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**THE EXTERNAL OVERSIGHT OF POLICE ACTIVITY
THE IGAI**

“Portugal is a sovereign Republic, based on the dignity of the human being and the will of the people, and committed to building a free, fair, united society.” Article 1.

“The police shall have the functions of defending democratic legality and the rights of citizens.” Article 272, paragraph 1.

Constitution of the Portuguese Republic

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

The implementation of the IGAI did not take place until February 26, 1996, with the appointment of the Inspector General.

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

“Implementation of institutional solutions and proceedings in order to ensure, in the area of the Internal 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 established the IGAI – the Decree-Law No. 227/95 – it corresponded 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 the disciplinary justice in the socially most relevant situations"*.

Comparing the preface of the Decree-Law No. 227/95 to that of the Decree-Law No. 154/96 – the legal text that modified the original text that established 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 practice.

This explains why, from the very first legal text on, the emphasis was placed on the specialities and the 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, the 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 of the dignity of the 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 subject to their own systems of internal control, each one with its own inspectorate general.

Regarding the external control over police activity, the Portuguese model relies on an Ombudsman, elected by the Parliament, and another control, in the criminal area, is carried out by the courts of law, namely by the Attorney General's Office. There is also an external control over the conduct of police forces, of a preventive nature and concrete action regarding discipline, which is carried out by the IGAI.

The Inspector General is appointed by the Minister of Internal 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 operations, 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 Attorney General.

Currently, the Inspector General is an Assistant Attorney General. One Deputy Inspector General is also an Assistant Attorney General and the other is a judge.

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.

The inspectors do not build up any professional career in the IGAI. They are appointed by the Minister, on the recommendation of the Inspector General, and maintain all the rights inherent to their careers of origin. They earn a supplement of 30 percent over their corresponding salary as a compensation for their permanent availability regardless of labour hours, the risk of their functional activity and the great responsibility of their tasks.

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.

Since they are appointed by the Minister on the recommendation of the Inspector General, they 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 an Administrative and General Support Branch.

The IGAI is a high-level inspectorate responsible for all services that depend on or are supervised by the Minister of Internal Affairs, as well as civil 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 breach 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 oversight 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 Internal 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 of police action and technical support to the Minister, especially 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 Attorney General's Office of all situations that come to its knowledge that may constitute a crime 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 fast and efficient without prejudice to the criminal justice.

In its activity, the IGAI is governed by the principle of legality and rigorous objectivity 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 Internal 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 is highly reputable by the 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 conduct regarding citizenship and the nucleus of fundamental rights.

The quality of police action implicitly includes this nucleus because if security forces 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.

The IGAI is systematically carrying out actions meant to assure the intransigent defence of the citizens' fundamental rights, the human rights and the implementation of actions aiming at the improvement of quality in police activity.

The IGAI has kept its preventive activity regarding police action, namely in the fields of the detention of citizens and the respect for their dignity, and developed inspective actions with previous notice in order to assess not only the respect for the law by the officers of the security forces but also their physical, material and working conditions. These actions intend to make a diagnosis of the organic structures of the organisations, their disciplinary and disciplining systems and the professional careers.

We note that in Portugal no citizen may be detained in a precinct or unit for more than 48 hours. After that period, he must be presented to a court of law.

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

After the IGAI's implementation, the curricula began to put also in evidence 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 constitutes a chief strategic goal.

In this context, the IGAI started a systematic practice of organising conferences with the presence of highly reputed persons in the field, namely resorting to international invitations, in order to stimulate the reflection and the debate on police training and particularly on the role of police officers in contemporary and future society.

Therefore, 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", "The Legal Framework of Municipal Police Forces".

Still in respect to this purpose, the IGAI organised in 1998 an International Seminar entitled "Human Rights and Police Efficacy, in 2001 another International Seminar entitled "Cultures and Security – Racism, Immigration, Youths in Group" and, in 2003, a third International Seminar entitled "The Use of Firearms by Police Officers".

In the first of the above-mentioned Seminars, the IGAI was glad and proud to have, among many other entities, a significant Canadian participation: Mr. Michel Sarrazin, chief of staff of the Police Service of the Urban Community of Montréal, Quebec, Mr. Gerald Lapkin, ex-Police Complaints Commissioner for the Province of Ontario, and Mr. Denis Racicot, Commissioner for Police Ethics of Quebec.

Mr. Mark Gissiner, by then the president of IACOLE, was another participant in this Seminar.

Also in this context, 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 4, 2000 (seminars, lectures, conferences, bibliographic and documentary exhibitions, cultural events).

Nowadays the IGAI is engaged with other partners, in the scope of the EU countries, in a process of external oversight of police activity in what may become the European police and has a very dynamic role in an EU 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 field since the finance of security forces by taxpayers imposes the correct use and management of the public funds.

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

During these eight years of operation, the IGAI has always endeavoured to establish international contacts with similar foreign organisations. It keeps a regular contact with Amnesty International (AI), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and with 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, and the USA, in the scope of IACOLE, as well as 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". In both Seminars, the Inspector General presented a paper.

Still in Brazil, the IGAI was present in Porto Alegre in 2002 with a communication in the International Seminar in the scope of the Second World Forum entitled "The Democratic State based on the Rule of Law and Police Organisations".

In that same year, the IGAI had an intervention in the first international conference on external oversight of police activity, held at the University Cândido Mendes, in Rio de Janeiro, Brazil.

Regarding 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 orders issued by the Minister of Internal 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.

Due to its external nature in relation to the security forces and since it only depends on the Government as far as the appointment of the Inspector General is concerned, the IGAI's system is characterised by an independent activity and operational autonomy, governed by criteria of legality and not of opportunity.

This system has achieved, in the still short Portuguese experience, levels of great and praised efficacy due to its capacity and quality of direct intervention in the incidents and systematic control over prevention.

Its investigatory proceedings are governed by law and in the end they submit a proposal for ministerial decision, susceptible of appeal to the courts of law in what concerns disciplinary matters.

The Minister answers, as we know, to the Parliament and is undoubtedly the most concerned with the control of the activity of the police forces for which he is responsible.

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 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.

The IGAI's proposals have been systematically accepted and latter implemented by ministerial decisions.

Still in this field, the IGAI elaborated the Regulations Applicable to the Material Conditions of Jails in Police Units and Precincts, which define the areas of the cells, the characteristics of the premises, the beds, light conditions, sanitary facilities, floors, and so on, as well as the proceedings regarding the detainees. These Regulations were implemented in Portugal by ministerial decision of May 1999.

These rules 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 cause 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 a compulsory registration of detainees, the communication, via fax, of a 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.

On the initiative of the IGAI, the author of the project, a law on the use of firearms by police officers 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 polices, now in force.

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

We must refer that since 1996, the year in which the police was held responsible for a death inside their premises, no other similar situation took place in Portugal.

On the other hand, the cases in which deaths have occurred as a result of police intervention, usually with the use of a firearm 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. These numbers do not necessarily mean that there was a blameable conduct by the police officer.

This year, no case of death has been registered so far.

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 for all citizens to be notified of the disciplinary consequences of their complaints, which was not a police routine.

In other fields, the IGAI developed a series 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 making 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 ourselves, namely Amnesty International. That is visible in its 1999 Report and by the references in its 2000 Report, namely to the 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 regarding the control and supervision of the activities of the civil and paramilitary police forces.

The fact that the IGAI can not apply sanctions is also mentioned in that Report.

In what concerns this aspect, we think that this solution is the best because a member of the Government is co-responsible for the imposition of sanctions.

Also in its 2002 Report, Amnesty International makes another reference regarding the IGAI's intervention in 11 cases with the imposition of disciplinary measures in three 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 and so the organisms of external oversight that depend on the parliaments, organs of politic power, are considered independent because they do not depend on the executive.

The truth is that in the Portuguese case, the Inspector General is appointed by the Prime Minister and the Minister of Internal Affairs and acts with total autonomy, having the power to initiate investigations.

He acts in the legal framework of procedural matters, different from the Ombudsman, an organ that also exists in Portugal, who is elected by the Parliament but whose activity is mainly in the field of public intervention and elaboration of recommendations, with no intervention in procedural matters in the legal sense of the word.

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 last Report, published this year. Similarly, 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 Internal 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 2 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 Internal 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 activity.

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 in the scope of the society in which it operates is, allow me to say it, clearly a positive one.

In modern times and democracy, the external oversight of the exercise of power is essential to ensure that this is substantially the exercise of the democratic power with 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, 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 those same rights constitute the limits of their action.

Thank you very much.

Written in Lisbon, on June 15, 2004.

Read in Toronto, on June 26, 2004.

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