General Policy Recommendation No. 11, On Combating Racism and Racial Discrimination in Policing*, § 51.

<sup>44</sup> *The CPT Standards*, Chapter IX., § 31.

officers are liable in criminal and disciplinary proceedings independently of complaints investigations and the rights and safeguards available to them are beyond the scope of this Opinion. This is based on the assumption that officers are subject to standard criminal justice procedures, including due process safeguards, and that discipline is a police service responsibility.

83. One model for the conduct of criminal and disciplinary proceedings against police officers arising from complaints is for them to be handled by standard criminal justice or police disciplinary processes. Where there is evidence that may give rise to proceedings the IPCB should forward its investigation report to the criminal prosecution authority to decide whether to bring criminal proceedings, and to the police to decide whether to bring disciplinary proceedings.
84. The prosecution authority and police should have regard to the recommendations contained in the complaints investigator's report when determining whether or not to bring criminal or disciplinary proceedings. The prosecution authority, police and IPCB should give reasons for all decisions relating to criminal and disciplinary proceedings for which they are responsible.<sup>46</sup>
85. In some member states there is concern that the close working relationship between the police and prosecution authority in standard criminal proceedings may undermine independence and impartiality in prosecution practice. A major cause of concern is that co-operation between police investigators and prosecution lawyers may tarnish the independence of prosecutors when working on cases against police officers. In an attempt to deal with this problem specialist criminal prosecution authorities with their own investigators have been established in some jurisdictions to investigate complaints against police officers and conduct criminal proceedings.
86. This type of independent police prosecution system could be adapted to a police complaints system which functions under the auspices of an IPCB. Following the example of certain European ombudsman institutions which possess powers to bring charges before the court on their own authority, the IPCB could be granted similar powers to press criminal charges after completion of its complaints investigations. Naturally, the constitutional and legal system prevailing in each member state would play an important part in gauging the feasibility of such an arrangement. Particular consideration would also need to be given to the availability of safeguards and protecting the rights of police officers as defendants in criminal proceedings.
87. There are lessons to be learned from all complaints. Even when it has been determined that a complainant did not have just cause to complain, it will be possible to learn something about the condition of police community relations. Statistical and empirical research and analysis of complaints is of fundamental importance to democratic and accountable policing. An IPCB will be ideally placed at points where police operations and community experiences intersect and, therefore, able to provide the police and public with informed advice on how to improve the effectiveness of policing services and police community relations. If, following the conclusion of a complaint or after research and analysis, either the police or the IPCB consider it appropriate to put into effect any lessons learned this should be after consultation with the other party.

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<sup>45</sup> See, for example, *Guja v Moldova* (Application no. 14277/04), Judgment 12 February 2008, § 88.

<sup>46</sup> See, for example, *McKerr v UK* (Application no. 28883/95), Judgment 4 May 2001, § 157.

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