The Governance and Oversight of Internal Security Forces in Turkey & 7 EU Countries

Sebastian Roché (ed)
Improvement of Civilian Oversight of Internal Security Sector Project Phase II is funded by the European Union. The beneficiary of the project is the Republic of Turkey Ministry of Interior. The project implementation is coordinated by the Republic of Turkey Ministry of Interior, General Directorate of Provincial Administrations. Technical assistance for the implementation of the project is provided by the United Nations Development Programme.
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Sebastian Roché, editor

We would like to thank to the Ministry of Interior personnel for their support on preparation of this booklet

March 2015

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The targets of the civilian oversight project are threefold:

- the protection of human rights and freedoms and enjoyment of democratic rights constitutes,

- the establishment of a legal and institutional system (governmental, managed by the Ministry of Interior) with the capacity of excercizing civilian oversight,

- promote an ISFs' system centered on users' needs as well as more transparent to civil society (citizen focused and not state focused).

The Improvement of Civilian Oversight of Internal Security Sector Project activities aim at:

- clarifying the concept of civilian oversight and disseminating it to the civil administrators and internal security forces chiefs,

- establishing a legal framework for effective civilian oversight after carrying out comparative studies including Turkey, Spain, UK, Italy, Portugal, Denmark, Germany and France,

- increasing the capacity of the Ministry of Interior to oversee all internal security forces.
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Book Series Editor Sebastian Roché

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This book is based on information contained in the country reports by a team of short term experts who have contributed to the comparative assessment for the 2010 and later 2015 editions. The 2010 edition was published in 2012, and updated in 2015 for France, Spain and the UK. The 2015 edition in addition includes Denmark, Germany, Italy, and Portugal.
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General Introduction

This book is one of the outputs of the “Improvement of Civilian Oversight of Internal Security Sector” (ICOISS) Project, phase 1 (2008-2010) and phase 2 (2012-2014).

The overall Project aims at the expanded enjoyment and institutionalization of democratic rights by citizens and civil society organizations. The specific objective of the project is to contribute to progress towards the overall objective by “establishing framework conditions for governors, district governors and Ministry of Interior staff to make a transition from narrowly conceived, bureaucratically and legally managed oversight of policing to a system of security sector governance based on human-centred understanding of security and public safety and transparency in partnership with civil society”.

The project’s Component A is entitled “Legislative Framework”. This component is geared towards developing a legislative framework which will enable the Mol and public administrators (governors and sub governors) to exercise effective civilian oversight (along the lines defined in the specific objective of the project) over law enforcement bodies.

The aim of this book is to examine, evaluate and compare civilian oversight mechanisms in seven selected EU member states – namely France, Spain, Denmark, Portugal, Germany, Italy and the UK- and Turkey, to help in identifying the best legal practices and structures of above mentioned countries to Turkey. This requires careful thinking and operationalization of oversight related concepts. Mechanisms are legally defined but of organizational nature. Thinking out civilian oversight of internal security forces equates with thinking of the structure of the state apparatus. Moreover, this books endeavours to do it systematically and in a comparative fashion.

Having a “general understanding” in legal and organizational terms is useful for theoreticians of governments, but also for the central authorities. It is known that the nature of civilian oversight of internal security forces in Turkey or in EU countries is shaped by the powers and practices of the Parliament, the court of account, the ministry of Justice (courts remain a corner stone of oversight in all countries) and the Ministry of Interior at the central and local levels (in the governorates). In addition, laws and mechanisms in relation with the public administration, the gendarmerie, the coast guards and the police constitute other pieces of the Turkish system of oversight. Finally, other bodies such as the Human Rights Boards working under the umbrella the Prime Minister or Defender of Rights designed as independent of the executive branch can be found. Because the system of civilian oversight is usually complex, heterogeneous and fragmented, an overview of its key features can enable effective coordination of efforts for its reform.

Methodology for the production of the book is as follows: the chief technical advisor (CTA) designed a framework and selected criteria for comparing countries on key legal elements of civilian oversight of policing forces. Turkey’s civilian oversight mechanisms were examined and evaluated by local experts. Simultaneously international experts were assigned to examining seven selected EU member states’ civilian oversight legal basis
(Denmark, Germany, Italy, Portugal, France, Spain, and the UK). Experts conducted a gap analysis between their case study and Turkey based on the methodology provided to them by the CTA. A final comparison was elaborated by the CTA based on the collected material. It is an attempt to build a systematic analysis of the legal principles for the governance of the internal security sector based on explicit indicators.

The first part of this book titled “Comparative Legal Appraisal” provides a cross-country study of regulations and a set of recommendations which aimed at drafting secondary legislation. Throughout this part, constitutional, parliamentary, judicial, hierarchical, different internal or external and oversight mechanisms of the seven selected EU member states are compared to the situation in Turkey. Additionally, citizen and local authorities’ involvement in security policies and issues is the subject of discussion.

The second part titled “Guidelines and Recommendations” puts forward recommendations and guidelines derived from comparative studies as necessary steps to be taken by Turkey in the field of the civilian oversight.

1. What is “Civilian Oversight”?

Civilian oversight of the internal security sector both as defined in this project (see the general and specific objective) and in academic studies of norms and practices has a very broad meaning. It refers to the impact of democratic rules and institutions on Internal Security Forces (ISFs). It refers to three key notions: direction of the internal security forces, prescription of the due processes, and control of those processes.

Civilian oversight of law enforcement forces is an essential component of a democratic society. Effective civilian oversight of policing forces implies drafting appropriate laws and regulations (that should assert respect of core international democratic principles such as, lawful policing, accountability and subordination to civil authorities, transparency, see below) and developing the appropriate mechanisms in order to ensure that the policing forces use their powers and tools in a manner respecting the law, individual rights and freedoms.

The term “oversight” of internal security forces refers to the ongoing multi-level monitoring of police activities with a view toward holding policing organizations accountable for the conduct of their members, the quality of the services that they provide, the processes and devices used and the policies that they operate under. Carrying out internal security activities or “policing” in English, is realized by civilian or military organizations or both depending on the country. Exercising democratic civilian oversight implies defining the legal competencies of policing forces and establishing mechanisms to achieve accountability (inspection, audit, internal and external disciplinary processes) and promote cooperation with other organizations and transparency to civil society. These accountability mechanisms often involve oversight bodies, civil society stakeholders and policing forces executives.

Why is the definition of “civilian oversight” of ISFs specifically useful in Turkey? It is a complex notion, with no agreed upon concept, which refers to a “system of oversight” meaning a set of regulations and mechanisms. The term “civilian” alternatively designates
“non-army” (the police is in that sense “civilian”), but sometimes “non-governmental” (the police consider non-police staff as civilian, as in the expression “civilization of police which refers to hiring civilians in police forces for various tasks, manager, computer engineer etc...”), and even “pure civil society” entities (citizen, NGOs). The term “oversight” used in English aggregates notions of accountability but also inspection or audit and hierarchical control. Therefore the interpretations of the expression combining the two notions “civilian oversight” can be extremely diverse across different organizations. The internal security forces often fear that there could be a direct and continuous power exercised by citizens in the sense of instructing them how to act, which is in practice never observed in any of our countries. Rather, governments have established “local prevention partnerships” or “Council for prevention of crime” as means to consult systematically citizens about their needs. Unless an unambiguous definition is established in an objective and systematic way and shared and discussed, such misunderstanding will probably remain.

Even if a definition can be agreed upon, its practical meaning when put into force would differ for each organization. The gendarmerie, be it in Italy, France, Portugal, Spain or Turkey has a perception of what could mean “civilian oversight” which does not match its significance for the police. For the gendarmerie it usually means a direct hierarchical control by civilian governmental authorities but not a loss of their military nature (as seen in Italy, France, Portugal or Spain).

The term civilian oversight is very often referred to as the notion of “governance” in parallel to civilian oversight because oversight tends to encompass not only governmental oversight but also non-governmental bodies and civil society organizations. In that sense, the terms “civilian oversight” or “governance” refer to the processes and structures used to provide direction to policing organizations. However, “civilian oversight” goes beyond providing direction to internal security forces and includes the possibility to inspect services and sanction individual misbehaviour.

Political power is always of a coercive nature. It is backed by the state’s machinery for enforcing its laws, among which the internal security forces are a major piece. The power is imposed on citizens and non citizens who reside within national boundaries of a state. However, in democratic regimes, the power of the state is also the power of citizens and it is widely believed that the state should work for their mutual advantage. The general structure of political authority, the political regime, is defined in the constitution. Therefore, the role of the internal security forces and their relations to state and to citizen are expected to be found in the laws and in the highest of them, the constitution.

Each democratic country has established its own laws and mechanisms in order to fulfil the demands of civilian oversight. The core of civilian oversight is constituted by a common belief shared in western democracies according to which all internal security forces and agents (from the lowest rank officers to the top ranking officials) must be working lawfully and under the authority of a legitimate government. This common belief is turned into a series of norms, laws and mechanisms. Oversight is meant to be effective, not only by sanctioning individual deviation from the norm, but also by establishing a system (a set of devices working both at individual and policy level) that prevents such
behaviour. This system oriented approach tends to become dominant; a clear sign of it is that directorates in charge of overseeing police behaviour are now named “standard stetting units” in some EU member states.

The possibility of civilian oversight of the internal security sector stands on a clear definition embedded in the highest laws of what actually is “internal security” and by extension what is “external security”. The need for such a definition is of special importance for countries with military units involved in policing. In western countries, all security units performing internal tasks whatever their status are considered as internal units even if of military nature (French Gendarmerie, Spanish Guardia Civil, Italian Carabinieri or Guardia di Finanza). In order for civilian oversight to be effective, legal answers need to be given to such questions as “what is policing” and “what are the forces in charge of policing”.

During the last 30 years, in addition to the demand for lawful policing that remains a must, the notion of civilian oversight has evolved in three directions:
1. a larger importance was given to the notion of “policing for the people”;
2. coordination of the police with the local authorities (be it in centralized or decentralized countries);
3. external mechanisms (to the police and even to the government).
These were established under various denominations but generally referred to as Non Departmental Bodies or Non Majoritarian Institutions.

The plurality of legislation and devices found across countries shall not obscure the fact that these countries share common visions of oversight. This common vision can be synthesized with reference to five key concepts of which civilian oversight consists. Those are: lawfulness, accountability, control, transparency and partnership.

**A. Lawfulness:** ISFs must use their authority in accordance with law and fundamental human rights and freedoms. Additionally, ISFs are expected to be just while they are fulfilling their duties. Lawfulness is defined as the authorities which either are given or not prohibited by law. Legality is on the other hand is to follow strictly the procedures defined by law. In this regard, it seems that in contrast to the term of legality, lawfulness contains ethical meanings. While "legality" explains the obedience of official norms, "lawfulness" adds ethical values to the previous notion. Further, "lawfulness" is a symbol of the appreciation of ethics.

**B. Accountability:** Civilian oversight cannot be achieved if the internal security forces are not accountable to the state and to citizens. The state is defined here as the public institutions (national and local governments, parliaments). In democratic regimes, the internal security forces are accountable to the government, and the government is accountable to the Parliament. The Parliament enacts the laws which define the norms and procedures to be followed. In addition, it has the power to oversee the budget and to investigate the actual implementation of laws and policies. Accountability to Non Majoritarian Institutions has also developed substantially under different names (Defensor del Pueblo in Spain, National Agency on Computing and Liberties in France, Independent Police Complaint Commission in the UK etc...) on the basis that these organizations are more impartial when carrying out probes so that individual misbehaviour committed by members of internal security forces is not investigated by their own personnel.
C. Control:

a. Hierarchical Control: Hierarchical control and command is another way of overseeing that the internal security forces “do the thing right”. Dedicated staff or assigned staff (disciplinary units or disciplinary procedures) are in charge of ensuring that orders are executed and for probing alleged misbehaviours by internal security sector personnel. Central directorates or specialized units of the internal security forces or of the ministry of Interior also audit the functioning of the services and their compliance with regulation. Audit units contribute to control especially in relation to budget use and organizational structure. In centralized systems, the Prefects or Governors also play a role regarding oversight of internal security forces, especially in the domain of public order but also of police performance. They also contribute to the establishment of local security plans.

b. Control by the Judiciary: The control by the courts ensures that policing and policing policies are lawful. In addition to the Ministry of Interior control, the control exercised by the judiciary is crucial. When penal crimes by state civil servants are alleged, the public prosecutor directs an independent judicial investigation (not to be confused with the administrative investigation conducted by MoI) and the courts decide about the appropriate sanction. Administrative courts contribute to check the legality of orders and decisions given by officials, be they high level officials.

D. Transparency: Internal security forces have become more transparent to non-governmental organizations (NGOs) and to the media. A number of institutions have been given the task of conducting more independent research on internal security forces’ activities or the public perception of these activities. The police and gendarmerie are not accountable to those organizations, but are contributing to research projects, subject to checks (for example of detention facilities) by NGOs and are making more documentation public (audits in relation to use of force, victim satisfaction surveys etc.). The fact that the media are guaranteed physical integrity of their personal, protection of their sources and a right to dissemination of information and for interpretation strongly contributes to transparency.

E. Partnership: Increased coordination across internal security forces can be a means of increased efficiency. It also provides an efficient oversight. Partnership with local authorities for problem solving is the most frequently observed way in EU member states. But in addition, internal security forces are more often obliged by law to consult with the community at the national and local levels, for example through local safety meetings so that the conclusions feed into local safety plans.

2. What are the Aims of “Civilian Oversight”?

Firstly, the aim of civilian oversight is to ensure that internal security forces and policies remain under the control of the civilian authorities to which they are accountable and that such forces act lawfully. Secondly, services have to be managed efficiently so that individual misbehaviour is prevented and, if not, detected and sanctioned. Usually, auditing to ensure proper functionality and hence prevent wrongdoing is the role of the internal inspections (within the internal security forces or ISFs), while sanctions will happen both at an internal
disciplinary level and at the judicial level. Judicial oversight ensures that alleged violations are independently examined and, if confirmed, appropriately sanctioned. Administrative courts allow citizens to scrutinize the decisions of the police and Gendarmerie authorities.

Another important element of civilian oversight is related to the notion of governance. It is to ensure the participation of civil society organizations in the formulation of internal security priorities, and to increase transparency of the policing forces to citizen scrutiny. In that sense, civilian oversight is improving the “good governance” of the internal security sector. An increase of citizen satisfaction is expected when such practices are established and perpetuated.

Establishment of democratic oversight can be regarded within internal security forces as an additional burden. It implies control by their hierarchy, reporting to the government, to be under the oversight of the judiciary as well as independent organisations (in those countries that have set up such arrangements). In addition, internal security forces will be under the scrutiny of the media and expected to be more “user friendly” with the population. However, the benefits of a reformed civilian oversight system for the internal security forces are real. As such, a clear legal framework provides a solid foundation for the activities of internal security forces. In other words, internal security personnel understand what is expected from them by their superiors and how they should fulfil these expectations. In this respect, standards with regard to work and duties develop; and with these standards, level of skills of internal security personnel increases and their professional activity becomes more attractive with plurality of professional services. Through an increase in the quality of services provided by internal security agents, the positive perception of public opinion on police forces increase and with this, the legitimacy of internal security units is strengthened.

3. A New Look at The Organizational Dimension of “Civilian Oversight”

The originality of this work should be underscored. A number of guidelines to what comprises “democratic civilian oversight” of internal security forces can be found in a series of important declarations, for example of Human Rights, in laws and “soft laws”, recommendations by the Council of Europe or other entities. However, the multidimensional dimension of “oversight” has not yet been subjected to an empirical assessment of its various components.

This task is indeed complex, since it entails that the underlying concepts to the principles of civilian oversight are identified and that those concepts (or latent variables) are turned into objective indicators. Government is a quite vague notion, especially when you make it travel across various countries. “Oversight” is a typically Anglo-Saxon notion that does not exist in most languages as such (in French or Turkish, there is inspection or control, but not oversight), and equally are not found in the legal vocabulary. Nor are other notions such as “accountability”. And notions are interpreted differently in different cultures and legal settings, for example the “independence” of oversight: what could this mean, how can it be measured?
At minimum, the concept of oversight needs to be divided into two sub-concepts. We are making the following proposal. Two main dimensions of civilian oversight can be distinguished: the horizontal and the vertical one. The **vertical (or hierarchical) oversight** is enforced by organizations that have a legal power of direction and sanction over the internal security forces agents and for monitoring the policies that they operate under. For example, the Minister of Interior is one of these structures, the Parliament is another body as well as the "non-governmental organizations" *(whose powers are entrusted by law and whose membership is defined by law).*

The **horizontal oversight** refers to the promotion of participation and contribution of citizens and of civil society to the design of local security policies, cooperation with local administrations, and **transparency with the media** *(not on every single individual penal case of course but rather via access to information, through publication of administrative reports for example, availability on internet of crime data etc...).* The laws that can be passed and bodies that can be established in relation to horizontal oversight are not “hierarchical” but rather make a contribution to a better cooperation between internal security forces and other organizations including civil society based ones and to transparency with the public. The principles behind democratic oversight are listed in the next section. However, those principles are difficult to assess due to their general character. There are so many organization specificities in the internal security system of countries with different historical legacies that it becomes challenging to understand how and to what extent the principles are or not turned into organizational features.

The comparative assessment of internal security systems is one of the academic blind spots in the field of policing. Over the years, much more effort was invested into the study of the effectiveness of police doctrines, of the efficacy of police actions or the motivation and stress of officers. The demand for studies can be explained by the political interrogations about the validity of the new doctrines, or the workers and their unions for example. Few persons are mobilized to study the structures, the organizational patterns of forces, and even less on comparative analysis.

We are referring to “policing” or internal security as a natural thing. But it is not. In some countries, there is no fully developed notion of “internal security” in the current legal framework included in the constitution. In some other countries such as Spain there is. This absence entails a blurring of responsibilities for internal security duties and external security duties. According to modern constitutions, external security duties should be entrusted to the army and be carried out exclusively outside of the country. Internal security duties shall be entirely under the authority of MoI and/ or MoJ *(depending on the country).* To think of oversight of the internal security sector means to think of the sector itself and conceptualize it.

How could we make progress in this new field? We have broken down “oversight” in a series of dimensions: oversight by government, by the forces themselves *(a general directorate of police, for example, exercising some oversight functions)*, by the Parliament, by the
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judiciary, by independent organisms (often named Defender of Rights) or by the people at local level. This is a classic series of distinctions.

What is new then? For each of these pillars of oversight, we have tried to find organizational measurements of the nature of the influence (or oversight) of each player that is involved in the internal security field. We have studied the legal foundations of the oversight of the government not only by looking at the existence of legal principles, but by looking at the legal definition of organization boundaries and links within and between organizations. For example, in Turkey the internal security forces are “affiliated” to the Ministry of Interior, they are not an integral part of it contrary to France or Spain. The UK with its central-local managerial system is offering different organizational features. And Nordic countries such as Denmark, have police forces placed under the Ministry of Justice for all their duties.

This is a quite complex endeavour since most of the concepts used to define an internal security sector cannot travel across countries: for example, the question of “militariness” of police forces cannot be translated given a simple yes or no answer. In each country, it encompasses a different definition of what is considered a military law enforcement agency. In some countries you can find civilian law enforcements agencies that have a military based name (gendarmerie), but are fully civilian as in Switzerland. In some others the status of the agents is military, but not the status of the force itself that is completely civilianised in the sense of operating under civilian control, laws and the same penal code as the police.

Complexity can be even more understood when one thinks of the limited portability of concepts which are basic but still undefined. Such is the notion of “centralization”. It is unclear what is entailed by such a word in a comparative perspective. A force can be managed from the centre and deployed from the centre, and have the status of a general law enforcement body covering the entirety of the country with agents bearing the status of national civil servants. But it can also be something else, like forces managed from the centre but operating locally (as in Spain, France or Turkey). Centralization of a force and centralization of a system of internal security are also distinct notions.

We were confronted with such conceptual problems. Those required that we should try to break the concept of oversight into a myriad of measurements, but also that we identify and measure characteristics of the forces and of agents serving in those forces, and then try to characterize the relationship of the forces to the political authorities and to the citizen. This book is a second attempt (the first one was its first edition) to do so in a series of EU countries and in Turkey.

In each thematic chapter, for example the oversight of forces by a Ministry, the reader will find comparative tables for a large number of criteria. Complexity of the oversight is reflected in the tables: what are the units that oversee in the sense of strategy setting, inspection, audit, discipline? How are their heads appointed, how independent of government politicians are they? What is their legal remit?

It is understood that the determinants of horizontal oversight will be different than those of vertical oversight. For the former, we have to inquire whether citizens direct participation in national and local governance is deemed desirable, and especially in the
governance of the internal security sector. Participation here is understood in the sense of participatory democracy, i.e. participation by service users, and therefore not focused on citizen’s participation to elections (representative democracy). Participation must be understood here as participation to the design of the local priorities by residents. It is not only about benefiting as recipients of a service designed by professionals (in the case of internal security by policing technicians) without their inputs. The protection of citizens entails the development of a preventive approach, which has emerged and consolidated in EU countries during the last 30 years, without a linear growth however. Prevention is here understood as effectively preventing crime from occurring (often through a partnership approach between police and other organizations, public or private), and not in the legal sense of “non judicial policing”. This provides a legal definition of a type of police actions rather than a definition based on the observed impact of a practice towards a specific problem (for example, prevention of drug use) as used in some continental European countries and in Turkey.

One important way of increasing citizens’ oversight entails being able to define and institutionalize the participation of citizens to the identification of internal security priorities and assessment of the service that they obtain. We have checked if such mechanisms exist in various countries.

Those tables are an attempt to set measurements of oversight that can be observed in various countries and need to be interpreted in a systemic way. Far from being the finishing line of a journey, this work is rather the starting point of a comparative experience.
PART 1
A Comparative Legal Appraisal of Organizational Civilian Oversight
Introduction

In this part, the study examines comparatively the seven selected EU members and Turkey in relation to the following areas and finds out the legal gaps in the field of constitutional, parliamentary, judicial, hierarchical, internal and external oversight mechanisms, citizens’ and local authorities’ involvement in security policies, regulations on video surveillance and rights and duties of security forces personnel.

1. Core Principles, Constitutions and Civilian Oversight

Establishing democratic civilian oversight implies asserting the key values in the most respected legal documents (usually the Constitution, declarations of rights, organic laws), but also to establish the working mechanisms that are designed by the laws in order to allow them to enforce the regulations and finally to ensure that those mechanism are effective in achieving their aims. The Constitution is the framework and the source of all second-level legal systems that exist. It defines the fundamental rights and liberties, and sets the boundaries in the use of legal constraints. Also, in EU states, the Constitution indicates by whom and how the internal security forces are instructed and directed, by whom and how they are subject to law in two main ways that is the prescription (how law prescribe their practices, for example by giving the courts the direction of judicial investigations) and the control (how the public prosecutor and the judge ensure that the penal laws and codes are respected).

1.1. Role and Functions of Fundamental Laws and Core Principles

National Constitutions and declarations of human rights are the basic and highest legal texts in a country’s legal system. Therefore, it is difficult to conceive a meaningful legal review in any policy sector or area without any reference to relevant constitutional provisions. The references to core principles in the constitution are used to guide the workings of public institutions and internal security forces.

Constitutions provide the legal framework in a number of important subjects, such as:

i. Declaration of human rights and the mechanisms for their effective guarantee and protection,

ii. Establishment of the principles of the ‘state structure which is influencing the organization and functioning of the entire state apparatus (unitary or federal state, centralized or decentralized state, presidential or parliamentary political system, etc.),

iii. Checks and balances between the legislative, executive and judicial branches of government; in particular, parliamentary and judicial controls over the executive branch,

iv. Very often, the basic principles and rules of the organization and functioning of the state bureaucracy include the role and remit of internal security forces and agents.
In this section, the constitutions of France, Spain, the UK, Denmark, Germany, Italy, Portugal and Turkey have been compared in terms of fundamental values and civilian oversight of Internal Security Forces mechanisms. The UK does not have a formal written constitution, and therefore its core values were used instead as a reference point. The key principles used during the comparison are protection of the free exercise of liberties, definition of internal and external security and reference to policing functions. Accountability, declaration of human rights and rights to professional representation of internal security forces are other key principles scrutinized in the course of constitutional comparisons. The more recent evolutions in policing policies during the last thirty years are related to a transition from the concept of "state security" to “citizen security”.

1.2. France

The French Constitution contains four basic principles that shape the civilian oversight of the internal security sector. These are the accountability of the security forces, the subordination of the security forces to the government, the control of the government’s policies by the Parliament in the name of the powers bestowed to them by the sovereign people, and lawfulness.

The principle of public accountability of the internal security forces is embedded in the foreword of the French Constitution of 1958 which includes the 1789 Declaration of Human Rights and Citizenship. This clearly defines the individual’s rights regarding personal liberty, property and safety (Art. 2 of the declaration). It also clearly indicates that human rights require a specific public force to be guaranteed and that this force is instituted for the benefit of all, not for the benefit of those to which it is given (Art. 12). At the same time the declaration stresses the fact that this force has to be accountable to society. This is the basis of the principle of public accountability for all public administration and public force including both police and gendarmerie (Arts. 13 to 15 of the Declaration of Human Rights).

Article 20 of the current constitution (of 1958) reflects the principles of subordination to the government and of parliamentary control. This article indicates that the government both has authority over the administration and the armed forces and is accountable to the Parliament. This clearly means that the ministers, the préfets (or governors), the gendarmerie and the police, like all state services, are under the full control of the central government. Article 13 reinforces this control by pointing out that high-level officials are formally designated by the president or through the council of ministers. Such positions include the préfets, the director general of the police and the gendarmerie, most of their deputies and all gendarmerie generals.

The constitution clearly defines what falls in the field of the law and consequently what is relevant to bylaws and ministerial regulations (Art. 34). This covers especially what usually defines the activities of internal security forces: matters that impact upon individual rights and public liberties, definition of crimes and criminal procedure. This implies that the activities of the police and the gendarmerie can only be defined by the Parliament either on the basis of a "law project" (initiated by the government) or on the basis of a “law proposal” (initiated by a member of the Parliament). Neither the police nor the gendarmerie can

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2 Article 15. "La Société a le droit de demander compte à tout Agent public de son administration"
define by themselves which duties they are entitled to perform.

The French constitution introduces some principles like accountability, subordination of the administration and the role of the préfet that are not outlined at constitutional level in Turkey.

Also, worthy of mention but of a constitutional nature, the French "Internal Security Code" sets four permanent targets for internal security: community policing ("policie de proximité"), cooperation between ISFs, assigning ISF officers in priority to security duties, and the importance of international cooperation.

1.3. Spain

The Constitution is the supreme legal document of the Spanish legal system\(^3\), and the provisions are binding for all citizens and public authorities.

Two aspects are to be highlighted concerning the Constitution and related to the subject of this report:

i. **The first one is the particular binding force of the constitutional provisions on fundamental rights and public freedoms (arts. 14 to 29).** According to the Spanish Constitutional Court, in case of conflict of interpretation with other norms of the Constitution, these must be given a preferential value. Citizens enjoy "reinforced" judicial protection of all fundamental rights and any violation of these rights can be brought to ordinary courts and eventually to the Constitutional Court through special procedures.

ii. **The second one is the “constitutionalisation” of the Security Forces and Corps, through a specific article (104) devoted to them, which defines their mission (the protection of the free exercise of the rights and liberties and the safeguard of citizens’ security/safety), asserts their dependence of the Government and refers the regulation of their concrete duties, principles of action and statute to an organic law (a Law which has to be adopted and can only be amended by the absolute majority of the Congress of Deputies).**

The Spanish Constitution defines the main elements of the “rule of law” - Estado de Derecho (Art. 9) which guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal norms, the non-retroactivity of punitive provisions (*that are not favourable to or are restrictive of individual rights*), the certainty that the rule of law shall prevail and the accountability of public authorities. With Article 9, both citizens and public authorities are bound by the constitution and the legal order.

Fundamental rights are guaranteed by the Constitution such as right to life, to physical and moral integrity and the consequent absolute and unconditional prohibition of torture or any other kind of inhumane or degrading treatment or punishment (Art. 15); the right to freedom and individual guarantees in cases of police detention or preventive arrest (Art. 17); the inviolability of the personal domicile and the secrecy of communications (*postal, telegraphic, telephonic*), as well as restrictions on the use of data processing so as to preserve the honour and personal and family privacy (Art. 18); the freedom of movement (*in

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\(^3\)It is sworn by all public authorities – central, regional and local – as the “fundamental norm of the State”, where “fundamental” means both “main” and “foundational”.
the country and to/from abroad) and residence (Art. 19); the right to gather in unarmed assembly and to demonstrate peacefully (Art. 20); etc.

In the Constitution of 1978, “State” or “National” security (which in the past involved a great emphasis in “public order”) has been replaced by a new concept of “public security”. Internal security and external security are clearly differentiated. The Constitution draws a clear-cut separation line between the mission and role of civilian authorities and the “forces and corps” dealing with internal public security on the one hand, and the constitutional mission of the Armed Forces (Army, Navy and Air Force) on the other hand:

i. **External security (defence) has been constitutionally defined as “to guarantee the sovereignty and independence of Spain (the Spanish State) and to defend its territorial integrity and the constitutional order”; this is the constitutional mission of the Armed Forces (Art. 8 Const.).**

ii. **Internal security (public security) has been constitutionally assigned to the Security Forces and Corps and defined as “the protection of the free exercise of rights and freedoms and guaranteeing the security/safety of citizens” (Art. 104 Const.).**

Hence, the Spanish Constitution emphasizes the role of the policing forces as “protectors of liberties”. In doing so, the Spanish Constitution has overcome an authoritarian concept of public security that deemed it as equivalent to State security, placing the protection of the State (actually, the political regime) well over the protection of citizens’ rights and freedoms. At the same time the emphasis to the concept of “public order” provided coverage to a wide range of legislative and administrative measures and practices which were set up to restrict the free exercise of democratic rights and freedoms.

In the 1978 Constitution “State” or “National” security is no longer a valid general criterion or reason for the law or the administrative practice to limit or restrict the free exercise of constitutional rights and freedoms by the citizens.

In addition, Article 11 of the Organic Law on Security Forces and Corps (LO 2/1986) which is the basic legal text outlining the duties, basic principles of action and statute of all “public security” forces that exist in Spain, describes the core missions and tasks assigned to the Security Forces and Corps. This can be taken as the best description of the components of the concept of “public security” in Spain. Such missions include “helping and protecting persons and ensuring the conservation and custody of goods/assets that might be in danger for any reason”. In any case, all these missions have to be carried out with the aim of protecting the free exercise of rights and liberties and citizens’ security/safety.

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4The law also includes a specific reference to the protection and security of high public authorities, as well as to the surveillance and protection of public building and facilities that so require.
1.4. United Kingdom

The United Kingdom does not have a written constitution while the legal tradition is based on common, as opposed to civil law. In contrast to those jurisdictions with a written constitution, the UK is known to have an ‘unwritten’ or ‘evolving’ constitution which is comprised not from one single document, but rather from statute law, treatises, court judgments, precedent and parliamentary constitutional conventions. Some of these conventions are ancient in origin dating back hundreds of years, while others are more recent. However, any discussion about the existence or otherwise of UK’s constitutive principles needs to consider that since the ratification of the European Communities Act by the UK Parliament in 1972, EU law has taken precedence over domestic UK law. The courts in the UK have consistently set aside those aspects of domestic legislation that conflict with that of the EU. The British Parliament is therefore highly circumscribed in terms of legislative action to the principles of EU law.

In addition there is some variation in the legal systems of the regions that comprise the UK, with Scotland for example having a legal system based on a Roman (civil) law tradition, while some aspects of Northern Irish law can be traced back to the Irish Parliament in Dublin which sat during the early 19th century. Devolution has also meant that in Scotland policing and criminal justice powers have been devolved to the Scottish Parliament in Edinburgh. Devolution of policing and criminal justice to the Northern Ireland Assembly in Belfast is also imminent. What this means is that it is difficult to make generalizations across all of the UK regions, since there are inevitably some organisational and jurisdictional differences. Some issues around police governance in Northern Ireland are by virtue of the legacy of political conflict considerably more robust than those found elsewhere in the UK. This is particularly the case with the existence of a fully independent system for the investigation of all complaints against the police in Northern Ireland.

Nevertheless, in general terms, a number of key principles are enshrined in the UK democratic tradition and can be mentioned here in relation to the accountability of the police, the relationship between internal and external security sectors and the role of the military.

Unlike many continental European jurisdictions there is no direct link between the police and the Home Office in the UK (the equivalent of the Ministry of the Interior) with the doctrine of constabulary independence (or police independence) meaning that Chief Constables (as heads of territorial police forces) are generally free from overt political interference. It would be extremely rare for a situation to arise in the UK whereby the Home Secretary (Minister for the Interior) gave specific directions to a Chief Constable in relation to day-to-day policing matters.

The organisation of policing in the UK is decentralised and localised with currently 52 autonomous police organisations in existence. This system has meant that policing in the UK has traditionally been able to respond to local needs and priorities, as well as being held accountable at local level. The role of the Home Office is a broad ‘steering’ one, insofar as pertains to development of national policy and standards, especially in relation to the Home Secretary’s current priorities and issues the Strategic Policing Requirement of which Chief Constables and Police and Crime Commissioners are required to take cognisance in
terms of local policing planning. Elected Police and Crime Commissioners ensure that the police are held democratically accountable to the local community.

The United Kingdom does not have separate types of police (administrative, political and judicial) which is a common situation in many common law jurisdictions. The military plays no role in policing in the UK and there is no gendarmerie. The military are subject to civilian authority, via the Ministry of Defence and ultimately Parliament. There are, however, a number of agencies, for example the National Crime Agency, that operate at the national level – mainly in relation to organised crime and counter-terrorism – but these are independent of the Executive and are accountable through the Home Secretary to Parliament.

In recent years there have been a number of developments that have had a major impact on policing in the United Kingdom, such as the incorporation of the European Convention of Human Rights into domestic law in 1998. In addition, the New Labour administration first elected in 1997 was a strong advocate of local community partnerships and neighbourhood policing which brought a strong local flavour to accountability structures and mechanisms. The murder of the black teenager Stephen Lawrence in 1993 and a highly critical report by Sir William Macpherson into the way that the police managed the investigation were instrumental in bringing forward proposals for an independent system for dealing with complaints against the police.

Despite these initiatives, the coalition administration elected in 2010, considered that there was a perceived lack of accountability of the then existing Police Authorities to the communities they served and Central government played too great a role in the setting of priorities. Thus through the Police Reform and Social Responsibility Act 2011, elected Police and Crime Commissioners were introduced in November 2012 with, inter alia, the responsibility to set a local Police and Crime Plan.

1.5. Denmark

The Danish Constitution of 1953 is the supreme legal document of the Danish legal system. The provisions of the constitution are binding for all citizens and all public authorities. The constitution has supremacy over all other national legislation. The constitution secures the separation of powers in the state, in order to prevent the abuse of power, and provides provisions on individual and fundamental rights and public freedoms (most importantly articles 71–79). These include:

- The legislative power is vested in the Parliament and the Government conjointly. The executive power is vested in the Government, and the judicial power is vested in the courts of justice. (Article 3).

- The courts can decide on any question regarding the scope of the executive’s authority, including all government ministries and agencies. (Article 63).

- Independence of the judiciary from the government. The judges have in their vocation only to abide by the law, and judges can only be dismissed by judgment by a court. (Article 64).

- Transparency and accessibility for the public in the courts, and the participation of the

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5The listed rights and protections from the Danish constitution are the most relevant for the overall assessment of civilian oversight of the police.
6Article 3 of the constitution states that the legislative authority shall be vested with the parliament and the government conjointly, the executive power with the government, and that the judicial authority shall be vested in the courts of justice.
public in criminal judgments via jurors. (Article 65).

• Equality of civil and political rights regardless of faith and descent. (Article 70).

• Detention can only take place on the basis of the law, and the detainee has a right to be taken before a judge within 24 hours, when detained by the police. (Article 71, sec. 3)

• Protection of personal liberty and protection from detention on the grounds of political or religious beliefs or lineage. (Article 71, sec. 1)

• Prohibiting detention in remand for a crime that is only punishable by a fine. (Article 71, sec. 5).

• Respect for the home. Searches of homes, communication etc. and seizures require a court order, if no exception is made by law. (Article 72)

• Protection of private property. (Article 73)

• Freedom of speech, and prohibition of censorship. (Article 77)

• Freedom of Association. Citizens have the right, without prior permission, to form associations for any lawful purpose, and associations can only be dissolved by judgment. (Article 78)

• Freedom of assembly. Citizens have the right, without previous permission, to assemble unarmed. The police can monitor public gatherings. Public gatherings may be prohibited when it is feared that they may pose a danger to the public peace. (Article 79).

• Freedom of religion. Citizens have the right to assemble and associate, to worship their religion in a manner consistent with their convictions, provided that nothing is taught or done contrary to public morality or order. (Article 67)

There is no Constitutional Court in Denmark, but a Supreme Court that makes the final rulings on the adherence and interpretation of the Constitution.

No constitutional article deals directly with the organization or role of the police. This is regulated by law, but not on a constitutional level. The Danish police must adhere to the constitution (as the supreme legal document), and are obligated to make sure that the individual rights in the constitution are protected. This stems implicitly from their fundamental duty to uphold the law and secure peace (now also regulated in the Danish Act on Police Activities (Politiloven)). The rights guaranteed in the constitution also function as limitations on the powers of the Government and the police.

One of the more important developments in recent years, regarding policing in Denmark, has been the incorporation of the European Convention of Human Rights into domestic law in 1992. The incorporation has strengthened the rights of individual citizens7 and has reinforced the focus on the fundamental rights guaranteed in the Danish Constitution. The police must respect the rights in the convention when investigating crimes and insuring security. The rights secured in the European Convention of Human Rights are predominantly consistent with the rights secured in the Danish Constitution.

Accountability for the Government and the police essentially derives from the fundamental principal of legality. The principle of legality is clearly stated in the Danish Criminal Code.

7 Citizens have the right to make individual complaint to the European Court of Human rights
(Article 1), but is also implicit in the fundamental rights in the constitution (especially Article 71). The principle of legality also asserts that the police can only exercise powers that are founded by law, and only investigate and prosecute crimes that are decided by law. The principal of legality and the fundamental rights in the Constitution (especially article 3 and article 63 of the Danish Constitution) secure accountability for all parts of government including the police. All parts of the government are subject to the controls of the courts and the Ombudsman.

Denmark does not have separate types of police (administrative, political and judicial etc.). The military play no role in policing in Denmark, and there is also no Gendarmerie. The police are part of the Government, specifically the Ministry of Justice. This means that the police are structurally a part of and subject to the Ministry of Justice, and that the Minister of Justice is the overall head of the police.

Military personnel are subject to civilian authority via the courts, and are subordinated to the Ministry of Defence and ultimately the Parliament. However, crimes committed in the course of military duty are investigated by the military police, but are decided in regular courts.

The fundamental duties of the Police in Denmark are to ensure that laws and regulations are complied with and to take the necessary steps to prevent crime. The police also administer a number of areas that are subject to authorization. The purpose and duties of the police is regulated by law, and specifically set out in article 1 of the Act on Police Activities:

“The purpose of the police is to maintain safety, security, peace and order in society. The police shall further this purpose by means of prevention, assistance and law enforcement”.

In brief, one of the most important tasks of the police is to ensure that the citizens comply with the legislation adopted by politicians. In addition, however, the police must also maintain security, peace and order among the citizens to ensure that everybody can move freely and safely everywhere in the country. Furthermore, police officers are also involved in crime prevention at schools and youth clubs, as driving test examiners, and as bodyguards for, among others, politicians and members of the Royal Family. There are approx. 10,500 police officers are employed in Denmark, which means that there is one police officer for every 519 citizen (2013).

1.6. Portugal

The Portuguese Constitution was approved in 1976, two years after the Carnations Revolution that brought democracy to the country after almost half a century of dictatorship.

Concerning internal security matters, we can emphasize the following aspects: the first one is that the main international normative documents in terms of human rights were adopted by the Constitution. Concerning rights, freedoms and guarantees of citizens, the special protection that is granted by the Constitution is also noteworthy: namely, binding on public and private entities, directly applicable and restricted only in cases expressly allowed by the Constitution.

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8 E.g. private security firms etc.
9 The duties of the police in Greenland and the Faroe Islands are of a similar nature as those of the Danish police districts, and are part of the same unified police force.
One of the constitutional guiding principles of internal security activity is the principle of legality, as is clear from Article 266, No. 2 of the Constitution, and Article 2 of the Law No. 53/2008, which approved the Internal Security Act (ISA). They specify that internal security activity is guided by the principles of the democratic rule of law, respect for the rights, freedoms and guarantees of citizens and general police rules.

The organs and administrative agents are subordinated to the Constitution and the law (Article 266, No. 2) and must act, in the exercise of their duties, with respect for the principles of equality, proportionality, fairness, impartiality and good faith.

Police powers are specified by law and should not be used beyond what is strictly necessary. They must obey the requirements of appropriateness and proportionality (article 2 of the ISA).

The missions of the Portuguese ISF are oriented towards guaranteeing the rights of individuals. The respect of those rights also limits their actions. This principle is laid down in Article 272 of the Constitution, in the ISA and is embodied in the organic laws of each of the internal security forces (PSP and GNR).

The importance that the Constitution and the law give to the respect for the rights, freedoms and guarantees of citizens reflects a modern understanding of policing but also an assertion of the new democratic Constitutional framework, that succeeded in 1976 after 48 years of dictatorship where there was conditioning of rights and freedoms by the State.

Internal Security and Defence (external security) are essential conceptions. As most commonly happens, the Portuguese Constitution distinguishes these two functions. In Article 273, national defence function is distinguished; in Article 272 the Homeland Security function is associated with police work.

According to Article 272 of the Constitution, the mission, function or task of internal security is given to the police. This is an attempt to avoid, as a rule, the intervention of the armed forces in this role. Armed forces can only be active in exceptional circumstances (state of siege or emergency, article 275, No. 6 and 7).

The function of internal security rests thus originally in the security forces. These do not include municipal police forces, which only cooperate locally with security forces, as we can conclude from Article 273, No. 3 of the Constitution.

The internal security legal concept is mentioned in Article 1 of the ISA, which is the legal text that defines the scope and basic principles of internal security activity, coordination and cooperation between security services and forces. It is statute.

According to the ISA, internal security is the activity of the state that ensures order, security and public tranquillity, protects persons and property, prevents and suppresses crime, helps ensure the normal functioning of democratic institutions, the regular exercise of rights, freedoms and guarantees of citizens, and respect for democratic legality.

The same law (ISA) specifies that the provisions of this Act are intended, in particular, to protect the lives and safety of people, public peace and democratic order, particularly against terrorism, sabotage and espionage, to prevent and respond to serious accidents or disasters, to protect the environment and to preserve public health.

The concept of external security is also in the Constitution, related with the concept of
national defence. It is oriented exclusively to the defence of the country’s security against external threats and aggression (Article 273).

Alongside military defence, the Constitution also refers to the role, which often means civil defence, of the Armed Forces as laid down by law. They may be charged with operating in civil defence missions, tasks concerning the fulfilment of basic needs and the improvement of the people’s quality of life, and technical and military cooperation actions within the ambit of the national cooperation policy (Article 273, No. 6). However, the Constitution is clear in defining the limits of their role by Constitutional order (Constitution and law) and democratic institutions (Parliament, government, President of the Republic, international conventions - Article 273, No. 1).

In recent years, several authors have indicated some overlap between the two concepts (or rather between the two functions), contributing to some uncertainty. This is related to issues such as organized crime, which have required an extended effort between countries and moved from the sole sphere of internal security to external security. In practice, the military began to circumstantially play some functions of internal security, which has motivated an on-going debate about where one begins and the other ends. In any case, the law seems to indicate a clear boundary between the two functions.

1.7. Germany

Germany is a federal republic consisting of 16 member states. After the Second World War and the national-socialist dictatorship, the three western allies (USA, UK and France) initiated the Federal Republic of Germany (BRD) with a state model based on the principles of democracy, federalism, individual liberty rights and social state. In the Russian occupied zone the German Democratic Republic (DDR) was established, which followed the principles of a socialist state. After the revolution in 1989, the DDR dissolved and five new states were established, which joined the Federal Republic in 1990.

In principle, the states have the prerogative for legislation and only in certain fields, enumerated in Article 78 of the Constitutional Law, the federation has the right of legislation. But with time, more and more de facto legislative competence shifted to the federation, while the competences of states were reduced (so-called ‘Unitarian Federalism’). The most important fields of state legislation are police, school education and higher education/science.

However, the executive and administrative competence of the states increased (e.g. education, cultural affairs, police forces and remuneration of the civil servants are their responsibility) and the federation only has its own administration in a few fields (e.g. international affairs, military, customs control).

In the judiciary branch, this division of work is implemented. Law enforcement and penal system are generally a matter of state, not of the federation. Persons charged with a crime (defined by federal criminal law) are arraigned by a state attorney and are on trial at a district or regional court (belonging to the state judicial system). The Federal Court of Justice acts only as a revision court. Even if the Federal Police or the Federal Criminal Police Office are in charge and assist the Federal Public Prosecutor, the court of first instance is a
state court. Germany has no federal prisons.

There are two fundamental important articles in the German Basic Law ("Grundgesetz" [GG], also constitutional law, approved in 1949) to consider when thinking about policing in the German constitutional state:

   **Article 1 (3) GG:** "The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law."

   **Article 20 (3) GG:** "The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice."

Unlike many other constitutions, the German Basic Law puts the people, their basic rights and the boundaries of state's power at the beginning of the constitution. The Parliamentary Council, which wrote the draft of the Basic Law in 1948/49, decided about this special structural element of the Constitution against the background of the inhuman national-socialist regime. Never again should a German state be allowed to oppress the people, to deny fundamental liberty rights and to act arbitrarily.

The human dignity shall be inviolable, says Article 1 (1) GG, and to respect and protect it shall be the duty of all state authorities. This sentence formulates the core task of the state and also an important assignation for the state's executive — including the police and other internal security forces. In combination with Article 1 (3) GG, the immediate effect of the basic rights for all state powers is evident, as the liberty rights are directly applicable law. This does not only mean, that the state has to respect the rights of the people, but also that it has a duty to defend and protect these rights if they are violated or at risk of being violated by other parties. This might cause problematic situations, for example if a discredited political minority with unacceptable demands wants to demonstrate and the police have to protect this demonstration (*e.g.* racists and Nazis) against other people. The right to demonstrate is a liberty right codified in Article 5 "Freedom of expression" and Article 8 "Freedom of Assembly" which has to be protected by security forces even if and despite the state and the society do not share their opinions.

The executive is bound by law, which means the Basic Law as well as other special law. All the executive’s activities have to be assigned and justified by law and/or decrees, which must not contradict the law and constitution. In the consequence the executive’s action can and must be reappraised by courts. This gives the people the right to recourse in the courts if they think that a public authority, e.g. the police, have violated their rights (*Article 19 GG*). This includes lawsuits against any wrongdoing, misinterpretation of law, unequal treatment, discrimination, etc. by civil servants. Those cases are handled by administrative courts.

If a civil servant, e.g. a police officer, commits a crime (*e.g.* assault during a police operation), this crime will be dealt with by a criminal court. If the officer is convicted with a penalty of more than one year in prison, this person will be dismissed from the force.

This shows that not only state institutions are accountable for activities, but also that the individual civil servant and police officer are accountable for their actions if this concerns criminal behaviour. If a police officer receives an illegal order (*e.g.* to enter premises without permission of a judge, to use unreasonable force) the officer has the right and the obligation to remonstrate and is allowed to disobey the order.
Following the federal constitutional system of Germany, there are independent police authorities at the federal level as well as at the level of the 16 states. The Basic Law lists the areas in which police authority is a national (federal) concern. In accordance with article 73 (10) GG, the federation has the exclusive legislative authority for “co-operation between the Federation and the states: a) in criminal investigation, b) for the protection of the free democratic constitutional structure, its continuance and the security of the Federation or a state (protection of the Constitution) and c) in the protection against attempts on federal territory, which through the use of force or preparatory acts of such, endanger the foreign interests of the Federal Republic of Germany, as well as the maintenance of a Federal Criminal Police Office and the combat of international crime”.

According to Article 73 (9a) GG, the Federation is also responsible for the “protection by the Federal Criminal Police Office against the dangers of international terrorism when a threat transcends the boundary of one Land, when the jurisdiction of a Land’s police authorities cannot be perceived, or when the highest authority of an individual Land requests the assumption of federal responsibility”. According to Art. 87 (1) 2 GG, the Federation is also responsible for border control, which is carried out by the Federal Police (formerly the Federal Border Guard). All other police tasks are fulfilled in principle by the state police forces and there is no “superorder” of the Federal Police to the state police forces.

If the main responsibility for the police is thus on the state level, this then means also that 16 state ministers of interior act as the highest authority of the police, that 16 federal state parliaments decide on 16 different police regulations and police organization laws. No standard national regulations can be expected.

1.8. Italy

The Italian constitution took effect on January 1, 1948, and is the result of political arrangements that followed the end of World War II and the fascist period. It is the fundamental law of the Italian State. This means both that it lays the foundations of the institutional setting of the country, and that it has a superior rank over other sources of law. In fact, the Italian Constitution is a rigid one. A normal ordinary law is not sufficient to amend the norms it contains: the procedure for any constitutional amendment requires a double parliamentary approval by a qualified majority (two-thirds of MPs) or a referendum approval. In addition, each ordinary law in conflict with the Constitution can be declared ‘unconstitutional’ by a special court (the Constitutional Court) and thus deleted, losing all legal effect.

The constitution defines the Italian state as republican, democratic, engaged for social equality, parliamentary, decentralized, non-sectarian and open to the international community. The second paragraph of article 1 states that sovereignty belongs to the people and is exercised within the forms and limits set by the Constitution.

As far as the topic of this report is concerned, the Italian constitution does not mention the phrase "rule of law", neither does it state all the individual principles that the concept of the rule of law summarizes. However, it asserts within specific rules, principles such as: legality of the administration, separation of powers, independence of the judiciary, equality of law for all and protection of human rights and fundamental freedoms.
The form of guarantee constitutionally provided for the protection of the rule of law is the statutory reserve that the Constitution provides for the most important rights: for instance, personal freedom, which can be limited only by law and after a reasoned decision of the judicial (Art. no. 13), or security measures, to which someone can be subjected only when a law expressly says so.

The statutory reserve in the constitution exists alongside a set of rules aimed at protecting explicitly the fundamental liberties of the citizen. This set of rules states the existence of the principle of legality in the Italian legal system. This principle consists of the assertion of the supremacy of the law with respect to acts adopted by other powers, especially the executive.

Among the main negative freedoms recognized by the Italian Constitution, we can mention: personal freedom, freedom of the home, freedom and secrecy of correspondence, freedom of movement and residence, freedom of assembly, freedom of association, freedom of religion, freedom of expression, freedom of art, science and teaching. Among all these freedoms, some are recognized both for citizens and non-citizens and are therefore considered universal freedoms; others (freedom of movement and residence, assembly and association) apply only to Italian citizens.

Personal freedom for the individual means being free from any coercion that prevents or limits his/her movements and actions. As we said earlier, personal freedom cannot be limited except in cases provided by law and by judicial decisions. The main modes of the limitation of personal freedom are detention, inspection, search, custody, police arrest and the temporary arrest of suspects of crime. For the Italian Penal Code, the public official who performs a search or a personal inspection by abusing the powers inherent to its functions commits an offence and is punishable by imprisonment of up to one year. As set forth by art. 13 par. 3 of the Constitution, only in exceptional cases of necessity and urgency, strictly defined by law, may ISF officers enforce a temporary arrest of the suspects of a crime and this must be communicated within forty-eight hours to a judge for preliminary investigations (GIP). If not ratified by him/her in the next forty-eight hours, the actions are revoked and void.

Additional guarantees of individual physical and psychological integrity are provided by other norms of the Constitution. Any physical or moral violence on persons subject to restrictions of freedom is punished. The law establishes the maximum period of preventive detention, proportionally to the seriousness of the offence. The punishment cannot consist of a treatment contrary to human dignity; it must aim at rehabilitating the offender. No one shall be subject to security measures, except in cases provided by law. No one can be forced to a specific medical treatment unless required by law; etc.

Nevertheless, there is no explicit definition in the Italian Constitution of internal or external security, neither are there general provisions on the police.

As far as external security is concerned, art. 52 establishes that the defence of the homeland is a sacred duty of citizens, also carried out by the military service. The organization of the Army must comply with the democratic spirit of the Italian Republic.

Internal security is instead considered by the constitutional rules a limit for the exercise of some citizens’ freedoms, such as freedom of movement and residence (Art. no. 16) or
freedom of assembly (art. no. 17), which may be limited by ISFs when it is exercised in a public space. However, for reasons of security and public safety only. Art. no. 117 of the Constitution provides that the State has the exclusive power to establish laws and regulations on public order and security, with the exception of ‘local administrative police’, on which there is a ‘concurrent legislative competence’ of Regions. The Consolidated Law (‘Testo Unico’) on public security sets in depth the national police forces’ competences in matters of public order and security.

Finally, in the Italian legal system, accountability of the public administration to citizens is not formally provided. The first period of art. 97 of the Constitution only establishes the principle that the organization of public offices shall be determined by law. These norms should be designed to ensure the efficacy and impartiality of the Public Administration.

In accordance with the principle of democracy, the administrative activities of the government must be inspired by the actual needs of the community and submitted to the citizens’ control. But this oversight of the people must be mediated by its representatives in parliament, through the relationship of confidence that must necessarily bind the government to the parliament.

In general, the activities of the Public Administration on the one hand must fit to the rules of good administration and aim to achieve greater efficiency and effectiveness of its action; on the other hand, they must ensure the realization of the collective interest, without any partisan influence. The principle of impartiality of public administration is reiterated by art. no. 98 of the Constitution, according to which civil servants are in the exclusive service of the nation (its third paragraph provides several incompatibilities in public office). A recent Decree (Legislative Decree no. 33/2013) introduced new obligations of transparency, publicity and information by the government in the exercise of their work, without having explicitly introduced the principle of accountability to the citizen.

1.9. Turkey

In the Constitution, there is no definition of internal-external security or of judicial-administrative police in relation to the organization of security forces.

The notion of National Security has been used in the Constitution pointing at threats concerning indiscriminately the internal and external security. The notion of national defence in the Constitution equates with the concept of external security. The Constitution is devoid of any specific concept used only for internal security.

However, in the Turkish Legal System, the concept of Law Enforcement (Kolluk) is used, in general, as a meta-concept which comprises internal security activities including both judicial and administrative police. Therefore, even if the distinction of internal-external security based on the mentioned conceptual model had not been adopted in the Constitution, it has been recognized implicitly by some of the laws. Accordingly, external security is a duty of Turkish Armed Forces, while the activity of internal security, defined by laws\textsuperscript{10} as maintenance of internal security and order and safety of the community; protection of public order and public decency, is carried out by the General Command of Gendarmerie, Coast Guard Command (which are Armed Forces) and the General Directorate of Security

\textsuperscript{10}See. Law 3152 on the Organization and Duties of the Ministry of Interior Art. 1; Law 3201 on Police Organization Art. 1.
(Emniyet Genel Müdürlüğü) i.e. Turkish National Police. The concept of "public order", which is directly related to policing activities of the internal security forces, is a meta-concept consisting of "public security", "peace and tranquillity" and "public health".

In the 2nd Article of the Constitution, the Republic of Turkey is identified as a state governed by rule of law respecting human rights. In the 12th Article of the Constitution, it is regulated that everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The Constitution has given place to the negative rights under the title "Rights and Duties of the Individual" (Art. 17-40), positive rights under the title of "Social and Economic Rights and Duties" (Art. 41-65), rights of participation under the title "Political Rights and Duties" (Art. 66-74) thereby adopting the trilateral distinction in the realms of fundamental rights and freedoms.

In the 2nd paragraph of the 12th Article of the Constitution, it is emphasized that the above-mentioned fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family, and other individuals. In the 13th through 15th Articles of the Constitution, prohibition of abuse of fundamental rights and freedoms, regime of restriction and suspension of fundamental rights and freedoms is regulated. In accordance with the 13th Article of the Constitution; fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of society and the secular republic, and the principle of proportionality. Judicial decision is also required additionally in particular articles which describe relevant fundamental rights and freedoms. General conditions for restriction of fundamental rights and freedoms such as indivisible integrity of the State with its territory and nation, national sovereignty, national security, public order, public peace, public interest, public morals, public health were purged of the Constitution by an amendment made in 2001. Fundamental rights and freedoms could only be limited by the specific conditions for restriction prescribed in the relevant article. The same amendment transferred the list of general conditions for restriction to a set of various articles (Art.20, 21, 22, 23, 26, 28, 33).

Constitutional guarantees referred to in articles related to fundamental rights and freedoms also constitute obligations which should be performed by the internal security forces. Cases in which the person may be deprived of their liberty based on a judicial decision, have been listed conclusively in the 1st paragraph of the 19th Article of the Constitution, which regulates personal liberty and security. In principle, internal security forces cannot be engaged in any activity on these spheres which would cause such restriction, unless a decision has been given by a judge.

In other words, concrete limits to impose restriction on fundamental rights and freedoms of individual by the internal security forces are directly stipulated in the Constitution. These concrete limits also constitute the constitutional basis of the civilian oversight of internal security forces.

In the 119th, 120th and 121st articles of the Constitution, a trilateral legal regime regarding extraordinary administrative procedures has been stipulated;
1. Declaration of state of emergency because of natural disaster or serious economic crisis (Art. 119),
2. Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order (Art. 120) and

In the states of emergency regulated in the 119th and 120th Articles, the power of declaration of a state of emergency for a period not exceeding six months belongs to the Government, meeting under the chairpersonship of the President. The decision of the Government to determine a state of emergency shall be published in the Official Gazette and immediately submitted to the Parliament for approval. The Parliament may lift the state of emergency or alter its duration. A set of minimal obligations with which internal security forces must comply even during the period of a state of emergency have been regulated by constitutional provisions.

An exceptional regime relating to partial or entire suspension of the exercise of fundamental rights and freedoms in the states of emergency is stipulated in the 15th Article of the Constitution. Accordingly, in the period of state of emergency;

1. Obligations under international law could not be violated.
2. Principle of proportionality would be valid (to the extent required by the exigencies of the situation)
3. The realms of core rights (as follows) stipulated in the Art. 15/2 would not be infringed upon;

   a. The individual’s right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except when death occurs through acts in conformity with law of war,
   b. No one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them,
   c. Offences and penalties shall not be made retroactive,
   d. Anyone could not be deemed guilty until otherwise proven by a court ruling.

Additionally, the Constitution does not confer any general power on the internal security forces; it has emphasized that the powers conferred to the police should be regulated in laws and it has made it obligatory to stipulate the measures which can be taken by the police in this period and how they are implemented in the Act on State of Emergency (Art. 121/2). It is emphasized that even in the state of emergency, the power of internal security forces should be based on the principle of legality, thereby bringing obligation to regulate how to limit and suspend the fundamental rights and freedoms by laws (Art. 121/2).

However, in the Art. 121/3 and 91/5, the power to issue decrees having the force of law (Kanun Hükümünde Kararname) has been conferred to the Government on matters necessitated by the state of emergency without an empowering law enacted by Parliament. In addition, decrees having the force of law issued during a state of emergency shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or
substance. The extension of authority of internal security forces in states of emergency, declared because of widespread acts of violence and serious deterioration of public order, is stipulated in the Constitution.

The principle of legality has been adopted for the exercise of executive power and function under the 8th Article of the Constitution and for actions and acts of administration under 123rd Article of the Constitution. The principle of restriction of fundamental rights and freedoms only by law and the principle of legality constitute substantial guarantees due to the fact that these principles particularly prevent the definition of a crime or the establishment of any new rule relating to criminal procedure by administrative regulations only. Hence, in the 38th Article of the Constitution, it is stated that the administration shall not impose any sanction resulting in the restriction of personal liberty. Therefore, the regulation related to law enforcement activities of police and gendarmerie can only be made by the Parliament either on the basis of governmental bills (kanun tasarisi) initiated by the Government or on the basis of private members’ bills (kanun teklifi) initiated by a member of the Parliament.

In accordance with general principles set forth by the Constitution related to political responsibility and subordination to political authorities, the Government is responsible and accountable to the Parliament in the execution of the government’s general policy (Art. 112), providing national security and preparation of the armed forces for the defence of the country (Art. 117). In accordance with the 4th paragraph of Article 117 of the Constitution, the Chief of the General Staff under which the Gendarmerie is placed, shall be responsible and accountable directly to the Prime Minister and not to the Minister of Defence in the exercise of his duties and powers. In accordance with the 2nd paragraph of the 112th Article of the Constitution, the Minister of Interior is responsible for internal security of the country and also in the position of hierarchical chief of internal security forces responsible to the Prime Minister.

In the 5th paragraph of the 129th Article of the Constitution of which also comprise civil responsibility of the internal security personnel, it is stipulated that compensation concerning damages arising from faults committed by public servants and other public officials in the exercise of their duties may only be filed against the administrative authorities. In this context, responsibility of the administration with regards to all sorts of act and actions within the scope of policing activities is the basic principle. And in the case of personal misbehaviour, the recourse mechanism shall be operated. It is not in the discretion of the administration to operate the recourse mechanism embodied in this regulation; it is an administrative obligation arising from the Constitution.

In the 137th Article of the Constitution, it is regulated that if a public official finds an order given by his/her superior to be contrary to the law, he/she shall not carry it out, and shall inform the person giving the order of this inconsistency. However, if his/her superior insists on the order and renews it in writing, his/her order shall be executed; in this case the person executing the order shall not be held responsible. And it is also stipulated that an order which in itself constitutes a criminal offence shall under no circumstances be executed; the person who executes such an order could not evade responsibility. From the point of
criminal responsibility, in the 6th paragraph of the 129th Article of the Constitution, a criminal prosecution of public servants for offences related to their duties shall be subject to the permission of related administrative authority designated by law.

1.10. Comparative Overview

There are some important elements favouring civilian oversight in the Constitution of the Republic of Turkey. However, from the perspective of civilian oversight, some of the above-mentioned constitutional principles found in selected European countries are not enshrined in the Constitution of the Republic of Turkey.

As is seen in the table 1, while no exception of supremacy of law exists in the selected EU countries, many restrictions of supremacy of law are prescribed in the Constitution of Turkey. In all selected EU countries, clear definition of external–internal security has been made either in constitutions or in laws. But in the Turkish legal system (both in constitution and laws), a clear definition is not available. However there are some conceptual references in the Constitution such as “national security” and “public order”, implicitly indicating the mentioned distinction, which could be strengthened. The notion of subordination of all internal security forces to the civilian authorities is not asserted in the Constitution. The protection of liberties is not defined in the Constitution as a mission for internal security forces, while it is regulated as a mission of Mol in the Law 3152 on Organization and Duties of Mol (Art. 2).
<table>
<thead>
<tr>
<th>Oversight Principles &amp; Internal Security Forces</th>
<th>Country</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution/Date</td>
<td></td>
<td>Yes /1958</td>
<td>Yes /1978</td>
<td>No formal written Constitution</td>
<td>Yes /1982</td>
</tr>
<tr>
<td>Supremacy of Law Asserted</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Subordination to the law is a strong principle</td>
<td>Yes</td>
</tr>
<tr>
<td>Restriction on Supremacy of Law</td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Unlawful orders execution not excluded. Decisions taken by High Military Council on promotion and retirement of military personnel due to lack of tenure. Decrees having the force of law issued during a state of emergency. Some of disciplinary sanctions imposed to members of the Turkish Armed Forces. Administrative acts related to exercise of authority vested in regional governor of the state of emergency and martial law commander are not subject to judicial scrutiny.</td>
</tr>
<tr>
<td>Subordination to a Civilian Authority</td>
<td></td>
<td>All administrations and forces</td>
<td>All administrations (Civilian &amp; Military) and forces</td>
<td>Principle of local accountability (tri partite arrangement). “Constabulary independence”.</td>
<td>All administrations and forces</td>
</tr>
<tr>
<td>Internal/External Security Definition</td>
<td></td>
<td>Defined in Internal Security Code, article 1</td>
<td>Def. of internal vs. external Security. Constitutional definition and separation of external (defence) and internal (public/citizens) security (art. 8 and 104). In case of conflicts of norms, “citizen security” prevails over “state security”.</td>
<td>Full separation police/army (no gendarmes)</td>
<td>Not defined in the Constitution explicitly. But there are some conceptual references in the Constitution which indicate internal-external security.</td>
</tr>
<tr>
<td>Accountability of all administrations and forces</td>
<td></td>
<td>Yes</td>
<td>Yes (civilian dome)</td>
<td>Strong Principle</td>
<td>Yes According to Art. 125 and 129 of Turkish Constitution.</td>
</tr>
<tr>
<td>Oversight Principles &amp; Internal Security Forces</td>
<td>Country</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitution/Date</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td>Yes / 1953</td>
<td>Yes / 1976</td>
<td>Yes / 1946</td>
<td>Yes / 1948</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supremacy of Law Asserted</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, see constitutional law (basic law, Grundgesetz [GG] Art. 20 (2) and (3)):</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Restriction on Supremacy of Law</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Protection of Free Exercise of Liberties</td>
<td>Not an ISF mission</td>
<td>Constitutional mission of ISFs</td>
<td>The protection of free exercise of liberties is an obligation of the ISFs.</td>
<td>Not an ISF mission</td>
<td></td>
</tr>
<tr>
<td>Subordination to a Civilian Authority</td>
<td>All administrations and forces</td>
<td>All administrations and forces (Civilian &amp; Military)</td>
<td>Yes, the ISFs are subordinated to the (elected, civilian) government</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Internal/External Security Definition</td>
<td>Full separation Police/Army</td>
<td>Yes, Constitution and Internal Security Act</td>
<td>Indirect definition of external security in Art. 115 a GG, when &quot;the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence) &quot;. But there is no legal definition of internal security.</td>
<td>No definitions of internal / external security</td>
<td></td>
</tr>
<tr>
<td>Accountability of all administrations and forces</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
As can be seen from Table 1, in France, the principles of public accountability, civilian supremacy and declaration of human rights are enshrined in the current constitution of state. In Spain, liberties are at the core of the constitution and are not considered inferior to security. On the contrary, the concept of “state security” has been replaced by “citizen security”. External security and internal security are clearly differentiated and defined. External security is designated as a fundamental mission of the army; internal security is given as a basic duty to domestic security forces. The UK has the same standards but without a written constitution (accountability to the public authorities of the policing forces is more local in the UK with Chief Constables taking general instruction from the Home Office). The situation is mixed in Spain – both local and national – and national in France. The same principles apply in Denmark, Portugal, Germany and Italy as well, where supremacy of law and subordination to a civilian authority are asserted.

1.11. Gaps

- **In the constitution, a regime of restriction is prescribed, even before the list of fundamental rights and freedoms is presented.**

  In the Turkish Constitution, a reference to fundamental rights and freedoms is provided in articles 12 through to 40. However, a regime of restriction is prescribed, even before the list of fundamental rights and freedoms is presented. The existence of such a lay out of the Constitution indicates that the security of the state is prioritized over fundamental rights and freedoms. When systems of Germany, Spain and Portugal are analysed, it is clear that the fundamental rights and freedoms constitute the first part of their constitutions and the security of individuals and communities is prioritized over the security of the state.

- **In the Constitution of Turkey, concepts such as “national security”, “public order”, “public interest”, “public health”, “public safety”, “endangering the existence of the democratic and secular order”, which are difficult to describe objectively, are referred frequently as a condition for restriction of fundamental rights and freedoms.**

  As a result of this, restrictive policing measures can be prescribed throughout laws and administrative regulations by referring to those concepts. In selected European countries, conditions for restriction of fundamental rights and freedoms are very few in number and are not ambiguous but rather concrete and clear.

- **In the Constitution of Turkey, there is no definition of internal-external security or judicial-administrative police.**

  The distinction between internal and external security has not been explained by the Constitution of Turkey. However, there are some concepts implicitly referring to this distinction. Since the distinction of judicial-administrative police has been regulated differently in the organizational law of each internal security force, some confusion and incoordination exist in practice. Systematic and clear definition of distinction of internal-external security and judicial-administrative police would prevent confusion and incoordination amongst public authorities and forces.
• **Mission of internal security forces to protect fundamental rights and freedoms has not been inscribed in the Constitution and is not a constitutional principle.**

While internal security forces were tasked with a mission to protect fundamental rights and freedoms in their respective legislations, this duty has not been regulated at constitutional level. When selected European countries are examined, it appears that the mission of internal security forces to protect fundamental rights and freedoms has been regulated as a constitutional principle. Adoption of this mission as a constitutional principle would provide the perception of internal security activity, not as an interference activity with individuals and freedoms but as an activity aiming at the protection and the exercising of fundamental rights and freedoms.

• **Some exceptions to Judicial oversight are based on the Constitution.**

Although it is emphasized in the 2\(^{nd}\) Article of the Constitution that the Republic of Turkey shall be governed by rule of law, there are some regulations in the Constitution that keep some sets of acts out of the scope of judicial review. It is regulated by the constitutional amendment made in 2010 that the disciplinary sanctions imposed on public servants and decisions of the High Military Council (Yüksek Askeri Şura) dismissing military personnel from service would be subject to judicial review. However, military disciplinary sanctions, decisions of the High Military Council excluding dismissal of military personnel from service and administrative decrees having the force of law which are issued in state of emergency and martial law or in time of war are not still subject to judicial review. Moreover, the 137\(^{th}\) Article of the Constitution only prohibits the implementation of orders which constitute crimes; however the Constitution allows acting upon illegal orders which do not constitute a crime.

• **There is a lack of definition of subordination to civilian authority for Police, Gendarme and Coast Guards.**

The notion of "subordination of all internal security forces to civilian authorities" and the definition of their duties is crucial. In the Turkish Legal System, in contrast to the selected EU member states, there is no regulation in the Constitution related to subordination of all ISFs to civilian authorities. In the organizational law of each ISF, affiliation to civilian authorities has been prescribed. A consistent definition of affiliation for all ISFs across all laws (public administration, gendarmerie and police laws) is however lacking.
2. Oversight Powers of Parliaments

2.1. Duties, Competencies and Functions

Parliaments are essential political bodies in democratic countries. Governments are accountable to Parliaments, and Parliaments are directly accountable to people through elections. A core function of the Parliament in democratic countries is to review and approve the budget and the financial affairs of various government departments. Parliaments also perform an auditing function of the Executive branch through questions, parliamentary inquiries, general debates and parliamentary investigations.

2.2. France

The Constitution has defined the responsibilities of the government and of the parliament and even of the President himself (designation of top officials) as regards the exercise of authority over internal security forces. Under article 24, the Parliament controls government action and this covers the field of internal security, including policies and activities of the relevant public organizations.

Regarding the Parliament, the ordinance of 17 October 1958 gives each chamber the power to conduct investigations to assess any situation that falls under its competency in line with article 34 of the Constitution, especially as regards the control of the government. Such investigations are completed through parliamentary investigative commissions. On that basis the parliament can investigate the whole sector of security and police and gendarmerie activities.

The budget used by the gendarmerie and the police to operate is defined, implemented and checked by civilian authorities. Inside the Ministry of Interior, the budget is prepared and its implementation monitored by a financial affairs directorate that has to work closely with the Ministry of Finance. The national court of accounts contributes to the control by the Parliament of the implementation of finance laws (the fact that the authorized expenditures are respected). It has full powers to audit the budget of the police and of the gendarmerie. The national court of accounts and the network of the regional courts of accounts are also playing an important role on cases of which the substance is of a budgetary nature. Regarding expenses, there is another system of control. Police and gendarmerie executives can order services or equipment but they cannot pay for them. The state treasury pays on the basis of legal instructions and compliance with the fact that the expenditure was approved by the Parliament.

France and Turkey have a constitution that gives the parliament both a role and the relevant legal instruments to ensure effective oversight of the security sector and especially of the public forces. In both countries the parliamentary investigation body is a key tool.

2.3 Spain

According to the Constitution, the Parliament plays a similar role in both Spain and Turkey, with regards to internal security by: 1. Adopting primary legislation; 2. Controlling the
action of the Government (Executive) and intervening in situations of exceptional internal security risks (states of emergency and siege/martial law).

Hence, from the viewpoint of the legislation, big differences do not seem to exist between the legal rules governing Parliament's control over the Executive (Government and Administration), at least at the level of Constitutional provisions. The control mechanisms are pretty much of the same nature.

Discussion and approval of the State budget, parliamentary debates and requesting the presence and participation of members of Government in such debates, adoption of resolutions and motions politically binding to the Government, requests of information and parliamentary inquiries, questions and interpellations, and investigation committees serve as parliamentary oversight tools.

In Turkey (as in Spain), parliamentary control over the Executive on internal security matters seems to be mostly circumscribed to the Government itself (Prime Minister and Ministers – political accountability). However, in Turkey there is a body (the National Security Council) which is constitutionally defined as part of the Executive and that plays a major role in internal security. There is no evidence that Parliament exercises any control or oversight over this crucial body. In Spain there is no such body, and the full political responsibility on internal security policy and its implementation belongs to the Government.

Although in Spain, like in Turkey, the Parliament is not the body leading public security policy (this belongs to the Government), the Spanish Parliament has access to all policy documents and information concerning such policy, so as to be able to exercise effective control over the Government in this field.

Both in Spain and in Turkey, the Court of Accounts is an essential constitutional institution. It oversees the management of public financial resources by the executive authorities (Government, Public Administrations) and other beneficiaries and users of such resources, on behalf of the Parliament, in order to ensure compliance with a number of principles of sound financial administration: legality, economy, efficiency, etc.; and to detect and prevent cases of loss of public financial resources for embezzlement or other forms of wrong or unprofessional financial management. This means that the Court of Accounts only audits financial management and accounting, but in a way that permits it to cover several aspects (legality, economy, efficiency) for all public administrations (including Mol and therefore the Guardia Civil) and receivers/users of public funds. A closer examination of the primary legislation on the Court of Accounts, as well as of the practical implementation of such legislation, may reveal some differences or gaps, particularly in what concerns the actual reach and effectiveness of such type of control mechanisms.

2.4. England

The Home Secretary in England and Wales performs a role similar to the Minister of the Interior in other jurisdictions and is responsible for internal affairs and immigration, citizenship and national security (all of the UK). The Home Secretary heads the Home Office which is one of the key branches of government and is ultimately accountable to the UK Parliament. In addition, the work of the Home Office can be scrutinized by various Parliamentary
Committees as well as the National Audit Office which oversees the budget and expenditure of various government bodies, government agencies and non-departmental public bodies. Given the fact that the first-past-the-post parliamentary system in the UK can favour large government majorities, various institutions such as the police have historically evolved in such a way to be insulated to a high degree from direct political control and manipulation by government or its Ministers. This can be seen most clearly in the highly decentralized nature of policing in the United Kingdom (52 separate and autonomous forces each with their own Police and Crime Commissioner) and more forcibly in the doctrine of ‘constabulary independence’ and the convention that chief police officers cannot be directed by politicians for the day to day running of their police forces. In relation to policing in the UK – at least compared with other more centralised continental European systems - local prioritization and accountability rather than centralised control is the order of the day.

Oversight of governmental budgetary spending (particularly in relation to auditing how government spends money and on what) is an important prerequisite of democratic governance. In England and Wales, this auditing role is performed by the "National Audit Office" which is an independent Parliamentary office headed by the Controller and Auditor General. The work and reports of the National Audit Office are in turn scrutinized by the all-party Public Accounts Committee (PAC) in the British Parliament. The role of the National Audit Office is to audit the accounts of all government departments and agencies as well as a wide range of other public bodies. They report to Parliament on the efficiency and effectiveness with which these bodies have used public money.

The National Audit Office does not simply scrutinize the financial affairs of government departments but also seeks to identify ‘best practices’ in the conduct of public administration. For example in recent years it has examined Home Office responses to violent crime, prison management, asylum, parole and so forth in order to assess how effectively government policies have been working in this regard.

The National Audit Office does not audit United Kingdom police forces directly but is concerned with auditing the expenditure of the UK government departments that have a role in the provision of policing and justice and security services. In addition the National Audit Office also audits the Security Industry Authority which regulates the private security industry in the United Kingdom.

The localized and decentralized nature of public administration in the United Kingdom means that local government auditors have a key role to play in the oversight of local government services (of which policing is a key one). The Local Government Accounts and Audit Regulations [2003] classifies the police as a “public authority” which means that it is required to undergo local audit inspections by audit commissions to ensure that it is meeting Home Office targets for ‘efficiency, economy and effectiveness’ but also to ensure that quality of service provision around equality and diversity issues are being delivered and maintained by the police service. This reflects the European Union General Framework Directive on religious belief, sexual orientation and disability and the requirement that public services such as the police have a duty to show how they are promoting equal opportunities. These Directives were translated into national law with the Equality Act [2006]. The
Audit Commission also conducts annual audits of crime statistics compiled by police forces, as well as assessing how well Home Office sponsored schemes and initiatives such as “Building Safer Communities” are being implemented at local / regional level. The Audit Commission can use its power to recommend that the Secretary of State give direction to an underperforming local authority. In cases where there is suspected fraud of public funds, the police will be informed and a criminal investigation will ensue.

In the UK, as a result of the doctrine of “constabulary independence” politicians cannot interfere in the running of police forces. The National Audit Office in the UK plays a similar role to the Turkish court of account. At local level, audit commissions oversee local government services including police, as a “public authority”. Inspections by the Audit Commission aim to ensure that local authorities and public bodies are meeting Home Office targets for economy efficiency and effectiveness, also quality of service at local level. Inspections include an overview of crime statistics compiled by police.

2.5. Denmark

2.5.1. The Role of the Ministry of Justice

The Ministry of Justice is responsible for the overall justice system in Denmark, including the police, the prosecution service and prisons. The Ministry’s principal functions further include data protection law and immigration, while the Ministry is also responsible for preparing legislation overall. The Ministry of Justice is a key branch of government and is ultimately accountable to the Danish Parliament. If a majority of the parliament loses its confidence in the government or a minister, then the parliament can decide on a vote of no confidence and the government/minister must resign.

A number of functions serve as parliamentary oversight tools in regards to the government including the police in Denmark. Important parliamentary oversight tools are:

- Discussion and approval of the total state budget,
- Parliamentary debates and the opportunity of requesting the presence and participation of members of Government in such debates,\(^\text{11}\)
- Politically binding motions for the Government,
- Requests of information and parliamentary inquiries,
- Questions and the opportunity for investigation committees.
- The Ministries can also be scrutinized by various parliamentary committees\(^\text{12}\) as well as the Rigsrevision which oversees the budget and expenditure of various government bodies, government agencies and non-departmental public bodies.

\(^{11}\)Parliamentary control over the Government can also be exercised in the Parliament’s 28 standing committees. In addition to their work on bills and proposals for parliamentary resolution, the committees can also put questions to Ministers to be answered orally or in writing. Such questions could deal with concrete issues or more general subjects within the committee’s area of responsibility. Questions from committees are asked on behalf of the committee as a whole and are therefore generally more neutral in tone than questions asked by MPs on their own initiative.

The Legal Affairs Committee of the Parliament has 29 members and it posed 1400 questions in 2013 on Justice and Home Affairs, including the police. Committees can decide to hold open consultations, that the public can attend for the public to attend. Moreover, the majority of these consultations are broadcast live on the Parliament’s TV channel and streamed online.

\(^{12}\)There is a number of standing committees in parliament, such as e.g. the Legal Affairs Committee. Every party in parliament is represented in the standing committees. In most of the committees the number of members in a standing commission will reflect the size of the party (on the grounds of the number of MP’s in each party).
2.5.2. Budget Oversight

Oversight of governmental budgetary spending, particularly auditing government spending is an important prerequisite of democratic governance. In Denmark the auditing function is performed by the “Rigsrevision”, headed by the Auditor General, which submits its reports to the Public Accounts Committee – an independent parliamentary office. The Auditor General is appointed for a period of six years with a possibility of a four-year extension. Additional extensions or re-appointment as Auditor General cannot take place (Rigsrevision Act article 1). The Parliament appoints the General Auditor via the Standing Orders Committee, which includes members from all parties in Parliament. The general Auditor must be an auditor by education and not a Member of Parliament.

Rigsrevisionen is independent from government. Rigsrevisionen does not answer to any ministry, and no public entity can overrule or dictate the decisions made. It hires its own personnel, and gets its financing from the Parliament, through the finance bill.

The role of Rigsrevisionen is to audit the accounts of all government departments and agencies as well as a wide range of other public bodies. It reports to the Parliament, through the Public Accounts Committee, on the efficiency and effectiveness with which these bodies have used public money. Rigsrevisionen’s approach to annual audit is holistic. It examines the accounts of the department, agency or other governmental body and determines whether spending is in compliance with the appropriation, and examines the performance of the agency against the objectives set, including whether it has taken sound financial considerations into account and administered the appropriated funds economically, effectively and efficiently. Rigsrevisionen does not audit all government areas every year, but selects its audits on the basis of materiality and risk. The concept of materiality includes both financial and non-financial issues and may therefore relate to both the size of an amount and the importance that the Public Accounts Committee, the Danish Parliament or the general public may be expected to attach to a specific issue.

Rigsrevisionen publishes approximately 25 reports every year. Around one third of these are made on the request of the Public Accounts Committee, whereas Rigsrevisionen decides the subjects of the remaining reports. Some examinations concern only one ministerial remit whereas others are cross-sectoral. The Danish audit model includes a Contradictory Procedure in order to ensure an effective follow-up. Rigsrevisionen reports the results of the annual audits and major studies to the Public Accounts Committee. Subsequently, Rigsrevisionen and the Public Accounts Committee follow up the results to ascertain whether the ministries act on the recommendations. This follow-up procedure is distinctive from an international perspective and aims to ensure that the audits are effective.

The primary financial oversight of the police by the parliament is the yearly Finance Act. Every year a new Finance Bill, which determines the Danish state’s budget for the following year, must be passed in Parliament. The Finance Act determines how much money will go for instance to the police, universities, ministries etc.¹³ The annual Finance Act is a key management tool for politicians regarding the police. It provides the financial framework for the coming year and determines the primary objectives, such as goals, outputs and

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¹³Since 1992, the police budget has been decided in political agreements covering 4 years at a time (and therefore politically binding with regards to the annual Finance Act). These agreements include a budget with priorities, and enable the police authorities to plan ahead. The present budget runs from 2012 to 2015.
outcomes. The central police chiefs are responsible for managing resources within the financial agreement and the Finance Act and the politically defined primary objectives.\textsuperscript{14}

The appropriation for the police and the prosecution service totals approximately DKK 7.5 billion annually. The police districts have independent budget responsibility. Their respective appropriations for 2014 are determined based on their level of activity in the recent 3.5 years. Furthermore, the districts can be assigned special appropriations to the strategic priorities for action and goals. This is also the case for the total financial framework of the National Police (Rigspolitiet).

2.5.3. The Ombudsman (Parliamentary Commissioner for Civil and Military Administration in Denmark)

A key parliamentary oversight mechanism regarding the government is the Ombudsman—institution. The Ombudsman (Parliamentary Commissioner for Civil and Military Administration in Denmark) has the responsibility of the main external oversight mechanism of government.\textsuperscript{15} The Ombudsman is elected by Parliament to investigate complaints about the public administration.

After each general election, the Parliament elects an Ombudsman. The Ombudsman’s period may be extended, but the Ombudsman’s total tenure may not exceed 10 years (the Danish Ombudsman Act article 1). On the first meeting in the Danish Parliament’s Legal Affairs Committee, after a general election, a subcommittee with a representative of each of the political parties is created. It is the role of the subcommittee to make a suggestion concerning the election of new Ombudsman to the Legal Affairs Committee – i.e. to find a suitable candidate. The Danish Parliament’s Legal Affairs Committee votes on the suggested candidate. In theory there can be more than one suggested candidate, but in practice there is always only one. Danish Parliament’s Legal Affairs Committee then makes a formal recommendation (by simple majority) to Parliament, which then votes on the recommended candidate. The final vote in Parliament is by simple majority, however, there is a tradition of consensus both in the Legal Affairs Committee and later within Parliament. Occasionally, members or parties, however, have abstained from voting. If the Ombudsman no longer enjoys the Parliament’s confidence, then the latter can dismiss the Ombudsman. The Ombudsman is automatically to be dismissed from the end of the month in which he reaches the age of 70 years (The Danish Ombudsman Act article 1).

The Ombudsman is fully independent from the government and the ministries and is a separate entity in itself. By independence – in this context – means that the person or institution is not subject to government by any senior entity. The person or institution does not answer to government, and no ministry can overrule or dictate the decisions made by the person or institution. Independence is here used in relation to the government/the ministries (the executive branch). In Danish State theory, there is usually a distinction between institutional and personnel independence. ‘Institutional’ refers to the decisions etc. made by the relevant body, and ‘personnel’ referring to the right to hire and dismiss etc. The Ombudsman is in this regard totally independent from the government (the ministries) is

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\textsuperscript{14} Examples of priorities is fighting gang-related violence, fighting terror and target crime areas, such as burglary in private residences and socially vulnerable residential areas.

financed by the state (through the Finance Act) and hires its own personnel. The Ombudsman’s relationship with Parliament is twofold. On the one hand, the Ombudsman is also technically institutionally independent, but on the other and the he must be appointed and removed by the parliament. The Ombudsman therefore is not personally independent from Parliament.

The jurisdiction of the Ombudsman does not extend to the courts of justice.\textsuperscript{16} Citizens who believe that a public authority has made a mistake\textsuperscript{17} can make a complaint to the Ombudsman, but the Ombudsman may also take up cases on his own initiative and investigate government institutions such as prisons, psychiatric hospitals etc. The Ombudsman may make criticism and recommend that the authorities reopen a case or change their decision, but he cannot make binding decisions for the government.

All government authorities that fall within the jurisdiction of the Ombudsman are obligated to supply him with information and to produce documents etc. as demanded. If the demands are not met, then the individual government employee is in misconduct of duty, which in the end can be a criminal offence (the Danish Criminal Act chapter 16). If an unlawful refusal or otherwise deception of the Ombudsman happens with the relevant minister’s knowledge, the minister can risk a vote of no confidence or in the end a criminal case (the Ministerial Accountability Act article 3). The Ombudsman may also demand written statements (the Ombudsman Act, chapter 6, article 19 (1) (2)). The Ombudsman may subpoe-na persons to give evidence in court on any matter of importance to his investigations and may inspect any place of employment and shall have access to all premises (The Ombudsman Act, chapter 6, article 19 (3) (4)). The Ombudsman receives between 4,000 and 5,000 complaints annually and employs about 100 staff members.

\subsection*{2.6. Portugal}

The Portuguese legal framework provides some specific instruments of parliamentary scrutiny within the internal security system, such as mandatory prior hearing of the Secretary General of Internal Security System (head of the internal security system) or the appointment of deputies (members of Parliament) for the inter-ministerial coordination body called Board of Homeland Security.

Also noteworthy is the ex-ante control that Parliament does through its reserved legislative competences in this field. According to the Constitution, Parliament has reserved legislative competence on "restrictions on the exercise of rights by full-time military personnel and militarized agents on active service and by agents of the security services and forces" [art 164, o] and "the regime governing the security forces" [art 164, u].

The main instrument of specific ex-post Parliamentary control concerning forces and security services is the RASI report, annually submitted by the government (by the Secretary General of Internal Security System) about the activity of the forces and security services developed in the previous year. The RASI is a detailed document and the most important Parliamentary debate about internal security.

However, with the exception of intelligence services, most of the control of the Internal Security System and main forces and security services (PSP, GNR and PJ) by the Parliament

\textsuperscript{16}The Ombudsman Act chapter 2, article 7 (2).
\textsuperscript{17}Regarding the rules and procedures of public administration.
lies in general instruments of control. This means that this control happens through:

- **Debates on ISS themes**;
- **Summoning the Minister of Home Affairs, the Minister of Justice or the Secretary General of the Internal Security System (whose statute is of a government member)**;
- **Summoning staff or senior officers of the state’s administration (such as the national director of the PSP, the national director of the PJ, the General Commander of the GNR or the General Inspector of Home Affairs)**;
- **Summoning any citizen (including experts) for testimonial**;
- **Asking questions to the Government about any of its acts or those of the Public Administration**;
- **Requesting elements, information and official publications that Deputies deem useful to the exercise of their mandate from the Government or the organs of any public entity**;
- **Inquiry committees**

Since the Parliamentary reform of 2007, some of the latter tools (e.g. summon ministers) can be triggered by the opposition without the consent of the majority. These rights vary for each Parliamentary partisan group according to its proportional weight. Regarding summoning ministers, the Mol must be heard at the hearing of the standing Committee for Rights, Freedoms and Guarantees (other ministers go the respective standing committee) at least 4 times in each legislative session (year), in accordance with a schedule to be set at a Conference of Leaders by the first week of the legislative session in question (art. 104 Rules Of Procedure of Parliament). This is intended to ensure the provision of effective accounts of all ministers, regardless of the will of the majority or schedule constraints from ministers. These are, as a rule, public hearings.

Regarding Parliamentary requests and questions, the Parliament approved in 2008 a good practice guide (Resolution 18/2008), which defines a deadline of 30 days for the government to deliver a reply. When deadlines are not respected, the Parliament makes it public in its official journal (symbolic sanction).

Another crucial control tool is the discussion and approval of state budget. This includes breakdown of the state’s income and expenditure, including that of autonomous funds and departments. The Budget shall be a single budget and shall set out expenditure in accordance with the respective organizational and functional classification, in such a way as to preclude the existence of secret appropriations and funds (art. 105 of the Constitution). In addition to this rule, Article 106 of the Constitution includes rules on the preparation of the budget. The Rules of Procedure of Parliament and Budgetary Framework Law complete the legal framework for the budget.

A strategic annual plan submitted to Parliament applicable to all internal security does not exist. However, concerning criminal investigation, Parliament should approve a Criminal Policy Law, which basically defines the strategic guidelines for police forces (as well as for Public Prosecution Service) for a certain period of time (usually two years). The
Framework Law on Criminal Policy (Law No. 17/2006) provides that the Government should set, every two years, the priorities in relation to criminal investigation. These objectives were defined by law for the biennium 2007-2009 and 2009-2011. However, no other law has been passed since then for fulfilment of this legal provision.

There is no strategic annual plan; however, as mentioned above, there is a national yearly report on the situation in terms of security and security forces during the previous year known under the acronym RASI.

Another important institution is the Court of Auditors. The principles concerning the Court of Auditors are found in the Constitution (art 214) and Organizational and Functioning Law of the Tribunal de Contas (Court of Auditors). The Constitution includes the Court of Auditors on the list of Courts, meaning that the general constitutionally established principles for Courts (like independence) are applied to it. The Court of Auditors is defined as "the supreme body which examines the legality of public expenditure and rules on the accounts which the law has ordered to be submitted to the Court" (214 CRP). It does not only hold jurisdictional functions. It also has other functions, namely "to give an opinion on the General State Account» (art 214)".

In short, the Court of Auditors is a financial court. It is a sovereign body, an independent, constitutional body of the State, which is not included in the Public Administration, in particular, in the State Administration. The examination or financial control function of the Court of Auditors comprises the following: i) powers of a priori control; ii) powers of concomitant control; iii) powers of successive or a posteriori control.

Through its powers of a priori control, the Court of Auditors verifies if the acts, contracts and other instruments which generate expenses or are representative of direct and indirect financial responsibilities as set out by law, are in compliance with the laws in force and if the respective expenses can be covered by the allocated budget. However, within the scope of a posteriori control, carried out following the end of the financial year, the powers of the Court are wider and include opinions on the states account, carrying out audits of the accounts of public sector administration entities so as to evaluate the respective internal control systems, taking into consideration the legality, efficiency and effectiveness of their financial management.

Another important tool that allows the Parliament to receive information about the conduct of ISFs from an independent institution is the Ombudsman report, submitted yearly to Parliament, which reports citizens' complaints about the action of security forces and police abuses. It is an important way to take the people's voice and concerns about internal security forces to the Parliament.
2.7. Germany

As previously described, the executive branch (and within it, the police) is bound by law and justice. This law is ‘made’ by the legislative power, meaning the federal and states parliaments. These parliaments are elected regularly (different in the states every four or five years). As in every parliamentary regime, the government is elected by the Parliament and not (as in a presidential regime) by the people. Germany established a system of a (weakened) competitive democracy. The competition between political parties and an election system leading to proportional representation leads (normally) to a situation with a parliamentary majority (often in coalitions) and an (often strong) opposition.

While the parliamentary majority tries to support and legitimize the government, the opposition has the right and duty to control the government. To provide the Parliament with (more or less) sufficient control, the rules of parliamentary order give a graded set of instruments:

- **Questions** for oral or written answer are usually addressed to the Parliamentary State Secretary of the Ministry (§ 105 GO-BT). These questions will often be either answered in written way or in the so-called “Question Time”, which takes place in every sitting week of the Parliament.

- **Aktuelle Stunde** (topical hour) in which actual topics are discussed (§ 106 GO-BT). The members of parliament ask the government about their attitudes, activities and plans, and the parliament debates the political perspectives on the topic.

- **Kleine Anfragen** (minor interpellation) are formulated by single MPs and deal with specific problems and/or certain activities of the executive. They are written notices and answered by the responsible ministry also in a written way. (§ 104 GO-BT)

- **Große Anfragen** (major interpellation) are more complex. They are also submitted written, answered written by the government and then discussed in the parliamentary debate (§ 100 GO-BT).

- **Untersuchungsausschüsse** (parliamentary investigation committees) have to be established if a quarter of the Parliament requests this (Art. 44 GG). They are the ‘sharpest knife’ of parliamentary control and used to investigate scandals. These committees are mainly an instrument of the opposition, which sees the chances to prove the government’s failures (and tries to benefit from this in the next election).

The parliament and also its committees (e.g. committee of internal affairs, which deals with matters of internal security) can – on request of a parliamentary group or 5 % of attending MPs – summon the responsible minister to give answers during a session (§ 42 GO-BT).

Within the work of parliamentary investigation committees, in hearings during the parlia-

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18 GO-BT = Gesetzesordnung des Deutschen Bundestags, parliamentary rules of procedure of the German Federal Parliament. The rules in the state parliaments are similar.

19 Recent examples of parliamentary investigation committees (PIC) are the PICs about the right-wing terror group „national socialist underground” at the Federal parliament (http://www.bundestag.de/dokumente/ textarchiv/2014/49561254_k-w08_sp_nsv/215776) but also in the state parliaments of Thüringen, Saxony, Bavaria, North-Rhine-Westphalia and Baden-Württemberg. Also in Baden-Württemberg a PIC analyses the police use of force with batons, water cannons and pepper spray against demonstrators, who protested against a new railway station in Stuttgart and the uprooting in the palace garden (http://www.landtag-bw.de/cms/home/der-landtag/gremien/ausschusses/ untersuchungsausschuss-polizei.html). Parliament. The rules in the state parliaments are similar.
mentary consultancy or in “Enquete Commissions” (study commissions) the Parliament or parliamentary groups summon and question experts from government/administration, academics, interest groups etc. to widen the horizon and to consider specific expertise.

Beside these special control instruments, the Parliament has its usual tasks of legislation. Regarding the project topic, there are some acts to be mentioned:

**Federation:** criminal law, code of criminal procedure, traffic law, law about regulatory offence, Federal Criminal Police Office Act, Federal Police Act, Joint Counter Terrorism Centre Act...

**States:** police law, police organisation law...

Also the budget has to be passed as a law. The police budget is part of the budget of the Ministry of Interior. The draft of the police budget is prepared by the police department at the Ministry of Interior, but the final draft and proposal to the parliament is the responsibility of the Ministry of Finance and the decision of the cabinet. The budget shows the revenue and expenditure and gives a differentiated overview about the personnel, but has no section about policies, political intention, strategy or operative activities. In the parliamentary budget debate the section ‘police’ is often discussed, as it is one of the central indicators for the situation of internal security. In the debate, the facts and figures are used to discuss the actual risks and threats, the police strategy, the police’s equipment, the need of alterations of police law etc.

### 2.7.1. Assistance of Parliamentary Oversight by Independent Agencies

**2.7.1.1. Court of Accounts**

The budget gives a framework for the government and administration. Adherence to this budget is analysed by the Rechnungshof (Court of Accounts / Court of Audit) and reported annually to the Parliament’s commission for budgetary control. If the Rechnungshof and the Parliament disapprove certain costs, activities and discrepancies of budget and de facto expenses, the government has to report to the Parliament about the measures it has taken (Bundesrechnungshof 2009).

The Bundesrechnungshof is a supreme federal authority. As an independent body of government auditing, it is subject only to the law. The status of the Bundesrechnungshof, its Members and its key functions are guaranteed by the Constitution (Article 114 (2) GG). A president, who also acts as the Federal Performance Commissioner and is designated by order of the Federal Government, chairs this court. The staff (about 600 employees) includes mainly jurists and economists, who are supported by civil servants. Division IV audits the defence budget and domestic security services. Similar to the “Bundesrechnungshof”, the state “Rechnungshöfe” are organised as independent bodies.

The Rechnungshof also analyses the economic behaviour of specific authorities and tests certain projects. The reports are given to the head of authorities and also to the Parliament. The ministries with responsibility give written explanations to the results of the report. The protocols of the parliamentary debates, the text of minor and major interpellation and the government’s answers, the Rechnungshof reports and the ministries’ statements are
documented as “Parliament Papers” and are online available – unless they are classified (e.g. based on risks for the internal or external security, but also intellectual property and patents, fiscal secret).

2.7.1.2. Commissioners for Data Protection and Freedom of Information

Beside the "Rechnungshof", the Federal and state "Commissioners for Data Protection and Freedom of Information" report directly to the Parliament. They have a quite strong position as a public body that monitors and supervises compliance with data protection laws and regulations. The commissioners are elected by the parliaments, and the agency works independently from the government.

The report of the North Rhine-Westphalia Commissioner for Data Protection and Freedom of Information has a chapter about „Police and Justice", in which for example data protection in the context of tracing or telephone and Internet surveillance is discussed. Apart from the general data protection laws, there are special laws at both state and federal level that contain data protection provisions governing specific areas. For instance, the North Rhine-Westphalia Police Act includes special provisions concerning data-processing by police services. Public and police authorities have to observe the data protection provisions laid down in the special laws that apply to them. Every police authority has to have a data protection officer.

2.7.1.3. No Ombudsman – no Police Commission

While the institutionalised control by the Parliament and the court of accounts is well established in Germany, independent control is meagre. In Germany, no Ombudsman for police matters exists. The governments and also the police unions argue that there would be no need for such a position, as the Parliament (assisted by the courts of audit and the Commissioner for Data Protection and Freedom of Information), the police itself and the courts would ensure sufficient oversight.

From 1998 until 2001 in Hamburg, a “police commission” existed with three independent volunteers, which had the task to observe malpractice of police officers and eventual risks for the police in a system with the rule of law. The discussion about the sense and task of this commission was highly controversial.

With fewer competences than an ombudsman has, there are, in some German states, so called “Central Complaint Points” (Hamburg, Berlin, Saxony-Anhalt). But these are organizational units in the force and not independent ones from police or ministry.

Police critics in Germany see a serious lack of civilian oversight in the fact that there are no ombudsmen or independent commissions. Amnesty International in Germany complains about the lack of control and individual accountability for malpractice. Amnesty demands an identification mark for every police officer (especially for members of armed riot police) and also presents reports on police violence.
2.7.2. Relationship of Parliament and Government

The Parliament in Germany has, besides all tasks as the legislative power, the right and duty to elect the Chancellor (Federation) or the prime minister (in the states) on the one hand, the control and supervision of the government and its subordinated administration on the other hand. As shown above, the parliament has a differentiated set of instruments to fulfil these tasks. But the government and the ministries are not only object of requests, they also inform the Parliament (and the public) on their own initiative and/or because of tradition or obligation.

One of the most important reports in aspects of internal security is the Police Crime Statistics, which is published (and send to the Parliament) annually. This report informs about offences, offenders, victims and damage by crime. Besides this report, the authorities also publish various status reports on different aspects of internal security, for example about human trafficking, drugs, organised crime, cybercrime, counterfeit money, corruption etc.

Attempts to establish a series of “Periodical Security Reports”, which would discuss matters of internal security based on scholarly analysis, did not succeed. Such a report was published only in 2001 and 2006.

2.8. Italy

In the Italian constitutional system, the Parliament has not only the function of creating the rules of the legislation, but also to engage in controlling the action of the government, thanks to the relationship of confidence that must be declared in the two Chambers. This function is called ‘policy guidance’ and is closely linked to the action of the government. The relationship arises when the government gets the confidence of the majority of both Chambers: in this first phase, the Parliament must approve the initial program of the government, and without the vote of confidence the government cannot settle and begin to operate (art. no. 94 of the Italian Constitution).

A series of policy guidance acts take place during the same phase. They are finalized to amend or supplement the program originally agreed with the government, or to commit the government and public administration to put some parts of the program into practice. Among them, can be mentioned agendas, motions and parliamentary resolutions. These policy guidance acts are not binding on government action, but can lead to a loss of the bond of trust between the executive and the parliamentary assembly, and to the presentation of a motion of no confidence, which determines the resignation of the government, if approved by the majority of both Chambers.

In the function of policy guidance of the parliament, we can also distinguish a second phase, defined as ‘instrumental’. The parliamentary activities aimed at defining the organization and the material resources necessary for the government and public administration to implement their initial program belong to this stage. The main parliamentary activity of this phase is the discussion and approval of the budget law and the law of stability. With the first one, the funds raised through the tax revenues are allocated for the next year among

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20 The motion is intended to promote a decision of the Parliament on a given topic. The parliamentary resolution is instead intended to express or define guidelines on specific topics.
the different sectors of the state and public administration. With the second, the main rules of public finance and state budget are established for the next three years, in coordination with the EU requirements of economic and financial convergence and with the financial activities of local governments.

The approval of the budget law and the law of stability is characterized by a special procedure, defined by Constitution and parliamentary rules: it must take place by December 31; otherwise the Government can use a provisional budget, for a period not exceeding four months. Only after the approval of the budget law, the Government may proceed to find and use the funds necessary to carry out its activities, by collecting taxes and defining the expenditure.

The third phase of the policy guidance role of the Parliament is of ‘control and information’. It includes all those parliamentary activities aimed to ascertain that the policy actually implemented by the government is coherent with what was stated in its program. In fact, the Italian Parliament must be able to know in detail the activities carried out by the government and public administrations, in order to determine if the executive bodies respect the plan approved with the vote of confidence. Again, these procedures do not have direct effect on the government activities, but they can breach the bond of trust between the executive and the parliament and lead to the presentation of a motion of no confidence. The main tools provided in the Italian Constitution are inquiries, the interpellations and the investigations carried out by ad hoc parliamentary committees.

A parliamentary inquiry is a simple question addressed by an MP to the Government or a minister, to have more information on given facts, documents or actions that government should take on a given topic.

A parliamentary interpellation is a written request addressed to the Government or a minister, about the causes or intentions of the conduct of the Government in matters related to certain aspects of its policy. The interpellation is more incisive than simple inquiries, both because they have a more direct reference to the governmental policy, and because an MP dissatisfied with the response could convert the interpellation into a motion, charging the whole Parliament of the discussion and voting on the Government conduct.

Parliamentary investigations may be triggered by the two Chambers (jointly or separately), on matters of public interest (art. no. 82 of the Constitution). The investigation activities are conducted by special committees, ad hoc created by law and formed so as to reflect the proportions of the different political groups in Parliament. The committees may carry out the investigations and examinations with the same powers and same limitations as a judicial authority. They can cite and examine witnesses, order audits, request documents, like any other State court. At the same time, they could encounter similar limitations, such as professional or State secrets that can be kept from them during the hearing. The investigation committees have the opportunity to ask the Government representatives information or clarification on issues and policies, on the subject under investigation. They can also obtain information, news and documents directly from the competent ministers.

The activities of the parliamentary committees of inquiry are purely informative: they do not have the power to impose a change in the governmental policy, to give directives or
to blame anyone. However, the results of the committees’ activities may affect the bond of confidence between Parliament and Government and cause specific motions. Moreover, the reports of each session of a Committee investigation and the final reports are public and made available on the Parliament website. This helps reinforce the principle of “participatory democracy” in Italy.

In addition to these parliamentary investigation Committees, there are the Oversight Committees (‘Commissioni di Vigilanza’ in the Italian Parliament). They are responsible for the oversight on certain public or private functions that are particularly sensitive for the democratic nature of the country (for instance, Intelligence Services, radio-television services or State interventions for the South, etc.). Not surprisingly, the chairmanship of these committees is often attributed as institutional guarantee to the representatives of the parliamentary minorities. However, these permanent parliamentary commissions are formed so as to reflect the proportions of the political groups in the Parliament. The annual reports and the main decisions of the Oversight Committees often reproduce the balance of power in the Parliament. The opposition parties can approve ‘minority reports’ which do not have direct consequences but can cause specific parliamentary motions or interpellations to the Government. There is no specific Oversight Committee on the police, although the establishment of a parliamentary committee of inquiry was once requested about a controversial incident that involved the police. \(^{21}\)

In Italy, the supervision on compliance with the budget law of public administration is given to the Parliament, who exerts it with the collaboration of the Court of Accounts (‘Corte dei Conti’, art. no. 100 of the Constitution). The Court of Accounts is an independent collegiate court that carries out the preventive control of legality over the most significant acts of Government and public administration, and the audit over the budget management of the State, public administrations and all the bodies funded by the State. The independence of the Court of Accounts is guaranteed through the procedure of appointment of its heads.\(^{22}\) The President is appointed among the magistrates of the Court who have actually held directive functions for at least three years, by Decree of the President of the Republic, on proposal of the Prime Minister, following a deliberation of the Council of Ministers and the advice of the Council of Presidency of the Court of Accounts, particular procedures of public selection of its judges, and the financial and administrative autonomy of the Court. The Court has to directly report to the Parliament on its audit findings.

The a priori audit of the Court of Accounts prevents administrative acts from taking effect if they fail the examination about their legality. Among the most important acts of the Government, only the Decree Laws and Legislative Decrees, issued for reasons of ‘necessity and urgency’ or upon a special delegation granted by the Parliament, are exempted from these controls. However, these decrees must be converted into law by Parliament, so that they can maintain effectiveness. During the special process of approval, the Parliament may require the President of the Court of Accounts to express the Court’s evaluation about the financial consequences that would result from the conversion into law of a Decree-Law or a Legislative Decree.

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\(^{21}\) In 2007, it was rejected by one vote a law proposal that would have set up a parliamentary commission of inquiry into the management of public order during the anti-GBP protests that occurred in Genoa in 2001.

\(^{22}\) The President is appointed among the magistrates of the Court who have actually held directive functions for at least three years, by Decree of the President of the Republic, on proposal of the Prime Minister, following a deliberation of the Council of Ministers and the advice of the Council of Presidency of the Court of Accounts.
The *a posteriori* audit takes into account effectiveness (*results*), efficiency (time and methods) and economy (*costs*). For this purpose, the legislator entrusted the Court of Accounts with the task of setting, on a yearly basis, audit programs and criteria. The Court was also entrusted with the task of verifying the functioning of internal audit in each State Department. During the audit, the Court may modify, suspend, or cancel measures of other State bodies, due to insufficient funding or to an inefficient use of public resources. The Court of Accounts reports, at least once a year, to Parliament and to Regional Councils on the results of audit carried out.

The control functions of the Court are extended to the local administrations of the State (*regions, provinces and municipalities*), in order to guarantee the financial stability of Italian administrations and respect the constraints imposed by the European Union. Even for this kind of audit on local government acts, the control is both preventive (*on the legality of acts*), and final (*on the results of financial management*). In these cases, the decentralized Sections of the Court refer directly to the councils of the concerned local institutions.

The Court of Accounts also functions as an administrative jurisdiction. In the jurisdictional field, its duties are:

- *judgement of responsibility, which concerns economic responsibility for damages caused to the State or other public bodies by their own civil servants or public administrators;*

- *judgements of accounts, which is a special responsibility for accounts, connected with the management of public money or property;*

- *judgements on pension matters, concerning civil, military and war pensions.*

**2.9. Turkey**

A Parliamentary regime has been embodied in the Constitution of Turkey. The fact that legal regulations related to internal security sector should be made within the constitutional principles is the primary mechanism used by Parliament for overseeing the internal security sector. Secondarily, there are some additional audit tools for efficient parliamentary oversight. In this context, legal mechanisms have been adopted in order to organize parliamentary oversight in various articles of the Constitution.

**2.9.1. General Oversight Tools of Parliament**

The Constitution regulates that the Council of Ministers (*Government*) is responsible and accountable to the Parliament for the implementation of the government’s general policy. The government is responsible for policing activities because of it is a hierarchical superior to the internal security forces. The Parliament oversees the activities of the Government; this oversight also comprises all relevant public institutions and organizations incorporated into the executive branch, including policing activities.

In the 98, 99 and 100th articles of the Constitution, the ways the Parliament can exercise its power of oversight is regulated under the title Ways of Obtaining Information and Supervision by the Grand National Assembly of Turkey. Accordingly:
• Question is a request for information regarding specific matters addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers (Cons. Art. 98/2),

• Parliamentary inquiry is an examination conducted to obtain information on a specific subject including policing activities (Cons. Art. 98/3).

• General Debate is the consideration of a specific subject relating to the community and the activities of the State at the Plenary of the Parliament (Cons. Art. 98/4). General debate may be requested by the Government, political party groups or by at least twenty deputies through a motion tabled to Presidency of Grand National Assembly of Turkey.

• Censure, is a way of supervision related to political responsibility of the Council of Ministers or a minister (Cons. Art. 99). Censure is the most efficient way of supervision compared to other tools of supervision. Prime Minister and Ministers could be unseated by censure. The Minister of Interior and even the Council of Ministers could be unseated as a result of adoption of motion of censure related to policing activities and by a decision of no-confidence.

• Parliamentary investigation is a way of supervision which may be requested against the Prime Minister and ministers regarding offences committed by them during their term in office. In this sense, it is seen as an efficient oversight mechanism with regards to hold the superiors of internal security units responsible for the committed offences. A minister who is brought before the Supreme Court as a result of a parliamentary investigation shall lose his/her ministerial status; if the Prime Minister is brought before the Supreme Court (“Yüce Divan”)23, the Government shall be deemed to have resigned.

In addition to these mechanisms, the Parliament has also tools such as forming ad hoc commissions in order to inquire and directly inspect internal security units and their activities along with the mentioned oversight mechanisms over the government. For example, a permanent Human Rights Investigation Commission has been formed within the scope of Parliament by Law 3686, dated 8.12.1990 on the Human Right Investigation Commission. There are several reports published by the Commission pertaining to the investigation of policing activities.

The right to apply to the Parliament by a petition has been granted to citizens by the 74th Article of the Constitution. The permanent Commission on Petition was formed with the purpose of examining petitions submitted to the Parliament with regard to the personal or general requests and complaints of citizens. The Commission on Petition processes a large numbers of complaints related to policing activities. The Mol is superior compared to other ministries.

However, for what concerns investigations of parliamentary commissions, some restrictive regulations exist with regards to obtaining information and documents. For example, the parliamentary research commission formed for the purpose of investigating the events that occurred after the bombing of a bookstore in provinces of Yüksekova and Şemdinli, parts of the city of Hakkari, could not examine confidential information and documents. It

23According to the 148th Article of the Constitution, Prime ministers and ministers are prosecuted and judged by the Constitutional Court in the capacity of Supreme Court (Yüce Divan) because of crime committed during their post and related to their duties.
did though have the power to reach all relevant information and documents by parliamentar-
y commissions particularly for efficient investigation of internal security units.

By legal modification to Law 2937 on the State Intelligence Services and National Intelli-
gence Organization made in April 2014, the permanent Commission of Security and Intelli-
gence has been formed under the authority of the Parliament. It should be emphasized that
the prime authority to advise with regard to the formulation, determination, and implement-
ation of the national security policy of the Republic of Turkey about internal security
matters belongs to the National Security Council.

In accordance with the abovementioned legal modification, annual reports prepared by
the Mol, the Ministry of Finance and the National Intelligence Organization, related to state
intelligence services operated by the National Intelligence Organization of Turkey and
security activities operated by the National Police Organization, the General Command of
Gendarmerie and the Financial Crime Investigation Board shall be submitted to the Parlia-
ment. They are, however, not prepared by the Parliament. If the Parliament decides to act,
this procedure would be able to provide additional means for civilian oversight of ISFs. As is
seen, there are both general and exclusive commissions within the scope of Parliament,
comprising activities of internal security units. However the Coast Guard Command is not
included in recent legal modifications explained above.

Another important tool that allows the Parliament to receive information about the
conduct of internal security forces from an independent institution is the Ombudsman

All parliamentary commissions are equipped with semi-judicial powers in accordance
with the Rules of Procedures of Parliament. In accordance with the Article 30 of the Rules
of Procedures, Commissions may invite experts in order to consult their views. According to
Article 105 of the Rules of Procedures, the Parliamentary Inquiry Commission has the
authority to request information from, carry out inquiries at and to obtain information by
inviting the relevant public institutions. But this authority has only been granted to the
Parliamentary Inquiry Commission. If deemed necessary, the Commission may consult
experts who are considered appropriate. State secrets and commercial secrets are excluded
from the scope of parliamentary inquiry.

It should be emphasized that this authority could not be defined as power to “summon”
or “subpoena”. The Rules of Procedures of Parliament chose the words of “call” and “invite”
and there is no mechanism which enables commissions to compel people who do not
accept the invitation. In practice, there are problems related to this ambiguity. For example,
some commanders of the Gendarmerie did not accept invitation of the ad hoc commission
on the murder of journalist Hrant Dink, and did not attend the hearing.

2.9.2. Budgetary Oversight

The Parliament determines and oversees spending of the government on policing activities
through budget bills and final accounts bills along with above mentioned oversight mecha-
nisms. The purpose and activities of the internal security units for which the budget is used
could be overseen during the debate on budget bills and final accounts bills. Auditing of all
revenues, expenditures, and assets of the internal security units is made by the Court of Accounts on behalf of the Parliament.

In accordance with the 160th Article of the Constitution, the Court of Accounts is entrusted with auditing revenues, expenditures, and assets of the public administrations financed by central government budget and social security institutions; and with taking final decisions on the accounts and acts of the responsible officials, and with exercising the functions prescribed in laws in matters of inquiry, auditing and judgment. The Turkish Court of Accounts has functional and institutional independence in carrying out its duties of examination, audit and taking a final decision. The principle that the auditing of assets possessed by the Turkish Armed Forces shall not be disclosed has been repealed by the amendment made in the 160th Article of the Constitution in 2004. Within the scope of this amendment, the new Law 6085 on the Court of Accounts which also includes provisions for auditing military expenditures on behalf of Parliament was enacted in December of 2010.

In the 1st paragraph of the 35th Article of the Law on the Court of Accounts entitled general principles of auditing, it is regulated that the Court of Accounts shall not undertake property audit and shall not render decisions that limit or remove the discretionary powers of administrations. In the 2nd paragraph of the Article, it is stipulated that, in the auditing of revenues, expenditures, and assets of public administrations and of all related accounts and acts of fiscal nature, an audit report could not include opinion and suggestion on necessity, proportionality, and opportunity on administrative matters. The expenditure could be subject to audit made on behalf of Parliament with regards to criteria of efficiency, effectiveness and economy while it could not be subject to audit with regards to property and best practice criteria.

During the debate of the Law in the Plenary Session of the Parliament, the obligation for Gendarmerie and Coast Guard Command to prepare a strategic plan to the Parliament was purged from the text.

In the 44th Article of the Law on the Court of Accounts, it is stipulated that audit reports drawn up by the Court of Accounts shall be announced to the public within fifteen days of the submission of reports to the Parliament. However, in the same article, audit reports relating to expenditure of the internal security units are made an exceptional case. In spite of the mentioned discrepancies among the obligations of internal security units, it shall be emphasized that, at present, the Court of Accounts has authority to audit all internal security forces. The audit and transparency of revenues and expenditures of internal security units are being provided by annual reports promulgated within the scope of mentioned audit.

2.10. Comparative Overview

As is seen in Table 2, there are no major legal gaps regarding oversight power of Parliament between selected EU states and Turkey. All selected EU states and Turkey have similar parliamentary legal control provisions, such as request of information, parliamentary inquiries, questions and interpellations and commissions. By the constitutional/legal amendments made between 2010 and 2014, many prior legal gaps were removed. Mechanisms of submission of annual strategic reports related to security activities and annual
reports of the Ombudsman have been adopted. A specific and permanent internal security commission i.e. the Commission of Security and Intelligence has been formed. Compared to Germany and Portugal, parliamentary commissions in Turkey are lacking certain powers such as the power to summon. The role of the political minority is guaranteed in the Parliament of various EU states, but not so in Turkey, so that oversight is only dependent on the majority rule. And as is seen in the table, there are some gaps regarding the announcement and submission of reports prepared by the Courts of Account and ISFs.

**Table 2: Oversight Powers of Parliaments in Selected EU Member States and Turkey**

<table>
<thead>
<tr>
<th>Oversight Powers of Parliaments</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>France</td>
</tr>
<tr>
<td>Discussion and Approval of State Budget</td>
<td>Yes</td>
</tr>
<tr>
<td>National Yearly Plan Submitted to Parliament</td>
<td>Yes</td>
</tr>
<tr>
<td>Parliamentary Request of Information from Government</td>
<td>Yes</td>
</tr>
<tr>
<td>Parliamentary Inquiries / Questions &amp; Interpellations</td>
<td>Yes/Yes</td>
</tr>
<tr>
<td>Parliamentary Investigation Committees</td>
<td>Yes</td>
</tr>
<tr>
<td>Publicity of Parliamentary Investigation Reports</td>
<td>Yes, in official publications posted on line</td>
</tr>
<tr>
<td>Court of Accounts</td>
<td>Yes + Regional Courts</td>
</tr>
<tr>
<td>Remit of Court of Accounts</td>
<td>Large scope</td>
</tr>
<tr>
<td>Exception on Control of Security Policy Formulation Bodies</td>
<td>No exception. Control over ministry in charge of policing</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Oversight Principles &amp; Internal Security Forces</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Discussion and Approval of State Budget</strong></td>
<td>Denmark</td>
</tr>
<tr>
<td>No, but the police has to submit an annual report to the Public Accounts Committee and to the Ministry of Justice and the Ministry of Finance</td>
<td>Yes</td>
</tr>
<tr>
<td>No (however, MoJ submits annually to Parliament, a report about the activity of the forces and security services developed in the previous year)</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>National Yearly Plan Submitted to Parliament</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Parliamentary Request of Information from Government</td>
<td>Yes</td>
</tr>
<tr>
<td>Parliamentary Inquiries/Questions &amp; Interpellations</td>
<td>Yes</td>
</tr>
<tr>
<td>Parliamentary Investigation Committees</td>
<td>Yes</td>
</tr>
<tr>
<td>Publicity of Parliamentary Investigation Reports</td>
<td>Yes, online</td>
</tr>
<tr>
<td>Court of Accounts</td>
<td>Yes, The Public Account Committee, that submits its reports to parliament.</td>
</tr>
<tr>
<td>Remit of Court of Accounts</td>
<td>Large scope. Audits financial management for every central government department.</td>
</tr>
<tr>
<td>Exception on Control of Security Policy Formulation Bodies</td>
<td>No exception. Control over ministry in charge of policing</td>
</tr>
</tbody>
</table>
2.11. Gaps

- **There are some restrictive measures with regards to obtaining data and documents needed by parliamentary commissions within the scope of investigations conducted by them.**
  
  By referring to the notion of “state secret”, some restrictive regulations have been put forth. For efficient parliamentary oversight, it is of vital importance that parliamentary commissions reach all relevant information and documents regardless of its nature particularly for efficient investigation of internal security units as illustrated by the arrangement under the Spanish Parliament.

- **There is an exception about the publicity of audit reports prepared by the Court of Accounts and related to expenditure of internal security forces.**
  
  Audit reports drafted by the Court of Accounts shall be announced to the public within fifteen days of the submission of reports to the Parliament. However, audit reports relating to expenditures of internal security units have been made an exceptional case by law.

- **Even though the mechanism of submission of the national annual strategic plan to the Parliament has been adopted in Turkey by a recent legal modification, the submission of the national yearly report including information about the situation of security issues of the previous year has not been regulated.**
  
  There is a strategic annual plan. However, contrary to the practice in the UK, France, Germany or Portugal, there is no national yearly report on the situation in terms of security and security forces, with an analysis of crime statistics during the previous year. Only the Ombudsman submits detailed reports related to the complaints made in the previous years and includes his opinion on ISFs activities.

- **Even though parliamentary commissions have the power to invite/call persons needed to be heard, commissions do not have strong powers to summon or subpoena.**
  
  The parliamentary commissions of Turkey have the power to invite ministers and high ranked officers to hearings in order to provide information about current problems. However, apart from Germany and Portugal, this authority of Turkish Parliament could not be defined as a power to summon or subpoena, as is has been seen in the ad hoc Susurluk and Hrant Dink Investigation Commission. High ranked military officers and commanders did not attend the commissions even though they had been invited by Parliament. In addition, the political minority is not guaranteed an influential role in these commissions.
3. Judicial Oversight

3.1. Duties, Competencies and Functions

For providing internal security services, internal security forces are given outstanding powers. At the same time, these security units are expected to complete their work by strict adherence to the principle of rule of law. Since the judiciary is responsible for the protection of individual rights and police investigations in relation to crime, the oversight of ISFs while fulfilling their judicial functions rests on the courts.

The judiciary is one of the public authorities of democratic political systems together with the legislative and executive powers. The judiciary is given the functions of protecting individual rights and freedoms. The role of the judiciary is central in the civilian oversight subject matter. It can be fulfilled only if its independence is well established and respected. The judiciary has multiple roles regarding the civilian oversight of the police and the gendarmerie. On one hand, it has to enforce the law when a member of the security forces commits a crime. On the other hand, it has to ensure that all forces operate in compliance with the law regarding criminal investigations and especially “stop and search” and detention processes. This applies also to the crimes that are committed by gendarmerie and police staff either in the course of their official duty or that are directly related to their duty even if they are not committed during their duty. Finally, the citizen can file complaints against the policing policies and the administration, for example the governors’ decisions, in an administrative court. Hence the judiciary contributes to the oversight of the people over the public administration.

3.2. France

France has a dual judiciary system with judicial courts and administrative courts. Judicial courts will act when officials with a role in the field of security have committed a crime. If officials have acted in compliance with regulations or orders that have been legally issued but when their implementation has harmed third parties, the administrative courts will process the case. In short, it can be said that the judicial judiciary addresses the behaviours of the individuals while the administrative judiciary addresses the activities and procedures of the public body.

Irrespective of the fact that the judicial or the administrative judiciary has initiated the case, in case of a doubt on its nature the case is raised to the court of conflicts, a joint jurisdiction of the supreme judicial court and the supreme administrative court. The court of conflicts decides on the nature of the case and of the appropriate jurisdiction, either judicial on administrative.

3.2.1. Judicial Judiciary Oversight

Two main points are defining the role of the judiciary regarding the violation of the law by the gendarmerie and police personnel. Firstly there are some special legal provisions regarding the definition of the crime and the sentence. Secondly the usual judicial proceed-
ings include some procedural rules when the offender is a member of the gendarmerie or
the police.

When it comes to crime definition, the law can make being a police or gendarmerie
member an aggravating factor. This means that during sentencing the penalty is increased.
The judicial proceedings of crimes that are committed by members of the police or gendar-
merie are carried out in line with the provisions of the criminal procedure code. The same
code is used for ordinary citizens. The criminal code only introduces heavier sentences
when members of the police or the gendarmerie commit violent crimes.

The criminal procedure code (Art. 43) gives the general prosecutor the opportunity to
"relocate" the proceeding to a prosecution service and a court where the suspect has no
relation. This provision is intended to ensure the fairness of the proceedings. The general
prosecutor makes his decision upon the request of the prosecutor who initially managed
the case or upon the request of the indicted member of police or gendarmerie.

The French criminal procedure code gives the citizen a way to initiate a judicial proceeding
if they think they have been a victim of the police. The procedure is to report the case to the
prosecutor. However, there is another available option that bypasses the prosecutor. It
consists of requesting an investigation judge to process the case him or herself. This is not
very common but is meant to prevent any blockage by the prosecutor and ensure that
judicial oversight will take place up to court level.

The criminal procedure code defines a kind of line of duty that organises the functional
subordination of the criminal investigation officers. Article 19 and more specifically, article
54 (red handed cases) and article 74 (discovery of a corpse) request the criminal investi-
gation officer to report the crime and their investigation immediately to the prosecutor.
Similarly the code requests them to send the prosecutor only their written reports. When an
investigation judge has been designated to work on a case, he has the same power as the
prosecutor over the criminal investigation officers (articles 151 and following) and it is the
responsibility of the investigation judge to ultimately transfer to the prosecutor all the
reports he had received from the criminal investigation officer.

The cornerstone of judicial oversight is in fact the tight control that is placed on the
criminal investigation officers as defined by the criminal procedure code. The key points are:
i) investigation police officers are granted their privileges through training and examina-
tion processes that integrate members of the judiciary (court and prosecution); ii) investi-
gation officers and consequently the agents and the deputy agents they manage can
perform their role regarding investigation and arrest only if they have been specially
authorised by the general prosecutor who has jurisdiction (article 16); iii) the officers are
regularly assessed by the general prosecutor (article 19-1) and various decrees define
the conditions under which the general prosecutor's authorisation given to criminal
investigation officers can be suspended or even withdrawn. This would mean that the
officer and his subordinates are no longer allowed to perform their roles in the police or
gendarmerie.

Another aspect of judicial oversight is control by the criminal chamber of the court of
appeal. Under certain conditions it can quash the output of investigations that have been
undertaken by the officers provided that these investigations have been flawed by any kind of misdoing. Formally the report of the investigation officer is cancelled and its substance cannot be used either by the prosecution or in a court. Similarly this same substance cannot be used for any kind of police operation.

Specific provisions that are included in the criminal procedure code govern custody and stop and search. A tight and specific legal framework governs custody. Custody measures have to be immediately reported to public prosecutor and a lawyer, possibly named by the detained person, and both included into the investigation file and a register that is bound to each custody facility. The prosecutor regularly controls such a register while the compliance of the custody measure to the law is checked at each step of the judicial proceeding. The importance of compliance with the law is reflected in the investigative role given to the prosecutor for overseeing the policing forces in France. There is no limitation to the prosecutor’s decision (preliminary agreement from ministerial departments) to investigate an alleged misbehaviour or crime.

Stop and search types can be split into two categories. In the first, the stop and search operation is connected to a specific crime or to a series of crimes that are under investigation. In such a case the police or gendarmerie decide such an operation (provided that any formal report referring to the ongoing investigation will be put into the investigation file). In the second, the stop and search aims at ensuring public order and prevention of crime: the criminal procedure code (article 78-2) details the conditions of the operation and sets that the decision ultimately falls under the control of the prosecutor (article 78-1). In every case the operation itself is completed under the supervision of an investigation officer.

3.2.2. Administrative Judiciary Oversight

The administrative judiciary has its own organisation with administrative courts, administrative courts of appeal and a supreme administrative court called “Conseil d’État” (state council).

The administrative judiciary deals with any administrative activity, be it a ministerial decree or a local decision by a préfet. It does not address police operations but the decision upon which the operations are implemented. Therefore most of the time police and gendarmerie commanders are outside the scope of the administrative judiciary since they implement decisions that are apparently legal. In comparison, the Ministry of Interior, the préfets, the mayors as well as the police and gendarmerie general directorates are rather often subject to decisions by administrative courts. The court can cancel the administrative order (any order in the field of security and policing). The court can also order that financial compensation to be paid by the state to those who suffered from this order.

Most of the laws and bylaws as well as many ministerial decisions are reviewed by the supreme administrative court upon the request of the government and the court advice is almost always taken into account. History proves that major difficulties always occur when the court has not reviewed the final decision.

Regarding all administrative court’s judges exchanges with the préfets exist. The administrative judge is meant to be concretely aware of the reality of the administrative work
including the field of security while the préfets and their sous-préfets should be aware of the legal constraints. This principle is sustained by the practices of job mobility for high-level civil servants. This mechanism brings administrative judges under secondment in the position of préfets and sous-préfets and in return sous-préfets and préfets can be seconded as administrative judges. Current statutory changes could soon extend the principle of mobility to police superintendents and to senior gendarmerie commanders.

3.2.3. Limitations

All the police powers that could impact upon rights and liberties are under the control of the judiciary and more especially of the prosecution services. Investigations into public services or involving public officials in France are not restricted by the kind of administrative authorisation that exist in Turkey. The only existing limitation in France is based on the principle of the protection of national defence and security secrecy. Nevertheless this decision is not left to the administration but to an independent commission that states if the investigation can be completed without harming the nation’s essential interest. Furthermore it is mandatory for any official to report to the prosecution services all crimes that are committed in his/her organisation and of which he is aware.

Control by the prosecutor is implemented through “the responsible judicial officer in the security forces” (OPI). The French system and its OPJs (the police or gendarmerie officers in charge of investigations) are different from the Turkish system. Regarding the selection of the OPJs there is no parallel in Turkey with the French selection commission that integrates jointly police or gendarme and magistrates in the selection and qualification process.

3.3. Spain

3.3.1. Judicial Investigation

In Spain, Prosecutors and Courts do not need to request and obtain prior authorisation by any executive authority for the opening and implementation of an investigation or a criminal process against public security authorities or members of the security forces, for possible criminal actions committed in the exercise of their duties. Members of security forces do not enjoy any kind of jurisdictional “privilege” as compared to ordinary civilians. Aggravated sanctions are incurred in some cases or for specific types of crimes, in accordance with the relevant provisions of the Penal Code.

In Spain, prior authorisation of the executive authorities (Ministry, Governors) or higher commanders is not a requirement for the investigation, prosecution or trial of members of the security forces. The jurisdiction in this case always belongs to the ordinary criminal courts and prosecutors (not to the military courts), the sole exception being in the case of criminal offences of a strict “military nature” committed by members of the Guardia Civil when implementing military missions assigned by the Government or otherwise integrated into military units.

Judicial Police are regulated at constitutional level. Article 126 of the Spanish Constitu-
tion – placed in the section on the Judiciary – states that "The judicial police shall report to the Judges, the Courts and the Public Prosecutors when discharging their duties of crime investigation and the discovery and arrest of offenders, under the terms to be laid down by the law."

The model of judicial police adopted in Spain involved the creation of specific and specialised units of judicial police, in principle at province level. Those members of the police and Guardia Civil who, after necessary and specialised training in police training centres (which involves obtaining a specific Diploma) become members of such Units of Judicial Police, have a double dependence: 1. Organically, they depend on the Ministry of Interior (the structure of the Police or Guardia Civil); 2. Functionally, they report to the Judges, Courts or Public Prosecutors.

In the execution of their functions of crime investigation and the discovery and arrest of offenders, the members of the Units of Judicial Police operate as "commissioned agents" of the Judges, Courts and Prosecutors, and cannot be removed from the investigations in which they are involved unless by the decision or with the authorisation of the Judge or Prosecutor in charge of such investigation.

The capacity of Judges and Prosecutors under which the members of judicial police work is to promote the initiation of disciplinary procedures against them (Judges and Prosecutors may open a preliminary fact-finding stage to this end, but cannot open the disciplinary procedure by themselves (art. 17 of the Royal Decree 769/1987)). They can also recommend the granting of professional rewards. Also, if a disciplinary procedure is opened by the hierarchical superiors of members of judicial police for facts related to their action or behaviour in judicial investigations commissioned to them, reporting by the Judge or Prosecutor is mandatory as part of the disciplinary procedure.

The entire system of judicial police is coordinated by a National Commission. Its members are the president of the Supreme Court (who is at the same time, in Spain, the President of the Higher Council of the Judiciary), the Ministers of Interior and Justice, the Prosecutor-General, the State Secretary for Security plus some two other members representing the Judiciary. Coordination Commissions are also established at province level under the chairmanship of the President of the Provincial Court. Such Commissions have a number of important functions, including being informed of appointments of the top officers of the Judicial Police Units, and assessing the proposals for the removal of members of such Units and disciplinary actions against them.

3.3.2. Administrative Courts and Government Control

In accordance with Article 106.1 of the Spanish Constitution, the Courts (all of them, within their respective jurisdiction, but especially the Administrative-law Courts) control the exercise of the regulatory powers conferred by the Constitution upon the Government. This includes the legality of secondary legislation, both in regards to rules on competence and procedures for its elaboration, as well as compliance of their content with primary legislation. In general, the Courts shall ensure that the rule of law prevails in administrative action and that such action is consistent to the ends which justify the existence of the public administration (service to general interest).
This wide constitutional formulation does not regard any exception for reasons of public security, public order or other grounds. Consequently, the new Law on Administrative-law Justice adopted after the Constitution came into force has substantially expanded the jurisdiction of these Courts. Such jurisdiction is not limited to assessing the formal compliance of Government regulations and formal administrative acts with the Laws, but entails the capacity of the Spanish Courts to review government’s and administrative action in all aspects; and even to review administrative “inactivity” in cases where such activity is mandatory.

Eventually, in Spain, one of the main roles of the judicial control of public administration is to ensure that the discretionary powers conferred on it are used within the limits set by the constitution and the rest of the Spanish legal order (including full respect for constitutional rights of the citizens and general principles of law).

As in other jurisdictions (criminal, civil, etc.), the Spanish legislation on Administrative-Law Court procedures foresees a special procedure (Arts. 114 to 121 of the Law 29/1998, on the system of Administrative-Law Justice) for the effective protection of fundamental rights which may have been violated by executive decisions of the public administration (including security authorities and units, outside the realm of the penal code/judicial police). If the Court understands that an administrative or executive decision has effectively violated one of such rights, the Court must declare the executive decision as null and void and arrange what is needed for the effective protection of the right.

Concerning the statutory regime of security forces and corps, the Administrative-Law Courts are the only ones having jurisdiction to review the decisions made by the public authorities, not only in regards to the Police, but also in regards to the Guardia Civil.

In Spain, Administrative-Law Courts can review governmental or administrative regulations and decisions that are legally classified as “secret” or “confidential” although in such cases only from the viewpoint of the protection of fundamental constitutional rights, non-discretionary aspects of the decision and the possible compensation for damages. This is the sole restriction on the jurisdiction of administrative courts concerning adjudication of cases involving the government’s decisions for they are covered by the law on official secrets.

3.3.3. Military Courts

The Spanish Constitution, (Art. 117.5) lays down the “principle of jurisdictional unity” as “the basis of the organization and operation of the courts”, but nevertheless envisages the existence of a military jurisdiction to be regulated by the Law and which will operate “strictly within military framework and in cases of state of siege (martial law)” and “in accordance with the principles of the Constitution”. Following up from this constitutional provision, (under normal circumstances, or even during the state of emergency) and, with regards to military personnel, such courts only have jurisdiction on matters that are considered strictly military (military offences).
3.4. England

In the UK there is a very clear distinction made between the police who investigate the commission of crimes and bring perpetrators to justice and the Crown Prosecution Service (CPS) which is solely responsible for prosecuting criminal cases in England and Wales – other UK regions have a similar system but different nomenclature. The CPS was established in England and Wales under a statute since it was felt at the time that if police acted both as investigator and prosecutor it opened the door for corruption, malpractice and miscarriages of justice to occur. The key duties of the CPS are to advise the police on cases for possible prosecution; review cases submitted by the police for prosecution; where the decision is to prosecute determine the charge in all but the most minor cases; prepare cases for court, and present those cases at court.

The introduction of the Police and Criminal Evidence Act [PACE, 1984] represented one of the most major legislative changes to police powers in England, Wales and Northern Ireland since the recommendations of the 1962 Royal Commission on the Police. Some aspects of PACE are statutory while other provisions are contained within Codes of Practice which are regularly updated. The most recent Codes of Practice came into operation on 31st December 2008 but the Codes are subject to continuing consultation and revision, Codes C, G and H being subject to consultation in November 2011 leading to revision. Subsequent legislation such as the Serious Organised Crime and Police Act [2005] has modified some of the earlier PACE provisions most notably insofar as it has rendered obsolete the category of ‘arrestable offence’ in English and Welsh law and replaced it with a general power of arrest for police constables subject to certain conditions being met. The provisions of the Serious Organised Crime and Police Act [2005] have been incorporated into PACE Code of Practice G (see box).

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**Codes of Practice: The Police and Criminal Evidence Act [1984, as amended]**

**Code A** - deals with the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. It also deals with the need for a police officer to make a record of a stop or encounter.

**Code B** - deals with police powers to search premises and to seize and retain property found on premises and persons.

**Code C** - sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers.

**Code D** - concerns the main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

**Code E** - deals with the audio recording of interviews with suspects in the police station.

**Code F** - deals with the visual recording with sound of interviews with suspects. There is no statutory requirement on police officers to visually record interviews. However, the contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect.


**Code H** - deals H sets out the requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers.
3.5. Denmark

3.5.1. Courts Functions and Independence

The system of governance in Denmark is based on the separation of powers into three branches, in order to prevent abuse of power. The legislative power is vested in the Parliament and the Government conjointly. The executive power is vested in the Government, and the judicial power is vested in the courts of justice (The Danish Constitution article 3). It is the Danish Supreme Court itself that appoints new judges to the Supreme Court. Denmark does not have a dual judiciary system with judicial courts and administrative courts. The courts therefore decide in all cases, whether civil or criminal, and all administrative decisions are subject to the courts (The Danish Constitution article 63). The courts will therefore decide both in cases when public officials (including police officers) are accused of having committed a crime and decide on whether officials otherwise have acted in compliance with the law.

3.5.2. Judicial Oversight

All members of the police are individually responsible for every action before the courts. Police officers are obliged to enforce orders from higher ranked personnel (in the end, the Minister of Justice) unless it is an (clearly) illegal order. No police personnel can claim an illegal order as an exonerating excuse in a criminal case before the courts.

The prosecution and the courts are not required to request and obtain prior authorization by any executive authority before investigating or opening criminal procedures against members of the internal security forces (i.e. police officers etc.), for possible criminal actions or activities committed in the exercise of their duties. Members of the police do not enjoy any jurisdictional privilege in comparison to private citizens/civilians. Aggravated sanctions for police officers are on the other hand incurred in some cases or for specific types of crimes,\(^\text{24}\) in accordance with the relevant provisions of the Penal Code (e.g. The Danish Criminal Code chapter 16).

Crimes committed by the armed forces (military personnel), when implementing military missions (criminal offences of a strict “military nature”) are regulated by the Danish Military Criminal Code, and are now decided by regular courts, and no longer by military courts. These cases are investigated by the military police. These rules and courts do not apply when it comes to internal security forces (the Danish police). No military courts have any jurisdiction on policing activities.

The key oversight functions with regard to the legality of the work of the police lies with the prosecution service. The prosecutors must make sure that the police investigations and arrests etc. are in accordance with the law. This key oversight function must be seen in the light of the specificities of the Danish police system.\(^\text{25}\) In Denmark, the Prosecution Service is integrated with the police, at the police district level. Police officers and prosecutors are part of the same authority and have the same chief at the district level (the commissioner/chief constable). In their daily work, however, the immediate head of the prosecutors in the police districts is the Senior Chief Prosecutor who ranks below the Commissioner. The

\(^{24}\)E.g. neglect of duty, stealing on the job etc.
\(^{25}\)See also regarding the Danish police system and structure below under point 4.1.
fact that the police and the Prosecution Service are integrated is a distinctive feature of the Danish law enforcement system. Only very few other western police systems have a similar structure. The prosecutors work closely together with the police officers that investigate criminal offences. In the end, it is the prosecutors who will assess whether a case is likely to stand up in court, and it is the prosecutors that make the indictment. It is also the prosecutors who will later appear in court and plead the cases. The Danish system has been much debated, but has been upheld, mainly due to the fact that it works well in practice. On the one hand, it has been stated that the objectivity of the prosecutor, who is to decide if a case should be tried in court, can be questioned, when the prosecutor has worked closely together with the investigating police officer. On the other hand, the pre-knowledge of the case makes it possible for the prosecutor to intervene in the handling of the case during the investigation, and at an early stage conduct legality control and exercise judicial review of the police work. The integration of the police and the prosecution service also allows for a flexible and speedy handling of the criminal case. In 2007 there was a major reform of the Danish police, and it seems that there is still overwhelming support for the present system at the political level.

Complaints with regard to police conduct and with regards to alleged criminal offences by police officers have since January 2012 been handled by the Independent Police Complaints Authority (IPCA). Before 2012 the regional prosecutors handled most of these complaints, but due to criticism for lack of objectivity and lack of public confidence in the independence of the complaint system and the (lack of) speed in the handling of the cases, the new authority IPCA was created. The IPCA is completely independent of both police and prosecution in its daily work, and has its own investigator and lawyers distinct from the police. The supreme governing body for the IPCA is the Police Complaints Council, chaired by a High Court judge, appointed by the Ministry of Justice for a 4-year term. This appointment can be renewed once. Furthermore, the council is comprised of an attorney, a professor of jurisprudence and two representatives of the general public. The IPCA is headed by a Chief Executive, and employs investigators as well as legal and administrative staff. The Ministry of justice cannot interfere in the decisions made by the IPCA, and has no instructional prerogative. The main tasks for the IPCA are to investigate criminal offences committed by police officers on duty and to investigate incidents where persons have died or been seriously injured as a consequence of a police action or while in police custody. Another important task for the IPCA is to consider and decide complaints for police misconduct, for which everybody can file a complaint to the IPCA. The role of the IPCA is to investigate the complaint and make a decision. The IPCA examines the case, including the questioning of witnesses, and deciding whether there is basis for criticism in the case. The three forms of criticism that can be expressed are “Criticisable”, “Very Criticisable” and “Highly Criticisable”. As to disciplinary sanctions, they are decided within the police by the National Commissioner. There is no access to appeal, but the legality of the disciplinary sanction can be tried in court. As for criminal offences by police officers on duty, the role of the IPCA is to investigate the case. If the complaint is not completely without merit, the IPCA draws up a legal report about the results of the investigation and sends it to the regional public prosecutor, who
subsequently decides if an indictment should be made or the case be dropped.

Of crucial importance for citizen’s access to make complaint against the police is the right of access to the relevant documents of the case. The right for a citizen to have access to relevant documents in a case concerning himself/herself is secured by the Administration of Justice act.

No police personnel enjoy any personal privileges or restrictions concerning court procedures, either in regards to civil or criminal responsibility.

3.5.3. Good Practices

The Danish police and Prosecution Service have adopted an overall strategy (The Strategy 2011-2015 of the Danish National Police and the Public Prosecution) which both national and local police work must adhere to. Once a year, the strategy is adjusted according to developments within society and crime.

The five main targets of the overall strategy are:

• To combat crime with conviction and prevent conflicts, unrest and crime.

• To focus on core duties and increase quality and efficiency in assignments.

• To be service-minded, open and accommodating.

• To be professional and collaborative and solve tasks in an innovative way

• To be an attractive workplace with competent employees and managers.

3.6. Portugal

Judicial court oversight is independent and guaranteed by the Constitution. There is no special procedure concerning security forces, either regarding crimes committed by ISF agents, or when exercising their duties. Thus, courts and prosecutors do not need any kind of authorization to start an investigation or a criminal process.

ISFs (PSP and GNR) and Judiciary Police (an internal security service) can undertake criminal investigation. PSP and GNR have general jurisdiction to investigate crimes whose competence is not reserved to other criminal police units and also crimes where the investigation was given to them by the competent judicial authority for the direction of the case (in accordance with Article 8 of the criminal investigation law).

The Judiciary Police (PJ) is the prime police of criminal investigation. It is under the authority of the Ministry of Justice. It has reserved competence in the following matters (main competences):

a. Felonies that involve the death of a person;

b. Slavery, kidnapping, kidnapping and hostage-taking;

c. Against cultural identity and personal integrity and those provided in the Criminal Law on violations of international humanitarian law;

d. Counterfeiting;

e. Capture or attack to safe transport by air, water, railways or road transport that
matches, in the abstract, sanction over eight years' imprisonment;
f. Money laundering;
g. Influence peddling and corruption;
h. Terrorist organizations and terrorism.

Criminal investigators undertake criminal investigation in a process that is led by a state's attorney (from the prosecutor's office). In each case, the investigators respond directly to that magistrate. They investigate with technical and tactical autonomy. The technical autonomy is based on the use of a set of appropriate knowledge and methods of action and tactical autonomy consists in choosing the time, place and manner appropriate to the practice of the acts related to the exercise of the legal powers of the criminal police. However, the responsible magistrate can, at any time, call the process, monitor its progress and legality and give specific instructions to perform any action. Nevertheless, we cannot say there is an assessment of investigating officers by the public prosecutor.

All decisions that may conflict with the rights, freedoms and guarantees of the citizen must be authorized by the prosecutor, or even a judge. The police cannot usually do searches without permission from a judge. The same goes for wiretaps or access to sensitive information, such as banking information. This is the rule. And the exceptions are rare; only in very specific cases, such as terrorism.

In case of a criminal case involving a member of an internal security force, the jurisdiction belongs to ordinary criminal courts and prosecutors. There are no jurisdictional (or any other kind of) privilege or need to obtain an authorization to start an investigation or criminal process. However, in those cases (criminal investigations involving police members), the Public Prosecution Service must immediately inform the General Command of the Guard or the General Command of the Public Security Police (the two main ISF), as required by the disciplinary rules of both security forces.

There is no aggravation or mitigation of penalties in a criminal process involving a member of the security forces in the Portuguese criminal law. However, as in most criminal laws, there are crimes that can only be committed by officials in the exercise of public functions (such as members of security forces), like the crime of corruption or peculation, crimes where there is an abuse of authority (crime of the violation of a home by a public official) or unlawful employment of force.

Disciplinary proceedings are independent from criminal proceedings. When, in a disciplinary investigation, the facts alleged against the accused are qualified as a crime of public nature (crimes which investigation requires no complaint from the victim), the police force has to inform the Public Prosecution Service.

In case of arrest or detention, there are prisons suited to receive people who hold office in the services and security forces (like the Évora prison, as defined by Law Decree No. 21/2008) if there is a need for a special type of protection, as with politicians, judges, lawyers or journalists.

According to the Portuguese Constitution (Article 212), the administrative courts have the competence to try contested actions and appeals which object is to settle disputes arising from administrative legal relations. This means that administrative courts are
competent to verify if government and administration acts and regulations are made according to the law. Acts from the Minister of Internal Administration, from Mol administration, including police forces, are, therefore, accountable in the administrative courts.

The Constitution asserts that citizens are guaranteed effective jurisdical oversight of the rights and interests that are protected by law, particularly including the recognition of those rights and interests, the impugnation of any administrative act that harms their rights and interests, regardless of its form, the issue of positive decisions requiring the practice of administrative acts that are required by law, and the adoption of adequate provisional remedies (Article 268).

Citizens also have the right to challenge administrative norms which have external force (decrees, for example) and harm those of their rights or interests that are protected by law.

During a state of war, there shall be martial courts with the competence to try crimes of a strictly military nature.

In Portugal, the courts have restricted access to information protected as state secrets (regulated by law 6/94, amended by Organic Law No. 2/2014). Called upon to rule on this issue, the Constitutional Court decided that (cf. Sentence No 458/93) such a restriction is found necessary in order to safeguard other constitutional values and protected interests, including the independence of the country, the integrity of its territory, and internal and external security of the political community.

Regarding criminal action, the state secret law also provides that this secret should cease to exist when there is information indicating the existence of crimes against state security, so that it can be communicated to the competent authorities for investigation. The law provides, however, that the body that holds the secret can keep it while it is strictly necessary to safeguard internal and external national security, national independence, unity and integrity of the State and its fundamental interests.

3.7. Germany

3.7.1. Courts Functions and Independence Guaranteed in the Constitution

Section IX of The Basic Law for the Federal Republic of Germany (Grundgesetz - GG) which carries the title "The Judiciary" (Article 92–104 GG) does not contain a cohesive and comprehensive regulation concerning the Judiciary. Only a few questions, namely those that are regarded as especially important, are being answered. The courts' organization and function have not been settled precisely in the Constitution, but those regulations can be found in the ordinary law of the Federation.

By Article 92 GG, the exercising of court ruling is assigned to the judge. A transfer of this judicial role to bodies of the legislative or executive power is not allowed. The judge's position is characterized by organizational, personal and functional independence, as well as neutrality and distance towards the parties involved.

The judge's personal independence is guaranteed by his irrevocability as well as his independence from transfer to another position (Article 97 (2) GG). Judges appointed permanently to full-time positions may only be involuntarily dismissed, permanently or temporari-
ly suspended, transferred or retired before the expiration of their term of office by virtue of a judicial decision and only for the reasons and in the manner specified by the laws.

Functional independence is the freedom from all influences and instructions through state authorities concerning the fields that are assigned to the judge for independent exercise. By this, it should be guaranteed that in the decision-making process, the judge makes his judgements only on the law.

3.7.2. Judicial Courts Oversight

The judicial system in Germany comprises basically three different types of courts: ordinary courts, dealing with criminal and most civil cases, specialized courts, such as the administrative, labour, social and fiscal courts, and finally constitutional courts (Federal Constitutional Court and Constitutional Courts of the Länder/states).

In Germany, a decision is made between two tasks of the police: firstly, the prevention of threats to public security ("Gefahrenabwehr") and secondly, criminal investigations ("Strafverfolgung"). In the area of prevention of threats, the police essentially operate independently. Judicial review procedures are in principle performed afterwards – upon request of the citizen concerned. Administrative courts are competent in these cases.

In the area of criminal investigations, the police are bound to further obligations: throughout the whole investigation proceedings, they are subject to the instructions of the public prosecution office. Many measures require the involvement of an independent judge (see below). Subsequent legal protection (in contrast to the prevention of threats as a purview of the police) needs to be granted by ordinary courts.

At the end, all the police powers that could have an impact upon rights and liberties are under the control of the judiciary.

Ordinary courts will also act when officials with a role in the field of security have committed a crime. Members of security forces do not enjoy any kind of jurisdictional "privilege" compared to ordinary civilians.

3.7.3. Aggravated Sanctions

Aggravated sanctions are incurred in some cases or for specific types of crimes. This applies to crimes that are committed by police staff either within their official duty or within cases that are directly related to their duty.

For example: Forcing someone to make a statement (§ 343 German Criminal Code [Strafgesetzbuch – StGB]); making false entries in public records, (§ 348 German Criminal Code; Perverting the course of justice, (§ 339 German Criminal Code), taking bribes; taking bribes meant as an incentive to violating one’s official duties, (§ 331), § 332, § 335 German Criminal Code); intentionally or knowingly prosecuting innocent persons; enforcing penal sanctions against innocent persons (§ 344, § 345 German Criminal Code); causing bodily harm while exercising a public office (§ 340 German Criminal Code); facilitating escape of prisoners (§ 120 Abs. 2 German Criminal Code); assistance given in official capacity, (§ 258a German Criminal Code); destruction of materials under official safekeeping( § 133 Abs. 3 German Criminal Code); abuse of official position (§ 174b German Criminal Code); using
threats or force to cause a person to do, suffer or omit an act – abuses his powers or position as a public official (§ 240 Abs. 4 Nr. 3 German Criminal Code).

3.7.4. Oversight Powers over Police Investigators

In Germany, strong oversight powers exist over police investigators.

3.7.4.1. Investigation

According to the conception of the Code of Criminal Procedure (Strafprozessordnung – StPO), in investigation proceedings the police can request relatively few encroachments on fundamental rights by themselves (e.g. Photographs and Fingerprints, § 81b Code of Criminal Procedure or Procedures for Establishing Identity, § 163b Code of Criminal Procedure).

The injunction of serious encroachments on the rights of the accused or of other persons is in principle reserved to the investigating judge (e.g. search, § 102 Code of Criminal Procedure, physical intervention, § 81a Code of Criminal Procedure, Interception of Telecommunications systems, § 100a Code of Criminal Procedure etc.). The public prosecution office and the police are only entitled to such an action in urgent cases. This competence in urgent cases requires the existence of exigent circumstances. This means that if obtaining a judge’s decision beforehand would endanger the success of the operation, the order may also be given by a police officer.

In a minority of cases, the competence in urgent cases – in the event of exigent circumstances – is only assigned to the public prosecution office (e.g. Seizure of Postal Items, § 100 Code of Criminal Procedure or Interception of Telecommunications, § 100b Code of Criminal Procedure).

The public prosecution office and the police have been very generous in the acceptance of exigent circumstances. In practice, the competence of urgent matters of the police and the public prosecution office still constitutes the general rule – and not as being required by the legislator – the exception. The Federal Constitutional Court tried to ensure the regularity of judges’ decisions: from an organizational point of view, the State is obligated to establish an urgency service for investigating judges, so that they can be accessible at night. Furthermore, the public prosecution office and the police need to document and verify the acceptance of exigent circumstances. In principle, attempts must always be made, at least by telephone to reach a judge.

3.7.4.2. Arrests

Remand detention shall be imposed by the judge in a written warrant of arrest (§ 114 Code of Criminal Procedure). As a general rule, the warrant of arrest is to be issued before the arrest of the accused. In exigent circumstances, the public prosecution office and officials in the police force shall be authorized to make a provisional arrest if the prerequisites for issuance of a warrant of arrest or of a placement order have been fulfilled (§ 127 Code of Criminal Procedure). After an arrest by police on an arrest warrant, or a provisional arrest, the accused shall, without delay, be brought before the court that is to examine him and
decide on his further detention. The police may hold no one in custody on their own authority beyond the end of the day following the arrest.

The accused may, if remand detention is continued after he is brought before the competent judge, file a complaint against the warrant of arrest or apply for a review of detention and an oral hearing. The accused shall be advised that he may at any time, also before his examination, consult with a defence counsel of his choice. An accused who does not have sufficient knowledge of the German language or who is hearing or speech impaired shall be advised in a language he understands and may require an interpreter or a translator to assist him during the entire criminal proceedings free of charge. A foreign national shall be advised that he may demand notification of the consular representation of his native country and have messages communicated to them.

3.7.5. Special Accreditation

There is no special accreditation for investigation officers. However, measures of investigation, which substantially restrict the rights of the accused, may only be requested by "public prosecution office assisting officials" in exigent circumstances (otherwise the judge is responsible, see 1.2.4.1). Relevant requirements, however, are low. To be acknowledged as an investigator, it is only required that the potential employees shall be members of the public services, have completed their 21st year of age, and shall have worked as police officers for at least two years. In this respect, almost every police officer will be an investigating official for the public prosecution office. There are no badges or special identity cards for showing the capacity as an investigator; partly, official identity cards of the police in some States contain appropriate labelling.

In Germany, the police of the Länder perform the majority of investigations. Their Criminal Investigation Departments are known as the Kriminalpolizei (Criminal Police or Criminal Investigation Department).

In the Länder, the Criminal Investigation Department is structured and organised very differently. However, the Criminal Investigation Department is always in charge of the fight against serious crime, e.g. homicides, trafficking of narcotics, weapons and human beings, credit card fraud, hold-ups, robberies and extortion etc. Other types of crime are being prosecuted by non-specialised police officers of the public safety police.

In the past, the public security police and the Criminal Investigation Department were clearly separated in the Länder. At the beginning of the 1990s, the trend of abolishing this specialisation began. This became evident both in the training of the young police officers and the organisation. In most of the Länder, there is no strict organisational separation between the public security police and the Criminal Investigation Department. Furthermore, in most of the Länder, special training for members of the Criminal Investigation Department no longer exists. During their career, police officers often perform tasks within units of the security police as well as the Criminal Investigation Department.

Highly specialised forces and specially trained investigation officers also work in the Federal Criminal Police Office. The Federal Criminal Police Office (Bundeskriminalamt/BKA) has to carry out law enforcement tasks in certain cases of international and serious
crime. The BKA has original jurisdiction to conduct investigations in cases of internationally organised trafficking in weapons, ammunition, explosives or drugs, internationally organised production or passing of counterfeit currency, internationally organised money laundering and, since the year 2002, in cases of internationally organised terrorism as well as particularly serious cases of computer piracy.

In Germany there is no assessment of investigating officers by the public prosecutor. A judicial police is not established. Police officers operating in criminal investigations are incorporated into the general police service. Only police officers, respectively officials of the Ministry of Interior are hierarchical superiors. The public prosecution offices remain under the supervision of the Ministry of Justice.

According to the law, however, the public prosecution offices are in authority over police officers in the context of investigation proceedings. The public prosecution office is the "sole mistress of the procedure". It shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided. There are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities. The managerial power of the investigations through the public prosecution office, as the sole mistress of procedure, includes that the public prosecution office can give the police a free hand in cases in which they have better expertise. In the fields of forensic science and criminal tactics, for example, the public prosecution office is not entitled to issue any instructions to the police.

However, the legal division of labour between the public prosecution office and the police, which has been described above, does not reflect reality: in most cases the police independently carry out an investigation, which they regard as necessary, and only forward the case to the public prosecution office after its completion. Then the public prosecution office may only decide whether or not to launch a prosecution due to the investigation results of the police. This is not unproblematic, because in that eventuality, the public prosecution office cannot live up to its legal responsibilities within the investigation proceedings. The police have more employees, are more technically advanced, possess an extensive data-processing network, and have therefore an enormous information advantage over the public prosecution office. On account of this, the public prosecution office has serious difficulties in fulfilling its managerial powers.

3.7.6. Privileges or Restrictions concerning Court Procedures

There are no personal privileges or restrictions concerning court procedures, but restrictions exist concerning the Courts’ access to information or documents covered by Law as official secrets. Submission or surrender of files or other documents officially impounded by authorities or public officials may not be requested if their highest superior authority declares that the publication of the content of these files or documents would be detrimental to the welfare of the Federation or of a German Land (see § 96 Code of Criminal Procedure).
Germany, however, has a particular feature: the confidentiality of official files can be examined in a specific legal procedure (so called in-camera-procedure). If a public body refuses to pass out - in their view - secret files to a court, the concerned court can call in the Federal Administrative Court. Then, the documents need to be handed out to the Federal Administrative Court, which examines whether the authority rightfully kept the documents secret.

3.7.7. Administrative Courts Oversight

The administrative courts are an integral part of the German judiciary. They have no advisory functions and are strictly independent from any executive branch of the government. The jurisdiction of the administrative courts covers legal protection against all administrative acts and other administrative proceedings. The administrative courts handle all trials under public administrative law (except those that fall under the jurisdiction of the social, finance or constitutional courts). Before the Administrative Courts, any police action, which is performed for the purpose of the prevention of threats to public security, can be examined.

3.8. Italy

The Italian legal system includes three types of jurisdictions: civil, criminal and administrative. The civil jurisdiction regulates the litigations between individuals, or between individuals and the public administration, based on the defence of a subjective right. The criminal jurisdiction strives to achieve the public interest so that basic institutional values are safeguarded, imposing a penal sanction on those who have committed a crime. The administrative jurisdiction protects the 'legitimate interests' of the citizens who have been mistreated by an act of public administration, in order to maintain a fair administration. The Courts of the first two types make up the so-called 'ordinary jurisdictions', whereas the administrative Courts, the Constitutional Court, military courts and other lower courts make up the 'special jurisdictions'.

The constitution protects all judges, thus giving the Judiciary a position of absolute autonomy and independence from the other powers of the State; in particular, they maintain independence from the executive and the Minister of Justice. The art. no. 105 of the Italian Constitution establishes the principle of self-government of the Judiciary: assumptions, seat assignments, transfers, promotions and disciplinary actions against judges belong to the Superior Council of Judiciary (‘Consiglio Superiore della Magistratura’, CSM). The CSM is chaired by the President of the Republic and is formed by two thirds of representatives elected by ordinary judges and one third of lawyers elected by Parliament. The Minister of Justice may request information, prompt disciplinary actions (then held by the CSM) and oversee the organization and the operation of judicial services.

Other constitutional provisions support the autonomy and independence of the Judiciary: 'judges are subject only to the law' (art. no. 101); 'judges are distinguished only by their different functions'; 'judges are irremovable', if not as a result of an autonomous decision of the CSM (art. no. 107). The appointments and promotions of judges are never decided by the Government.
3.8.1 Oversight of the Ordinary Jurisdictions

As far as the relationship between police and Judiciary is concerned, we must underline that in Italy, police officers charged with a violation of the law do not have any special protection. On the contrary, they are exposed to more severe sanctions, because of their position as ‘public officers’. In fact, the Italian Penal Code provides specific aggravated sanctions (art. no. 61) when the offences are committed ‘with abuse of power or violation of the duties inherent to a public function or a public service’. The Penal Code contains also a specific series of crimes committed by police officers / officials in the line of duty. Some of these crimes equate the police officers with other employees of the Public Administration (bribery, corruption, embezzlement or abuse of authority), but other crimes are specifically connected to the police or investigation activities. Among them, we can mention illegal arrests, undue restrictions of personal freedom, arbitrary searches and inspections, trespassing committed by a public official, refusal or delay of obedience to superiors, and a series of minor offenses committed during investigations.

For police officers indicted for crimes ‘against the public administration’, Law no. 97/2001 provides for the automatic transfer or, if not possible, an automatic time off work. There is also the possibility to suspend the officer through internal disciplinary proceedings. When an officer is convicted, there is an obligatory suspension from service, even when the judgment is not final. The final criminal judgment is effective (‘has res judicata’) also within internal disciplinary proceedings, and may be the cause of a disciplinary dismissal in the most serious crimes.

Concerning the ‘positive’ side of the relationship between police and Judiciary, the Italian Constitution establishes a direct functional dependence of police officers to public prosecutors in the conduct of investigations (art. no. 109). We must stress that it is only a functional dependence, because police officers continue to depend on the executive branch, in terms of hierarchical organization and discipline. But for investigative activities, the public prosecutors can dispose the police investigators freely and independently from their executive power. The Italian Code of Penal Procedure has tried to strengthen the functional dependence of police officers in charge of investigations to the judges.

These strong powers of direction of police investigators held by the Judiciary concern both the phase of pure investigation and the phase of execution of the orders of arrest. In cases of flagrante delicto or necessity related to the investigation, the police may make temporary arrests independently, but the Constitution (art. no. 13) establishes that these provisional measures must be communicated to the competent judges within 48 hours. If the arrests are not approved by the judge for preliminary investigations (GIP) within the next 48 hours, they are revoked and lose any effectiveness.

The position of an investigation official or officer does not require a particular form of accreditation, but is automatically conferred by law (no. 121/1981), depending on the hierarchical level of police officers within their own organizations. It is just a functional role that is linked to the investigative powers exercised by the police officers and not a position related to the professional status of the agent. The investigation officials and officers have a common competence with regard to the investigation and ascertainment of any offence, but these two roles have different powers in performing the various acts of an investigation.
3.8.2. Restrictions for Courts

As previously mentioned, all police activities (in particular, all the acts affecting personal freedom) that might impact on the citizens’ rights and freedoms are under the scrutiny of the Judiciary. In case of abuse, police officers / officials are subjected to the Courts without any limitation or special protection. On the contrary, they can be punished more severely and for specific crimes.

In a trial, the only limitations to the action of the judges are connected to professional and State secrets, regulated by articles no. 201 and 202 of the Code of Penal Procedure. They impose an obligation on public officials to refuse to testify on facts covered by secrecy during a trial testimony.

In the case of professional secrets, the Court may order autonomous investigations on the actual existence of such secrecy obligations. In case of a State secret, the Court may ask confirmation from the Presidency of the Council of Ministers, which must be answered within 30 days. If there is no reply, the Court may order the witness to provide relevant information. If the existence of a State secret is confirmed, the court shall cease to request the relevant information and issue a trial order of dismissal if the information covered by State secret is fundamental for the trial decision.

3.8.3. Oversight of the Administrative Jurisdictions

Administrative jurisdictions are the means the Italian legislation uses to protect the legitimate interests of citizens from the public administration. If an act of public administration is considered illegitimate, Italian citizens can choose whether to appeal to the Judiciary (to the Courts of the ordinary or administrative jurisdictions), or to make an internal administrative complaint, addressed to the office which issued the act or to the body which is hierarchically superior. The guarantees for citizens are obviously higher when they appeal to the courts, which are impartial with respect to the administration responsible for the act.

To distinguish the competence between ordinary and administrative jurisdictions when a citizen has appealed against an act of the public administration, the Italian legal system has adopted a mixed criterion, based both on the nature of the subjective situation affected by the administrative act and on the matter. If the act infringes a citizen’s right, the ordinary jurisdictions are competent. If the act breaches a legitimate interest, the appeal has to be presented to the administrative jurisdictions. However, on certain matters (such as disputes concerning a public service or the provision of public goods or services) there is an exclusive competence of the administrative jurisdictions.

The administrative Courts in Italy are the State Council (‘Consiglio di Stato’), the Regional Administrative Courts (‘TAR’) and other minor administrative courts. Also the Court of Accounts and the provincial and regional tax commission are considered administrative jurisdictions for specific matters (accounting and tax).

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26 The distinction between right and legitimate interest in the Italian legal system is a subtle matter of case-law definition, since it is not contained in any law of the State. In short, ‘by right’ means an entitlement directly attributed by law to someone, who can obtain protection for exercising it. By ‘legitimate interest’ we mean an entitlement that someone aims to maintain or achieve through the legitimate exercise of the administrative power. When a public administration does not respect the forms and the limitations imposed by law to its action, a legitimate interest is infringed and the citizen can request and obtain the annulment of the unlawful act and an economic compensation, by appealing to the administrative jurisdictions.
3.8.4. Other Courts

The Constitutional Court (also named ‘Consulta’) is considered the Supreme Court of the Italian State. It is in charge of disputes concerning the constitutionality of laws and administrative acts having the force of law. The Court has other fundamental responsibilities, such as decisions on the impeachment of the President of the Republic, on disputes between State bodies or between the State and the Regions and on the admission of referendums.

With regard to judgments on the constitutionality of laws, we must underline that in Italy citizens cannot directly appeal to the Court. The judges of an ordinary or administrative Court appeal to the Constitutional Court when they have reasonable doubts on the constitutionality of the law they must apply to resolve the dispute. In these cases, the judges shall suspend a trial and defer the judgment on the constitutionality of the law to the Constitutional Court.

Any Constitutional Court decision of unconstitutionality of the law, however, must be applied in every case (not only in the one that led to the decision of the Constitutional Court). A norm declared unconstitutional by the Constitutional Court is automatically deleted and ceases immediately to be applied. However, situations formerly decided with final judgments are not editable.

The Italian Military Courts in time of peace are competent only for military crimes (identified by the Military Penal Code) committed by members of the army during their military duties. This rule also applies to the Carabineers Corps and the Guardia di Finanza Corps: despite their military status, Carabineers or Guardia di Finanza officers can be subjected to the Military Courts only for crimes committed during their military duties. The ordinary jurisdictions are competent on crimes committed by Carabineers or finanzieri in the conduct of police activities.

Military Courts have two levels of jurisdiction, with a Military Court of Appeal. In case of presence of military and common crimes, there is a distinction between lawsuits submitted to the Military and ordinary Courts. However, if the common crime is more serious than the military, the ordinary Courts are competent for the entire lawsuit (art. no 13 par. 2 of the Penal Procedure Code).

3.9. Turkey

Although a part of the continental system, Turkish judiciary has overall adopted a triple distinction consisting of judicial, administrative and constitutional judiciary. In this context:

- hearings of disputes related to crimes committed by internal security officers are held in ordinary judicial courts,

- hearings of claims for administrative orders and regulations related to implementation of internal security activities and claims for compensation arising from damages caused by implementation of these administrative acts and actions are held in administrative courts, and finally

- constitutional complaints related to violation of constitutional rights and judicial reviews of constitutionality of laws are held in the Constitutional Court.
Under the abovementioned basic distinction of judicial system, there are also sub-branches related to military justice. There is an extensive military justice system in Turkey. There are military and disciplinary courts as a court of first instance for cases related to military crimes. Appeals in these cases are held in the High Military Court of Appeals (Askeri Yargıtay). Also there is a High Military Administrative Court (Askeri Yüksek İdare Mahkemesi) which is in charge of reviewing military administrative acts and actions regarding military staff as both court of first instance and appeal. Where there is a doubt in the jurisdiction of the judicial branch caused by the multiple nature of the judicial system, the case is referred to the Court of Conflict (Uyuşmazlık Mahkemesi) in order to designate the judicial branch having jurisdiction over the case. After the designation of the court having jurisdiction by the Court of Conflict, the case would be held by the designated court. However, decisions of the Constitutional Court shall take precedence in jurisdictional disputes between the Constitutional Court and other courts.

3.9.1. Analysis of Judicial Judiciary

In Turkey, four basic points have importance with regards to judicial judiciary oversight of internal security forces.

3.9.1.1. Functional Distinction of Judicial Police-Administrative Police

In Turkish Law, a distinction between judicial police-administrative police has been adopted functionally even though there is no organizational distinction. According to the Law 2559 on Duties and Responsibilities;

a. **Administrative police mission is described as prevention of offences, as opposed to the enforcement of laws and public order;**

b. **Judicial police mission is described as undertaking duties prescribed in the Law on Criminal Procedures and other laws regarding a committed crime.**

Distinction of the missions such as judicial police-administrative police, relation of the public prosecutor with judicial police and definitions of mission of the National Police, General Command of Gendarmerie and Coast Guard Command have been regulated differently in the organizational law of each internal security units specific to their own staff.

In the Law 5271 on Criminal Procedure that entered into force on 1 June 2005, judicial police missions and general principles for action have been stipulated so as to comprise all internal security units. It is regulated that judicial internal security personnel are under the command of a public prosecutor with regard to their judicial duties. When they operate outside of these duties, they do so under the command of their administrative superiors (Law 5271 Art. 164). Administrative police are also obliged to fulfill the duties of judicial police, if needed, or if the public prosecutor so requests (Law 5271 Art. 165). There are four internal security units included as judicial police in Law 5271;

- **General Directorate of Security (National Police),**
- **General Command of Gendarmerie,**
- **General Directorate of Custom Enforcement**,  

- **Coast Guard Command**.

The model of judicial police adopted in Turkey envisages a specialization of internal security units. The 167th Article of the Law on Criminal Procedure regulates the requirements for education of members of judicial police prior to holding office, as well as their in-service education. Their appointment to different departments according to their specialization is stipulated in the Regulation on Judicial Police issued by the MoI and the Ministry of Justice.

The Regulation on Judicial Police has regulated details of prior and in-service education. It also stipulates that police staff will be conferred a certification after successful completion of judicial police training. “Certificated police” staff would be appointed primarily in judicial missions.

In accordance with the Law on Criminal Procedure, interactions related to criminal investigations shall be conducted by the public prosecutor. However, if the public prosecutor is out of reach or the criminal event goes beyond the scope of the duties of the public prosecutor because of its broad and comprehensive nature, a judge is also empowered to conduct all necessary interactions related to investigation by its own motion.

Judicial police staffs are obliged to initiate necessary interactions related to investigation in order to shed light on an event. As explained above, in principle an investigation shall be conducted by the public prosecutor. However in some exceptional cases, the judge could also conduct all the actions of investigation. In these cases, the judge has the authority of a prosecutor over the judicial police personnel who are in charge of the investigation (Law 5271 Art. 163).

In the 166th Article of the Law on Criminal Procedure, it is stipulated that at the end of each year, the Chief Public Prosecutors shall prepare an evaluation report about the responsible persons at the judicial police at that location, and send it to their administrative superiors. In Turkish Law, it is possible in all the phases of an investigation for the administrative superiors of internal security units on which they depend to reshuffle the judicial police staff by, without asking permission or consideration of the judge or the prosecutor. The latter have no voice on the reshuffling of judicial police staff in the event of their inefficiency in a criminal investigation. These matters constitute a serious deficiency with regards to functional subordination of judicial police staff.

### 3.9.1.2. Being Internal Security Staff is an Aggravating Factor for Some Crimes

When it comes to the definition of crime and punishment, the fact that some crimes are committed by public officials (thereby internal security forces agents) is regarded as an aggravating factor in the Turkish Penal Law No. 5237. In the Turkish Penal Law, it is regulated that the penalty imposed on internal security staff in response to crimes committed while performing their duties are increased by one half. Crimes in the Turkish Penal Law with an aggravating factor are aimed at protecting data, documents and evidence obtained by internal security forces, particularly judicial police staffs working within the scope of
investigation (for example, offences against privacy and secrecy of life (Law 5237 Art. 132 and follows), destruction of an official document (Law 5237 Art. 205), destruction of evidence (Law 5237 Art. 281), laundering of assets acquired as a result of an offence (Law 5237 Art. 282), supporting an offender (Law 5237 Art. 283), failure to notify the accused, arrested or convicted person or the evidence of an offence (Law 5237 Art. 284), violation of confidentiality of the investigation (Law 5237 Art. 285).

In Turkish Law, tight procedural rules have been stipulated and legal guarantees have been set up for actions related to custody, detention and arrest at constitutional and statutory level. In case of violation of these principles and guarantees, it is possible to file a lawsuit for compensation by judicial courts.


According to the system adopted by the Law on Criminal Procedure, judicial authorities such as judges and prosecutors are in charge at every stage of an investigation. However, in the 6th paragraph of the 129th Article of the Constitution it is regulated that prosecution of public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law. Accordingly, in the Law 4483 on Prosecution of Public Servants and Other Public Officials, special criminal procedures for investigation of crimes committed by public officials differing from the previously mentioned ordinary procedure has been stipulated.

According to the procedure stipulated in the Law 4483, the prosecution office cannot initiate a criminal investigation against a public official without the permission of his/her high level superior. Such a permission or refusal of permission is subject to appeal before the regional administrative court or Danistay within 10 days.

The procedure for administrative permission necessary for criminal investigation is only valid for the police acting as administrative police. Senior officers and officers of police units of the judicial police shall be directly prosecuted by the public prosecutor. The position of staff in the Gendarmerie differs with regards to judicial oversight. By amendments made to the Constitution in 2010, jurisdiction of military courts is confined to prosecutions of crimes committed by military personnel in relation with military duties. Additionally non-military persons shall not be tried in military courts, except during a state of war. The authority of commanders to impose a disciplinary sanction restricting liberty to soldiers without trial was repealed in 2013. As a result, crimes committed by Gendarmerie personnel are heard in military courts.

However, following crimes are investigated and prosecuted in accordance with general provisions without asking permission;

- *The case of flagrante delicto which necessitates heavy penalty (Law 4483, Art. 2/3)*,
- *Crime of Torture (Turkish Penalty Law Art. 94)*,
- *Crime of consequential severe torture (Turkish Penalty Law Art. 95)*,
• **Crimes within the context of Martial Law (Law 1402 Art. 13),**

• **Crimes described in the Law 298 on Election (Law 298 Art. 174),**

• **Crimes described in the Law 3628 on Declaration of Assets, Combat Against Bribery and Corruption (Law 3628 Art. 18),**

• **Crimes described in the Law 3713 on Combating Against Terrorism,**

• **Crimes described in the Law 5607 on Combating Against Smuggling.**

### 3.9.1.4. Administrative Sanctions Imposed by Internal Security Forces are Reviewed by Judicial Courts

In the Turkish Law misdemeanours were purged from the category of crimes. Administrative sanctions have been imposed on misdemeanours by the Law 5326, which entered into force on 1 June 2005. The Law is of particular concern to internal security units because of the powers given to internal security forces. According to the Law on Misdemeanours, authorities having power to impose an administrative fine/sanction are:

• **Courts (Law 5326, Art. 24),**

• **Prosecutors (Law 5326, Art.23),**

• **Internal security units**

  Under this Law, internal security units are authorized ex officio to sanction minor offences such as mendicancy, gambling, noise, consumption of tobacco products, putting up a poster and carrying a gun. The appeal shall be filed to judicial courts (*i.e. criminal court of peace*), unless administrative courts have been specifically entrusted by a legal provision (Law 5326, Art. 27).

### 3.9.2. Analysis of Administrative Judiciary

The administrative judiciary in Turkey consists of administrative and tax courts (*idare ve vergi mahkemeleri*) as courts of first instance, district administrative courts (*Bölge İdare Mahkemesi*) as courts of appeal and the Council of State (*Danıştay*) as supreme administrative court. In principle the administrative judiciary reviews the legality of all acts and actions of administrative authorities. All administrative regulations, decrees and acts issued by Mol, National Police Department, provincial police directorates, governors and sub-governors can be brought before administrative courts by persons whose interests were violated by the act.

The administrative judiciary is not concerned with police operations or internal security activity in itself but it addresses administrative acts through which the operation or internal security activity is implemented. Mol, governors, sub-governors, the relevant police and gendarmerie general directorates which issued the administrative acts are subject to judicial review of administrative courts. At the end of the judgment, an administrative act can be cancelled or deemed null and void in accordance with its level of illegality. Moreover,
financial compensation for damages arising from administrative actions or from the implementation of an administrative act can also be ordered by the court to those who suffered from this action. All administrative acts issued in relation with the statutory regime of internal security officials and corps can be brought before administrative courts.

Claims for compensation by those who suffered from the internal security activities shall be asserted only against administrative authorities in administrative courts. Legal evaluation in these cases shall be carried out by administrative courts in accordance with the responsibility of administrative authorities based on an objective fault or service fault rather than the responsibility of an individual who caused damages. However, it is obligatory for the administrative authority, which compensates the damage, to reclaim the paid compensation from the relevant police officer in the event of the individual fault.

There are two significant functions of the recourse mechanisms. It is important for identifying the individual responsibility of police officers and this mechanism can encourage the internal security personnel to act more carefully. In the absence of recourse, damages arising from the individual fault of the internal security personnel would not be compensated by the responsible person. Moreover, where damages arise through the individual fault of a public servant, the recourse for compensation shall be directed at the faulty staff, otherwise the compensation would be paid by public money.

Apart from the general administrative judiciary, judicial examination of disputes arising from administrative acts and actions involving military persons and related to military service shall be held in the High Military Administrative Court, even if such acts and actions have been carried out by non-military authorities. Administrative acts related to military service and issued by General Command of Gendarmerie are reviewed by the High Military Administrative Court.

According to the 125th Article of the Constitution, the judicial power of an administrative court is confined to the review of legality and does not comprise a review of expediency. However, discretionary powers exercised by administrative authorities in the undertaking of internal security activities shall be reviewed by administrative courts for legality and general principles. Police intervention in mass demonstrations is reviewed by administrative courts in line with the concept of proportionality.

However, according to various constitutional provisions, some administrative acts are outside the scope of judicial review. These administrative acts are:

- **Decisions taken by the Supreme Military Council regarding promotion and retirement due to lack of tenure,**

- **Disciplinary penalties and other administrative sanctions imposed to members of the Armed Forces on the ground of indiscipline could not be subject of judicial review unless acts whose subjection to judicial review have been recognized explicitly by laws related to military discipline,**

- **Administrative acts related to the exercise of authority vested in the regional governor during the state of emergency and martial law commander.**
3.9.3. Analysis of Constitutional Judiciary

In Turkish Law, judicial review of constitutionality of laws is made by the Constitutional Court. Claims on unconstitutionality of a law could be brought before the Constitutional Court through an action for annulment or through a plea of unconstitutionality made by other courts.

A right to apply to the Constitutional Court exists on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights (ECHR) which are guaranteed by the Constitution has been violated by public authorities. This has been defined by a Constitutional amendment made in 2010 (Cons. Art. 148/3). In case of violation of one of the fundamental rights and freedoms by internal security forces, an individual application (constitutional complaint) can be made to the Constitutional Court when ordinary legal channels are exhausted.

When applications are made to the Constitutional Court with regard to internal security activities and rendered decisions are examined, it can be said that the Constitutional Court provides efficient protection. Decisions could be listed as follows;

- The Constitutional Court decided the highest amount of compensation for the individual complaint which was made by a person subjected to torture and maltreatment by internal security forces.27

- The Constitutional Court decision that a crime committed by the internal security personnel during their duties must be investigated is a procedural application of the right to life according to ECtHR standards. On that ground, the State must undertake an efficient investigation in case of death caused by an ISF agent. Upon this decision of the Court, a permission for the order to investigate the police officers was granted.28

The Constitutional Court decided that submitting the intelligence obtained by internal security forces to the case file does violate the right to respect to private life because of the lack of legal evidence.29

3.10. Comparative Overview

Turkey has a judicial system characterized by a general organizational structure with a judicial judiciary and an administrative judiciary comparable to Continental EU countries such as France, Spain, Germany and Portugal for example. The independence of Courts and their functioning are guaranteed in the constitution. As is seen in the table, major gaps between selected EU member states and Turkey are: the special procedure of investigation of public officials, insufficient judicial oversight of public prosecutors over judicial police staff and some restriction of supremacy of law and judicial review of administration. However, some good practice is found in Turkey with regards to judicial oversight. Contrary to all selected EU member states, there is no legal restriction on the jurisdiction of criminal courts because of national interest or state secret.

The independence of Courts and their functioning are guaranteed in the Constitution. However, and contrary to the selected EU countries, prior permission has to be given to the

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27 The Constitutional Court of Turkey, 17.07.2014 date and application no. 2013/293
28 The Constitutional Court of Turkey, 17.07.2014 date and application no 2012/848
29 The Constitutional Court of Turkey, 09.01.2014 date and application no. 2013/533
public prosecutor from the directorate of the public bodies to which the civil servants belong before the judicial authorities can investigate alleged crimes committed by civil servants, including members of the internal security forces relating to their duties (4483). Also, heads of internal security units serving in provinces and sub-provinces have a different form of protection than lay citizens. In the course of judicial duties, if the mentioned heads are alleged to have committed a crime, they are treated in the same way "as a judge or public prosecutor" would be treated (according to Criminal Procedure Code numbered 5271, Article 161/5; Law 2802 on Judges and Public Prosecutors, Article 82).

In Turkey, there are restrictions at constitutional level on the jurisdiction of courts as well as on the scope of their interpretation. For instance, this can be observed by the exclusion from judicial oversight of the acts of the President in his/her own competence and of the decisions of High Military Council (Art. 125/2 of the Constitution) and a reference to the limitation of judicial power to the verification of the conformity of actions and acts of the administration with law (Art. 125/3 of the Constitution). On the other hand, in the selected EU countries, no restriction of courts' role is asserted in respective constitutions when it comes to checking the interpretation by court of the use of the powers bestowed to the executive branch.

Table 3 illustrates the difference in duties of judicial oversight mechanisms in selected EU member states and Turkey.
<table>
<thead>
<tr>
<th>Courts</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts Functions and Independence Guaranteed in Constitution</td>
<td>No</td>
<td>Yes</td>
<td>Not in constitution, but long history of judicial independence &amp; separation of powers.</td>
<td>Yes</td>
</tr>
<tr>
<td>Judicial Courts Oversight</td>
<td>France</td>
<td>Spain</td>
<td>UK</td>
<td>Turkey</td>
</tr>
<tr>
<td>ISFs in Investigation Receive Special Protection</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes, investigation of ISFs for alleged offences shall be subject to the permission of the administrative authority designated by law.</td>
</tr>
<tr>
<td>Aggravated Sanctions</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Nature of Restrictions to Courts’ Investigation Powers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- by administration</td>
<td>No military courts have jurisdiction on policing activities</td>
<td>No prior authorisation</td>
<td>No</td>
<td>Prior authorisation (if a crime is committed during administrative duties)</td>
</tr>
<tr>
<td>- by army</td>
<td>No restriction, except defence secret for police intelligence activities</td>
<td>No military courts have jurisdiction on policing activities</td>
<td>No</td>
<td>No military courts have jurisdiction on policing activities</td>
</tr>
<tr>
<td>Strong Oversight Powers Over Police Investigators</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- investigations</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes. Investigation and arrest under judicial Authorities</td>
</tr>
<tr>
<td>- arrests</td>
<td>Yes (including GAV, i.e. temporary detention by police)</td>
<td>Judicial police report to judges &amp; prosecutors.</td>
<td>Yes, All of these reviewed by the IPCC (England &amp; Wales) or Police Ombudsman (NI)</td>
<td>Yes. Custody measures to be Reported to Prosecutor.</td>
</tr>
<tr>
<td>Special Accreditation for Investigation Officers</td>
<td>Yes, OPI.</td>
<td>Yes, Members of Judicial Police Units require specific training and accreditation.</td>
<td>Yes</td>
<td>Yes, but discretionary</td>
</tr>
<tr>
<td>Assessment of Investigating Officers by Public Prosecutor</td>
<td>All OPI (senior investigating officers) are given marks + narrative assessment</td>
<td>Not formally (no marks or written assessments)</td>
<td>Yes. Criminal investigations must conform to exact standards.</td>
<td>Yes, but assessment of investigation officers by prosecutors are of advisory nature standards.</td>
</tr>
<tr>
<td>Restriction because of “National Interests”</td>
<td>No personal privileges or restrictions concerning court procedures (Criminal &amp; Civil Liabilities). -Yes, but only if decided by independent commission</td>
<td>No personal privileges or restrictions concerning court procedures (Criminal &amp; Civil Liabilities). -Yes, restrictions concerning Courts’ access to information or documents covered by Law on official secrets</td>
<td>No personal privileges or restrictions concerning court procedures (Criminal &amp; Civil Liabilities). -Yes but only if decided by the courts</td>
<td>No / PPC Article 47 and 125</td>
</tr>
<tr>
<td>Administrative Courts Oversight</td>
<td>Country</td>
<td>France</td>
<td>Spain</td>
<td>UK</td>
</tr>
<tr>
<td>--------------------------------</td>
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<td>-------</td>
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</tr>
<tr>
<td>Citizen Challenging Decrees, Orders etc...</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Checking Powers Conferred to Government</td>
<td>Constitutional powers of Government under the jurisdiction of the Constitutional Court + administrative courts.</td>
<td>Yes, Constitutional powers of Government under the jurisdiction of the Constitutional Court + administrative courts.</td>
<td>Checks on government by courts and also judicial review of public bodies</td>
<td>Yes, Gov. decisions under scrutiny of constitutional courts and ministers &amp; governorships of administrative courts.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Good Practices</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Updated Codes of Police Practice</td>
<td>No</td>
<td>No</td>
<td>Legislation into Codes of Practice (regularly updated)</td>
<td>No</td>
</tr>
</tbody>
</table>
## The Governance and Oversight of Internal Security Forces in Turkey & 7 EU Countries

<table>
<thead>
<tr>
<th>Courts Functions and Independence Guaranteed in Constitution</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Judicial Courts Oversight</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>ISFs in Investigation Receive Special Protection</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Aggravated Sanctions</td>
<td>Yes</td>
<td>No (only the same that applies to all public officials in the exercise of public functions)</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nature of Restrictions to Courts’ Investigation Powers</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>- by administration</td>
<td>No prior authorization</td>
<td>No prior authorization</td>
<td>No prior authorization</td>
<td>No</td>
</tr>
<tr>
<td>- by army</td>
<td>No military courts have jurisdiction on policing activities</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Strong Oversight Powers Over Police Investigators</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>- investigations</td>
<td>Yes, oversight by the prosecutor</td>
<td>Yes - The investigation is leded by a prosecutor; judge intervention in certain cases that may conflict with rights, freedoms and guarantees (like an arrest)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>- arrests</td>
<td>Yes, oversight by the prosecutor</td>
<td>Yes (including temporary detention, that has to be Reported to Prosecutor and confirmed by GIP)</td>
<td>Yes</td>
<td>No. just a functional position</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Special Accreditation for Investigation Officers</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessment of Investigating Officers by Public Prosecutor</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No. Criminal Investigators (ID, FSP or GNR) respond to the public prosecutor in charge of the investigation process. But there isn’t an assessment of investigating officers by public prosecutor</td>
<td>No</td>
<td>Not formally (no marks or written assessments)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Restriction because of “National Interests”</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>- No personal privileges or restrictions concerning court procedures (Criminal &amp; Civil Liability)</td>
<td>- No personal privileges or restrictions concerning court procedures (Criminal &amp; Civil Liability)</td>
<td>- No personal privileges or restrictions concerning court procedures</td>
<td>- No personal privileges or restrictions concerning court procedures</td>
<td>- No</td>
</tr>
<tr>
<td>- Yes, but only if decided by the courts</td>
<td>- Yes, restrictions concerning Courts’ access to information covered by State Secret</td>
<td>- Only restrictions concerning Courts’ access to information or documents covered by Law on official secrets; the confidentiality, however, can be examined in a specific in-camera-procedure before the Federal Administrative Court</td>
<td>- Yes (concerning information covered by office secrets or State secrets)</td>
<td>- Yes</td>
</tr>
<tr>
<td>Administrative Courts Oversight</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
</tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Checking Powers Conferred to Government</td>
<td>Yes, Checks on government by courts, and judicial review of public bodies</td>
<td>Yes. Constitutional powers of government under the jurisdiction of the Constitutional Court and administrative courts</td>
<td>Yes. Constitutional powers of Government under the Jurisdiction of the Constitutional Court and Administrative Courts</td>
<td>Yes Constitutional powers of Government under the jurisdiction of the Constitutional Court &amp; ordinary + administrative courts</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Good Practices</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Updated Codes of Police Practice</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
3.11. Gaps

- **Special procedure privileges applied to internal security personnel for their criminal investigation constitutes a serious gap for efficient judicial oversight.**

  Contrary to the selected EU member states, in Turkey there is a special procedure for the judicial investigation of public servants. Internal security personnel is regulated in the Law 4483. In the selected EU countries, no special procedure is applied to civil servants, including internal security forces agents for their judicial investigation duties. Judicial proceedings for crimes that are committed by public officials, including police and gendarmerie members, do not differ from those committed by lay citizens. Prior consent of relevant public authorities is not necessary for the investigation and prosecution of the members of security forces, including the heads of the security units. The mechanism in Turkey provides privilege to ISFs and constitutes an important gap between Turkey and the selected EU member states. Indeed it is emphasized by both ECHR and the Constitutional Court of Turkey that this special mechanism prevents the conduct of an efficient and effective investigation and thereby violates the state’s obligation of efficient and effective investigation of crimes, which impacts on fundamental rights and freedoms.

- **There are some problems and inconsistencies in the application of the Law 4483 which regulates special investigation procedure of ISFs.**

  In the investigation of judicial police senior officers, there are some discrepancies between Law 4483 and the organizational law of the ISFs. The scope of the notion of public official is different in the Criminal Law and the Administrative Law. This creates uncertainty.

- **Some administrative acts related to the security service are kept out of scope of judicial scrutiny in Turkey by the Constitution.**

  In the selected EU countries, no restriction of the courts’ role is asserted in the Constitution when it comes to checking the interpretation by court of the use of the powers bestowed on the executive branch. In Turkey, unlike in selected EU states, there are restrictions at constitutional level on the judicial review of many administrative acts explained above and closely related to internal security activity.

- **Compared to selected EU member states, prosecutors in Turkey have a much weaker grip on the judicial policing forces.**

  Contrary to France, Spain, Portugal and Denmark, judicial police officers or investigation agents do not need to be specially authorized by public prosecutors. Judges and prosecutors have no authority in designation,reshuffling, suspension or withdrawal of judicial police staff. Prosecutors have the authority to prepare evaluation reports regarding judicial police while in practice these reports are considered of an advisory nature and not taken into account with regard to the statutory regime of the relevant judicial police (i.e. appointment, promotion etc.). While judicial police work in accordance with the instruction of the prosecutor, prosecutors do not have necessary compelling tools over judicial police.
• **Training of the judicial police agents exists, but is not compulsory.**
  A mechanism for special training of judicial police forces has been adopted by the Regulation on Judicial Police. But the judicial police do not require a special license and status to undertake of criminal investigation. Judicial police training does not grant status or a licence, it only grants a certificate which provides an advantage to the officer in charge of a judicial mission. The issue of such a certificate is left to the discretion of Mol.

• **Problems and inconsistency exist between the Law on Criminal Procedure and Administrative Regulation on Judicial Police.**
  While basic principles related to judicial police mission have been stipulated in the Law on Criminal Procedure, the overwhelming majority of issues related to judicial police have been regulated in ordinary administrative regulations, i.e. the Regulation on Judicial Police. This causes serious problems and inconsistencies in practice with regards to oversight of judicial police.
4. Structures, Remits and Oversight Functions of The Ministries in Charge of ISFs (Interior or Justice)

4.1. Duties, Competencies and Functions

In most countries, the Ministry of Interior (MoI) is the executive body primarily responsible for providing internal security and safety and protecting public order. In some countries, the protection of civil liberties is also stated as one of its missions (this is the case in the Spanish constitution, MoI Organizational Law and Security legislation in Turkey, French Police Code of Ethics). Stemming from these responsibilities given by law, Ministries of Interior have substantial oversight powers over internal security forces. In this section, oversight powers that relate to the institutional structure and the remit of Mols are discussed comparatively between selected EU member states and Turkey. In other countries, the Ministry of Justice has the duty of overseeing the ISFs (for ex. Denmark, but also other non EU Nordic countries).

Oversight of the internal security forces by the MoI/MoJ can be effective when the below-mentioned elements are established:

- **i. the legal definition of its missions and competencies,**
- **ii. the determination of the forces and units which are placed under its authority (including training units),**
- **iii. the control over the budget of the forces and units,**
- **iv. the powers given to appoint and dismiss personnel,**
- **v. the curriculum of pre-service and in-service training (through which key values are taught).**

Of course, also important is the role of the representative of the state at the local level (the governor at the provincial level) and the various legal mechanisms and “tools” existing at the central level in order to achieve oversight (notably the audit/inspectorate units). These will be discussed separately in the following chapters.

4.2. France

4.2.1. General Structure

France has a dual national police system (a police and a gendarmerie) which is supplemented by a third public force, the municipal police. The principle for deciding the location of national forces is that the police work in the cities and the gendarmerie in the rural areas and in peripheries of the cities (quasi urban area or suburban areas).

Before 2009, the Gendarmerie was placed under the MoI for its day-to-day instruction. However recruitment, promotion, equipment etc. was still managed by the Ministry of Defence. The full transfer was accomplished in 2009. On 1st January 2009 the gendarmerie has formally moved from the Ministry of Defence to the Ministry of Interior. Every two years, a fully-fledged comparative assessment of the concrete functioning of the new system since
2009 is completed. The Ministry of Defence remains currently the guardian of the military status of the gendarmerie. The two general directorates (one for the police, one for the gendarmerie) are preserved as well as the military statute of the Gendarmerie. The Ministry of Defence has kept its full competencies over the gendarmerie when involved in national defence missions abroad.

Budgets at national level and at local ones are decided and overseen by the MOL and its general secretaries for administration (SGAMI) both for the police and gendarmerie. On some issues such as ethics, military discipline codes and some administrative subjects such as social benefits, health systems, ordinance and procurement, the Minister of Defence is still in charge. The transfer of the gendarmerie to the Ministry of Interior should not change that situation.

All appointments for top civil servants are made by the civilian authorities. The general directors of the police and the gendarmerie are appointed by the Council of Ministers. The head of the gendarmerie is proposed for designation by the GD of Gendarmerie to the council of ministers after the approval of the MOL (and even before 2009 was subject to review by the MOL). The profile of the general director is typically a prefect or a magistrate, but can sometimes be a senior police commissioner (for the police) or a senior gendarmerie general (for the gendarmerie), at the exclusion of generals from the army. The provincial directors’ designation for both police and gendarmerie are now subject to approval by the MOL.

The police have their own training system for police personnel which is divided into three ranks: commissioners (one national academy), middle rank managers (called “officers”) and rank and file officers (called “gardiens de la paix” or peace keepers). It is separate from the gendarmerie recruitment and training system which has only two tiers: high ranking (called “officers”) and low ranking (called “gendarmes”). The gendarmerie recruitment and training system has common elements with the army’s curriculum but also a specific and separate part. For the gendarmerie, in all training facilities and for all ranks civilian (non police, non army) professors take an active part in training.

Regarding policing, the role of the prefects has been strengthened firstly in 1995 with the Security Orientation Law (called LOPS) and later in 2002 with the Security Orientation and Planning law (called LOPSII) as well as with the 2004 bylaw on the power of the prefect. This strengthening reflects the importance of security and of security forces in the national political debate.

4.2.2. Budget

4.2.2.1. Budgetary Organisation

The budgets of the police and the gendarmerie are part of the same “mission”, according to the 2001 Law on budget (“Loi Organique Relative aux Lois de Finance”, LOFL). It is called the “securities” mission, which also includes the budget of crisis management and, since last year, a specific budget called “road safety and education”. The mission “securities” has therefore four “programs”.

Missions that include several budgets are subdivided in “programs”. The mission “securities” has therefore four programs: P.164 (national police); P.152 (national gendar-
merie); P.161 (crisis management) and P.207 (road safety and education).

A person in charge is designated at the head of each program. For the P.152, it is the General Director of the national police and for the P.176, it is the General Director of the national gendarmerie.

Each program is translated into an "operational budget" (OB), under the responsibility of an "operational budget manager" (OBM). OBM's are now defence and security zones prefects (there are seven zones in France). For the national gendarmerie, the general located at the zone capital can receive a delegation from the zone prefect for the implementation of the operational budget of the gendarmerie in the aforementioned zone. The budget execution within each OB implies then the intervention of "operational unit managers" (OUM). For the gendarmerie, regional commanders in each zone are in charge of that responsibility.

4.2.2.2. Budget Preparation Procedure

The Minister of Interior is responsible for the budget of the "securities" mission. He relies on the program managers.

Each program manager expresses his needs to the Minister. The Minister's staff is in touch with the Ministry of Budget during the preparation of the budget. The work is done in coordination.

As each program manager is in direct contact with the Minister, the procedure is coherent and balanced.

4.3. Spain

In Spain, the Minister of Interior is the head of all state internal security forces. The Spanish Guardia Civil is no longer a part of the Army, but a public security force fully dependent on the civilian administration (Ministries of Interior and Defence), albeit with a military nature and structure that explains its "double" dependence on both Ministries for selected aspects. The "execution of the Government's policy on citizens'/public security, including the command of State security forces and corps" and in general, "the promotion of the conditions for the free exercise of fundamental rights" correspond to the Ministry of Interior. The Minister of Interior holds the top responsibility concerning planning, direction and inspection of all ministerial services and units, as well as the top command of the State security forces and corps (National Police Corps and Guardia Civil).

Alongside the Minister, the State Secretary (Junior Minister) for Security, the Director General of National Police Corps (CNP) and Guardia Civil (GC), other second-level high-ranking civilian officials subordinated to the first two, make up the "civilian dome" responsible for public/citizens' security in Spain (including command and "executive" oversight of security forces and corps). The National Police and Guardia Civil have traditionally had separate Heads (Directors), although a unified Command and Director is also possible and existed between 2006 and 2011. The "Head" of the Police and of GC is the Director-General himself (with the rank of an Undersecretary). Below him, there are "professional heads" of several units or departments (operations, personnel, etc.). In practice, the Heads of the "Operations"
Departments (in both Police and GC) have a certain pre-eminence over the others and are seen as the "professional" heads of the respective Force or Corps. Before the 1980's, a general of any of the Armed Forces (not from the GC itself) would be appointed as the professional head of the Guardia Civil.

With the sole exception of the appointment of the Director of the Guardia Civil (which requires agreement between the Ministers of Interior and Defence) and the fact that some of the official appointments (the highest ones) require a formal decision by the Council of Ministers, all staff are appointed and dismissed solely by the Government. Notwithstanding their individual responsibility (liability) for their actions, they are accountable/answerable to the Minister of Interior and the Government.

In Spain the regional and local self-governments participate in internal security and may even have their own armed police forces. Such forces and the civilian authorities to which they are answerable (regional ministers – Consejeros - or other high-ranking regional officials responsible for internal security affairs, Mayors and members of municipal governments responsible for local police) are not hierarchically subordinated to the state authorities or security forces. And in some cases (autonomous police in regions such as Cataluña and the Basque country) they have virtually replaced the state internal security units in most of the security tasks and duties, within the relevant territory.

Regional Ministers (Consejeros) responsible for public security play a certain role in the formulation of national policies in this area through their participation in a council for security policy (a coordination body created by Article 48 of the L.O 2/1986); civil society organizations also have some participation in the formulation of the Government's policy on citizens’ security through their participation in a consultative body named the "National Council of Citizens' Security".

The process of disciplinary sanctions for serious infringements is mainly under the responsibility of the Director-General and the State Secretary or the Minister. Otherwise, professionals that are the hierarchical superiors (the heads of units) and the Government's territorial delegates deal with less serious infringements.

The Guardia Civil manages its own "Academies" or training centres, which are used both for pre-service training as well as for further professional training. However, direct access to the highest military ranks of the Guardia Civil (the professional "Scale" starting from Lieutenant and with a career which can run up to Division General - the highest rank possible) requires a first cycle of education at the General Academy of the Land Forces. The general rules to access the Academy are the same as for those who want to enter the Army and develop a professional career within the Land Forces. Therefore, in the initial stages of their career, officers of the Guardia Civil follow a common training programme with officers of the land forces. In addition, the initial requirements for entering the Guardia Civil as a Lieutenant are the same as those required for joining the armed forces as a Lieutenant. However, students of the Land Forces Academy wishing to develop their careers in the Guardia Civil have to complete their entrance education/training in the special Academy for Officers managed by the Guardia Civil itself. A similar itinerary is foreseen for University Graduates wishing to join the Guardia Civil in the so called "Technical scale" (for instance,
medical doctors, or other technical professions). They all have to undergo an initial period of training at the General Academy of the Land Forces, before completing their entrance training (specific to their future work in the GC) in the Academy for Officers of the GC.

4.4. England

4.4.1. Structure and coordination

Under the Police Reform Act [2002] the Home Secretary is in charge of designing and producing an annual National Policing Plan (which is presented to the UK parliament). It is the role of the Home Secretary working through the Home Office to set the overarching strategic direction for the police service across the UK. Under the Police Reform and Social Responsibility Act the Home Secretary issues “from time to time” a Strategic Policing Requirement setting out the national threats at the time the document is issued and the appropriate national policing capabilities to counter those threats. All Police and Crime Commissioners must have regard for this requirement in the setting of their local Police and Crime Plan and all Chief Constables must have a similar regard when setting their strategies to carry out the local Police and Crime Plan.

By the creation of Police and Crime Commissioners, the Home Secretary and Home Office have deliberately withdrawn from day to day policing matters, intending to give the police greater freedom to tackle crime as they see fit and allowing local communities to hold the police to account. Nevertheless as the Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen’s Peace within all force areas, safeguarding the public and protecting national borders and security, there are reserved powers and legislative tools that permit intervention and direction to all parties if necessary to prevent or mitigate risk to the public or national security. This is specified as a last resort and subject to certain legal caveats. The UK doctrine of police independence is confirmed in the Policing Protocol issued under the Police Reform and Social Responsibility Act: “The operational independence of the police is a fundamental principle of British policing. It is expected by the Home Secretary that the professional discretion of the police service and oath of office give surety to the public that this shall not be compromised.”

Thus while the Home Secretary and Home Office are permitted to issue codes of practice to Police and Crime Commissioners and to Chief Officers, they are not permitted to direct operational policing in specific ways. This is the doctrine of constabulary independence in operation.

The criteria governing the appointment and dismissal of senior officers are contained in the Police Reform and Social Responsibility Act [2011-]. Both the appointment and dismissal of the Chief Constable is the responsibility of the Police and Crime Commissioner of the force area. Deputy Chief Constables and Assistant Chief Constable are appointed by the Chief Constable after consultation with the Police and Crime Commissioner.

The military play only a marginal role in the maintenance of internal security in the United Kingdom subject only to clearly specified conventions. There is no military force exercising policing duties such as the French Gendarmerie or Turkish Jandarma for
example. The bulk of this responsibility as has already been noted lies with the Home Office and the police.

4.4.2. Budget

Police forces in the United Kingdom are funded from central and local taxation. Central funding for the police service comes from two sources.

The first is allocated as a single sum by the Government as part of its setting of the national budget and given to the Home Office. Typically this funding, known as the Core Grant, represents around 37%\(^{30}\) of an individual force's income. As each police force comprises different requirements, the Core Grant is allocated to each according to a Police Allocation Formula (PAF).

The PAF works in two stages. The first stage divides funds between the different activities that the police undertake:

- **Crime (of which there are seven sub-categories)**;
- **Incidents (e.g. public disorder)**
- **Traffic (e.g. assistance at road traffic accidents)**
- **Fear of Crime (e.g. public reassurance)**
- **Special Events (e.g. football matches)**

A portion of total funding is also distributed according to population sparsity, to address the specific needs of rural forces.

The second stage divides funding for each of these workloads between the 43 local policing bodies of England and Wales.\(^{31}\) In order to do this, ‘workload indicators’ are calculated to estimate how much work each police force is expected to have in each of the key areas compared to other forces. These estimates are calculated using socio-economic and demographic indicators that are correlated with each workload. Indicators of workload are used rather than data on actual recorded crime levels to account for known variations in recording practices and to avoid creating perverse incentives.

The formula consists of a basic amount per resident, a basic amount for special events and top-ups for the five key areas, sparsity and area costs (which takes account for regional differences in costs). Additional special allocations are made to deal with distortions in the requirement; for example the Metropolitan Police receives a special payment known as the National and International Capital City Grant to assist with the additional policing requirement it faces.

The second area of central funding is from the Department for Communities and Local Government and typically represents 27% of funding. This central allocation of funding is also distributed by formula which although similar in nature to the PAF is known as the Police Relative Needs Formula.

Funding for police forces is also provided from local taxation known as the police precept component of the local council tax. Typically this represents 24% of total funding

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\(^{30}\) Note that the % figures vary because of the different nature of each police force and those quoted are the mean values for 2014/15.

\(^{31}\) Similar processes exist in Scotland and Northern Ireland.
and is determined by the Police and Crime Commissioner for the local area. Although the Police and Crime Commissioner has the responsibility to determine this amount, they are limited by a national ‘cap’ on local taxation increases set by Central Government. This prevents a Police and Crime Commissioner from increasing the local police precept to balance a fall in central funding when Central Government has decided that overall funding for the police service should be reduced.

In addition to the central government grants and the local police precept, Police and Crime Commissioners may also generate income from charging for policing commercial events (this includes sporting and entertainment but excludes charity and some small community events) and from investments (both interest and dividends). They may also seek and receive funding from any legitimate source such as the Community Safety Fund which is maintained separately by the Home Office to enable the local commissioning of service that help tackle drugs and crime, reduce re-offending, and improve community safety in their force area. Typically such special grants represent about 6% of total funding and local ‘income’, a further 6%.

The total funding is allocated to the Police and Crime Commissioner for each area. They determine the amount to be given to the Chief Constable to run the police force but may retain funding to enable them to run a locally based Community Safety Fund providing grants to any organisation or body that will contribute to the reduction of offending, re-offending, and support to victims and witnesses.

Funding allocated to the Chief Constable will be spent according to the control strategy set by the Chief Constable to achieve the Police and Crime Plan. Each force will comprise a number of basic command units known as Divisions which have co-terminus boundaries with the local authority. After funding for the headquarters services of the force has been set aside, the remainder is allocated to each Division according to the local policing requirement.

4.5. Denmark

4.5.1. The Overall Organisational Structure of the Danish Police

The Minister of Justice is responsible for the overall justice system, including the police and prosecution service, courts and prisons. The police in Denmark, the Faroe Islands and Greenland constitute one national force, employed directly by the state. The Minister of Justice, who is the chief police authority, exercises his powers through the National Commissioner (National Chief of Police), and the Commissioners (Chief Constables) of the police districts.32

The National Commissioner is the head of the Danish National Police. He has a fixed term-employment for 6 years at a time and is appointed by the Minister of Justice. The Danish National Police sets the direction and produces overall strategies for the entire police service, in close collaboration with the police districts and coordinates police work on a national level and in relation with international collaborators. The Danish National Police does not carry out police operations on their own, but does support the operations of the police districts. The National Police is divided into five areas: Corporate Governance, Police, Corporate ICT and Corporate HR. These areas are staffed with administrative personnel, attorneys, police officers

32 The Minister of Justice appoints the commissioners of the police districts, after proposal from the National Commissioner and the Director of Public Prosecutions. The position of a police districts commissioner is a fixed-term employment, 6-year terms. The Minister of Justice can dismiss any district commissioner.
and many others in charge of, for example, budgets and accounts, IT, police equipment and vehicles, personnel and education and training, as well as press and information tasks. The National Police also include areas known as operative departments engaged in investigation into IT-crime, forensic technical investigations, road traffic tasks, and the surveillance of environments involving drugs, bikers, gangs and prostitution, as well as international cooperation with the police of other countries. The individual police districts can request assistance from the National Police for various investigations and special duties. The National Police draws up the general framework for the entire police service. The National Commissioner meets regularly with the 12 Commissioners who are the chief executive officers of the 12 police districts in the country. The forum is known as the Group Management, and the participants discuss important issues regarding the work and duties of the police, such as strategies and economy.

Figure 1: Organisational Structure of Danish Police

The Director of Prosecutions is the head of the Prosecution Service in Denmark, which also comprises the two regional prosecutors, one central public prosecutor and the 12 Commissioners of police in the local police districts. The 12 police districts, the National Police and the Prosecution Service employ approximately 550 Prosecutors.

33 Dealing with complex economic cases and war crimes.
Denmark is divided into 12 police districts. In addition, Greenland and the Faroe Islands constitute independent police districts. The structure of the 12 police districts in Denmark is practically identical. Each police district is headed by a Commissioner/Chief Constable, followed by the Deputy Commissioner, a Senior Chief Prosecutor and an Assistant Commissioner. Below the Assistant Commissioner, three line managers, known as Chief Superintendents, are in charge of tactical support, the local police and specialized investigation. The three lines have units at several police stations within the district. In all districts, there is a main police station that provides round-the-clock service and a number of local police stations that serve the citizens of the community during daytime. There are approximately 11,000 police officials in Denmark.

In addition to the staff in the police districts, there are central police departments associated with the Danish National Police. Their task is to assist the individual police districts, for example through the collection and analysis of data and preparation of investigation proposals concerning cases of organized, complex and resource-demanding crime. These include the NEC (National Investigation Centre) and PET (Police Intelligence Service). The PET has the task to monitor, prevent and stop criminal activities and other activities that endanger national security.

The PET is administratively subject to NCP – but not operationally. Concerning operational actions, the PET refers to the Ministry of Justice alone. On January 1st 2014, a new law came into force, which strengthens the supervision of the PET, through greater insight into “agent cases” for Parliamentary Control. Also a new independent, non-political committee is
established, tasked to oversee the PET handling of personal data. Recently, a department connected to the Danish National Police was established in order to assist the police districts in investigating cyber-crime. These departments also emit continuous threat assessments. In addition, the central departments have no separate executive authority. Therefore, specific cases will always be rooted in each police district.

The Danish Act on Police Activities (Politiloven) functions as a homogeneous legal text which applies to all areas of the police. Here, among other things, the purpose of the police is described in article 1 of the laws:

“The police must work to ensure security, safety, peace and order in society. The police must promote this purpose through preventive, helping and enforcing work.”

Furthermore, article 2 of the same law describes the tasks of the police. These can be summed up to two overall tasks: namely, to prevent crime, and to prevent disturbance of public peace and order.

4.5.2. Recruitment and Training of Police Officers

Every year, about 2,000 people apply to the police academy in Denmark, but the acceptance rate is approximately 10%. Additional efforts are put into recruiting students of different ethnic origins than Danish in order to reflect the new demographic composition of the country. The training of police officers takes place at the Police Academy in Copenhagen. The education lasts 3 years. It is an "open" merit-giving education at bachelor level. The Bachelor program lasts three years and consists of theoretical and practical modules, including regular stays in a police district on equal terms with the other police personnel. The program also includes training in cultural diversity, Denmark as a legal state, power and authority, ethics, human rights and psychology. The basic training is subsequently followed-up with different specialty courses. Teachers are lawyers and police officers who have completed the master's program in police science.

The education for police officers is divided into 5 modules – 3 modules at the Academy (modules 1, 3 and 5) and 2 practical modules, where the students are working with different police duties in a police district (modules 2 and 4). The police education has the following aims:

• Through theoretical and practical training achieve basic knowledge, skills and competencies to perform police duties under applicable law.

• To achieve the ability to analyse, evaluate and reflect on police profession issues and develop the professional field of activity

• To achieve the ability to enter into collaborations and have the necessary self-awareness and knowledge of own skills, behaviour, signals and responsibility in the performance of police duties.

• To develop the ability of continuous learning in order to maintain theoretical and practical education also after leaving the Police Academy.
4.5.3. Authorized Use of Force for ISF

Both lawyers and police officers have police authority as assigned by the Danish police. In practice, however, only police personnel can use force when necessary in contact with citizens, since only police officers are trained in how to do so. The personal equipment for all regular police officers in Denmark includes gun, truncheon, handcuffs and pepper spray. Any interference in citizens’ liberty, such as denial of individual freedom and peace, intervention in private property, psychical force and injunctions restricting the citizen must be based on law.

A distinction is made between a formal intervention, meaning the decision to intervene and the actual action - the use of force - involving the use of police force against citizens in an emergency or to complete the formal intervention. A distinction is also made between the authorized force means such as firearms, truncheon, dog, gas, pepper spray and physical force and the unauthorized means of force, where there are no detailed central regulations. Regarding the most serious resources such as firearms, dogs, truncheon and gas, procedures and conditions for use are directly regulated. The conditions for the use of other authorized means of power are by administrative regulation. In addition to these detailed conditions, the use of all interventions - including the unauthorized - need to fulfill the general requirements of necessity (The Danish Act on Police Activities article 3 and 16), and proportionality. Assessments according to these requirements will be stricter regarding the unauthorized means than the authorized ones. Thus, there are fairly strict conditions for the police to intervene and exercise power against citizens. Every time a police officer uses force a report must be made, and it is the prosecutors’ responsibility to make sure that the police officers use of force is in accordance with the law. The IPCA investigates every time a police officer discharges his or her weapon (even if there are no casualties).

4.6. Portugal

4.6.1. Structure and Coordination

Before turning over to security forces, it is worth making a very brief introduction about the internal security system (ISS). The most recent reform of the ISS was held in 2008, by means of Law n° 53/2008, and was intended to replace the one in force at the time, created in the late 1980s, in a different international and domestic context, within the framework of the Cold War and the actions of terrorist organizations of ideological inspiration.

The ISS has three bodies: Board of Homeland Security (an inter-ministerial consultation body), Security Coordination Office (advice and consultation on matters of internal security) and Secretary General of ISS (competences of coordination, management, control and operational command). With the 2008 reform, the latter saw its statute upgraded to secretary of state level. The Secretary General of ISS is appointed by the Prime Minister, after a joint proposal from the Mol and the Minister of Justice. Although it is at the head of the ISS, the General Secretariat of the ISS is not an internal security force.

Portugal has a dual police force system: one of military nature (GNR) and another of civil nature (PSP). The Judiciary Police, the Immigrants and Borders Service and Security Intelligence Services also perform functions of internal security.
Regarding police forces (GNR and PSP), they both depend on the Minister of Interior (except, for the GNR, in time of state of crisis or emergency, in which case it depends on the Ministry of Defence).

The head of the PSP is appointed by the Prime Minister and the Mol (through a joint order). The head of the GNR is appointed by the Prime Minister, the Mol and Minister of Defence (through a joint order), and after hearing of the Council of major chiefs of staff of the Armed Forces, the appointment will be a general officer of the Armed Forces.

Internal security forces are organized according to the principle of unity for the entire national territory. The law defines the regime governing the security forces and each such force shall have a sole organizational structure for the whole of Portuguese territory (Article 272, No. 4 of the Constitution).

In general, the attributes of both forces are identical, varying on the basis of the geographical area assigned to each of the forces.

Mostly, Gendarmerie and Police areas are mutually exclusive: PSP operates in urban areas and GNR in the rest of the territory. In areas where there competences are overlapping, the Mol approves regulations defining the competence of each force.

The Mol controls the budget of all ISFs, which is submitted to the Parliament and controlled by the Audits Court.

Local Police (Polícia Municipal) are not considered a security force. The Constitutional revision of 1997 gave this police a public security assignment. Nevertheless, Municipal Police forces shall cooperate in maintaining public order and protecting local communities. However, its fundamental nature is administrative. The Municipal Police are subordinate to the mayor.

The national police head is recruited by choice, from chief superintendents, or licensed individuals of recognized competence and experience, linked or not to the Public Administration (PSP organic law - No. 53/2007-, Article 52). The GNR head must be a lieutenant general (Article 23 of the GNR organic law - No. 63/2007).

There is no specific text defining the organization and statutory regime of both forces. These are defined by their respective organic laws. However, the Internal Security Act provides some common regulations concerning the functions of internal security forces, typical and special police measures and in which cases use of force is possible.

Since 2011, with the extinction of civil governors, the government does not have a representative at local level.

The most serious disciplinary violations are investigated by the General Inspection of Home Affairs (IGAI). This inspection has functions of audit, inspection and supervision of high-level, with technical and administrative autonomy, which works in direct dependence of the Minister of Home Affairs.

The IGAI, the Ombudsman and criminal control of the courts - especially Public Prosecution Service - complete the system of external oversight of the ISF.

Both the PSP and the GNR have their own academies, as defined by the respective organic laws. The Military Academy (GNR) for the GNR and the Instituto Superior de Ciências Policiais e Segurança Interna (ISCPSI) for the PSP is where officers are trained. These schools are integrated in the national public higher education system.
At a practical level, the Escola Prática de Polícia (EPP) has the task of designing and delivering training courses, providing improvement and update knowledge for agents and chiefs of police, and expertise to all employees of the PSP. The GNR has Escola da Guarda (EG), commanded by a major-general, which provides technical and professional training of military personnel of the GNR.

4.6.2. Budget

Oversight of internal security forces by the Mol is considered to be more effective when Mol has control over the budget of the forces and units. That is the case in the Portuguese system, where the budgeting is conducted by the Mol. The budget preparation for the internal security forces follows the public administration regulations.

Currently the Secretariat General (SG) of the Ministry of the Interior is the service responsible for ensuring the development of the ministry’s budget. This model of concentration in a single entity (the general secretariat) of the budgeting functions aims to ensure:

- shared management of human resources, finances and assets;
- centralisation of common tasks into a single entity, concerning the areas of human resources, financial and equity management;
- simplification of Budget and Budgetary Management through the reduction of organic fragmentation and reducing the number of accountable entities; and
- efficiency gains in the administrative areas, processes and procedures.

The state budget is structured by programs (a model first tested in 2011). This allows a better understanding of the resources allocated to different public policies. A budget program structure complements the traditional organic and functional classification of expenditure with a focus on the classification of policy objectives and results to be achieved.

Each budget program will have a single ministry which is in charge of its execution. There are no horizontal programs. It therefore strengthens the responsibility of ministries for results. In most cases, each ministry will be responsible for a single program, which is intended to allow greater flexibility in the implementation of the budget. The Mol manages the Internal Security Program (P007).

In turn, the programs are divided in measures (like M-011 - Security and Public Order - Security Forces) and these are materialized through activities and projects.

Each program has a Coordinating Entity. The Mol's coordinating entity is, as mentioned, the Secretary General of the Ministry.

During the preparation of the budget by the Government, ministry services (PSP and GNR) send the respective budget proposals to the Mol, that include permanent or temporary activities to be developed during its execution, any amendments to the organizational units, as well as the personnel map. These elements must accompany the respective proposal of the state budget.

In the preparation of their respective budgets, PSP and GNR must take into account the ceiling of the general revenue indicated by the Mol and the instructions of the General Direction of Budget (DGO) to be applied for drawing up the budget.
The PSP and GNR budget proposal must be approved superiorly at the Ministry of Interior (by the Minister or the competent Secretary of State, as happens with the current government), and thereby serve as a basis for the government's budget proposal to be presented to Parliament (after proper coordination with the Ministry of Finance).

This report is prepared by the respective financial directions, which depend on the National Director.

This budget proposal of the security forces may be revised after the adoption of the state budget bill.

During the elaboration of the budget, there is coordination between the Mol and the Ministry of Finance. This coordination is important also during the Budget discussion in the Parliament, following amendments to the Budgeted Proposal by Parliamentary parties. In this case, the collaboration extends to the Parliamentary group supporting the Government. The role of the Coordinating Entity mentioned above is also important in terms of monitoring the budget’s execution. Concerned services are required to report the respective levels of implementation every month.

The preparation of the budget by central Government departments and agencies is governed primarily by the Budgetary Framework Law (latest version, law No. 52/2011), the Law No. 66-B/2007, Decree Law No. 155/92 and Decree Law No. 183/96.

4.7. Germany

The police are separated from the intelligence services, which have no police powers, like intervention measures apart from the gathering of information. Conversely, the police are not allowed to perform intelligence operations. This borderline was established with the foundation of the republic and should preclude an upcoming of a system as in the national-socialist regime with the ‘Gestapo’ (secret state police). External security falls into the field of responsibility of the Ministry of Defence, including the German Army (Bundeswehr). A gendarmerie does not exist in Germany.

4.7.1. The Federation and the States

Germany is a federal republic consisting of 16 member states (the Länder) and the federation (Bund). According to this organization, there is one Federal Ministry of Interior, which supervises the federal police authorities. Furthermore, the Federal Ministry of Interior co-ordinates the border police cooperation of the European Union (mainly Frontex), the European and international cooperation of criminal police (mainly Europol), the European cooperation of national intelligence services and the European and international cooperation of emergency response (van Ooyen 2012: 18).

As part of Europeanization efforts of internal security, tasks and competences of the federal ISF have become significantly more important.

16 Ministries of Interior (Mol) supervise the state police authorities. Emergency response authorities and the local municipal surveillance (neither of which are police or ISF) also fall within their competences.

State police authorities and the Federal police are the most important ISFs. On the local
level, towns and municipalities also have some tasks of general risk prevention, but they are not police authorities. The latter are state institutions. The local police commissioners cannot be elected by citizens but are appointed by the Minister of Interior (Lange 1999: 272).

4.7.2. Budgetary control of MOL

4.7.2.1. Budgetary Organization

The budget of federal police authorities falls within the competence of the Federal Ministry of Interior. The Ministries of Interior of the states are competent for the budget of state police authorities. In case of transnational deployment of the state police, the Federal Ministry of Interior has to consent.

The state police's annual budget amounts to 1/1.5 billion euro/year/state. This corresponds to a share of 70 percent of the total expenditures of each Ministry of Interior. 80-85 % of the total costs of police are personnel costs.

4.7.2.2. Budgetary Procedure

The budgetary department of the MOL determines the needs of the local police authorities (increased and reduced requirements for new or lost duties/tasks). Many states support this procedure by making use of a supporting authority (regulatory authorities, e.g. district governments, state police headquarters). The regulatory authorities have the competence to control the budgetary needs of the local police authorities. Savings on material resources can be used to finance expenditures. Requirements resulting from new regulations are also taken into consideration.

The procedure for establishing the Administrative Board is a multistage system. The Administrative Board for each following year is already established at the beginning of the current year. Furthermore the medium-term fiscal planning comprises three more years. The state parliament negotiates the approval of state resources. The legal frameworks are the state constitutions (e.g. § 81 state constitution of North Rhine-Westphalia).

The Ministry of Interior negotiates with the Ministry of Finance regarding the notified demands. After finishing negotiations, the state parliament decides the Financial Law (annual regulation of the Administrative Board) and the Administrative Board.

The Administrative Board is published by the state parliaments. The revenues and expenditures of police are defined in standardized budget chapters, especially budget chapter 03.110.

4.7.3. Heads of ISF

The Minister of Interior is the senior employer of all police officers of the states.

The Federal Minister of Interior holds the same responsibility for all federal police officers. The Federal Inspector of the riot police (riot police of the states) and the inspectors of the state polices are the highest ranking officers, comparable to a police commissioner.

The local police commissioner has a special significance. The states Saarland, Baden-Württemberg, Saxony, Lower Saxony and the state of Hessen have established

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34 Oberster Dienstvorgesetzter, Dienstherr
“Landespolizeipräsidien”, which are the main police authorities of the state. A police officer is the head. Other states control the executive working of police by installing a political head, e.g. North Rhine-Westphalia. In general, the domain of this political official\textsuperscript{35} has shifted towards external relations. He represents the police authorities to the local, political and municipal administrative system and also to the local public (citizens, media, NGOs). Furthermore, he promotes police interests to judicial institutions and to state supervisory authorities (regional departments\textsuperscript{36} and the Mol). This is the concept of civil management of police authorities. The police commissioner should correct the police-executive action in a political manner (Lange 1999: 272). The Minister of Interior appoints the police commissioners and can also retire them at any time (Lange 1999: 271).

4.7.4. Policy Formulation/Daily Work Orientation

The federation (Bund) is competent for border security (Art. 73 Nr 5 GG, \textit{the German constitution}). Competences of the federal police authorities are expanding constantly. There is an extension to general security and criminal police tasks.

The federal criminal police office is allowed to support the state police forces. Constitutional rules are the result of Art. 20 GG, which determines the federal organization of law enforcement. Overall, a rapid change of internal security has been taking place. Since September 11\textsuperscript{th}, federal and state police intervention powers have been expanded and competences of the federal ISF increased. The aims are improved data-collection and information sharing. At the local level, police act in a community oriented manner. Local police forces are responsible for averting danger (maintaining public order and security, the recording and processing of traffic accidents, requests for assistance by the citizens), criminal prosecution and regulatory offences. In order to reach this objective, police operate in partnership with many other local organizations (municipalities, youth welfare organizations, drug prevention service, schools).

4.8. Italy

4.8.1. The Italian ISF System

The territorial organization of Italian Internal Security Forces could be inserted into the frame of the so-called ‘continental Europe model’ of policing, based on the prominence of central police corps and a strict dependence to the Ministry of Interior for political inputs and administrative management. In particular, Italy has two main national corps for the implementation of general police duties: a civil force, called State Police (\textit{Polizia di Stato}) and a military one, called Carabiniers (\textit{Arma dei Carabinieri}). The Italian policing model maintains strong peculiarities, which keeps distinguishing the country from other national systems.

The distribution of competences between the two main national police forces (State Police and Carabiniers) is far less clear than in other countries. Both are generally responsible for providing police duties in Italy, and in particular investigations, public order enforcement and public security day-by-day activities. The main difference can be found in their distribution on the territory: the State Police is more concentrated in urban areas (except for

\textsuperscript{35}Politischer Beamter/ political servant

\textsuperscript{36}Bezirksregierungen, Oberbehörden
the Road Police on Italian highways) while Carabineers have a better distribution in the rural and peripheral areas. But this distribution is not mutually exclusive, so that Carabineers also maintain their presence in the biggest urban and suburban centres (with a smaller number of officers than the State Police).

Also, there are three other national police forces in Italy, with strong competencies in some important sectors of law enforcement.

The ‘Guardia di Finanza’ corps is a peculiarity of the Italian policing model: this military police force is positioned under the authority of the Minister of Economy and Finance, as their priority mission is preventing, investigating and reporting financial crimes, as well as taking care of the surveillance of the sea for financial police purposes.

The National Corps of Forest Rangers (‘Corpo Forestale dello Stato’) is a national police force under the jurisdiction of the Ministry of Agriculture, Food and Forestry. It is specialized in environmental protection and is responsible for law enforcement in Italian national parks and forests.

The Penitentiary Police is a civilian force specialized in managing surveillance services in the Italian prison system and handling the transportation of inmates. It falls under the jurisdiction of the Penitentiary Administration, within the Ministry of Justice.

When engaged in the tasks of law enforcement and public security, all the officers and officials of the five national police forces play the role of officers / officials of public security. Therefore, they are subject to the rules contained in the Consolidated Law on Public Safety (Decree no. 773/1931) and other state laws that contribute to regulate security issues.

The role of local police forces (municipal and provincial) is much more relevant than in other countries, due to their strong (and growing) consistency in terms of economical and human resources. Local police have become a realistic partner of the national corps, so that their Commanders (with the mayors of the biggest towns) are frequently invited to participate in the main local boards of ISFs (the Provincial Committees for the Public Order and Security and their technical boards), for a better coordination and distribution of duties in the law enforcement at local level.

4.8.2. Appointment of Heads, Geographical Distribution and Setting of Operational Strategies within the ISF

In Italy, there are two legal texts that apply to all ISFs and establish the fundamental principles of public security and coordination of police forces: the Consolidated Law (‘Testo Unico’) of public security (Decree no. 773/1931) and the Law no. 121/1981. The latter established the State Police and rearranged the responsibilities in the field of Internal Security.

Art. no. 1 of the Law 121/1981 gives the Ministry of Interior the role of national authority for public security: the Mol has the overall direction of the services of public order and security and coordinates tasks and activities of the national police forces. The Ministry of Interior is comprised of five Departments. The Department of Public Safety is in charge of all activities related to the management of order and public safety, the technical and operational coordination of police forces, the administration of the State Police, and the direction of technical supports.
Since 2010, the Ministry of Interior has the functional direction of the Carabineers Corps, concerning the tasks of public order and security. The Public Security Department also deals with the use of financial resources allocated to the Carabineers Corps to strengthen police services and to arrange the accommodation in barracks of the Carabineers units engaged in internal security tasks. Carabineers still depend on the Ministry of Defence as far as staff administration and logistic activities are concerned, because of their military status.

At the head of the Department of Public Security is a prefect who embodies two roles, including that of General Director of Public Security and Chief of the State Police. The position of Chief of Police is formally conferred by Decree of the President of the Republic after a decision of the Council of Ministers after consultation with the Minister of Interior. In fact, the appointment is the result of negotiations between the different political forces that support the government; the Minister of Interior nominates a name, but the final outcome arises from a collective decision of the Council of Ministers.

The directives and general strategies regarding public order and security are processed by the Ministry of Interior, which is advised by a permanent body called ‘National Committee for Public Order and Security’. It is chaired by the Minister of Interior and comprises the Minister, a Secretary of his choice and the 5 chiefs of the 5 national police forces.

The Government is locally represented by the Prefect, who chairs the Prefecture (‘Prefettura – Ufficio Territoriale del Governo’), in every Italian province. With regard to the subject of this report, the Prefect is the provincial public security authority, and has a general responsibility for the coordination and direction of the activities of police forces within the province. In carrying out his/her functions, the Prefect is supported by an advisory body, the Provincial Committee for Public Order and Security. The Provincial Committee is chaired in its regular meetings by the Prefect, and the law prescribes the mandatory participation of the Questore (Chief of State Police at the provincial level), the provincial heads of Carabineers Corps, Guardia di Finanza Corps and National Corps of Forest Rangers, the President of the Province, the mayor of the province capital and the mayors of municipalities likely to be concerned by the topics on the agenda.

The police and local authorities’ strategies in matters of public security are defined within the Provincial Committees for Public Order and Security. In fact, this consultation board is designed to mediate the needs of national actors (that often prevail, given the composition of the Committee) with those of local authorities and the respective police forces. Inputs and strategies developed within the Committee are then put into effect within technical meetings set up in every province at the State Police headquarters and chaired by the Questore. These technical meetings follow each Provincial Committee and involve the heads of the provincial levels of national and local police forces.

4.8.3. Police and Carabineers: Structure, Budget Preparation Procedure and Oversight Functions of the Ministry of Interior

The territorial distribution of the State Police is structured on the presence of a Questura in each of the 103 Italian provincial capitals: the Questura is responsible for the Polizia di Stato activities carried out at a provincial level. The Questore is the provincial head office; his
appointment is decided by the Minister of the Interior. Again, there are complex judgments on political and operative profiles behind every choice of appointment or transfer of local police heads, especially for the appointments in the most sensitive / important cities of the country. Below the provincial level, in the most important towns of any province and in the neighbourhoods of the biggest Italian cities, there are police stations named 'Commissariati'. They are under the general authority of the competent Questura.

Regarding the Carabiniers Corps, the General Commander is appointed among the Carabiniers Generals by Decree of the President of the Republic after a decision of the Council of Ministers, based on a proposal of the Minister of Defence, after consulting the Chief of Army Staff. For military duties of Carabiniers, the General Commander depends directly on the Chief of the Army Staff and participates as a full member of the Superior Council of the Army. For the tasks related to public order and security, he depends functionally on the Minister of Interior and participates in the National Committee of Public Order and Security and the General Council for the Fight against Organized Crime. The General Commander proposes the posting of the Carabiniers Generals and other officials to the Chief of Army Staff. The territorial distribution of the Carabiniers Corps is widespread on the Italian territory. It is structured in Interregional Commands, Legion Commands, Provincial Commands, Companies and Carabiniers Stations.

With regard to the preparation of budget and accounting of expenditure, every police force responds to the competent Ministry, in reason of its legal and organizational status. Therefore, for the State Police, the Ministry of Interior establishes the budget and controls its accounting. For the Carabiniers Corps, the competence is binary: concerning the general remuneration of the Corps members, the competent administration is the Ministry of Defence, while the Ministry of Interior has in the Mission ‘Public Order and Safety’ in its budget with two specific chapters for functional involvement of the Carabiniers Corps in public order and security and for planning and coordination of the national police forces. Also, the strengthening of the anti-drug police and the possible extraordinary enhancement of police officers provided in special laws are funded through specific chapters in the budget of the Ministry of Interior, although it may concern police forces other than the State Police. These exceptions are due to the functional subordination of all ISFs to the Ministry of the Interior, as far as operations and coordination of policing in the matters of public order and security are concerned.

Within the respective Ministries, the relevant Departments prepare annually a document of budget forecast for the financial year following the year in progress, and a 3-year document for the next financial period. These documents identify internally all the different operational missions of the Ministries and every budget chapter provided within. The documents of budget forecast of the Ministry of Interior contain, in particular, the Mission ‘Public Order and Security’ (for the fight against crime, law enforcement and public security), which includes the expenditure chapters for the State Police, as well as special sections devoted to the Carabiniers’ involvement in the public order, security services and to the coordination of ISFs.

These documents of budget forecast have to be approved by the National Committee for
Public Order and Security. Then they are incorporated, as attachments, into the Budget Law presented annually by the Government, which must be approved by 31 December of the previous financial year. When the Budget Law is approved by the Parliament, every attachment that comprises the law enters into force. After this procedure, the transfers of resources to each Ministry and the outlay for the different missions, including the management of the ISF from the Department of Public Security of the Ministry of Interior are authorized.

As mentioned earlier, the Ministry of Interior is composed of 5 Departments, because of the different duties of the Ministry; in particular, the Department of Public Security is responsible for all activities related to the management of law enforcement, the technical and operational coordination of national police forces and the management and administration of the State Police. The Department of Public Security is also the administrative centre of responsibility identified by law for the preparation of the budget and the accounting management of the funds allocated to the State Police and the coordination of ISFs.

The Department of Public Security consists of a Secretariat, 13 Central Directorates and 4 Offices. Among the 13 Directorates, the Central Directorate for Accounting Services is in charge of the financial planning of public security administrations. This task is carried out through the preparation of the annual and 3-year budget plan, and the collection of additional resources in relation to emerging needs during the financial year.

Within this Central Directorate, the Budget and Planning Service deals with:

- the monitoring and analysis of management of financial resources;
- the analysis of the impact of economic policy objectives set out in the Planning Document of the Government;
- the coordination and evaluation of the yearly multi-annual estimate of expenditure for the preparation of the budget and financial adjustment laws;
- the support for the arrangement of budget estimates for every budget spending centre and cost centre of the Department of Public Security;
- the preparation of guidelines on the accounting activities of the peripheral offices of the State Police.

Monitoring is mainly carried out by the Office of Economic and Financial Analysis of the Central Directorate, with the use of computer tools. This Office verifies the correct and complete utilization of available funds, both on accrual basis and cash basis, taking into account the priorities of the administration. It also monitors the financial and economic management of all the resources allocated to the Department of Public Security, with the goal of obtaining efficient and rational expenditure. In addition to this activity, the Office directly manages some funds, such as those related to catering, cleaning, heating and lighting of the premises, the office expenses etc. The Office of Economic and Financial Analysis is also responsible for the use of resources allocated by special laws for upgrading the ordinary public security or strengthening anti-drug services, including those performed by other police forces.
For the Ministry of Defence, the responsibilities for the annual budget preparation and the monitoring of expenditure belong to the Area 'Tecnico-Operativa, Direzione Generale di Commissariato e Servizi Generali’. In particular, the tasks are assigned to the 5th Division of the Directorate, called ‘Budget and liquidations’.

4.8.4. Training and Recruitment

Every police force has its own system of training, with Offices in charge of organizing and supporting schools for training and professional development of police officers and officials. The only exception to this separation is the Italian Inter-agency College of Advanced Studies for Law Enforcement Officials. Located in Rome, this College is the only example of an inter-agency school of police in Europe, with the purpose of promoting the diffusion of a shared security system between the five national police forces.

For the State Police, it is the Central Directorate for Institutes of Education (within the Department of Public Security of the Ministry of Interior) that deals with this function.

The recruitment in the State Police is done through an open competition that differs depending on the school qualification of candidates and the initial position of recruits. In particular, the three initial roles are: Commissioners (a college degree is required to participate in these competitions), Inspectors (the high school diploma is required) and police officers (whose role can be accessed through competition or recruitment following the military service).

The training courses are divided into courses for the initial training and training courses for specific functions. The first ones are related to the basic preparation for the initial position in the Corps, while the latter are training courses for learning or in-depth analysis of specific police activities. The Superior Police Academy in Rome is responsible for the training of the Commissioners and officials of the State Police. The School offers university-level and postgraduate courses, in collaboration with professors of some Italian universities (the three main universities of Rome and the University of Catania), seminars and workshops on internal security issues. The School for Inspectors is located in Nettuno, near Rome; it provides specific courses for public order enforcement (for the Mobile Unit of the State Police, formerly known as ‘Celere’) and for canine patrols. The eight schools for police officers are located in different Italian regions for a better territorial coverage.

The Carabiniers Corps provides the necessary training facilities for individual and collective preparation ranging from basic military training to more specialized career training. The training schools are required to prepare participants to carry out their military and public order duties, thereby maintaining the high standards of the Corps. To achieve the above objective, the Carabiniers Training School Command controls and coordinates the training organization, which consists of the following institutions:

- The Military Academy, located in Modena, is the most ancient military training academy in the world. The Academy provides university-level courses for all the military forces, including Carabiniers;

- The Carabiniers Officers’ College, which headquarters are based in Rome, carries out many
training activities including the 3-years academic course, after which a Degree in Law is attained;

- The Warrant Officer and Brigadier Training School, based in Florence;
- The Carabiniers Cadets Training Schools that provides the basic military technical-professional training for young recruits who join the Corps.

Both State Police and Carabiniers provide a participation in different courses of trainers belonging to the two police forces and of external teachers (especially professors in law). They have also agreements with several Italian universities (in particular, the University of Rome Tor Vergata) to provide facilitated academic paths for officers / officials of the police forces aimed to obtain a degree in Security Sciences.

4.9. Turkey

There is a direct link between the administrative organization of the Republic of Turkey and institutional structures, remits and authorities of police and gendarmerie, which are general internal security units.

4.9.1. Definition of Duty and Authority and Subordination to Ministry of Interior

In the Republic of Turkey, the Mol is the prime responsible authority for internal security. Duty, responsibility and authority of the Mol are stipulated in the first two articles of Law 3152 on the Establishment and Duties of the Ministry of Interior. In the 1st Article entitled “aim” of the Law 3152, internal security duties are to provide internal security and safety in the country, to protect public order and public decency, to prevent and investigate smuggling.

The mission of providing internal security and protecting public order assigned to Mol by the Law is performed through affiliated institutions of Mol. Affiliated institutions are listed as follows in the 29th Article of the Law 3152;

a. General Directorate of Security (National Police),
b. General Command of Gendarmerie,
c. Coast Guard Command,
d. Undersecretariat for Public Order and Security,
e. General Directorate of Migration Management.

The mentioned Law does not provide any definition of the nature of an affiliated institution and does not specify the legal characteristic of hierarchical relations between internal security units and the Mol.

The general framework of the legal relation between affiliated internal security units and the Mol can be understood in organizational laws of each internal security units. There is no single legal provision which regulates subordination of all internal security forces to the Mol. Subordination of internal security units to the Mol, and their duties and authorities are described differently in the organizational law of each internal security force. This is a source of inconsistency.
The Gendarmerie and Coast Guard have a military status; therefore, they are placed in the organogram of the Turkish Armed Forces. It is asserted in the abovementioned laws that the General Command of Gendarmerie and Coast Guard Command are part of the Turkish Armed Forces. These two institutions are subordinated to the Mol with regard to the performance of internal security activities while they are subordinated directly to the General Staff (not to Ministry of National Defence) with regard to military missions.

In Turkish Law, there is no constitutional reference related to the mission of internal security forces to protect fundamental rights and freedoms. However, in the first paragraph of the 1st Article of the Law 3152, the duty to protect the rights and freedoms outlined in the Constitution has also been listed after the definition of main duties of the Mol related to internal security. As a consequence, all internal security units are also under the obligation to protect the rights and freedoms outlined in the Constitution.

In accordance with the 10th Article of the Law 2803 on Organization, Duties and Competences of the Gendarmerie, the duty and responsibility areas of the Gendarmerie, in general, are outside of the geographical areas of the National Police. The Gendarmerie operates outside of the municipal boundaries of cities and provincial towns or in places where a police department does not exist. The Gendarmerie is, in general, responsible for security of rural places such as villages and small towns.

As mentioned above, the basic law regarding these issues is Law 2803 on Organization, Duties and Competences of the Gendarmerie. In addition to Law 2803, approximately 500 laws and administrative regulations describe the responsibilities and duties of the General Command of Gendarmerie. This situation left the General Command of Gendarmerie in a semi-military status between the General Staff and the Mol and an area of duty and responsibility that requires clarification.

4.9.2. Organizational Structure of Internal Security Forces

In Turkey, which is a unitary state and has central administrative organization, the police organization is part of this central structuring. According to the 16th Article of Law 3201 on the Police Organization, internal security structuring of the National Police organization consists of two main parts: central and provincial organization. In the central organization, there exists the General Directorate of Police affiliated to the Mol. In the provincial organization, there are entities subordinated directly to the central organization and there are also departments (provincial police departments) directly subordinated to local representatives of the central authorities (governors and sub-governors). In the central organization, there is a committee of inspection and operational units which have been formed in accordance with specialties (such as smuggling, terror, intelligence). Education, criminal and laboratory units in the provinces are subordinated directly to the general directorate of the National Police.

The overall framework is different with regard to the organizational structure of the Gendarmerie. There is no regulation related to the organizational structure of the Gendarmerie in Law 2803 on Organization, Duties and Competences of the Gendarmerie. However, in the 5th Article of the Law 2803 entitled “deployment and organization”, it is stipulated that the organization of the General Command of Gendarmerie shall be specified in its own law and
that personnel cadre must be in compliance with the characteristics of the mission and principles of the Turkish Armed Forces. It is regulated that organization, personnel cadre and deployment places of the General Command of Gendarmerie shall be specified by the Mol after receiving the opinion of the General Staff. Law 2803 contains various articles providing the legal foundation for many related subjects including the organisation of the Gendarmerie.

In the Regulation on Organization, Duties and Competences of the Gendarmerie issued for determining its legal foundation, many subjects, including organisation of the Gendarmerie, have been included. In the 7th Article of the Regulation, the deployment of internal security units of the Gendarmerie across the country is stated. Accordingly, it is specified that City Regiment Commands in each city centre and District Company Commands in each district shall be established as an internal security unit.

In the Turkish Law, there are also some organizations which do not exist in European countries. There are voluntary village guards (gönüllü köy koruculuğu) and temporal village guards (geçici köy koruculuğu) established by the 68th and 74th Articles of the Village Law. By the modification made in the Village Law in 1985 because of the tensions that occurred in the Eastern and South Eastern regions of Turkey, armed units consisting of approximately 50,000 guards were created. They officially carry a gun, wear uniform specified by the Mol, receive a salary from the state and exercise powers related to internal security forces including the use of weapons in some cases.

Agreeing to become a village guard is a largely a voluntary process. Civilian residents of villages apply to the Office of the governor. They are assigned in order to protect the village in which they live. Resident of villages in rural places are not educated as Professional units. They are assigned by the Minister of Interior upon the proposal of the governor. They are subordinated to the nearest gendarmerie unit. There is no clear, transparent reporting line. There are no institutional inspection mechanisms for village guards and this armed force has no institutional structure or hierarchical organization.

4.9.3. The Statute of Internal Security Personnel

In the 35th Article entitled as “appointment” of Law 3152 on the Establishment and Duties of the Ministry of Interior, the general appointment authority of the Minister of Interior over internal security personnel has been outlined. However, provisions in the organizational laws of affiliated institutions of the Mol exempt forces from the general rule related to the appointment of staff. The statute regime of internal security personnel (appointment, depos- al, discipline, personnel rights) has been regulated differently in each internal security force. According to the 4th Article of the Law on the Police Organization, police forces are divided into two main categories: the “civilian” personnel and “security service class” staff, including “armed and uniformed” personnel. Policing activity is directly carried out by security service class staff. Civilian personnel stay out of the scope of the security services class and provide assisted services in the performance of the internal security mission. This involves a variety of academic, administrative, cleaning, and technical staff of the National Police organization. Position title, rank and degree of the armed and uniformed personnel are specified in detail in the 13th Article of the Law on the Police Organization. Accordingly, there exists a rank
system ranging from police officer on the lowest level to first class police commissioner on the top level. The Director General of Security is appointed by proposal of the Minister of Interior and approval of the Prime Minister and the President of Republic. He/she may be unseated by the same procedure. Provincial Police Commissioners are also appointed and may be revoked by the same procedure.

There are some differences between the Gendarmerie and Coast Guard Command with regards to the statute regime of personnel. In the 23rd Article of the Law on Organization, Duties and Competences of the Gendarmerie, it is specified that personnel of the General Command of Gendarmerie consist of officers, non-commissioned officers, specialist or expert gendarmerie, military students, enlisted specialists, privates as well as civilian personnel. Activities of the Gendarmerie shall be performed by soldiers as unranked staff, and specialist gendarmerie, commissioned and non-commissioned officers as lower ranked staff. Civilian officers and workers provide assisted service. This regime related to statute of personnel is also valid for personnel of the Coast Guard Command.

The official headcount of the Gendarmerie currently stands at nearly 300,000. In accordance with the 72nd Article of the Constitution, soldiers that constitute the overwhelming majority of this number (i.e. % 80), are performing their compulsory military service (i.e. conscripts). These are personnel providing security, public order in rural and some urban areas. Commissioned and non-commissioned officers of Gendarmerie have military ranks which are also used for the personnel of the Turkish Armed Forces.

According to the Law 2803, the appointment of personnel in ranks lower than General, such as third lieutenants, colonels, as well as non-commissioned officers and specialist gendarmes are made by the commander of the Gendarmerie General Command. Generals of the General Command of Gendarmerie are appointed upon the recommendation of the General Commander of the Gendarmerie, the Chief of Staff, MoI, and a resulting joint decree which is signed by the Prime Minister and confirmed by the President of Republic. The appointment of the General Commander of the Gendarmerie is made after a proposal by the Chief of Staff, upon the suggestion of the MoI. This results in a joint decree signed by the Prime Minister and confirmed by the President. However, the authority for appointment, secondment and removal of provincial commanders and gendarmerie personnel for ranks lower than General, which used to be the responsibility of General Commander of the Gendarmerie, is now wholly entrusted to the Minister of Interior by a legal modification proposed in the last internal security bill. The authority to dismiss Gendarmerie personnel because of crimes committed in the context of a non-military mission has also been entrusted to the Minister of Interior.

4.9.4. Personal Records of the Internal Security Staff

Activities of internal security staff are evaluated by their organization and these evaluations are taken into consideration for the advancement and promotion of staff. The fact that promotion of the staff is made in accordance with their seniority and merit has been specified in Law 3201 on Police Organization (Law 3201, Art. 55). In the same regulation, it is also emphasized that the main aim of the performance evaluation system is to measure the success of
staff with regards to the fulfilment of the strategic plan, objectives and duties undertaken by the National Police Department and to maximize the efficiency of the Department. As explained above, those provisions of the Turkish Armed Forces Personnel, (Law No. 926) is also applied to the Gendarmerie personnel. In the Law on Organization, Duties and Competences of the Gendarmerie, it is specified that personal evaluation of provincial commanders of the Gendarmerie shall be issued by local governors (their military work excepted).

4.9.5. Education of Internal Security Personnel

The General Command of Gendarmerie exercises its duties through its officers, non-commissioned officers, specialist gendarmes, as well as privates educated and trained at the gendarmerie schools and in training units. The training needs of senior officers of the Gendarmerie is met through educational institutions of the Turkish Armed Forces, which give an associate degree (the College of Non-commissioned Officers), undergraduate degree (the Land Force Academy) and a post-graduate degree (the War Colleges).

The non-commissioned and specialist gendarmes are educated in the Gendarmerie schools. In accordance with the other branches of the Turkish Armed Forces, the General Command of Gendarmerie also employs non-professional soldiers who are performing their compulsory military service (i.e. conscripts). In the National Police Directorate, police officers take office after education and training given in the Police Vocational College and Police Vocational Training Centres. Personnel of the National Police Directorate who have the rank of deputy police chief and over are appointed 4 years after their undergraduate degree taken in the Police Academy. A substantial proportion of lectures related to human rights, constitutional law, international law, criminal law, administrative law and basic principles of law are contained in the academic curriculums of the military academies, colleges of non-commissioned officers, the Police Academy and police vocational colleges.

4.9.6. Budgetary Control of Internal Security Forces

The Budgets of the Gendarmerie and Coast Guard Command are allocated independently, but within the framework of the Mol. Therefore, budgets of the General Command of Gendarmerie and Coast Guard Command are not under the general budget of the Mol. Budgets of all internal security forces in conjunction with the budget of the Mol are listed separately in the Additional Chart No 1 of Law 5018 on Public Financial Management and Control. Even though the budget of the General Command of Gendarmerie is in the scope of the Mol, it remains described as an independent “function” as the gendarmerie law. Therefore in the state budget structure, it is allocated independently of the general budget of the Mol.

A budgetary proposal of the General Command of Gendarmerie is prepared by the General Command under the coordination of the Department of Control in cooperation with the Financial and Budget Department of the Mol. As is seen, the power vested in the Mol and relevant civilian authorities is only one of coordination and the main authority for the preparation of the budget is granted to the military authorities.

In accordance with Law 5018 on Public Financial Management and Control, the Minister of Interior is responsible for the preparation and implementation of the budgets of the
National Police Department, General Command of Gendarmerie and Coast Guard Command, which are institutions affiliated to the Mol in compliance with law (Law 5018, Art. 10). In the 11th Article of this Law, it is stated that top managers are responsible for the preparation and implementation of the budgets of public administrations, which are under control of the Minister of Interior. In the Regulation, the responsibility of the Minister of Interior is in the superior position with regards to budgetary spending of internal security units. However, provisions of the mentioned regulation explicitly diverge from principles set forth in Law 5018. Contrary to the latter law, the Minister of Interior is obliged to delegate his/her responsibility in the beginning of the each financial year and thus the actual authority of spending of the budget shall be incumbent on military personnel (Regulation, Art. 192).

The general procedure applied in the preparation of the budget of internal security units is as follows: the budget proposal of each internal security unit takes its final form after the evaluation of the Ministry of Finances and is submitted to the Parliament by the Government. During the Parliamentary deliberation of budget proposals of the internal security units, a budget presentation and explanation are made by the Mol. Budgets of the internal security units take their final shape after discussion and modification made in the Planning and Budget Commission of the Parliament. It becomes law after approval of the General Assembly of the Parliament.

In accordance with the 24th Article of Law 5018 on Public Financial Management and Control Law, a Covert Fund (Örtülü Ödenek) exists under the budget of the Prime Ministry to be used in matters such as secret intelligence, defence services and national security of the state. Usage of the covert funds is outside of the knowledge and audit of the Parliament. The Parliament is not informed regarding spending items within the scope of this covert fund. This fact is a limitation on parliamentary oversight of spending on the internal security forces.

According to the 27th Article of Law 5018, expenditure made by the General Command of Gendarmerie, Coast Guard Command and National Police Department that are related to purchases such as ammunition, machinery or equipment are not limited to the funds allocated by the Parliament for one year. By approval of the top manager, commitments carried over to the next year and not limited to one fiscal year may be undertaken by internal security units provided that, for each task, it does not exceed fifty percent of the appropriation provided in the budget.

4.10. Comparative Overview

The Ministry of Interior is the ministry that is primarily responsible for providing internal security and safety and protecting public order. This responsibility is stated by the articles 1 and 2 of the Law on the Establishment and Duties of the Ministry of Interior of Turkey numbered 3152.

There are some convergences in the general organization of the Ministries of Interior in France and Turkey because these two countries have centralized political systems and also centralized internal security forces. However, major differences can be found as well: in France, the control over the gendarmerie is now fully under the jurisdiction of the Mol, and the roles and structures of central inspection directorates differ. The Gendarmerie is a part of
Turkish Armed Forces, subordinated to the General Staff in matters of military training and education, and to the Ministry of Interior in matters related to the performance of safety and public order duties. However, the General Commander of Gendarmerie is responsible to the Ministry of Interior.37

As it can be seen in Table 4, in Spain and France the Ministry of Interior is endowed with all powers and competencies related to the implementation of the government’s policy on internal, public security. In Spain, the Minister of Interior is the top head of internal security administration while in France there are still two GD heads, but under the Minister of Interior. In Spain, the State Secretary for Security, who is the director general of the national police corps, and the Guardia Civil is the other second level civilian authority responsible for public security.

The integration of the Directorate General of Security/Police (Emniyet) and the General Command of Gendarmerie (Jandarma) into the organizational structure of the Ministry of Interior in Turkey differs from Spain. While in Spain the structures of both the Police and the Guardia Civil are clearly and fully integrated into the organizational structure of the Ministry of Interior, in Turkey both the Directorate General for Security (Emniyet-Police) and the General Commandership of Gendarmerie are described in Article 29 of Law no 3152 on the organization of the Ministry of Interior as “affiliated” institutions. The law does not provide a definition of the nature and characteristics of “affiliation”. This is a gap between these countries and Turkey.

The affiliation of Gendarmerie, Police and Coast Guard to the Mol is referred to differently in each and every organisational law relative to those forces. In addition there is no precisely defined notion of affiliation as regards to the relationship of the affiliated institution with the Mol.

The National Police Head is appointed upon the proposal of the Mol and the approval of the Prime Minister and the President. The National Gendarmerie head is appointed upon the proposal of the Commander Chief of Staff, the signature of the Mol and the approval of the Prime Minister and the President.

Pre-1977 in Turkey, the general cadre of the General of the Gendarmerie General Command could only be filled by Generals from the Land Forces (Turkish Armed Forces Personnel Law (926 Art.49). However, following rulings by the Constitutional Court in 1977 and in 1979, this provision was found to be unconstitutional and the Court recommended that this provision should be amended (13.12.1977. E.1977/41 & K.1977/133). Following the court rulings, Article 49 of the Turkish Armed Forces Personnel Law was duly amended by the Parliament upon the proposal of the Government to uphold the court’s decision. Therefore Generals from the Gendarmerie were legally allowed to fill the top cadres within the Gendarmerie. However, this issue was once again revisited by the Government in 1981 and, despite the previous constitutional court rulings, the same article was once again amended to revert back to the situation of only Generals from the Land Forces being able to fill the top cadre (“Orgeneral” in Turkish) of the Gendarmerie General Command. This current legal contradiction is an obstacle which prevents Gendarmerie Generals from being in the Gendarmerie General Command.

37(The Law no 2803 of Organization, Duties and Authorities of the Gendarmerie Art. 4).
According to the Public Financial Management and Control law (5018) these internal security units have separate budgets from the MoI.

In sum, in Turkey, key appointments to the central directorates of internal security (including provincial directors of police) need the approval of more than one political authority (Minister of Interior, Prime Minister, President of the Republic) as it is the case in the selected EU countries. However, in the case of the head of the Jandarma, it is noted that the Chief of the General Staff is still in charge of such appointments (suggesting authority). Moreover, and contrary to the situation in France (and even of a pre-existing situation when police and gendarmerie were more strictly separated and not integrated into the MoI), the Head of the Army (the Chief of the General Staff) and not the Minister of Defence has the responsibility for such appointments. In Spain, the appointment of the Director of the Guardia Civil requires an agreement between the Ministers of Interior and Defence. All very high positions require a formal decision by the Council of Ministers. All other appointments depend exclusively on the will of the Ministry of Interior. This is an important gap between the selected EU countries with a centralized dual policing system and Turkey.

In Spain, the General Directors of the Police and Guardia Civil are the “spending” authority within the MoI. But for certain types of expenditure (for instance, investments in infrastructure or equipment of a large volume in monetary terms) even if the item is present in the Police section or Guardia Civil section of the budget, the final decision has to be made by the State Secretary or even by the Minister. In France, the budget for both the Police and the Gendarmerie is now fully in the hands of the MoI. The Ministry also decides on expenditure that is specific to the Gendarmerie such as the purchase of armoured vehicles used for public order maintenance.

Some selected EU countries have a dual policing system (police and gendarmerie) as is in Turkey. Some have not: UK, Denmark and Germany. One, single and similar system in organization of ISFs has been adopted in Denmark.

The main gaps with regards to oversight function of the MoI concern oversight of the Gendarmerie. As is seen in the table, Turkey is the only country having limitations on the civilian oversight of the budget of ISFs. Contrary to the EU states, heads of the Gendarmerie and Coast Guard are military commanders in Turkey. There is a lack of homogeneous and common legal text applicable to all ISFs in Turkey. The recent modifications with regard to civilian oversight in the appointment and dismissal of national and provincial heads of gendarmerie have filled some gaps.

In the selected EU countries with a dual policing system, all internal security forces carry out their duties under common principles and rules, and there is a hierarchy in the legal texts which regulate all ISFs. In Turkey, there is no such homogenized legal framework.

Additionally, after some amendments witnessed after 2001 in the Constitution, the Turkish Penal Code, Penal Procedure Code and Police Duties and Authorities Law, some articles (i.e. Prohibition, General Search, Closure, Transfer in Person by Force, Demand of Information) in the Gendarmerie Regulation are not compliant.
Table 4: Structure, Remits and Oversight Functions of Ministries of Interior in Selected EU Member States and Turkey

<table>
<thead>
<tr>
<th>ISFs</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gendarmerie, Coast Guards</td>
<td>Gendarmerie is moving from MoD to MoI. Military status of Gendarmerie preserved. No coast guard in ISF</td>
<td>Gendarmerie (Guardia Civil) fully integrated and dependent on the MoI. Military status preserved. No coast guard in ISF</td>
<td>Not relevant</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>GD of Security Gendarmerie and Coast Guards are “Affiliated Institutions”</td>
<td></td>
</tr>
<tr>
<td>Budgetary Control of All ISFs by Mol</td>
<td>Police: Yes Gendarmerie: Yes</td>
<td>Police: Yes GC: Yes</td>
<td>Yes</td>
<td>Police: No Gendarmerie: No</td>
</tr>
<tr>
<td>Head(s) of ISFs</td>
<td>2 heads (general directors) both under MoI’s authority</td>
<td>2 heads (one for Police Corps and one for Guardia Civil under MoI)</td>
<td>Heads of individual Police Forces appointed by local Police and Crime Commissioner. No national ‘head’</td>
<td>3 heads. Police under MoI. Gendarmerie and Coast Guards for military duties are under the chief of the army staff.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of National Police Head</td>
<td>Council of ministers, under proposal by DG of police</td>
<td>Common for police and GC.</td>
<td>Tripartite structure</td>
<td>PM &amp; Pt, after proposal of MoI</td>
</tr>
<tr>
<td>Appointment of National Gendarmerie Head</td>
<td>Council of ministers, under proposal by DG of gendarmerie</td>
<td>Council of Ministers, under joint proposal by MoI and MoD</td>
<td>Not applicable</td>
<td>PM &amp; Pt after proposal of Chief of Staff of Army + signature of MoI</td>
</tr>
<tr>
<td>National Police Head Profile</td>
<td>Prefect, senior police commissioner</td>
<td>Civil administrator, senior police commissioner</td>
<td>Not applicable</td>
<td>Governors and Police commissioners.</td>
</tr>
<tr>
<td>Gendarmerie National Head Profile</td>
<td>Prefect / judge / gendarmerie general</td>
<td>Civil administrator</td>
<td>Not applicable</td>
<td>Land forces general, not civilian</td>
</tr>
<tr>
<td>Appointment/ Dismissal of Provincial Heads</td>
<td>Appointments / dismissal by decree of MoI. Mutation by DG of Gendarmerie or Police Before Jan 1, 2009, decree of MoD</td>
<td>Appointments exclusively by MoI (under proposal of Director -general)</td>
<td>Appointment and dismissal of Chief Constable, responsibility of “Police and Crime Commissioner”. All other officers responsibility of Chief Constable</td>
<td>Police: - PM &amp; Pt, after proposal of MoI, - Gendarmerie &amp; Coast guards: MoI</td>
</tr>
<tr>
<td>ISFs</td>
<td>France</td>
<td>Spain</td>
<td>UK</td>
<td>Turkey</td>
</tr>
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</tr>
<tr>
<td>Policy Formulation/ Daily Work Orientation</td>
<td>Mol: cabinet of the minister, general directorate/ Mol: prefect</td>
<td>Mol: State Secretary for Security and Director-general of Police &amp; GC (policy and daily work) Government’s Regional Delegates and Provincial Sub-Delegates (daily work of territorial units)</td>
<td>Strategic Direction by Strategic Policing Requirement from the Home Office and local Police and Crime Plan / No role in Day-to-Day Policing “Constabulary Independence”</td>
<td>Authority of Mol differs for Police, Gendarmerie and Coast Guards</td>
</tr>
<tr>
<td>One Homogeneous Legal Text which Applies to All ISF</td>
<td>Yes (Internal Security Code)</td>
<td>Yes</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Inspection/Sanctions</td>
<td>IGA-IGN/IGN / IGPN/IGN</td>
<td>Inspection: Inspectorate for the Security Personal and Services (IPSS). Sanction: General Director / State Secretary / Minister</td>
<td>Mol sends Regulations to Chief Constables and HMIC</td>
<td>Mol Inspectorate Board / Prime Ministry Inspection Board /FEG of Security Inspectorate Board / Gendarmerie General Command Inspection Head and Gendarmerie Inspection Board</td>
</tr>
<tr>
<td>Specific Gendarmerie Academies / Civilian Professors</td>
<td>Gendarmerie: Partly/Yes</td>
<td>GC: Partly/Yes</td>
<td>Not relevant</td>
<td>Partly/Yes</td>
</tr>
<tr>
<td>Representative of Gov. at Local Level</td>
<td>Prefect</td>
<td>Regional Delegates of Government (17) + provincial sub-delegates.</td>
<td>None</td>
<td>Governor</td>
</tr>
<tr>
<td>ISFs</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
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<tr>
<td>Territorial Organization</td>
<td>The police are divided into 12 districts and some special units.</td>
<td>Gendarmerie / police areas: are mutually exclusive; PSP (urban areas) GNR (rest of the territory) Where there are overlapping competences, MoI approves regulation defining competence of each force.</td>
<td>Internal Security Forces (ISF); -federal police, -police of the state (Länder), -intelligence services (no police competences), -customs authorities. Federal and state police authorities under supervision of the MoI. External security forces: German Army (Bundeswehr)</td>
<td>Carabinieri / Police areas not mutually exclusive + additional local police (both provincial &amp; municipal)</td>
</tr>
<tr>
<td>Gendarmerie, Coast Guards</td>
<td>The police in Denmark, the Faroe Islands and Greenland constitute one national police force.</td>
<td>GNR (military nature) integrated and dependent on the MoI No Coast Guard in ISF 1. Subordinated organizations of the police of the states: river and shipping police 2. Federal police (external borders, aviation security, railway facilities)</td>
<td>Carabinieri functionally dependent on the MoI but formally dependent on the MoD (military status preserved) / No Coast Guards in ISF, but Guarda di Finanza</td>
<td></td>
</tr>
<tr>
<td>Budgetary Control of All ISFs by MoI</td>
<td>No</td>
<td>Yes (Police and GNR)</td>
<td>Yes</td>
<td>Police: Yes Carabinieri: just for ISF’s coordination in IS missions</td>
</tr>
<tr>
<td>Head(s) of ISFs</td>
<td>The Minister of Justice, is the chief police authority, and exercises his powers through the National Commissioner, and the Commissioners of the police districts. The Danish Security and Intelligence Service (PET) Reports directly to the Ministry of Justice. The Minister of Justice is also the chief authority of the Prosecution Service. The Prosecution Service comprises the Director of Public Prosecutions, the regional public prosecutors and the chief constables in the police districts.</td>
<td>PSP: national director GNR: general commander Both under MoI’s authority</td>
<td>According to the primacy of politics: 1. Federal Minister of the Interior (federal police, federal criminal police office) 2. Minister of the Interior (state police) with subordinate character: 3. Federal Inspector of the riot police (riot police of the state) 4. Inspectors of the riot police of the state 5. National police commissioners (police of the state) 6. Police commissioner and district administrators (local police)</td>
<td>2 heads Police under MoI. Carabinieri under MoD.</td>
</tr>
<tr>
<td>Appointment of National Police Head</td>
<td>Ministry of Justice</td>
<td>PM and MoI</td>
<td>The (federal) Minister of Interior appoints the inspectors and commissioners.</td>
<td>Council of Ministers, after proposal of MoI</td>
</tr>
<tr>
<td>Appointment of National Gendarmerie Head</td>
<td>Not relevant</td>
<td>PM, MoI and Ministry of Defence</td>
<td>Germany has no gendarmerie. There’s a division between internal safety (police, ISF) and external safety (army).</td>
<td>Council of Ministers, after proposal of MoD and belief of the Chief of the Army</td>
</tr>
<tr>
<td>ISFs</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
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<tr>
<td>National Police Head Profile</td>
<td>The National Commissioner is typically a lawyer, but this is not a requirement by law.</td>
<td>Chosen from chief superintendents, or individuals with license degree of recognized competence and experience</td>
<td>Police officers and administrators of the higher civil service.</td>
<td>Prefect</td>
</tr>
<tr>
<td>Gendarmerie National Head Profile</td>
<td>Not Relevant</td>
<td>Lieutenant General</td>
<td>No gendarmerie in Germany.</td>
<td>General of the Army</td>
</tr>
<tr>
<td>Appointment/Dismissal of Provincial Heads</td>
<td>Ministry of Justice, after proposal from National Commissioner and Director of Public Prosecutions. Fixed-term employment, 6-year terms.</td>
<td>(Portugal is a unitary state). Police: territorial commands: regional (2), Metropolitan (2) and district (16). Appointed by the MoI, after proposal of the National Director GNR: General commandant appoints the heads of the territorial commands</td>
<td>The (federal minister of the Interior appoints the inspectors and (local) commissioners.</td>
<td>Police: MoI, after proposal of the Chief of Police Carabiniers; Chief of the Army, after proposal of the Commander in Chief of Carabiniers</td>
</tr>
<tr>
<td>Policy Formulation/Daily Work Orientation</td>
<td>Ministry of Justice/ National Commissioner/ Director of Public Prosecutions - Commissioners of the police districts.</td>
<td>MoI: secretary of state to the MoI (delegated competences) and director/commandant of security forces (policy and daily work)</td>
<td>Tasks: criminal prosecution, averting of danger &amp; the prosecution of administrative offences (set by law). The federal criminal office is the key investigation branch.</td>
<td>MoI: National Committee for Public Order and Security / Prefectures: Provincial Committees for Public Order and Security</td>
</tr>
<tr>
<td>One Homogeneous Legal Text which Applies to All ISF</td>
<td>Yes. The Danish Act on Police Activities (Politiloven)</td>
<td>No (defined by the respective organic laws). However, the Internal Security Act provides some common regulations concerning the functions of internal security forces, typical and special police measures and circumstances for the use of force.</td>
<td>Grundgesetz (national constitution)</td>
<td>Yes</td>
</tr>
<tr>
<td>Inspection / Sanctions</td>
<td>National Commissioner/The regional public prosecutors</td>
<td>General Inspection of Home Affairs (IGAI) Sanction: MoI</td>
<td>Legal and technical supervision of police authorities. MoI is supervised by political means. Legal basis of inspections and sanctions are disciplinary laws.</td>
<td>Police: MoI Central Inspection Office / Carabiniers; General Command Inspection Head and Local Commanders / Police: Chief of the Police / Carabiniers: Regional Commander</td>
</tr>
<tr>
<td>Specific Gendarmerie Academies / Civilian Professors</td>
<td>No</td>
<td>Yes/Yes</td>
<td>Police: both, accredited studies (Bachelor/ Master) &amp; specific academies. Civilian professors teach law, business administration and social sciences.</td>
<td>Yes/Yes</td>
</tr>
<tr>
<td>Representative of Gov. at Local Level</td>
<td>No</td>
<td>There isn’t one. There were civil governments but they were extinct in 2011</td>
<td>MoI and Prime Minister of each state</td>
<td>Prefect</td>
</tr>
</tbody>
</table>
4.11. Gaps

- **In Turkey, the Gendarmerie is directly dependent on the Chief of the General Staff and the General Staff is not subordinated to the Ministry of Defence but accountable/responsible directly to the Prime Ministry.**

  In the selected EU countries with a dual policing system such as France, Spain, Italy and Portugal, gendarmeries have preserved their military status but operate under the Ministry of Defence (and not the Chief of the General Staff) and are placed under the authority of the Ministry of Interior as far as policing activities are concerned. Moreover the Chief of General Staff is not accountable to the Ministry of Defence but directly to the Prime Ministry. Therefore in the protocol, the Chief of General Staff is ranked number four after the President, the Speaker of the Parliament and Prime Minister.

- **In Turkey, there is no common legal basis and homogenized legal text applicable to all ISFs with regards to their duty and authority.**

  In Turkey there is no common legal basis applicable to all ISFs. Organizational structures, duties and responsibilities of ISFs are regulated in approximately 500 laws and administrative regulations that describe the responsibilities and duties of the General Command of Gendarmerie. In the selected EU member states with a dual policing system, all internal security forces carry out their duties under common principles and rules, and there is a hierarchy in the legal texts which regulate the internal security sector.

- **The legal nature of hierarchical relations between the Mol and ISFs is not clear when compared with selected EU member states.**

  There is no single legal text which regulates the subordination of all ISFs to the Mol in Turkey. While main service units and other units have been listed and their duties and authorities have been described in Law 3152, ISFs that are affiliated institutions have only been listed but not described. The subordination of ISFs to the Mol, as well as their duties and powers, are listed in separate organizational laws (each ISF has a specific organizational law that regulates its activities). In the selected EU countries with a dual policing system, the status of all internal security forces is clear in terms of hierarchical and reporting lines with the top of the line reaching Mol.

- **In Turkey, some articles in the Gendarmerie Regulation are not in harmony with laws superior to it.**

  In Turkey, some provisions of the Gendarmerie Regulation explicitly wander from principles set forth on the laws with regards to budget preparation and spending, subordination and hierarchical relation.

- **In Turkey, the national head of the Gendarmerie is selected amongst generals of the Land Forces of Turkish Army.**

  In the selected EU countries with a dual policing system, the national head of the Gendarmerie can be a civil administrator, a judge or a Gendarmerie General (*not an Army General in the name of the separation between internal and external security*). However in Turkey, the national head of the Gendarmerie is selected only amongst generals of the Land Forces.
of Turkish Army. This contradicts the principle of professionalization of the internal security sector and its differentiation against the defence sector in EU countries.

- **There are serious lacks in the system of village guards with regards to civilian oversight.**
  
  Approximately 50,000 uniformed village guards carrying a gun, and, receiving a salary from state are exercising authority related to the internal security without a clear institutional structure and hierarchical organization. The oversight mechanism of the Mol over these guards is limited. Such a situation does not exist in EU states and contradicts the principle of professionalization.

- **The overwhelming majority of the Gendarmerie personnel consists of non-professional soldiers who are performing their compulsory military service.**
  
  Non-professional Soldiers that constitute the overwhelming majority of this number (i.e. 80 %), work as an internal security staff within the scope of the compulsory military service (i.e. conscripts). This is contrary to the principle of professionalization of ISFs and not observed in EU states.

- **The budgets of the National Police, Gendarmerie and Coast Guard Command are not under the full control of civilian authorities.**
  
  In the selected EU countries with a dual policing system, both police and Gendarmerie budgets are under the full control of the Mol. However in Turkey, budgets of the Gendarmerie and the Coast Guard Command, in parallel to that of the Turkish Armed Forces, have not yet been put under an efficient and full Parliamentary oversight. Despite the fact that the budgets of the Gendarmerie and the Coast Guard Command are part of the budget of the Mol, they remain under the discretion of the Military and are also presented as defence funds in addition to the Army’s budget. In the Gendarmerie Regulation, it is specified that the Minister of Interior is obliged to delegate his/her responsibility to the Military at the beginning of the each financial year, and thus the actual authority for spending the budget shall be incumbent on military entities.

- **Law 5018 grants some exceptional advantages to ISFs and gives authority to spend funds over the limit of funds allocated by the Parliament for one fiscal year.**
  
  According to Law 5018, infrastructure and construction purchases pertaining to the Strategic Target Plan and decided by the General Command of Gendarmerie and the Coast Guard Command are not subject to the approval of the Ministry of Development and do not appear in the investment plans. Moreover, expenditure made by the General Command of Gendarmerie, Coast Guard Command and the National Police Directorate which are for purchases such as ammunition, machinery and equipment are not limited to funds allocated by the Parliament for one year.
The Covert Fund of the budget of the Prime Ministry for matters such as secret intelligence and defence services is not auditable.

In accordance with the 24th Article of the Law 5018 on Public Financial Management and Control Law, there is a Covert Fund (Örtülü Ödenek) under the budget of the Prime Ministry for matters such as secret intelligence, defence and national security of the state. Usage of the covert fund cannot be audited by the Parliament. The Parliament is not informed regarding spending items within the scope of the covert fund.
5. Central Internal Oversight Mechanisms (Inspectorates)

5.1. Duties, Competencies and Functions

The double definition of inspection gives the inspectorate a dual role. Firstly it is responsible for auditing and assessing performance with a view to ensure the efficiency of units. In that respect, inspections help institutions to work in line with legislation (including respect for Human Rights), plans, programs and other rules of operation. Secondly it must investigate flaws, mistakes and even crimes. Inspectorates oversee missions, units and individual behaviour of the organizations over which the Mol has authority.

5.2. France

Three inspectorates have competencies regarding the police and the gendarmerie. They form an “inspectorate system” that works in a rather coherent way. These are the general inspectorate of the administration (IGA) that operates within the Ministry of Interior, the general inspectorate of the national police (IGPN) and the inspectorate of the gendarmerie (IGN). The full integration of the gendarmerie under the authority of the Ministry of Interior will make this system more homogeneous.

The IGA role was redefined in 1981. It covers a wide field of administrative activities including policing and the police as well as gendarmerie activities. It has a certain level of autonomy and reports directly to the Minister of Interior.

The IGPN (for the police) role was similarly redefined in 1985 and in 1986 it was formally merged with the Paris police inspectorate (IGS). The IGPN has both disciplinary and criminal investigation powers. It reports to the general director of the police and on his behalf can also perform some form of auditing role.

The IGN (for the gendarmerie) is very similar to the IGPN and its role has been fixed in law since 2002. It reports to the gendarmerie general directorate.

The IGA can be described as a governmental inspectorate that ensures compliance with national policies while the IGPN and the IGN are organizational inspectorates. This means that they are in charge of ensuring compliance with procedures and regulations (they elaborate recommendations to improve the efficiency and/or the integrity of the organization and of its processes). Policy compliance is ensured by the increased role of cooperation that the IGA has developed with the general inspectorates of other Ministries.

These three inspectorates can work independently on individual cases. There is however a certain division of labour. The principle that has been established (which is being strengthened) is that when it is a single individual case, either criminal or disciplinary, it is handled by either the IGN or the IGPN depending on the suspect. When the inspection proved that there was a flaw in the organization or in the operations or when several cases underline such a situation, the IGA can initiate a joint inspectorate process that addresses not individual cases but the structures and the procedures including the law. The intention of such a process is to give the Ministry the necessary substance to adjust the law or issue a new ministerial regulation if needed.
The limitation is however not tight and some cases can fall both into the hands of both the IGA and that of the IGPN or IGN. The close cooperation that now exists is based on the principle of joint inspections or audits and can be seen as a good way to address and cover this grey area which involves both individual and organizational issues.

The inspection covers both what is of an individual nature and relates to the misconduct of the police officer or gendarme and what is of a more organizational and even institutional nature and relates to the policy and the general decisions that are taken. The two kinds of investigations are undertaken by the same members of the inspectorate, however, not on the basis of the same kind of mandate, nor of the same regulation and with the same purpose.

This leads onto a number of key questions as regards the missions of inspectors, reporting authorities, the scope of inspections and the decision making process of inspections. Once a police officer or a gendarme has allegedly committed a penal crime, the prosecutor will request an inspectorate, either police or gendarmerie, to investigate. As far as misbehaviour and administrative sanctions are concerned, the inspectorates (IGPN or IGGN) are mobilized to carry out the investigation and daily receive, by mail, phone or internet, public remarks on police alleged bad activities and misconduct that have to be verified. A decision is taken by the council for discipline according to the relevant regulations. Those regulations are not identical for the police and the gendarmerie, but their core principles are common after the adoption by the two corps of the European code of Ethics.

Audit and performance assessment is a mixed process. The police or gendarmerie general director can give his or her own inspectorate a specific mission. This kind of order either comes from the general director’s own will or by endorsing some inspectorate proposals. Therefore the initiative of the inspectorates is limited, meaning that they cannot exercise their oversight when they have not been asked to do so. The administration general inspectorate (IGA) has more room for manoeuvre and even if the minister is not compelled to follow its recommendations, the IGA can decide on its own a subject of work.

The issue of reporting is equally important. An inspection can have an impact only if the appropriate decision maker can use its outputs. The situation is clearly defined when it comes to criminal investigations: there is a direct reporting line to the prosecution services. Regarding performance assessment and audit, the gendarmerie and police inspectorates report only to their relevant director general whatever they have been tasked with or the initiative taken. This means that the Minister will not necessarily be informed and therefore will remain unable to take the necessary measures. The gendarmerie and police inspectorates are not legally in a position to help the Ministry to exercise its oversight. In practical terms, things can work differently with copies being sent outside the police or gendarmerie to the Minister but this is an informal practice. The situation is rather different with the administration general inspectorate (IGA) that reports directly to the Minister. Nevertheless the reporting line and the fact that the members of the inspectorates are coming either from the police or the gendarmerie reinforce a system that prevents the inspectorates from having an impact outside the police and the gendarmerie.
5.3. Spain

In Spain, internal Inspectorates (Inspectorates of Services) set up within the Ministries have traditionally been the key units carrying out internal control and oversight of state administration services and the conduct and performance of their personnel. The system also has a central guidance and coordination unit, with the rank of a Directorate-general, within the remit of the Ministry responsible for the organization of the state administration and the civil service.

Until 2005, the regulation of these inspectorates of services was laid down in a whole series of specific norms of various ranks. In 2005, the Government adopted a Decree (799/2005) that established a general framework for all these inspectorates, in the context of a wider policy for the improvement of the quality of public services *(laid down in another Government Decree, numbered 951/2005, which regulates a series of basic and integrated programmes designed for this purpose)*.

In this context, neither the Directorate General of the Police nor that of the Guardia Civil traditionally had any specific organ or unit responsible for the “inspection” of the activities, performance or efficiency level of their respective services and personnel. Such functions were part of the tasks and duties assigned to specific job positions: for the Guardia Civil, in the general command structure and for the Police, to regional and provincial “police inspectors”.

Specific inspection organs were established in the organizational structure of the Spanish Police and Guardia Civil in the period 1990-1995. In the case of the Police, such organs were the same as for “internal affairs” and disciplinary matters.

The final step in this process took place in 1996, with the creation of the Inspectorate of Security Personnel and Services (IPSS), directly depending on the State Secretary for Security and as a common inspection structure for both Police and Guardia Civil. The original objectives set for the IPSS were:

1. help rationalize security organization and expenditure distribution;
2. improve the effectiveness and efficiency of security services;
3. oversee the functioning of the services, centres and units of CNP and Guardia Civil, as well as the action of their members in the performance of their duties.

The IPSS does not replace or play the role of an “internal affairs (investigations)” unit, nor deals directly with disciplinary procedures *(although IPSS inspections and investigations may be the starting point for such investigations or disciplinary procedures)*. The IPSS does not need specific authorization to carry out routine inspections. However, the Minister, State Secretary and General Director may request IPSS to undertake a particular inspection. It does so with guidelines and standards developed by IPSS itself and sometimes approved by the State Secretary as Service Instructions. The competence to initiate disciplinary procedures belongs to the General Director, but it is delegated to one of the Deputy-Directors *(at the professional level)*. The top sanction of separation of service is imposed only by the Minister of Interior for the Police or the Minister of Defence for the GC. For less serious sanctions, the heads of professional service units *(central or local)* or the Government’s
Territorial delegates will act. The complaint system is regulated by an Instruction of the State Secretary and is decentralized (all Police and GC units) but the IPSS receives copies of all complaints and monitors processing and response. The IPSS reports to the State Secretary and the General Director.

The Head of the IPSS is appointed by the Mol. The Undersecretary, in agreement with the State Secretary for Security is responsible for appointing this position. It is a career position for a professional civil servant, who does not necessarily come from the ISFs, but is most frequently a civil administrator. The heads of Inspection teams are appointed by the head of IPSS. And, finally, the IPSS reports to the Minister himself, via the State Secretary for Security and also to the ISFs’ managerial head, namely the General Directors of the Police and GC. The technical staff of IPSS (Inspectors and others) is recruited according to civil service rules. The positions are opened to members of ISFs, civil administrators and even Army officers.

In Spain, not only does the removal from particular positions, remain under the competence of the Directorate-General for Police and Guardia Civil (or even at lower level), but disciplinary sanctions against members of the Police and Guardia Civil are also their responsibility. Only "separation of service" (loss of the public service status) is to be decided, for the Police, by the Minister of Interior (for the Police); and by the Minister of Defence (for the Guardia Civil).

In Spanish legislation, the basic rules on disciplinary infringements (including the detailed description of the most serious infringements and the corresponding sanctions and rules of procedure) need to be laid down in formal Law (parliamentary act). This is a general constitutional requirement (not only for the security forces).

Other than that, in Spain, like in Turkey, the Police and Guardia Civil have separate disciplinary regimes. Organic Law 4/2010 regulates the disciplinary regime of Guardia Civil and Organic Law 12/2007 that of National Police. However, in Spain the current legislation is to a great extent inspired by the same principles.

Such principles are related, in what concerns the definition of the infringements, to the Code of Conduct for members of public/internal security forces laid down in the L.O. 2/1986 (which is inspired by the UN and Council of Europe’s recommendations), plus standard disciplinary infringements common to all civil servants. As for the disciplinary procedures, the rules for both forces are closer to the rules applying to disciplinary procedures in the civil service than in the Armed Forces. Despite the military "nature" of this Force, the disciplinary regime of the Guardia Civil is not the same as that for the Army and is not applied by Army authorities or disciplinary organs.

A very important characteristic of the Spanish system in this area is that both regimes (Police and Guardia Civil) are administered (implemented, applied) strictly within the boundaries of the Ministry of Interior, with the sole exception of the sanction (punishment) of "separation of service" (loss of the status of member of the force and of civil servant) for members of the Guardia Civil, which corresponds to the Minister of Defence (not to any military body or authority). This highlights a gap between Turkish and Spanish legislation, in so far as in the former, the disciplinary regime of the Jandarma, is not implemented by
the civilian authorities of the Ministry of Interior, but by the own structure of the Gendarmerie themselves or, in the most serious cases, by the higher disciplinary structures and bodies of the Armed Forces.

5.4. England

The role of Her Majesty’s Inspectorate of Constabulary (HMIC) which has been in existence for over 150 years, is to independently assess police forces and policing across activity from neighbourhood teams to serious crime and the fight against terrorism – in the public interest. It also provides impartial professional advice to Chief Officers, Police and Crime Commissioners and the Home Secretary. While HMIC performs internal audit functions it maintains a degree of independence from the police at the same time.

HMIC is responsible for conducting inspections of police forces in England, Wales and Northern Ireland. HMIC decides on the depth, frequency and areas to inspect based on their judgements about what is in the public interest. In making these judgements, they consider the risks to the public, the risks to the integrity of policing, service quality, public concerns, the operating environment, the burden of inspection and the potential benefits to society from the improvements that might arise from the inspection. HMIC’s annual inspection programme is subject to the approval of the Home Secretary in accordance with the Police Reform and Social Responsibility Act 2011. Inspection subjects can be general or thematic, including, for example, the monitoring the police organization in relation to equality legislation and EU directives. Police forces that are recorded by HMIC as being ‘underperforming’ or get ‘poor’ evaluations come to the attention of the Police Standards Unit (PSU) at the Home Office which may advise that remedial action is taken by the Chief Constable of the police force in question.

In Turkey, internal audit mechanisms of the domestic security sector operate under the board of inspection of the Mol, and the boards of inspection of the Police and of the Jandarma. In the UK the closest approximation for the Board of Inspection of the Mol is Her Majesty’s Inspectorate of Constabulary (HMIC). However, HMIC is not strictly speaking an internal audit mechanism since the Inspectors of Constabulary are appointed by Parliament on the recommendation of the Home Secretary. The Chief Inspector of Constabulary is the Home Secretary’s principal policing advisor, but at the same time is independent both of the Home Office and the police. The degree of independence that the Turkish Board has in relation to the Ministry of the Interior is less than HMIC.

In the UK, the new procedures for both performance and misconduct are based on ACAS (Employment Arbitration Service in the UK) principles. They aim to give managers the means to deal with unsatisfactory performance and misconduct in a way that is: fair, transparent, proportionate, and timely. The procedures will also mark a cultural change - with the emphasis being more on facilitating improvement and development as opposed to disciplinary or unsatisfactory performance outcomes, although the procedures allow for the latter where appropriate.

In all police forces across the UK a ‘Professional Standards Unit’ established within each force area monitors compliance with ethical and professional standards. As of Decem-
ber 2008 new police misconduct and discipline regulations came into force in England and Wales under the Police (Conduct) Regulations [2008]. These regulations put in place revised disciplinary mechanisms for police conduct that falls short of professional and ethical standards, but which does not constitute an act of criminal commission by a police officer. In other words, the regulations make a distinction between a police officer’s behaviour that falls short of professional and ethical standards and behaviour which is a clear breach of the criminal code. In the latter case misconduct proceedings will be temporarily suspended so as to not prejudice a criminal trial.

The ‘Professional Standards Unit’ acting with the authority of the Chief Constable in the officer’s force area is ultimately responsible for initiating disciplinary action against a police officer, or this may be directed by the Independent Police Complaints Commission (IPCC) in England and Wales or the Office of the Police Ombudsman for Northern Ireland (OPONI). Therefore, in the UK, the initiation of disciplinary proceedings may not necessarily lie with Chief Officers within the police organization. This also needs to be seen in the context of the independent (external) investigation of complaints against the police in the UK which is important for generating public trust and confidence in policing structures.

In the case of Chief Officers (Chief Constables, Deputy Chief Constables, and Assistant Chief Constables) the Police Authority is the main disciplinary body and the means by which this is exercised is specified in the Part III of the Police Reform Act [2002]. In short, discipline proceedings for all other police officers are the responsibility of the Professional Standards Unit in the police force concerned and the Chief Constable. However, in England and Wales the Independent Commission on Police Complaints (IPCC) will also become involved — or the Office of the Police Ombudsman in Northern Ireland — particularly where there has been a serious breach of a discipline code or a criminal offence committed by a police officer. The statutory duties and responsibilities of the IPCC are set out in Part II of the Police Reform Act [2002] Complaints and Misconduct.

5.5. Denmark

5.5.1. Inspections

The Minister of Justice, who is the chief police authority, exercises his powers through the National Commissioner, and the Commissioners of the police districts. This means that they are in charge of ensuring compliance with procedures and regulations.

The National Commissioner can at any time make inspections of police districts. The same goes for the Director of Public Prosecutions who exercises this power through the regional public prosecutors. Inspections can include legality control or more specific auditing. Inspections are done on the National Commissioners’ Regional Public Protectors’ own initiative. The National Commissioner/ Director of Public Prosecution reports to the Minister of Justice, but there is no general specified system of reporting. The procedure is clearly defined when it comes to criminal investigations: in this case, there is a direct reporting line to the prosecution services. Inspections are done regularly by the National Commissioner/ Director of Public Prosecutions, supervising respectively police and prosecutor
activities, but can also be initiated by order of the Ministry of Justice.

A main overall instrument of managing and controlling the police is the annual Performance Contracts that are made between the Minister of Justice on the one hand, and the National Commissioner of Police and the Director of Public Prosecution on the other hand. The Performance Contract contains concrete goals. The prioritized goals must be operational, and in order to reach the goals the National Commissioner of Police together with the Director of Public Prosecutions sign Performance Contracts with each of the commissioners in the 12 police districts. Both the National Commissioner of Police, the Director of Public Prosecutions and each of the 12 commissioners have an individual incentive to fulfil all goals in their respective contracts, as a bonus/salary increase is coupled with the fulfilling of the goals in the Performance Contracts. The goals in the Performance Contracts are set mainly by the executive party – which is the Ministry of Justice with regard to the Performance Contracts of the National Commissioner of Police and the Director of Public Prosecutions, respectively. The initial drafts for the Performance Contracts, with each of the Commissioners, are made by the National Commissioner of Police and the Director of Public Prosecutions conjointly. When the first draft is made, there are negotiations between the parties, but in the end the executive party has the decisive last word.

5.5.2. Discipline and Sanctions

Complaints with regard to police conduct and with regard to alleged criminal offences by police officers have since January 2012 been handled by the Danish Independent Police Complaints Authority (IPCA). Before 2012, the regional prosecutors handled most of these complaints, but due to severe criticism for lack of objectivity, lack of public confidence, and for slow case-handling, the IPCA was created.

IPCA is independent of both the police and the prosecution. The supreme governing body for the IPCA is the Police Complaints Council, chaired by a High Court judge. Furthermore the council is comprised of an attorney, a professor of jurisprudence and two representatives of the general public. The council has the overall responsibility and makes guidelines for the case handling in the IPCA. In its daily work however, the IPCA is headed by a Chief Executive, who answers to the council. Besides the Chief Executive, the IPCA employs investigators, legal and administrative staff. The IPCA covers the entire police force in Denmark.

The main tasks of the IPCA are to investigate criminal offences committed by police officers on duty and to investigate incidents where persons have died or been seriously injured as a consequence of a police intervention or while in police custody. Furthermore, an important task is to consider and decide about complaints of police misconduct. In the case of complaints of police misconduct, anybody can file a complaint against the police with the IPCA. The role of the IPCA in these cases is to investigate and arrive at a decision. IPCA decisions are final and cannot be appealed. Examples of misconduct are:

- Police have spoken rudely or acted inappropriately.
- Police were too rough when arresting a suspect.
• Police have used unnecessary force.

• Police have abused their power.

When there is a complaint of police misconduct, the IPCA examines the case, questions witnesses, and subsequently makes a decision in the case. If there is no basis for initiating or continuing an investigation, the case can be rejected as ill-founded. If the conduct is found to be regrettable or inappropriate, the IPCA may find that there is ground for criticism of the conduct. The three forms of criticism that can be expressed by the IPCA are: "Criticisable", "Very Criticisable" and "Highly Criticisable". The IPCA can only criticize, but not decide on disciplinary sanctions. As for disciplinary sanctions, these are decided within the police, by the National Commissioner. There is no access to appeal, but the legality of the disciplinary sanction can be tried in court.

In the case of criminal offences by police officers on duty, the role of the IPCA is to investigate the case. The IPCA can reject an ill-founded complaint. If the complaint is not ill-founded, the IPCA draws up a legal report about the results of the investigation to the district attorney, who subsequently decides if indictment should be made or if the case should be dropped. The categories of alleged criminal offences by police officers on duty are mainly:

• Disclosure of confidential information.

• Abuse of power/position.

• Negligence or recklessness in performing duties/function.

• Traffic offences.

• Violence against a citizen.

The IPCA is on call 24/7 for the so-called "Quick Response Cases". These are cases where immediate investigative measures are required, for instance because the police have fired a weapon at a person or where severe injuries have occurred as a result of a police pursuit, or when a person has died while in police custody.

The material basis for disciplinary proceedings is regulated in the Civil Servants Act sec. 10 ("The civil servant must conscientiously comply with the rules that apply to his position, and both on duty and off duty prove worthy of the esteem and trust required by the position"), and the possible sanctions are listed in sec. 24.
5.6. Portugal

The General Inspection of Home Affairs (IGAI) has functions of audit, inspection and supervision, with technical and administrative autonomy, and works in direct dependence on the Minister of Interior.

Its "jurisdiction" covers all entities dependent on or whose activity is legally regulated or overseen by the Government member responsible for Home Affairs. Regarding forces and security services, IGAi must not interfere with the development of the performance of operational forces and security services. However, IGAi is responsible for investigating how it is processed and the respective consequences, if deemed appropriate.

IGAI's main competences are:

- Inspections and use of methods of auditing and verification of legality in order to assess the fulfilment of the tasks, the rules and regulations and government instructions that apply to activities of services and entities;

- Investigate serious violation of fundamental rights of citizens, services or their agents. In general, analyse claims and complaints for possible violations of legality in services operation;

- Make inquiries, investigations, examinations and disciplinary procedures started by the superior level;
• Audits of organization and operation, focusing on efficiency and effectiveness of services, and propose legislative measures to the Minister, tending to improve the quality and efficiency of services and the improvement of security institutions;

• Contravention proceedings related to acts of discrimination based on race, colour, national or ethnic origin remitted by the High Commission for Equality and Intercultural Dialogue.

Regarding inspections procedures, visits can be made without notice to the security forces (and private security companies). Inspections and audit actions can be regular or extraordinary. Regular inspections are in the annual plans, which are proposed by the General Inspector to the Mol, which approves it. Extraordinary inspections are decided by the Mol. The IGAI’s competence to investigate disciplinary infractions of law enforcement agents is reserved only to serious situations and with social and relevant impact, namely in murder cases or grievous physical harm or serious evidence of misuse of authority or harm of high financial values (Article 2 of the Regulation of inspection activity and Supervision of IGAI and Order of May 8, 2009).

The IGAI is not competent to conduct criminal investigation. All situations that may constitute a criminal offence must to be communicated immediately to the Public Prosecution Service. IGAI’s role inter alia is to investigate cases with a view to make recommendations to the Minister of the Interior about disciplinary sanctions.

Its disciplinary actions are in accordance with the disciplinary statutes of public officers (in the case of security forces, the PSP and GNR). Each ISF has its own disciplinary statute, which is approved by the Parliament.

The Regulation for Inspective and Monitoring Actions (RAIF) defines the procedural rules of the IGAI’s inspections. As the IGAI’s scope of action is extensive and covers services and institutions that have different organic and different legal basis, it was found important to concentrate, in one single document, the norms of procedure for the inspection and control actions, establishing a standard procedure and improving the IGAI’s performance. Whenever, for example, an allegation of ill-treatment by law enforcement officials takes place, it should be communicated promptly to the appropriate body (i.e. to the Public Prosecutor’s Office, with a copy to IGAI). However, according to the European Committee for the Prevention of Torture (CPT), this is still not always the case. In practice, there is sometimes some difficulty in the consolidation of such practices (in order for it to become the culture), and its respect seems still too dependent on the strength of their respective leaders. Indeed, the RAIF establishes that whenever an action or omission by law enforcement officials or services under the scope of action of the IGAI results in a violation of personal rights (namely murder or grievous bodily harm or evidence of serious misuse of authority or harm to high financial values), the forces or services must immediately give notice of the facts to the Minister of Interior and (since 2009) to the IGAI.

The IGAI shall immediately consider the expedient and establish an inquiry or investigation, for which has its own competence or propose to the Minister of Interior the opening of a disciplinary process if that is the case.

Facts that can be defined as a crime or administrative offences are sent to the Public
Prosecution Service. The IGAI must also send the final reports of their inspection containing the relevant facts to the Court of Auditors.

The final report of the inspection is sent by the general inspector to the Mol, for ratification. Both PSP and GNR have internal general inspections which are instances of internal control.

This service has the competence of internal control (operational, administrative, financial and technical level) and check, monitor, evaluate and report on the performance of all services of the PSP, in order to promote:

i. the legality, effectiveness and efficiency of operational activity, budget management and asset and personnel management;

ii. the quality of service provided to the population;

iii. compliance with the business plans and decisions and internal instructions.

The inspection is headed by a national inspector, which reports to the National Director. The latter is competent to determine the inspections and has the final decision on the inspection reports. The rules of the inspection are approved by the Mol.

The GNR inspection (Guard Inspection) in general observes the same principles. The Guard Inspection is the first level of internal control. It has technical independence, but is part of the internal structure of the organization. It depends directly on the General Commandant, and is the body responsible for developing inspection actions and audit at the higher level of the Guard. It supports the General Commander in the exercise of supervision and evaluation of operational activity, training, human resources, material and financial management and compliance with applicable laws and regulations and internal instructions. The General Commander is competent to determine the inspections. The final report is the competence of the Guard Inspector, unless the General Commander arrogates to itself the report, in which case the Guard Inspector issues the competent opinion.

The national inspectors of both forces are appointed by the Mol.

Disciplinary investigations are the competence of the superior (in hierarchy) officer with command/directions functions (both PSP and GNR).

The General Prosecutor's Office must always be informed of a public crime (because private and semi-public crimes depend on a complaint being filed by the victim).

Special procedures that can only be ordered by the GD of police/gendarmerie are inquiries, which serve to investigate facts linked to the irregular running of a command or service. The inquiry aims at determining whether or not there was an infringement. It starts when there is a suspicion. The investigation seeks to ascertain whether certain facts occurred or not, and who the perpetrators are. If an infringement is confirmed a disciplinary action against the agent can be generated.

Disciplinary sentencing competence is defined in both disciplinary statutes. Only the Mol has full competence - from written reprimand to dismissal. Both in the GNR and the PSP, the General Commander/Director of Police can apply all sanctions with the exception of dismissal and compulsory retirement. Other entities (with lower hierarchical ranking) can apply less serious sanctions (like suspensions for a short period of time). The punitive
competence is defined in an annex of the disciplinary regimes.

Both the GNR and the PSP have a Board of Ethics and Discipline, with an advis function on disciplinary issues.

The PSP and GNR organic laws establish the exercise of disciplinary power as a competence, typically exercised within the GNR and PSP, conducted by their high ranking officials. It implies legal and legitimate authority for these security forces to open, conduct, and conclude an inquiry procedure including whether to apply a disciplinary sanction or dismiss the procedure.

When the illicit acts are more serious, the IGAI's competences supersede those of the PSP and GNR higher ranking officials. Mostly, IGAI is informed of facts that might constitute a disciplinary infraction by Public Prosecution Service notice, or communications by NGO's (such as ACIDI or IA or other civic, cultural or neighbourhood committees and associations), or by complaints or reports.

Only in the more serious cases does the IGAI proceed to a direct control, opening inquiry, investigation or disciplinary procedure.

Inquiry procedures are determined by the General Inspector, without prejudice of the Minister of Home Affairs himself determining the establishment of any procedure.

The IGAI oversees the investigations carried out by the internal control bodies of the law enforcement agencies (notably, GNR and PSP).

The guidelines for conducting an inspection are in the Inspection Manual (Inspections to detention centres by security forces and ordinary inspections to security forces).

The General Inspector of IGAI is appointed by the MoI. The appointed person should be a judge or a public prosecutor.

With regard to the prevention of torture and other forms of ill-treatment, it is important to highlight that, in 2012 after Portugal ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT), the Government adopted a resolution designating the Provedoria de Justiça (Ombudsman) as National Preventive Mechanism (NPM). The NPMs are natural partners for the Committee for the Prevention of Torture, which stresses the importance of these mechanisms for the effectiveness of efforts to prevent torture and other forms of ill-treatment.

5.7. Germany

5.7.1. Audit System, Disciplinary Powers and Disciplinary Level Systems

There is a legal framework concerning audit systems (law, decrees of the Mol, regulations, legal framework of police organization, political means). The regulations determine audit sectors and issues which are subject to reports, as well as responsibilities, powers and duties of (regulatory) authorities. The disciplinary system and the formation of audit reports follow a level system.

Legal and technical supervision is provided by the federal MoI, which itself is supervised by political means, e.g. (brief) inquiries/interpellations, petitions, legal actions. The Mol has also the competence to define so called "inspection themes" for all public police authorities
of the state. The law, especially disciplinary regulations, defines methods and procedures.

Furthermore, external police advisory groups (Polizeibeiräte) were established in some states, e.g. North Rhine-Westphalia, Lower Saxony and Schleswig-Holstein. They are composed on local level and comprise 10-15 elected members. Local police authorities must report an average of four times per year on the local reality of crime, the personnel situation, current legal situations or issues which are points of interest for citizens. Nevertheless the influence of those advisory groups is very limited.

Regarding ISFs, there is no exchange about disciplinary issues because the legal framework defines a hierarchical organization (local police authorities, regulation authorities, Mol). There is an exception concerning cases involving the professional duties of police officers from the middle and higher intermediate grade of civil service, which must be reported to the Minister of Justice. The Minister has to be informed about the whole disciplinary procedure. This procedure is defined by disciplinary law (e.g. LDG NRW, state disciplinary regulation).

5.7.2. Procedure to Cope with Complaints about Police

Another part of the control system is established by a standardized procedure of coping with complaints of citizens. All local police authorities must implement an internal audit department. It is also their duty to establish a standardized system for the management of complaints. Complaints of citizens concerning professional obligations of police officers or their behaviour towards the public are also treated in a step-by-step procedure.

In general, citizens can make a complaint to the (local head) of police authorities or, in cases of criminal offences, to the Public Prosecutor. They can also initiate proceedings involving a court intervention. A recent decree of the Minister of Interior determines the obligation to publish the complaining report.

In general, police acts are controlled by the constitutional idea of separation of powers. The police–executive actions can be checked by the legislative branch.

5.7.3. Disciplinary Sanction Regime

Civil servants are responsible for their acts in two ways, firstly by criminal proceedings, secondly by disciplinary proceedings. Disciplinary failures and the professional duties of civil servants are described in a legal framework, especially the disciplinary laws of the state (e.g. the BeamtStG, BBG, LBG, LDG, POG: these are the disciplinary regulations of the federation and the state).

If facts about a disciplinary offence become known, the superior initiates pre-investigations. The police officer must be informed about this initiated procedure. Disciplinary actions are taken by the police authority, or if the authority does not act, by regulation authorities or by the Mol which is also competent for monitoring the procedure. Disciplinary measures are defined by state disciplinary laws. They range from giving a rebuke, through monetary penalties, to removal from post and loss of entitlement to pension.

To sum things up, it can be emphasised, that there a three responsible authorities for disciplinary proceedings in all states: the local police authority, regulatory authorities (e.g.
regional departments) and the Ministry of Interior (top supervisory organism). They are allowed to initiate disciplinary proceedings upon notification of offences. The regulatory authorities are also competent for monitoring the disciplinary proceedings of the local police authorities and making reports to support the Mol.

Criminal offences and failures of professional duties can be reported directly by citizens to the Public Prosecutor.

5.8. Italy

5.8.1. External Inspection Activities

In the Italian Internal Security system, disciplinary proceedings against personnel and the inspection activities are different and rigidly separated. In fact, each of the five national police forces in Italy has its own structure, hierarchically organized and independent from others.

The system of inspectorates and checks on Italian ISFs maintains a substantial differentiation between the State Police and Carabiniers, despite the functional submission of Carabiniers Corps to the guidance of the Ministry of Interior. In fact, the system of internal oversight and disciplinary sanctions are still related to the professional status of members of the police force. Therefore, the Ministry of Defence maintains its prerogatives in these areas, thanks to the military status of the officers and agents of Carabiniers.

The system of checks and inspections has to be distinguished into three types of activity:

1. Inspections that are external to the ISFs structures, conducted by Ministerial Inspectorates;
2. Internal inspections intended to verify the fulfilment of the policy directives and the efficiency of ISF activities;
3. Internal checks for the detection and punishment of disciplinary offences.

The Ministries are competent for the first type of controls: the General Inspectorate of Administration (‘Ispettorato Generale di Amministrazione’, IGA) does the inspections inside the Ministry of Interior, whereas the Central Office of Administrative Inspections (‘Ufficio Centrale delle Ispezioni Amministrative’, ISPEDIFE) conducts them for the Ministry of Defence. State Police and Carabiniers Corps are involved in these controls, as they are respectively inserted within the Ministries of Interior and Defence.

The General Inspectorate of Administration (IGA) is a body placed in the Department for Personnel Policies & Instrumental and Financial Resources of the Ministry of Interior. The IGA carries out checks, inspections and administrative inquiries on behalf of the Minister of Interior or on request of the Prime Minister, other Ministers or the Heads of the Departments of the Ministry of Interior. The Head of the Inspectorate is appointed by the Prime Minister after proposal of the Minister of Interior. He/she depends directly on the Minister and is assisted by General Inspectors (not more than 25, of whom at least three are prefects). There are no explicit guarantees of independence, besides the professional rank of the appointees: in fact, the General Inspectors are usually Mol officials of prefectural rank (prefects or vice-prefects).
The tasks of the Inspectorate are:

- **Periodic inspections at the offices of the central and peripheral administration of the MoI, as set forth by the program annually approved by the Minister;**
- **Routine inspections at the MoI offices and also at the bodies and administrations supervised by the MoI;**
- **Inspections and inquiries in other Ministries or public administrations, at the request of the President of the Council of Ministers or other Ministers;**
- **Other minor controls on regularity of employment contracts, self-certifications, accounting regularity of the administrative action, proceedings not completed within the statutory deadline.**

The Inspectorate analyses the cases and suggests the adoption of appropriate measures by the competent structures. In case of inaction or delay of the competent office, the Head of the Inspectorate can substitute the relevant manager in order to complete the proceedings.

For the Carabineers Corps, external checks and inspections are arranged by the Central Office of the Administrative Inspections of the Ministry of Defence (ISPEDIFE). This office has the following main tasks:

- **Administrative inspections and audit, over central and peripheral offices, in order to promote any disciplinary actions;**
- **Keeping in contact with other Ministries for the respective competences in terms of inspections;**
- **Controls over the regularity of the employment contracts.**

The ISPEDIFE structure consists of a Central Director (**appointed by the Prime Minister after proposal of the Ministry of Defence**) who depends directly from the Minister. He is assisted by a Deputy Director, a Secretariat and an Inspectors Unit. The First Section of the Unit is in charge of the inspections over the Carabineers Corps, both at central and local level. Ordinary inspections are carried out periodically, as set forth by the program prepared every year. However, extraordinary inspections can take place, at the request of the Minister.

### 5.8.2. Internal Inspections and Disciplinary Proceedings

For the State Police internal checks and inspections are arranged by the Central Inspection Office. The Central Inspection Office was established by Law No. 121/1981, with the following main tasks: it verifies the implementation of the orders and directives of the Minister of Interior and the Chief of State Police; it reports to the latter on the activities performed by central and local offices of the State Police administration; it verifies the effectiveness of services and the proper accounting management. Since 1998, moreover, it also fulfils the oversight functions on safety in the workplace, with competence for all administrative areas pertaining to the Ministry of Interior.
The organization of the Central Inspection Office provides for a Director (a prefect, nominated by the Ministry of Interior after proposal of the Director of the Public Security Department, Chief of the Police), a body of 28 ‘General Inspectors’ directly dependent from him/her and 4 internal Services.

Concerning the competence and power limitations of this office, we must underline that the Central Inspection Office is dedicated only to the 17 Head Offices of the Public Security Department of the Ministry of the Interior and all the local divisions of State Police throughout the Italian territory. The other national police forces, in accordance with their regulations, have their respective offices for conducting inspection activities in each police structure.

The Central Inspection Office has no direct powers of sanction against the employees of those police forces, but if the inspectors are informed of illegal conduct during their investigation activities, they may report them to the Director of the Public Security Department (Chief of State Police), who will then inform the heads of the police force to which the concerned employees belong, thus enabling inspective or disciplinary procedures. Secondly, the type of audit is different and additional to the disciplinary powers of hierarchical superiors activated within each police force.

In summary, the control activities of the Central Inspection Office are threefold:

a. Routine inspections (also known as ‘collaborative controls’), based on a three-year program of controls, in which all the 1800 offices (central and decentralized) of the State Police are inspected to verify the correctness of the office management and report to office managers on how to fix an incorrect management. Inspection procedures are laid down by the first volume of the current ministerial guidelines of 2008. They arise in a semi-annual report delivered to the General Director of the Public Security Department, showing the problems detected in the organization and operations of the offices audited; the measures taken in response to problems found or the proposals made to the relevant bodies; offices that will be checked in the next six months of inspections;

b. Extraordinary inspection activity, only upon request of the Minister of the Interior or the General Director of the Public Security Department (Chief of the State Police), following the reporting of serious events that deserve special attention;

c. Survey activities, intended to verify the extent of certain phenomena connected to the organization of the police offices on the Italian territory (for instance, one of the latest surveys was carried out on the situation of custody cells in police stations).

The Central Inspection Office is not responsible for issuing penalties to those responsible for inappropriate behaviour. The Office reports to the Chief of Police, who takes the most appropriate decision autonomously.

As far as internal checks and inspections for the Carabiniers Corps are concerned, the Vice-General Commander (delegated by the General Commander) is responsible for
dealing with inspections and may use the internal inspectors of General Command for more complex investigations. For routine inspections, on the basis of the program annually prepared by the General Command, the various Commands of the territorial organization exercise checks on the commands of lower territorial level (the Inter-Regional Command on the Regional one, the Regional Command on the Provincial, etc.).

Disciplinary proceedings against police employees are managed independently by each police force, which within its hierarchical structure and its own regulations provides disciplinary procedures, boards and penalties. The main distinctions among the disciplinary procedures of the different national police forces depend on the diverse nature of their legal status; State Police, National Corps of Forest Rangers and Penitentiary Police have a legal status of civilian police forces, while the Carabineers Corps and Guardia di Finanza Corps have a military one.

Within the State Police the principle of hierarchical subordination is in force, although it is a civilian administration; therefore, the employee of lower rank shall be subject to the higher one. In case of violation of internal regulations for an operational, disciplinary or logistic responsibility, a disciplinary procedure (regulated by national laws: DPR no. 737/1981 and DPR no. 782/1985) could be activated. In particular, there are two types of procedures: the minor is called ‘Corps sanction’ and can result in a simple warning or monetary fine for the offenders and the other is called ‘status sanction’ (because it concerns the legal status of the employee) and can lead to a suspension or dismissal of the employee. While the first type of penalty is imposed directly by the immediate superior of the police officer accused of violation (after having heard the explanations of the latter and having sent a report to the competent local authority), the second requires a more complex procedure. It is up to the provincial Disciplinary Council (board of State Police officials, composed by the Vice-Questore, two provincial Police executive officers and two Police union representatives) to impose the sanction. The disciplinary regulation provides the possibility for the accused employee to use a lawyer for his defence. It should be noted that the criminal proceedings against police employees are handled by a court of the Judiciary, independently of internal disciplinary proceedings.

In the case of simultaneous disciplinary and criminal proceedings for the same police officer’s conduct, if the abovementioned officer is subject to a detention order for his conduct, a compulsory suspension is arranged. If there is no detention order but only an indictment in a criminal proceeding, the superior of the officer can decide to suspend him/her, if he/she considers that there are ‘serious reasons’. In case of simultaneity of criminal and disciplinary proceedings, the disciplinary proceedings will be suspended until the end of the criminal one, which decision will also affect the disciplinary proceedings. When there is a criminal sentence against a police officer found guilty, a disciplinary sanction against him is automatically imposed.

Disciplinary proceedings of Carabineers Corps have many common features with the procedures of State Police – the regulation of these disciplinary proceedings by national laws, the independence from other types of proceedings as the Judiciary, the existence of two levels of severity of the sanctions, the need for a collegial board of senior officers for the
decision on the most severe penalties, etc. The main difference is that, since the status of these two police corps is military, there are no monetary fines for the sanctioned employees.

In particular, Carabineers officers are subject to the Code of Military Discipline and its basic principles: the subordination to the superior, the obedience, the oath and the Italian flag. The sanctions listed in the Code of Military Discipline are the recall, the reprimand, the confinement and the strict confinement (two measures of detention, enforced within military barracks). For the most severe penalties, the Code provides a special advisory committee, appointed by the Regional Commander, and a hearing similar to a judicial trial, with the possibility of using a military lawyer for the accused officer. During the disciplinary proceedings, the special advisory committee must ascertain the alleged violations also through oral investigation activities. At the end of these proceedings, the sanctions are imposed by the Regional Commander.

5.9. Turkey

There are various procedures in Turkey in respect to audit and complaints made about internal security personnel. Each of three internal security forces (police, gendarmerie and coast guard) has their own different internal oversight mechanisms.

5.9.1. Oversight Mechanisms within Internal Security Units and Mol

The structure, duty, authority and operation of internal oversight mechanisms of internal security units have been regulated in each internal security units’ own statutory law.

5.9.1.1. National Police Department

The Police Inspectorate Board (PIB) is within the central organization of the National Police Directorate according to the Law on Organization of the Police. It is regulated in the bylaw on the Police Inspectorate Board that it consists of one chairman and inspectors, and is subordinated directly to the Director General of Police.

Cases when acts, actions, attitudes and behaviours of personnel of the National Police shall be a subject to investigation are stated in the bylaw on Discipline of Police Organization and the criminal law. Investigations shall be conducted by the Inspectorate Board. If an act is not to be subject to investigation, the measures that should be taken shall be determined and submitted to the General Directorate of National Police. Necessary investigations shall be conducted by the Inspectorate Board, when acts, actions and behaviours of personnel of the National Police Department constitute a criminal offence in terms of Law 4483, and the criminal law. If inspectors observe an offence which is not involved in the assignment letter, but is in relation to the subject of the inspection, a request for additional inspection must be made to the Inspectorate Board. No authority and no other office may give orders or instructions to inspectors apart from the General Director and the chairman of the Inspectorate Board.

Documents drafted at the end of an inspection contain: overall situation, summary of the proceedings, investigation, and examination reports. A special data system has been
created within the scope of National Police Department for human rights. Violations caused by police personnel are registered. The Group and Office of Examination of Human Right Violation Claims has been created so as to evaluate complaints registered in the mentioned system, and to take necessary actions in accordance with the result of this evaluation.

In Law 4483, criminal investigation of public servants for crimes committed during their duty is divided into two phases, the first phase, i.e. the ön inceleme (preliminary examination), is an administrative procedure initiated and conducted by the administrative superior or by a public servant appointed by his administrative superior. This procedure has an administrative character and the public prosecutor does not have any power until an administrative decision to grant or not to grant permission is taken. After the decision to grant permission, the file is submitted to public prosecutor and he/she can initiate a criminal investigation. At this stage, the prosecutor becomes in charge of the criminal investigation.

5.9.1.2. General Command of Gendarmerie

In the Regulation on Organization, Duties and Authorities of the Gendarmerie about internal oversight of the Gendarmerie, it is outlined that the Department of Inspection (Denetleme Başkanlığı) shall inspect continually all units and institutions within the Gendarmerie. The Gendarmerie Centre of Evaluation and Examination of Human Rights Violation (UİHİDEM) has also been created within the Gendarmerie on the purpose of researching the complaints and applications related to claims for human rights violations which have occurred in the geographical area of responsibility.

5.9.2. The Inspection Board of the Mol

The Inspectorate Board of the Mol (IBM) shall inspect and audit upon the order and approval of the Minister of Interior, review and investigate the transactions and financial accounts of the central units and affiliated entities of the Ministry, provinces, districts and local authorities, and of the unions, enterprises and establishments affiliated with or founded by the foregoing or by special laws. The IBM is directly subordinated to the Minister of Interior and inspectors of the Board do inspect, review, search and investigate on behalf of the Minister. No authority may give orders to inspectors apart from the Minister and chairman of Inspectorate Board. The authority of inspection by IBM comprises all central units and local authorities. However, the IBM has no authority to inspect all actions of the Gendarmerie and Coast Guard Command, but only their internal security actions. The IBM conducts a general annual inspection. The period included in the general inspection is comprised of three years. The IBM is also charged with conducting special inspections regarding internal security units directly on orders of the Minister of Interior.

5.9.3. The Inspection Board of Prime Minister

Another important organ with regards to oversight and inspection of internal security forces is the Inspectorate Board of Prime Ministry (IBPM). The IBPM has power to inspect not only
in the Prime Ministry but also all public authorities including internal security units. The IBPM operates directly on orders of the Prime Minister. In the inspection of the internal security units, inspectors of the Prime Ministry, act with the title of Coordinator of Panel, in case of a joint inspection made collectively with inspectors of the Mol or other relevant institutions. The IBM and inspection boards of all internal security units are obliged to meet without any delay when a written demand is made by the IBPM. In practice, conducting an investigation by the IBPM over internal security units comes into question only in case of serious allegations of corruption and illegality, or in the case of failure of the IBM or inspectorates boards of all internal security units to solve a problem and clarify an incident.

5.10. Comparative Overview

As can be seen from Table 5, there are gaps concerning the actual functioning and characteristics of inspectorate mechanisms. Inspectorate bodies in Spain, UK and Denmark are located outside of the internal security organizations and are independent of the police structure. The French and Germany case studies are closer to the Turkish structure, but the inspection membership is more open to civil society. Citizens can appeal to the inspection directly (France), and inspection units of police and gendarmerie and the Mol are very often working in joint missions. Contrary to all selected EU member states, an audit without authorization of the Minister of Interior is not possible in Turkey. Contrary to Germany, Denmark and Portugal, disciplinary inspection without order of the head of the National Police or Gendarmerie is not possible in Turkey. Appointment of heads of inspections in Turkey is similar to that of France, Spain, and Portugal i.e. by the Mol, while appointments in UK and Denmark are made by authorities that are external to internal security forces and the Ministry of Interior.

It is also observed that the investigation/audit systems of the various ISFs in selected EU countries are more integrated in terms of principles, and legal foundations compared to Turkey. In Turkey, the Ministry of Interior, the Higher Discipline Board, the Higher Discipline Board of the General Directorate of Police, the Discipline Board of the General Directorate of Police (Central and Provincial), Governors, District Governors, Provincial Director of Security are all authorized to apply different sanctions and procedures to different ranks and personnel. The Gendarmerie and Coast Guard personnel use a military legislation regarding disciplinary issues.

The way these inspection boards operate in the EU countries and in Turkey is different for crime. In Turkey a public prosecutor can receive a complaint of, for example, abuse of authority that does not originate from the complaint services of Police/Gendarmerie. But, after receiving it, he must send it to the relevant department of government or the governorship, where it will be processed. In Turkey, the inspectorate board is given an order to start a penal investigation by the Minister of Interior (the board of inspector of Mol is attached to the Minister himself), but is not monitored during the inspection process and reports to the Minister. In EU countries, the investigation is initiated and monitored by the public prosecutor and the investigative judge, and inspectors are reporting to the public prosecutor and the investigation judge.
### Table 5: Internal Oversight Mechanisms in Selected EU Member States and Turkey

<table>
<thead>
<tr>
<th>Country</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mol inspection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audit services / Status vis-à-vis ISFs</td>
<td>General Inspectorate of Administration (IGA) /External to Police &amp; Gendarmerie (For internal services see below)</td>
<td>Inspectorate of Security Personnel and Services (IPSS) and competent for inspecting both Police and Guardia Civil service units/ External to Police &amp; Guardia Civil</td>
<td>Her Majesty’s Inspectorate of Constabulary (HMIC) / External to S2 forces</td>
<td>Mol Board of Inspectors (MoI/Bl) External to ISF’s competent to both Police &amp; Gendarmerie</td>
</tr>
<tr>
<td>Appointment of Heads of Inspections</td>
<td>IGA IGPN IGN = council of minister</td>
<td>Head of IPSS appointed by Mol. Heads of Inspection teams appointed by Head of IPSS.</td>
<td>Chief Inspector of Constabulary appointed by Parliament.</td>
<td>Mol inspection: PM+Pd after proposal of Mol</td>
</tr>
<tr>
<td>Reporting Line of Audit Service</td>
<td>IGA reports to Minister of Interior</td>
<td>IPSS reports to Minister via State Secretary for Security</td>
<td>Chief Inspector of Constabulary is independent both of the Home Office and Police.</td>
<td>Mol Inspector Board reports to Minister Prime Ministry Inspector Board reports to Prime Minister.</td>
</tr>
<tr>
<td>Audit without Authorization of Minister of Interior</td>
<td>Yes, IGA</td>
<td>Yes, IPSS</td>
<td>Yes, HMIC</td>
<td>No</td>
</tr>
<tr>
<td>Guidelines or Standards for Conducting Inspections / Publicity</td>
<td>Yes for the police / publicity of administrative documents, 1978 law</td>
<td>Yes, Developed by IPSS itself + sometimes service instructions from State Secretary.</td>
<td>Yes, HMIC / public</td>
<td>Yes/ On line</td>
</tr>
<tr>
<td>Security Forces Inspections</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audit Services Internal to ISFs</td>
<td>IGPN (police) in charge of audit + investigations (administrative / penal) IGN (Gendarmerie) has 2 services - IASG (audit) - IT (discipline)</td>
<td>No specific Police Inspectorate. Daily/routine oversight by heads of Units. “Internal Affairs” unit at DG (crimes)</td>
<td>Disciplinary actions: Standards Units (PSU). Discipline body for Chief Officers: Police Authority.</td>
<td>Inspectorate Board GD of Police Head of Gendarmerie Inspection and Inspection Board</td>
</tr>
</tbody>
</table>

38 The Procedure of the Generals Appointment: Gendarmerie General Command shows necessity, Chief of General Staff suggests, Minister of Interior gives a positive opinion, Prime Minister signs for the appointment and President approves of it.
<table>
<thead>
<tr>
<th>Security Forces Inspections</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting Line of Inspection Services of Police</td>
<td>France: General Inspectorate of National Police (IGPN) - reports to GD of National Police, accountable to public prosecutor</td>
</tr>
<tr>
<td>Reporting Line of Inspection Services of Gendarmerie</td>
<td>France: Inspectorate of Gendarmerie (2 services: investigations/audit) - reports to Gendarmerie Director, accountable to public prosecutor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Discipline and Sanctions</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disciplinary Sanction Regime</td>
<td>France: Regulated by the service’s discipline regulation. - Gendarmerie: Discipline regulation of the Armies - Police: Partisan technical committee (with trade union representatives)</td>
</tr>
<tr>
<td>Disciplinary Inspection without Order of GD of Police/ Gendarmerie</td>
<td>No</td>
</tr>
<tr>
<td>Ordinary Service vs. Special Mechanism to Register Complaints at Police/Gendarmerie</td>
<td>France: Ordinary service (the IGPN is organized to daily register and treat complaints against the police)</td>
</tr>
<tr>
<td>Disciplinary Sentencing</td>
<td>France: Council of discipline (not the IGPN or IT of IGN)</td>
</tr>
<tr>
<td>Penal Investigation by Inspectorate: - decision to start - monitoring &amp; - reporting to</td>
<td>France: All 3 by public prosecutor and judge of instruction</td>
</tr>
<tr>
<td>Mol inspection</td>
<td>Country</td>
</tr>
<tr>
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</tr>
<tr>
<td>Audit services / Status vis-à-vis ISFs</td>
<td>The National Commissioner can at any time make inspections of the police districts. The same goes for the Director of Public Prosecutions who exercising this power through the regional public prosecutors</td>
</tr>
<tr>
<td>Appointment of Heads of Inspections</td>
<td>Inspections are done on the National Commissioners/ The regional public protectors' own initiative</td>
</tr>
<tr>
<td>Reporting Line of Audit Service</td>
<td>The National Commissioner/The Director of Public Prosecution reports to The Minister of Justice, but no specified system of reporting.</td>
</tr>
<tr>
<td>Audit without Authorization of Minister of Interior</td>
<td>Regular inspections by The National Commissioner/The Director of Public Prosecutions, supervising respectively police and prosecutor activities</td>
</tr>
<tr>
<td>Guidelines or Standards for Conducting Inspections / Publicity</td>
<td>Internal guidelines and regional prosecutors have permanent supervision departments for each police district</td>
</tr>
<tr>
<td>Security Forces Inspections</td>
<td></td>
</tr>
<tr>
<td>Audit Services Internal to ISFs</td>
<td>Daily/routine oversight by Heads of Units.</td>
</tr>
<tr>
<td>Security Forces Inspections</td>
<td>Country</td>
</tr>
<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td>Reporting Line of Inspection Services of Police</td>
<td>Denmark: No specific reporting line system. Portugal: Reports to National Director. Germany: Legal framework which defines a gradual procedure, three different bodies (police authorities, supporting supervisory authorities and MoI). Italy: MoI Department of Public Security.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Discipline and Sanctions</th>
<th>Denmark</th>
<th>Portugal</th>
<th>Germany</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disciplinary Investigations</td>
<td>The Danish Independent Police Complaints Authority handles investigation of criminal cases against police officers and considers and decides complaints of police misconduct. Police inspection GNR inspection The most serious situations and with social and relevant impact are investigated by the IGAI.</td>
<td>Police inspection GNR inspection The most serious situations and with social and relevant impact are investigated by the IGAI.</td>
<td>Regulation of MoI and police investigation.</td>
<td>State Police: Police official charged by Disciplinary Committee Carabinieri and Guardia di Finanza Corp. -Special investigations by a special advisory committee (only for the most severe sanctions), as set forth by the Code of Military Discipline, that applies to all branches of the Italian army.</td>
</tr>
<tr>
<td>Disciplinary Inspection without Order of GD of Police/Gendarmerie</td>
<td>Yes, Commissioners of the police districts can in minor cases themselves initiate an investigation. Yes, in case of disciplinary procedure (for both police and gendarmerie). Special procedures that can only be ordered by the GD of police/Gendarmerie. Inquiries, which serve to investigate certain facts assigned to either the irregular running a command or service, whether the action likely to involve employee disciplinary action or agent. Cases investigated by the IGAI don’t need any authorization from GD of police/Gendarmerie.</td>
<td>The MoI is competent to request and conduct inspections in cases the particular police authorities do not act.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Discipline and Sanctions</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
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<tr>
<td>--------------------------</td>
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</tr>
<tr>
<td>Ordinary Service vs. Special Mechanism to Register Complaints at Police/Gendarmerie</td>
<td>Special mechanism</td>
<td>Ordinary service</td>
<td>Both</td>
<td>Ordinary service</td>
</tr>
<tr>
<td>Disciplinary Sentencing</td>
<td>Commissioners of the police districts, The National Commissioner, The Minister of Justice</td>
<td>- For most serious sanctions (dismissal or compulsory retirement), only the MoI; - For all the other sanctions, the Director / General Commandant; - Less serious sanctions can be applied by entities with lower hierarchical ranking</td>
<td>Decision to start/initiating the disciplinary procedure: the Superior, the superior of the employees, services responsible for conducting investigations (Ermittlungsführer), supporting supervisory authorities, (federal) MoI.</td>
<td>Disciplinary Committee (but the execution orders compete to the Chief of Police or Carabiniers’ General Commander)</td>
</tr>
<tr>
<td>Penal Investigation by Inspectorate: - decision to start - monitoring &amp; reporting to</td>
<td>All 3 by public prosecutor (The regional prosecutors)</td>
<td>All 3 by public prosecutor and investigative judge</td>
<td>- Offences of the German penal code: criminal proceedings must be initiated (by public prosecutor). - Offences of professional duties: disciplinary proceeding will also be initiated (legal framework, see above). - Hierarchical superior or persons for conducting investigations (member of the concerned police authority, also competent for the decision to start). - Supporting supervisory authorities and MoI (monitoring the procedure and self-dependent starting of disciplinary procedures) Reports: written by police authority or supporting supervisory authorities. Report of taken actions for the senior employer.</td>
<td>All 3 by public prosecutor and investigative judge</td>
</tr>
</tbody>
</table>
A Summary of the Complaint System in Turkey

In Turkey citizens may submit their complaints to Governorates, General Directorates, Ministries, Prime Ministry, Parliament, Public Prosecutors and the like. The complaint is sent to the competent authority, and then the following procedures take place:

- The Government department or governorship undertakes an investigation on the complaint subject.
- If there is no convincing proof no further action is taken
- If there is a convincing proof, disciplinary or criminal investigation or both may be launched.
- The preliminary criminal investigation is decided by the Governor, Sub-Governor or the Mol, within the scope of Law 4483. Criminal investigation is authorized if there is convincing proof.
- This decision can be challenged by either complainant, alleged perpetrator of the offence or the public prosecutor before an administrative court.

In line with disciplinary investigation outputs infringements of discipline codes are sanctioned by either disciplinary chiefs designated by law or disciplinary panels in line with the “civil servants” law (657) and national police organization disciplinary by-law. The military discipline regime is applied for discipline rules infringements committed by gendarmerie and coast guard personnel.

*Source: Ministry of Interior of the Turkish Republic; An Independent Police Complaints Commission & Complaints System for the Turkish National Police and Gendarmerie Twinning Project Consultation Document, Ankara, January 2009

5.11. Gaps

- **The Investigation/Audit system in Turkey has been constituted by administrative regulations rather than laws.**

  With the exception of the legal definition of a few important principles, many inspection procedures and mechanisms are regulated by ordinary administrative regulations. Sanctions are not always legally defined, but administratively adopted in practice (*from salary cuts to dismissal*). Turkey lacks a clear and legal definition of serious versus non serious crimes for triggering the appropriate investigation mechanism (*local or national*).

- **There is no common and homogeneous statutory law applicable to all ISFs.**

  The Gendarmerie and National Police Department have their own disciplinary regime in all EU states with a dual system. However, in the selected EU member states, inspectors of Police and the Gendarmerie carry out their duties under similar principles. In Turkey while inspection (*PIB*) has a transparent regime, investigations/audits conducted by inspectors of the Gendarmerie and Coast Guard Command are not open to the general public. Inspectorate boards consisting of generals in the Gendarmerie and Coast Guard Command are found. However, the legal information related to the structure and activity of these boards could not be reached.
• **The internal investigation/audit boards in Turkey are less integrated compared to selected EU member states.**
  
  Investigation/audit boards of ISF are not sufficiently integrated with each other. As we can see in selected EU states, a more uniform internal inspection system can be adopted, often coordinated by the Mol.

• **The internal investigation/audit system in Turkey is not as independent from Government when compared to selected EU member states.**
  
  Audit inspectorates can initiate work without being required to do so by the Minister of Interior in all selected EU member states. In one case, the Chief Inspector of Constabulary (HMIC the British inspectorate) is independent both of the Home Office and the Police and appointed by Parliament.

• **Public Prosecutors have no authority on investigations of ISFs conducted by administrative inspectors.**
  
  In Turkey, public prosecutors have no authority on administrative investigation of ISFs. Moreover, initiating criminal investigation by prosecutors is subject to the permission of administrative superiors of ISFs. As a result, if a criminal offence is identified during an administrative inspection, it is not possible to directly report this offence to the prosecutor and initiate a criminal investigation. In the selected EU countries, the prosecutors are fully in charge of penal investigation (*initiation, monitoring and designation of investigation officers*) carried out by inspectorates of police/gendarmerie.
6. The Role of the Representative of the State at the Local Level (Prefets, Governors)

6.1. Duties, Competencies and Functions

In the hierarchical system of the state, where they exist, governors are representatives of the central government at the local level. Important oversight functions are exercised by governors with regard to the internal security forces as well as on other public structures. These functions can be of hierarchical or disciplinary nature but can also be in terms of coordination across national administrations working at the local level.

6.2. France

The “préfet” is the symbol of the state line of control that stretches from the government level in Paris down to the administrative level in each of the 100 “départements” (the equivalent of Turkish “provinces”) that are the basic administrative units of France. This role covers all fields of government activities with the exception of military defence, education and justice.

The role of préfet has been reshaped and adjusted in the last decades both through laws and bylaws. Some of the legislation is general but relates to security issues while other legislation is purely dedicated to security (see box below).

The préfet plays a key role in the oversight of the local communities and of the private security industry. In local communities, the préfet has the power to challenge any decision of the locally elected bodies, mainly the mayors, before the administrative in order to annul these decisions (when the decision is proven to be illegal). In the field of private security the préfet is the authority figure that is granted power to allow private companies and individuals to operate in this sector.

When using the word ‘préfet’ it is a reference to the state representative in the département. It should however be noted that the préfet can be assisted by a “deputy préfet for security”. This is the case in the most heavily populous departments. Where they exist, these deputies have the same competencies and powers as the préfets. They act through delegation of power from the préfet. Also, there are regional préfets (regions are the territorial unit above departments), they are involved in public safety when two departments or more are concerned by the same public order issue.
Main Legal References

- The law of 2 March 1982 on about decentralization (namely the law about the rights and privileges of municipalities, “departments” and regions) clearly indicates in article 34 that: (i) the préfet is the representative of all Ministers; (ii) the préfet is in charge of the national interests, of the respect to the law and of public order.
- Through the law of 2 March 1982, the Prefet’s role relating to the police and the gendarmerie has been made more accurate through an amendment that was introduced in 2003 by the LOPSI: “the préfet drives the activity of the police and of the gendarmerie in the département in the field of public order and of administrative policing; the local chiefs of the police and the gendarmerie report to him on these matters”. This wording in fact strengthens the line of the 1995 internal security law that said, “The préfet drives and coordinates the activities of the police of the gendarmerie and defines their missions” introducing the notion of “reporting”.
- This responsibility of the préfet regarding security is also reaffirmed when it comes to the relationship of the préfet with the locally elected bodies and especially the mayors. Article 2215-1 of the “code of local communities” stresses that the préfet is the only one who can decides on security, safety and public order measures that encompass more than one municipality.
- The 15 May 2002 decree gives full responsibility to the Ministry of Interior regarding the gendarmerie operations in the field of internal security. It strengthens the power of the préfet over the gendarmerie (except for criminal investigations that are instructed by a magistrate) even if the decree has a wider spectrum and does not explicitly refer to the préfet.
- The decree of 29 April 2004 further defines the role of the préfets. It repeats the principles that have been set previously and extends the competencies of the préfet in the field of logistics: (i) article 11 states that the préfet is in charge of public order as well as the security and protection of the population; (ii) article 19 clearly makes him responsible for real estate and equipment asset of the public services that fall under his authority; (iii) article 20 also gives him the secondary power of financial decision regarding the state budget whatever the budget funding is used for; (iv) article 31 gives him the power to assess the département gendarmerie commander each year.
- The article 122.1 of the Internal Security Code states that the préfet leads and coordinates the internal security system.

In short, the préfet can decide the missions of the police and of the gendarmerie in the field of policing where no crime investigation is involved. This decisional power is complemented by the mandatory requirement for the police and the gendarmerie to report locally on the implementation of these missions. This role does not include the activities that rely on the sole initiative of the police and of the gendarmerie and the deficiencies that occur in matters where the préfet has not taken any decision. These fall outside of the oversight role of the préfet.

However, this last assertion has to be mitigated. When a crime is committed (whoever is the perpetrator, be it an ordinary citizen or either the police or the gendarmerie) the préfet has no formal power to act since this competency fall into the hands of the judicial power,
namely prosecutors, investigative judges and the courts. Nevertheless when it appears that
the violator is a public servant and furthermore a police officer or a gendarme, according to
the law a préfet, like all public service managers, has a duty to report the case to the
prosecutor. This is a mandatory requirement according to article 40 of the criminal
procedure code. If the préfet fails to do so, he himself can be prosecuted.

The current section has described the role of the préfet with regards to the police and
the gendarmerie. It can be said that the according to the law, the préfet is in charge of local
policing policies while the police and gendarmerie commanders are in charge of police
operations. The préfet is not only a supervisory actor but also an active and direct player.
Therefore, as a player that operates in the field of the civilian oversight of the security sector
the préfet himself or herself has to be overseen.

6.3. Spain

Differences in basic principles of the state also have a reflection in differences at the level of
the organization and functions of the state apparatus, the main ones being:

1. the system of territorial division of a country and the nature of public authorities
   at territorial level (autonomous regions and municipalities in Spain, versus a
centralised "préfectoral" system in Turkey);
2. the position and role of the Army vis a vis the civilian authorities, in a number of
   areas, but notably with regards to national security (including internal security).

The “Préfectoral” system in Spain was abolished in 1997. The Central Government’s
“Delegate (Delegation)” has replaced it in each of the 17 Autonomous regions as the state’s
top representative. Under the Delegate, provincial sub-delegates (equivalent to District
Governors in Turkey) can be found.

In Spain the Government’s Regional Delegates and provincial Sub-delegates formally
hold the top responsibility for public security at the relevant territorial level. (region,
province), as well as the command of the State security forces and corps (CNP and Guardia
Civil) at that level. However, although this authority gives them a certain role in overseeing
the action of such forces, their decision-making capacity is actually quite limited in key
aspects such as deployment, appointments and dismissals, internal discipline, etc.

At sub-national (territorial) level, the state’s internal security administration is placed
under the Government’s Delegates to the Autonomous Regions and their Sub-delegates at
provincial level.

A government delegate is never requested to contribute (with "notations" or in any other
way) to the evaluation of the professional capacity and performance of neither the head of the
Police nor the head of the Guardia Civil. Civilian authorities may send written comments or
assessments to the "organic" superiors of the heads of the police forces (Directorate-general of
Police/Guardia Civil) but there is no standard and established procedure for the periodical
assessment by civilian authorities of such professional capacity and performance. The assess-
ments are done by the hierarchical superiors within the Police Corps or the Guardia Civil itself.

Although Turkey and Spain have central government delegates at the sub-national
level, the positions of governor and prefect are quite different. There is no governor at the regional level in Turkey. And there is no equivalent of district governor in Spain. The powers of Spanish central government’s representatives at local level (especially in provinces) have substantially declined with the deepening of the decentralization.

6.4. England

There is no equivalent to Turkish Governors in the UK context. While each of the regions (Wales, Northern Ireland and Scotland) has their own First Minister, they do not exercise individual powers or sole responsibility in relation to policing and criminal justice. Rather in all the regions of the UK policing is governed under the so-called “tripartite arrangements”, established under the Police Act (England & Wales) [1964] which attempted to strike a balance between the responsibilities of the police via the Chief Constable; local communities via newly established Police and Crime Commissioners, and the Home Secretary representing central government. In theory no one single element can dominate the other and the system contains a number of in-built checks and balances to prevent any one single element in the tripartite arrangements dominating policing.

In Turkey, Governors have authority over the activities of internal security sector units within the scope of Law no: 5442. Control of the police is the result of a finely balanced relationship between the three elements in the tripartite structures. Policing is not directed or controlled by any one bureaucrat either at national or local level.

In relation to Turkey, Governors and district governors are directly responsible for the security and public order of provinces and districts. Their mediums of execution are gendarmerie commanders, security directors, heads or officers.

In the UK this is the collective responsibility of the Police and Crime Commissioner in conjunction with the Chief Constable. Chief Constables are solely responsible for the day-to-day policing activities in their area. They cannot be directed by politicians in terms of the conduct of day-to-day policing but national standards and codes of practice will be set by the Home Secretary and the Home Office and Chief Constables must have regard to both the Strategic Policing Requirement issued by the Home Secretary and the Police and Crime Plan set by the local Police and Crime Commissioner.

6.5. Denmark

There is no equivalent to Turkish Governors in the Danish context. There is also no “Prefect-institution” in Denmark regarding the oversight of the local communities and of the private security industry. The central government is not directly represented in the 98 local municipalities, and 5 regions.40

The Danish police authority is solely responsible for policing in Denmark

The 5 regions and the 98 municipalities do not exercise individual powers or sole responsibilities in relation to policing and criminal justice.

No part of internal security in Denmark is formally handled by the private sector, and the Ministry of Justice is responsible for enforcement of private security legislation and control of private security companies and personnel.

40Denmark is divided into 5 regions. The 5 regions are elected administrative units whose main tasks are healthcare, regional development and operation of a number of social institutions.
6.6. Portugal

In 2011, the Government abolished Civil Governments, which had competences in the areas of Government representation, public security and civil protection.

The Civil Governments existed in Portugal for almost 200 years (established in 1834), and were the administration’s body that represented, administratively, the government in each district (22 in total). The heads of the Civil Government were the civil governors, who depended, in practice, on the Mol.

The functions of Civil Governments had been decreasing since their inception. Initially, they had wider jurisdiction in central government representation and the coordination of all state services located at the district level. More recently, they were working in practice as a simple delegation of the Mol (issuing of passports, public security, civil protection and management of electoral processes).

More specifically in the security and policing area, some of the following were the responsibility of civil governments: grant of licenses or authorizations to perform activities in order to protect public safety and prevent risks and dangers inherent to such activities; receiving communication on private security activity; promoting community policing; promoting coordination of the national security forces with the Municipal Police; promoting coordination of control actions that fall under the Mol; providing for the maintenance or restoration of public order and tranquillity, requesting the intervention of the commands of the GNR and PSP installed in the district; applying police measures and administrative sanctions provided by the law.

The extinction of the Civil Government was implemented with Law Decree No. 114/2011 and Organic Law 1/2011 (for Parliament legislative reserve matters), which transferred all powers to other administrative bodies (such as the Mol services, city councils, the PSP, the GNR and the National Civil Protection Authority).

6.7. Germany

6.7.1. Local Representation of Government

The Prime Minister of the state is the supreme elected representative. He/she is the head of the state ministers, which are responsible for various departments, e.g. justice, internal safety, labour, sciences, etc.

The Minister of Interior has two roles. In the general system of ISF he is the senior employer who represents the interests of his staff and has the overall responsibility for the executive action of police authorities. He has to take political responsibility for this action. He has to justify the action in a political manner, e.g. by answering inquiries/interpellations. On the other hand, he should represent the public interest concerning issues of internal security. He/she is not elected by direct vote of the citizens but by the state parliament. On a secondary level the inspector of police, the highest ranking police officer of the states, fulfils the representative tasks assigned to him. He is also the counsellor of the Minister of Interior concerning security issues. The local police authorities are represented by the local police commissioners. Some states have established administrative offices (Landratsbe-
hörden) led by a political civil servant (Landrat) who is also responsible for police authorities and municipal authorities.

6.7.2. The Meaning of Local Councils and the Private Sector

On the local level, police councils are elected to ensure a democratic control of local police authorities. States which have not established councils make use of similar advisory groups and co-operations, especially crime prevention councils. External partners co-operate with local police authorities. On the other hand, citizens are involved in solving local security problems by making use of civil defence leagues (Bürgerwehren). They have no official character; some neighbourhoods have established them for prevention of burglary for instance. There are also various prevention councils.

Overall, a privatisation of internal security and public safety can be observed. There is an expanding influence of private security companies. In some states police and/or municipalities collaborate with private security services. The police have no authority to give directives to private security companies, but their competencies are restricted.

6.7.3. Public Reports

For the output and outcome of local police authorities, there are various public reporting systems. The annual police criminal statistics, road accident statistics, annual surveys on internal security, surveys of special crimes, reports issues such as extremism are some key examples.

In addition, there is an internal reporting system within the ISFs concerning their strategies, aims, personnel performance, costs, results and outcome of police action (so-called security programs of local police authorities). Contents, complexity and intervals are regulated by decrees of the Mol.

6.8. Italy

The representative of the national government at the local level is the Prefect (since 2004 his/her official seat is called ‘Prefettura – Ufficio Territoriale del Governo’). The Prefect depends directly on the Ministry of Interior, but acts as general representative of the Government in the territory. He/she ensures the coordinated operation of the State administrative offices in collaboration with local authorities. It is supported by a Deputy Prefect and some vice-Prefects, in charge of the different organizational areas of the Prefecture.

As far as the function of public security protection is concerned, the Prefect is the main ‘political’ authority at the provincial level, whereas from a technical-operational point of view, the public security local authority is the Questore. The Prefect has a general responsibility for public order and security in the province, and oversees the implementation of the directives in this matter. As set forth by art. no. 13 of Law 121/1981, he/she has the ISFs and other relevant organizations at his/her disposal and coordinates their tasks and activities. Therefore, the Questore, the Provincial Commander of Carabineers and other provincial heads of the ISFs must inform the Prefect on any problem concerning public order and
security, so that in turn the Prefect can keep the Minister of Interior informed with periodic reports on police activities carried out in the province. Moreover, art. no. 65 of Law 121/1981 establishes that police officers have a relationship of functional dependence with the Prefect, who can give them guidelines for the conduct of the activities of law enforcement and security at the provincial level.

However, this functional constraint does not include issues such as the appointment of police heads, internal inspections or disciplinary proceedings. These aspects are a matter of professional status of ISFs and are managed within the hierarchical structure of every police force. Moreover, since the Law 121/1981, the hierarchical dependence between Prefect and Questore has been removed: the relationship between these two roles is a functional direction and coordination played from the first to the second. Now there is no longer a power of the Prefect to sanction or remove a Questore, nor the duty for the latter to be accountable to the former.

In carrying out the functions of direction and coordination on Internal Security at the local level, the Prefect is assisted by an advisory body, the Provincial Committee for Public Order and Security. In fact, the Prefect plays a double role: he/she is responsible for the implementation of ministerial directives and for the coordination of police forces, and he/she is also responsible, at provincial level, for public order and security. In particular, the Prefect is not part of the hierarchical structure of the Department of Public Security (whose Director is the Chief of the State Police). He/she has to report directly to the Ministry of Interior itself. Therefore, within the Provincial Committee for Public Order and Security, the Prefect is the Minister’s representative. The Prefect defines coordinated plans for the control of the territory (in order to carry out ministerial directives) and submits these plans to the Office for the Coordination and Planning of Police Forces (‘Ufficio Coordinamento e Pianificazione delle Forze di Polizia) at the Ministry of Interior for the necessary authorizations and coordination at the national level. Police forces, in turn, are required to actually implement them.

The main task of the Prefect, in every province, is that of ensuring social peace, thus preventing the emergence of factors that can represent a threat to it, while at the same time eliminating existing cases of disturbance. This requires him/her to be constantly in touch with all social and institutional bodies. In other words, he/she needs to work on building balanced forms of relations and agreements and to pay constant attention to emerging social tensions and conflicts. For this reason, all decisions by the Provincial Committee are generally taken on the basis of unanimous consent. Where any dissent arises, efforts are made to allow for all existing opinions to be expressed, but the Prefect has the ultimate responsibility to formulate a decision. At the same time, every member of the Committee is granted the opportunity to report to the hierarchical superior of their own structure. For the Prefect, this is generally represented by the Minister of Interior who in turn can call for the National Committee for the Public Order and Security to settle the controversy.

The Provincial Committee does not only include the Prefect. Representatives of other institutions must join in, as they are permanent members: the Questore (who represents the State Police), the Provincial Commander of the Carabiniers Corps, the Provincial Command-
er of the Guardia di Finanza Corps, the Provincial Commander of the National Corps of Forest Rangers, the President of the Provincial authority and the mayor of the province capital. All these representatives are functionally subordinated to the Prefect and the Questore: the latter can ask them to collaborate, as far as their specific areas of competence are involved, in order to improve the performance of public security functions. Depending on the agenda of meetings, other representatives can be invited to meetings, including local officers representing State administrations (including the Judiciary, in agreement with the public prosecutor competent for the territory), representatives of local government agencies and/or of the civil society who might be interested in the issues to be discussed, either because they relate to their competence or because they are interested in the topics themselves. Inputs and strategies developed within the Committee are then translated into operations within technical meetings, set up in every province at the Questura, i.e. the State Police headquarters (involving the provincial heads of national police forces and the heads of local police forces). These meetings are chaired by the Questore.

The Prefect and the Questore play an important role also with regard to private security, which has recently been the subject of a new regulation. For almost 80 years, the position of 'private security guard' has been settled exclusively by some provisions in the Consolidated Act on Public Security of 1931. The Mol Decree no. 269/2010 aims at improving the organization quality and the efficacy of private security services through the strengthening of controls over those who intend to carry out such activities. The Ministry of Interior and its territorial bodies are now responsible for verifying that private security services are carried out under conditions of sufficient reliability. The ministerial regulation in fact has set the minimum requirements in terms of professional skills and education requirements of the private security guards. The Prefect of the province in which the private security company has established its main seat has the power to release the professional license (valid countrywide). The control activities on meeting the requirements needed to obtain and maintain this professional license are conducted by the State Police headquarters (Questure) of the provinces where the private security society carries out its activities.

With regard to the management and coordination of governmental administrations at the provincial level, the prefect can ask their heads to adopt measures apt to prevent significant damages to the quality of services rendered to the citizens, even in cooperation with the local autonomies. Furthermore, if these acts are not taken within the time specified, the Prefect can replace the public official in adopting the required measures, with the assent of the competent Minister and after notifying the President of the Council of Ministers.

In relations with the local government, the Prefect may temporarily suspend from office the mayor, the president of the Province and other local authorities when they perform acts contrary to the Constitution or for serious reasons of violation of the law or public order. This suspension is temporary and takes place only when there are grounds of urgency and necessity, pending the removal of the local authority by the Minister of Interior. In these cases, the Prefect may initiate the procedure for the dissolution of the municipal or provincial council and send a governmental commissioner. Pending the ministerial decree of dissolution of the local council, the Prefect can suspend the board and appoint a Special
Commissioner to ensure the smooth operation of services pertaining to the local authorities. The functions of Special Commissioner at the local entities, whose councils are dissolved, are carried out by officials of prefectural rank.

To perform these functions of coordination between governmental agencies and local authorities, the Prefect is assisted by a permanent provincial conference, chaired by him/her and formed by the provincial heads of the national administrations, as well as representatives of the local governments.

6.9. Turkey

Turkey is divided into 81 cities/provinces (il) and cities are subdivided into 919 districts (ilçe). In Turkey the governor (vali) as representative of both state and government at provincial level, the sub-governor (kaymakam) as representative of only government at district level are in charge with contributing to efficient oversight of the internal security forces.

6.9.1. Legal Statutes of Governors and Sub-Governors

In accordance with the Law on Provincial Administration, the head and authority of the general provincial administration shall be the governor. According to the organizational laws of ministries, an adequate number of organizations shall be established in the provinces and these organizations shall be subordinated to the governor. Governors shall be appointed, upon a proposal of Mol, by a decree of the Council of Ministers and the approval by the President of the Republic.

6.9.2. Supervision of Governors and Sub-Governors over Internal Security Activities

6.9.2.1. Providing Public Order

In the Legislation, it is specified that the governor and sub-governor are directly responsible for security and public order of the province and the district, and that this duty shall be performed through gendarmerie and police personnel. Therefore, the Provincial Director of Police and the Provincial Commander of Gendarmerie are in the position of Provincial Administration Branch Head that is subordinated to the governor. In the 11th Article of the Law on Provincial Administration, duties of the governor related to internal security activities in the province in which he/she assigned are listed as follows:

- The governor shall take necessary measures to prevent crimes from being committed, to protect public order and security.
- The governor shall secure the borders and coasts of the country, and execute all affairs relating to border and coastal security according to law.
- The governor has the duty, to ensure peace and security, personal immunity, safety of private property, public well-being and the prevention of crimes,
- When the governor sees that it is not possible to prevent events likely to happen or experiences sudden and extraordinary events, which could not be prevented by the police forces
within the province, he/she shall immediately call the nearest military commander of land, naval and air troop and call for assistance.

He has authority to determine a serious deterioration of public order because of acts of violence; to take necessary measures in these cases; to use all necessary public institutions and organizations and to task the personnel of these institutions, to arrest perpetrators of crimes and clear up the crimes, to detain individuals for 24 hours in usual cases and for 48 hours those involved in protests causing disturbance of the public order or crimes committed collectively. All those responsibilities have been bestowed upon the governor by legal modification made within the scope of the 2015 internal security bill.

6.9.2.2. Duties and Authorities of Governors in a State of Emergency

In province/s and district/s in which state of emergency is declared, Governors have a set of powers related to internal security forces, such as: imposition of a limited or full curfew; prohibition of any kind of assembly or procession or movement of vehicles in certain places or certain hours; authorization to officials for searching persons, their vehicles or property and to seize goods; control and, if deemed necessary, suspension or prohibition of the exhibition of all kinds of plays and films.

In accordance with the Law on State of Emergency, governors may ask help of military units in case of insufficient action by internal security forces.

However, even in the occurrence of deteriorating public order, a declaration of a state of emergency by governors rarely takes place. A self-declared expansion of their powers is preferred by governors instead. The wide authority of governors to take necessary measures in order to protect public order has been interpreted in a broad manner. On top of this, governors may ask the help of military units in such cases, which can lead to a situation similar to a de facto state of emergency (powers are used without a declaration of a state of emergency).

6.9.2.3. Supervision and Inspection

In accordance with the Law on Provincial Administration, the governor shall supervise and inspect all state offices, establishments and enterprises, private businesses, special administration, municipalities, village administrations and all affiliates thereof with the exception of judicial and military organizations. It is specified in the Law on Organization, Duties and Competences of Gendarmerie that the acts and activities of the Gendarmerie related to its administrative duties are supervised and inspected by the MoI and governors. By the legal modifications made within the scope of the recent internal security bill (2015), it is regulated that at the end of each year, evaluation reports regarding provincial/district gendarmerie and coast guard commanders shall be prepared by the provincial governors on issues related to their missions, military duties excluded. It is also specified that these evaluation reports are taken into consideration in rewarding, promoting, appointing and rotating Gendarmerie and Coast Guard personnel.
6.9.3. Oversight Power of Governors over Internal Security Personnel

6.9.3.1. Powers of Local Governors Related to the Appointment, Shuffle and Dismissal of Internal Security Personnel

Governors and sub-governors have no authority for appointment of internal security personnel in provinces in which they are assigned in the Civil Servants Law n°657. However, in the Law on Provincial Administration, it is regulated that the governor, exclusively within the province, may change temporarily or permanently, the duty stations of all subordinates and senior officers of the gendarmerie, police, customs enforcement and other special law enforcement forces; and shall immediately inform the Mol accordingly. It is specified in the legal modifications made within the scope of the recent internal security bill that the appointment, rotation and secondment of provincial commanders of gendarmerie are a prerogative of the Mol.

6.9.3.2. Powers of Governors and Sub-Governors over Discipline of Internal Security Personnel

According to the Law on Provincial Administration, the governor is the highest superior of civil servants and employees working in the provincial organizations of the ministries and of provincial directorates vested with legal personality. With such capacity, the governor and sub-governor shall impose and enforce penalties of warning, condemnation, or a cut in salary. The governor and sub-governor may make proposals and request the imposition of heavier disciplinary penalties according to special laws.

With Law 3201 on the Police Organization, governors have been entrusted with the authority to impose a sanction such as warning or a reduction in salary of up to 10 days to personnel of the National Police in their province. Sub-governors have been entrusted with the authority to impose a sanction such as warning, reprimand, or reduction of salary of up to 3 days to personnel of the National Police in the district. With the recent internal security bill, governors have been entrusted with authority to impose a sanction on the personnel of the Gendarmerie. Governors have no disciplinary authority over personnel of the Coast Guard Command. It is regulated in the Law on the Organization, Duties and Competences of the Gendarmerie that excepting the military personal file of provincial gendarmerie commanders, their administrative personal file shall be prepared by governors. Governors have no authority to prepare the personal files of the Coast Guard.

6.9.3.3. Powers of Governors and Sub-Governors Related to Criminal Prosecution of Internal Security Personnel

Criminal prosecution of personnel of the National Police Directorate, General Command of Gendarmerie and Coast Guard Command within the scope of Law 4483 is subject to the permission of the governor or sub-governor. For the highest managers of internal security units, the prosecution procedure applied is identical to the one for judges and prosecutors (Art. 82 of the Law 2802 on Judges and Prosecutors).
6.10. Comparative Overview

French, Italian, Spanish and Turkish governors have the legal status of a representative of central government and all ministers, in charge of ensuring respect for the law and ensuring public order. Like governors in Turkey, French and Italian préfets and Spanish delegates of the state are in charge of policing policies and the ISFs. They are also given a key role in the oversight of the private security industry.

In Portugal, governors have been abolished. In the UK, there is no governor. Police in the United Kingdom are not directed by central government representatives, but rather subject to the collective oversight of democratically elected Police and Crime Commissioners. In EU countries with governors, their legal powers are weaker than that of their Turkish equivalents. In Denmark and Portugal, the central government is not directly represented at the local level.

A difference between Turkey and selected EU member states is the level of powers of government over ISFs. As is apparent from Table 6, several powers of Turkish governors are not endowed to the central government authorities at the local level in France, Spain and Italy. In Turkey as well as in Italy, France and Spain, police and gendarmerie heads report to governors. Turkish governors have the authority to assess the performance and quality of work of the provincial heads of the ISF’s and to inspect and sanction the ISFs while their European counterparts can only ask for inspection and sanction.
<table>
<thead>
<tr>
<th>Governors</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>How Is Government Represented Locally?</td>
<td></td>
</tr>
<tr>
<td>Préfet representative of all Ministers</td>
<td>Central Government's &quot;Delegate&quot; in 17 autonomous regions as top state representative.</td>
</tr>
<tr>
<td>Role</td>
<td>Increased. Direct and coordinate state administrations in the province.</td>
</tr>
<tr>
<td>Missions</td>
<td>In charge of national interest, internal security and public order. Leads police and gendarmerie defines their missions.</td>
</tr>
<tr>
<td>Heads of Provincial Internal Security Forces Reporting to the Préfet or Governor</td>
<td>Yes, Police &amp; Gendarmerie</td>
</tr>
<tr>
<td>Assessing Provincial Heads of ISFs Performance &amp; Quality of Work</td>
<td>Give a mark + narrative assessment of police &amp; gendarmerie</td>
</tr>
<tr>
<td>Inspection and Discipline</td>
<td>No (but has duty to alert the judiciary on all misbehaviour)</td>
</tr>
<tr>
<td>Agreement with Army Restricting Its Role on Policing</td>
<td>None</td>
</tr>
<tr>
<td>Private Sector</td>
<td>Responsibility for enforcement of private security legislation / control of private security companies and personnel</td>
</tr>
<tr>
<td>Governors</td>
<td>Denmark</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>How Is Government Represented</td>
<td>Central government not directly represented in the 98 local municipalities, and 5 regions</td>
</tr>
<tr>
<td>Locally?</td>
<td></td>
</tr>
<tr>
<td>Role</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Missions</td>
<td>Police authority are responsible for policing</td>
</tr>
<tr>
<td>Heads of Provincial Internal</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Security Forces Reporting to the</td>
<td></td>
</tr>
<tr>
<td>Préfet or Governor</td>
<td></td>
</tr>
<tr>
<td>Assessing Provincial Heads of ISFs</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Performance &amp; Quality of Work</td>
<td></td>
</tr>
<tr>
<td>Inspection and Discipline</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Agreement with Army</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Restricting Its Role on</td>
<td></td>
</tr>
<tr>
<td>Policing</td>
<td></td>
</tr>
<tr>
<td>Private Sector</td>
<td>Not applicable. Ministry of Justice responsible for enforcement of private security legislation/control of private security companies and personnel</td>
</tr>
</tbody>
</table>
6.11. Gaps

- **Turkish governors are given more powers over internal security sector agents compared to selected EU countries.**

  Turkish governors are given more powers over internal security sector units than their French, Spanish and Italian counterparts who can only alert the provincial directorate which would then investigate. With the recent internal security bill, some judicial powers which are only vested in judicial authorities in EU countries have been granted to governors. For example, governors can give senior police officers the authority to detain individuals (24 hours in usual cases and up to 48 hours for those involved in protests causing disturbance of the public order or crimes committed collectively).

- **Investigating ISFs for their administrative duties is subject to governor’s approval.**

  In Turkey, a provincial investigation of ISFs regarding their administrative duties is subject to permission of governors according to Law 4483. This is a limit to the judicial authority of prosecutors. Following a complaint from citizens against the ISFs regarding their administrative duties, and based on its results, the governor filters and transmits the complaints to the judiciary. In all selected EU countries, the prosecutor is fully in charge.

- **There is a lack of consistency regarding the duties and powers of governors over ISFs.**

  The hierarchy of norms and consistency of regulations and laws is better established in EU countries. There is a great variety of legal texts regulating duties and authorities of governors over ISFs in Turkey. This is a source of conflict amongst legal texts. For example there is a conflict between Law 5442 and other ISF organization laws regarding the governor’s disciplinary role over ISFs.
7. External Independent Oversight Mechanisms

7.1 Rationale for the Creation of External Mechanisms

External mechanisms are designed to ensure oversight functions over the activities and operations of the internal security sector. They are commonly designated as Non Departmental Bodies, Non Majoritarian Institutions or Independent Administrative Authorities (an example being the Ombudsman or the Defender of the People).

Non-majoritarian, Non Departmental or Independent Administrative Authorities can be defined as those administrative entities (a) separate from other institutions that (b) possess and exercise some form of specialised public authority, (c) are neither a service of a department of the public administration or accountable to the government nor directly managed by elected members or government officials (e) and finally are not being directly elected by the people.

This definition excludes the exercise of state powers that are placed under the direct control of Ministers and the civil service. It does not exclude a specialised organ or agency that may be linked to a Ministry in certain formal ways, so long as that body is not merely a department (or administrative office of a larger bureaucratic entity) or is not accountable to the government.

These agencies act in the name of the State but without being subordinate to the government and enjoy freedom to act in an autonomous way. Their actions cannot be oriented or censored by the government. Only courts can do so to ensure their compliance with the law. They operate in various fields and are not only restricted to overseeing internal security forces.

The justifications for the creation of such external oversight bodies are (a) a quest for reinforced impartiality, (b) increased professionalism and efficiency of state action, (c) the will to satisfy the needs for increased transparency.

The review of independent organizations in charge of the three issues specified below is relevant to our gap analysis.

i. personal data protection,
ii. citizen complaints against the internal security forces,
iii. human rights in a more general way.

7.2. France

The Torture Prevention Committee (CPT) stems from the European declaration of human rights and is part of the oversight power of the Council of Europe. Regarding security forces, the CPT focuses on inspecting the custodial facilities of the police and the gendarmerie. Despite being part of an International organization, the CPT visits have a great media impact in France. Usually the outputs of the visit are taken into account and the French government replies point by point on its published reports. The HALDE (Haute Autorité de Lutte contre les Discriminations et pour l’Égalité) was the High Authority established in 2004 to tackle discrimination and promote equality. Its yearly report is given to the Parliament, the President and the Prime Minister.
The Defender of Rights is another independent authority that was established following the reform of the constitution in July 2008. The goal has been to replace the existing ombudsman and to extend his or her competencies. The Defender of Rights is a new and important independent authority put in place by a Constitutional Law in 2011. This Authority regroups, in the same organization, the Ombudsman and, with three other deputy-presidents, the prior "Security and Ethics superior council" and the HALDE described above, plus the Defence and Promotion of Children Rights, all composed with colleges of several members.

The last two decades have seen the establishment and the continuous growing importance of four independent bodies of national or international origin. In 2006, the Parliament counted 39 "administrative independent authorities", although most of these are not related to the internal security forces and human rights. The establishment of independent bodies must be seen as a major and dramatic step forward in the building of the civilian oversight of all policing forces in France. The conclusions of their reports can be followed up by judicial measures against those inside the police or the gendarmerie who have broken the rules. However, the independent bodies themselves do not have the power to sanction in the French context.

The Personal Data Protection Commission (National Commission on Informatics and Liberties - Commission National Informatique et Liberté- CNIL) was set up in 1978 and acts as the national supervisory body required by the Schengen Convention. It is in charge of overseeing the use of personal data by the police and the gendarmerie. Its remit has recently been extended to cover biometrics and video-surveillance. In March 2012, a National Council for Digital Issues ("Conseil National du Numérique") was founded in order to provide public advice about all aspects of digital matters, including security.

The "Security and Ethics Superior Council" was established in 2000 to ensure the full compliance of all security staff, public and private, with the rules of ethics. Its activities cover mostly the police and gendarmerie and to a lesser extent the penitentiary staff and the private security as can be observed in their published reports. Its powers have been absorbed by the Defender of Rights.

Lastly, the General Controller on Facilities Where People are Deprived of Liberty of Movement was created by law in 2007 but has only been in operation since 2008. Its remit includes police and gendarmerie custodies but also illegal immigrants' detention centres that are operated either by the police or the gendarmerie.

7.3. Spain

In Spain, like in the majority of EU countries, there is a constitutional institution Defensor del Pueblo (Art. 54 Const.) which has the function of the Ombudsman. This institution (is endowed with very important powers and can use them in regards to the activities of internal security units and forces. It plays a major role on behalf of the Parliament to which it reports in the defence and protection of the citizen's constitutional rights and freedoms in relation to the action of executive authorities and public administrations (and their agents) as well as in the investigation and correction of cases in the event of the “malfunctioning” of the public administration.
The Defender of the People has its own staff to carry out any investigation within the public administration as a result of a citizen's complaint. However, one of the first steps is usually to communicate the basic elements of the complaint to the head of the relevant administrative unit (for instance, a police station) and request an explanation or response to the complaint. In this way, members of the police and the GC may be involved in investigating the facts relevant to the complaint. If the investigation carried out by the administrative unit, itself renders an outcome that is seen as satisfactory by the Defender, s/he can decide that there is no need for the institution to mobilise their own staff for a further investigation.

In any event, what is more important is that the Law on the Defender contains provisions that make it very "risky" for any public administrator to oppose, resist or try to "boycott" in any way the action of the Defender and its staff: it is a crime to do so and this gives the Defender a real authority. In addition, when carrying out an investigation, the staff of the Defender is entitled to have access to all sorts of administrative information and documents, including those legally classified as secret or confidential. Only the Council of Ministers may decide that some "classified" documents are not made available to them.

In Spain there is a Law on the Protection of Personal Data (Organic Law 15/1999) which contains provisions concerning the data files kept by security forces and corps and incorporates into Spanish national legislation not only the EU Directive 95/46/CE and the relevant provisions of the “Schengen” and “Europol” Agreements, but also the Recommendation N° R (87) 15 of the Council of Europe (use of personal data in the police sector) and the principles laid down in the “Framework Decision” of the EU Council (on the protection of personal data processed in the framework of the police and judicial cooperation on criminal matters).

The Spanish Agency for Data Protection (APD), an independent body created by the Law, is endowed with the necessary powers to protect citizens' rights in regards to data protections and ensure compliance with the legal rules on this matter (including by security service units). It can inspect databases and data services of ISFs to check their compliance with the law and can also issue recommendations. Finally, it can defend individual rights related to personal data use vis-à-vis security forces data recordings and establishment of databases.

The external oversight of detention centres managed by the Police and GC is realized by the IPSS. For prisons, a specific Inspectorate exists. For all detention facilities, the Ombudsman also has responsibility as the main external oversight mechanism. In relation to action against torture, the national mechanism for prevention of torture – as designed in UN protocol – has been established in the Defender of the People's Office since 2009.

7.4. England

In October 2007 it took over the role and functions of the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC). In line with European Directives in relation to sexual orientation, religion and belief, age and disability the EHRC assumed responsibility for these areas also.

In the United Kingdom all private citizens may pursue civil cases against the police where it is believed that a tort (civil wrong) has been committed against them – such as wrongful arrest. The proposals outlined in the Police Act (England and Wales) [1964] made it easier for private citizens to pursue civil damages against the police in this way. Consequently, while many jurisdictions (the UK included) retain the option of legal redress against the police as an option, as a general principle they also have in place mechanisms and structures to deal with complaints against the police in ways that do not involve costly and protracted legal battles in a court of law.

Legislation in England and Wales introduced an independent system for the investigation, monitoring and overseeing of complaints against the police via the creation of the Police Complaints Authority (PCA). The PCA was established as a separate entity - independent of government and the police – that was given powers to supervise the police investigation of complaints. The PCA came in for strong criticism on the grounds that it was not independent enough – it could only supervise investigations not conduct them itself – and was replaced in 2004 by the Independent Police Complaints Commission (IPCC) as an element of the Police Reform Act [2002]. One notable feature of the investigation of complaints against police officers in the United Kingdom is that there are varying levels of external oversight and police involvement in the complaints process between England & Wales, Scotland and Northern Ireland and that there is no single model.

Broadly speaking, the systems for dealing with police complaints in each of the regions of the United Kingdom conform to a number of international models. They range, on the one hand, from a system of fully independent investigation of police complaints with no police involvement (Northern Ireland); to a quasi-independent model of external investigation but with police officers conducting the investigation (England and Wales); to a system whereby the police investigate all complaints but which may be subject to civilian review (Scotland).

The IPCC has teams of investigators headed by Regional Directors in each of its regions, to assist with supervision and management of some police investigations. They also carry out independent investigations into serious incidents or allegations of misconduct by persons serving with the police.

Arguably, of all the UK regions, Northern Ireland has the most robust system for dealing with police complaints and which is regarded as example of international best practice. The Office of the Police Ombudsman for Northern Ireland (OPONI) is a Non-departmental Public Body administered by, but fully independent of, the Northern Ireland Office. It was legislated for in 1998, and endorsed by the Independent Commission on Policing in their 1999 report.

The OPONI is based around a model of full civilian control (as opposed to civilian review as is the case in England and Wales) that is fully independent of the police and that possesses wide statutory and investigative powers. The establishment of the Ombudsman’s office
has been absolutely vital in enhancing the legitimacy of the new policing structures and arrangements in Northern Ireland and in terms of establishing public confidence in the police it has played a key role. The Ombudsman’s Office recruits its staff from a wide variety of fields and occupations: international policing agencies, the legal profession, insurance investigators and so on. Investigators are accorded full police powers of search, arrest, and seizure.

The Office of the Police Ombudsman for Northern Ireland must also comply with a range of other statutes such as the Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998, the Freedom of Information Act 2000 and the Public Interest Disclosure (NI) Order 1998. The provisions of the European Convention on Human Rights, as incorporated in the Human Rights Act and other relevant international human rights standards are fundamental to the ethos of the office of the Police Ombudsman and will be complied with in all its functions.

The Committee on Standards of Public Life in the UK is an advisory Non-Departmental Public Body, sponsored by the Cabinet Office (which is the equivalent to the Turkish Prime Ministry). The Committee monitors the adherence of public bodies and public servants to what are regarded as the seven principles of public life. These principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. While the Committee on Standards of Public Life does not exist on a statutory footing, it does advise the Prime Minister on issues that fall within its remit. While there is no statutory requirement to adhere to the seven principles, most public bodies have incorporated them into Codes of Practice and other internal standards that can then be taken into account. An equivalent of it as far as the functions are concerned is the Public Officials Ethics Board in the Republic of Turkey.

7.5. Denmark

7.5.1. Oversight Mechanisms

A citizen can always make a complaint regarding police officers’ dispositions as well as police officers’ behaviour. The Commissioner of the district/Chief Constable receives the complaint, and if it does not prevail, the verdict can be appealed to either the Regional Public Prosecutor (Criminal Procedure) or the National Chief of Police (order and security).

For complaints concerning police conduct, a special appeal system is in place. Here there is a special independent authority - the Danish Independent Police Complaints Authority (IPCA), which investigates complaints regarding police officials’ behaviour and makes definitive decision in these cases. This is the final procedure, unless the authority finds that the police official has committed a criminal offence – and in which case – the Prosecution Service makes the final decision on whether the case must be taken to the courts in criminal proceedings. The overall responsibility for the IPCA lies with the Police Complaints Council consisting of a judge, a lawyer, a university lecturer in forensic science and two laymen. This board is independent in the proceedings from the police organisation and the Ministry of Justice, and the decisions cannot be appealed to any higher court. Administratively (payment of wages etc.) the IPCA is located within the Ministry of Justice, but the IPCA is both geographically and hierarchically held separate. The IPCA do not refer to the Ministry and
the dictions of the IPCA cannot be changed or overruled by the ministry. Regarding personnel, however, it is the Ministry of Justice that hires the personnel for the IPCA. Most of the complaints concern the police officers' use of language, but also objections about harsh treatment when being detained occur occasionally. The IPCA may express criticism regarding the conduct of the policeman, resulting in disciplinary proceedings. If it considered that the complaint relates to so-called "system failure", e.g. where an authorized force is used inappropriately, the IPCA will make the National Chief Police aware of this. If the IPCA, after having completed its investigation, finds that there are indications of a criminal offence, such as violence during police business, they will forward the case to the Regional Public Prosecutor, who then decides whether the police officer should be prosecuted by law. All parties to the proceedings and the IPCA can appeal the decision of the Regional Public Prosecutor to the Director of Public Prosecutions.

Over a 9-year period, approximately 2% of the cases regarding behaviour of police officers resulted in criticism, while there has been basis for an indictment for approximately 3% of the criminal cases, of which it is estimated that one case per year – approximately 0.3% - results in a conviction. The process of the appeal proceedings may, in addition to a request from a citizen, also take place on the initiative of the individual police district.

Pursuant to the Constitution, the courts can hear complaints regarding the administration's (including the police's) decisions, but it cannot assess the underlying estimates, unless these can be said to be illegal, such as arbitrary decisions etc. This option for the citizen to appeal administrative decisions can also be of importance for the individual police officer who can be liable to disciplinary measures in this regard.

7.5.2. Disciplinary Measures

The decisive statutory rule on disciplinary proceedings is the Civil Servants Act article 10:

"The civil servant must conscientiously comply with the rules that apply to his position, and both on duty and off duty prove worthy of the esteem and trust required by the position".

Either due to criticism regarding a complaint, or on the initiative of the Commissioner/Chief Constable, disciplinary proceedings can be initiated. Criminal offences will always be followed by a disciplinary inquiry, and furthermore there will be an investigation if the police officer has committed "misconduct". This is the case if the police officer has violated the regulations on "decorum" - i.e. the Dignity Criterion - in the Civil Servants Act. A violation hereof is committed if the behaviour is not in accordance with the demands to the "esteem and confidence" the police officer must meet or if the problematic conduct has taken place when the police officer acted as a private person. The scope of "misconduct" is fairly broad, and ranges from exceptionally poor personal finances, unauthorized use of police identification, violation of internal regulations, intoxication at work or refusal to obey an order. Disciplinary sanctions range from a warning or reprimand to a fine, transfer, demotion or dismissal. They depend on the seriousness of the misconduct, obsolescence, subjective facts concerning the police officer, and more personal matters, such as age, illness and expected departure, are also taken into consideration.
The Commissioners/Chief Constables in the police districts have jurisdiction in matters that are expected to be settled with a warning or reprimand, while the National Chief of Police handles the rest of the disciplinary cases. The decisions of the Commissioners/Chief Constables in the police districts can be appealed by the police officer to the National Chief of Police. Only decisions of discharge can be appealed to the Ministry of Justice. If the verdict is a fine exceeding 1/25 of the police officers yearly salary, there will, if requested, be conducted an official inquiry, which involves questioning of witnesses etc. The interrogator, who will be an experienced lawyer, also suggests a result of the decision to the National Chief of Police, who then decides the final result of the disciplinary case. In more serious cases, the police officer will be suspended from duty, while the disciplinary case is going on.

7.5.3. Compensation

The rules regarding compensation in Denmark are based on so-called culpa-considerations, according to which responsibility for an injury is placed with the person who caused it- for example, whether the accused acted intentionally or recklessly. However, when it concerns accusations regarding a police intervention, for example, harsh treatment when being detained, unlawful body searches or search of property, legislation has introduced “objective liability”, so that the aggrieved is compensated on an objective basis. This happens if it is proven that the intervention was unjustified, if no further action is taken or if the criminal case ends in an acquittal where coercive measures have been used. The compensation is warranted for indignity and/or economic damage, but there is a prerequisite that there must be coherence between the police intervention and the economic damage, and the behaviour of the aggrieved must not be the main reason for the intervention by the police. The compensation for indignity is calculated according to fixed rates.

When a citizen claims compensation due to police intervention, the Regional Public Prosecutor handles the cases, after a presentation of the individual case by the relevant police district. If the aggrieved person who seeks compensation is not satisfied with the Prosecutor’s decision, he can appeal to The Director of Public Prosecutions, or choose to go to court. The latter is made specifically simple for the citizen to do. It only requires that the citizen makes an application for compensation by the courts to the police district or the public prosecutor, after which the Prosecution is obligated to bring the case to the courts and to provide the citizen with a lawyer and call for witnesses. It is the public treasury that is obliged to pay the compensation if this is rewarded. In exceptional cases, the state afterwards makes financial claims against the policeman personally.

7.5.4. The Danish Data Protection Agency (Datatilsynet)

The Danish Act on Processing of Personal Data (Act No. 429 of 31 May 2000) entered into force on 1 July 2000. The act implements the EU Directive 95/46/EC on the protection of individuals with regards to the processing of personal data and on the free movement of such data. The Danish Act on Processing of Personal Data regulates how public authorities and private companies, etc. must collect, register and process personal data.

The Act on Processing of Personal Data is under the authority of the Danish Data Protec-
tion Agency (DDPA), and it is the agency's duty to ensure that the law is abided by. These duties are performed by providing guidance and advice to authorities, companies and citizens and through dealing with citizen complaints.

In case of citizen complaints, the DDPA can make decisions on whether a certain processing is in accordance with the regulations of the Act on Processing of Personal Data. The DDPA can also take up cases of its own initiative ("own-initiative cases") – if, e.g. due to a citizen enquiry or newspaper article, the agency suspects a violation of the regulations of the Act on Processing of Personal Data. The DDPA conducts an annual series of inspections of public authorities and private companies that have received the agency’s authorization to process personal data. The DDPA inspects whether the processing of data is carried out in accordance with the Act.

The DDPA is an independent authority and therefore not subject to the Ministry of Justice’s instructions. The Ministry of Justice hires the personnel for the DDPA, but the DDPA is not included in the ministerial hierarchy, and the Ministry does not have authority to influence the decisions of the DDPA. The DDPA cannot summon public officials to appear, but can request information from public authorities. The DDPA can, however only request information from the police on handling information not regarding criminal investigations.

The Danish Data Protection Agency issues criticism if the public authority or private company has violated the regulations of the Act. If the DDPA discovers punishable violations of the Act on Processing of Personal Data in connection with handling a complaint or an inspection, the Agency is authorized to issue a ban or enforcement notice or report the violation to the police.

The Data Protection Act does not apply to acts carried out by police and defence forces, intelligence services and the courts within the scope of criminal investigations (Article 2, sec. 4). Here, data processing is regulated by the rules of the Administration of Justice Act. If a citizen finds that e.g. the police have misused person data within the scope of a criminal investigation, he can make a complaint to the courts or the Ombudsman.

7.5.5. The Ombudsman

The Ombudsman is the main external oversight mechanism of government. In 2011, the Ombudsman was given the task of overseeing the police expulsion of foreigners, and in 2009 the Ombudsman started as Denmark’s OPCAT\textsuperscript{41} unit that verifies that citizens are not subjected to torture or other degrading treatment. The Ombudsman also has specific obligations in relation to society’s most vulnerable citizens e.g. inmates in detention centres and prisons, patients in psychiatric institutions, children in residential institutions and foreigners staying in Denmark illegally, waiting to be sent out of the country.

The Ombudsman conducts inspections at prisons and detention centres and investigates the conditions regarding the use of force and other procedures and disciplinary measures and informal actions against prisoners, inspects health conditions and monitor compliance with the UN treaties on prohibition of torture and inhuman treatment. The Ombudsman can state criticism of public authorities and report to the Parliament.

\textsuperscript{41}The Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
7.5.6. The Danish Institute for Human Rights

The European Convention on Human Rights (ECHR) was ratified in Denmark on 3 September 1953, and was implemented in Danish Law on 29 April 1992. The Act came into force on 1 July 1992. The incorporation means that ECHR is a part of Danish law. The principal body for monitoring compliance with Human Rights legislation in Denmark is the Danish Institute for Human Right. Other important bodies are the Danish Parliamentary Ombudsman and the Board of Equal Treatment.

The Danish Institute for Human Rights is a non-departmental public body established in 1987. The Institute is a "National Human Rights Institution" (NHRI), in accordance with the UN Paris Principles. It is accountable to the Parliament for its public funds but is fully independent from government. The Danish Institute for Human Rights is not part of any ministry or administrative unit. It handles its own budgets and hires its own personnel.

The Danish Institute for Human Rights is responsible for monitoring and protecting human rights and promoting equality in Denmark and abroad. The Institute is also the National Equality body for Denmark, and participating in the EU network of equality bodies, Equinet. In October 2007 it took over the role and functions of the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC). In line with European Directives in relation to sexual orientation, religion and belief, age and disability, the EHRC assumed responsibility for these areas also.

The Danish Institute for Human Rights advises the government, the Parliament, ministries and public authorities on human rights, among other things, when new legislation is suggested. They produce analysis and research, for instance about children with imprisoned parents, legislation on terrorism, the rights of stateless human beings and equal pay, and carry out specific projects to promote equal treatment and advise those, who may have suffered discrimination. The Danish Institute for Human Rights maps out the biggest human rights challenges in Denmark as well as the yearly improvements in the area. The institute publishes annual status reports and annual reports to the Danish Parliament, which are available on-line for the public.

In Denmark, all private citizens may pursue civil cases against the police where it is believed that a tort (civil wrong) has been committed against them – such as a wrongful arrest. The Danish Institute for Human Rights can in certain cases intervene on behalf of the citizen against the state in civil proceedings.

Denmark’s Council for Human Rights assesses the design and execution of Danish Institute for Human Rights activities and may propose new activities to the Board of the Danish Institute of Human Rights. The Council for Human Rights also appoints six of the Board members. Denmark’s Council for Human Rights is composed of the representatives of a number of civil society organizations. The members are appointed in such a way as to reflect the viewpoints of the civil society organizations that engage in human rights activities.42

42 Members of the Council include representatives from the Ministry of Justice, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Social Affairs, Children and Integration, the Ministry of Gender Equality and Ecclesiastical Affairs, and other Authorities, such as The Danish Parliamentary Ombudsman, The Danish Independent Police Complaints Authority, The Board of Equal Treatment; various Councils (The Danish Disability Council, The National Council for Children, The Council for Socially Marginalised People etc.), and different Civil society organizations, Political parties, NGOs (such as Amnesty International, IBIS, Danish Red Cross, DIGNITY – Danish Institute against Torture) and Danish Bar and Law Society etc.
7.5.7. The Board of Equal Treatment (Ligebehandlingsnævnet)

The Board of Equal Treatment (Ligebehandlingsnævnet) is an independent tribunal funded by Parliament, which makes decisions in discrimination cases. It was established in 2009.\(^{43}\) The Equal Treatment Board consists of three judges and nine other judicial members. Everyone can complain to the Board of Equal Treatment. However there is a requirement of legal interests/standing. This means that a person must either be directly affected by discrimination, or belong to the discriminated group.\(^{44}\) A person can represent him or herself in the Equal Treatment Board or can have another representative (i.e. a lawyer or Union representative).

The Equal Treatment Board can award compensation and in special cases overrule a dismissal. The Equal Treatment Board deals with complaints of discrimination based on sex, race and ethnic origin both inside and outside the labour market. When it comes to age, disability, religion/belief, political opinion, sexual orientation or national or social origin, the Board can only deal with complaints relating to discrimination within the scope of labour. The Board cannot issue any fines or impose the respondent to provide injured party an apology. The board’s decisions are available on line. Before you can complain to the Equal Treatment Board you must have exercised any other potential administrative remedies. In any discrimination case, the citizen can always go to the courts, either before or after a possible complaint to the Equal Treatment Board.

7.6. Portugal

7.6.1. Ombudsman (Provedor de Justiça)

One of the main oversight external mechanisms is the Ombudsman, an independent State body institution elected by the Parliament (by a 2/3 majority vote). In accordance with the Constitution (Article 23), the Ombudsman's role is to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring that public authorities act fairly and in compliance with the law.

Citizens can complain to this office about decisions made by public authorities (including, naturally, security forces). The Ombudsman's office, which has a staff of several dozen technicians, can also begin investigations on its own initiative and visit institutions. In 2012, there were 27,218 complaints, that determined the opening of 7027 cases; 12 own-initiative cases.

As mentioned above, the institution produces an annual report, delivered to the Parliament. For instance, the 2012 Ombudsman Annual Report to the Parliament allows us to identify an increase of 160% in complaints on internal security issues, especially against police conduct.

The activities of the Ombudsman focus namely on the activity of the services integrated in the central, regional and local public administration, among other entities (Armed Forces, public institutes, etc.).

The Ombudsman's powers include the power to make, with or without prior notice, inspection visits to any area of activity of the central, regional and local administration, including public services and civil and military prisons, to hear their bodies and officials and to request them such information and documents as he may deem adequate.

\(^{43}\)Before the Board of Equal Treatment creation were two administrative complaints board: Gender Equality Board which examined complaints about discrimination on grounds of sex and Complaints Committee for Ethnic Equal Treatment, which considered cases of discrimination based on ethnic origin.

\(^{44}\)For example, a man cannot complain that a woman is discriminated against and vice versa.
To undertake such investigations he/she may deem necessary, for the purposes of collecting and producing evidence, all reasonable means may be used, provided that such means do not collide with the rights and legitimate interests of citizens;

The entities mentioned above have the obligation to provide the Ombudsman with every information that he/she may request from them, making documents and files available for examination, and sending them to the Ombudsman, if so requested. However, these provisions do not prevail either over the legal restrictions with respect to the confidentiality of judicial investigations or over the higher interest of the State, when duly justified by the competent bodies, in issues relating to security, defence or international relations.

The Provedor de Justiça has played an active role in monitoring places of deprivation of liberty, particularly prisons and police establishments. As mentioned above, regarding the prevention of torture and other forms of ill-treatment, the Portuguese Ombudsman was recently (2013) designated by the Government as National Preventive Mechanism (NPM), within the framework of the Optional Protocol to the United Nations Convention against Torture (OPCAT). The NPMs are natural partners for the CPT and are considered of primary importance to the effectiveness of efforts to prevent torture and other forms of ill-treatment.

7.6.2. Commission on Access to Administrative Documents

Another external mechanism can be found in the Commission on Access to Administrative Documents (CADA), an independent administrative body that works with the Parliament to ensure compliance with the legal provisions concerning access to administrative information (including from internal security forces).

It gives non-binding opinions on these matters after citizens (or other entities) complaints. Its opinion is usually followed by the administration. Every citizen possess the right of access to administrative documents without the need to state any interest. This includes the rights of consultation, reproduction, and information as to the administrative documents’ existence and content.

There are restrictions on documents which contain information, knowledge of which is deemed capable of endangering or damaging the internal and external security of the State. In this case, it shall be subject to prohibited access or access with authorization, for such time as is strictly necessary, by means of their classification as such in accordance with specific legislation.

The commission produces an annual report sent to the Parliament and the Prime Minister.

7.6.3. Data Protection Authority

Another relevant independent body is the Portuguese Data Protection Authority (CNPD). The CNPD is endowed with the power to supervise and monitor compliance with the laws and regulations in the area of personal data protection, with strict respect for human rights and the fundamental freedoms and guarantees enshrined in the Constitution and the law.

Concerning internal security, one of the CNPD roles is to give an opinion on video surveillance projects. Until recently (2012), this was a binding opinion. It is not anymore. Now the final decision is entirely up to the Mol.
In addition to the regular monitoring activity, the CNPD also performs some specific actions, of longer duration (more than one year) and amplitude, like the audit of the databases of the police, within the framework of the Integrated System of Criminal Information. This system is a computing platform for sharing information, which allows a police access to information that all security forces have on a suspect. There is a Supervisory Board of the Integrated Criminal Information (CFSIIC) with the mission to supervise the activities of the Secretary-General of the Internal Security System as well as the criminal police regarding the exchange of data and information through the Integrated Criminal Information. Three of its 5 members are elected by the Parliament, by a 2/3 majority. The other two are appointed by the Supreme Judicial Council and the Higher Council of Public Prosecution Service. It has powers to do inspections and receives reports from criminal police and the Secretary General of Internal Security Service (the latter every two months) concerning this matter.

### 7.6.4. Other institutions

There are other institutions that play an important oversight role in areas related to internal security and rights of citizens (namely torture/minorities), such as CPT (which performs regular inspections), Amnesty International or ACIDI (High Commission for Equality and Intercultural Dialogue), collaborating with the MoI and the IGAI.

The detention conditions in the GNR and PSP stations are governed by Regulation 8684/99 and are regularly inspected by IGAI. There are several changes ordered by the MoI following recommendations of IGAI and CPT.

Prisons are managed by the Ministry of Justice, with one exception (Prison Santa Cruz do Bispo, in Porto), run by a third sector organization (Santa Casa da Misericórdia). But there are detention centres / places of detention run by the internal services and security forces (PSP, SEF or PJ).

### 7.7. Germany

In Germany there is currently no independent body or ombudsman that would deal particularly with the issue of police violence. This is being criticised, among others, by Amnesty International\(^{45}\) and the UN Committee against Torture.\(^{46}\) Allegations of torture, ill-treatment or unlawful use of force by the police are only investigated by the Public Prosecution Offices and the police acting under the supervision of the Public Prosecution Offices. Furthermore, police officers are not obliged (with the exception of Brandenburg and Berlin) to wear identification badges showing their number or name during the exercise of their functions. Thus, there is a risk, that cases of alleged ill-treatment by the police could not be clarified and prosecuted due to a lack of identification.

However, there are independent bodies for data-protection, for the prevention of torture and for the protection of prisoners.

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\(^{46}\)United Nations, Committee against Torture, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Germany, Nr. 19: „The Committee recommends that the State party: a) Take all appropriate measures both at the Federal and Länder level so as to ensure that all allegations of torture and ill-treatment by the police are investigated promptly and thoroughly by independent bodies with no institutional or hierarchical connection between the investigators and the alleged perpetrators from among the police ...”
7.7.1. Commissioner for Data Protection and Freedom of Information

The Commissioner for Data Protection and Freedom of Information controls and advises the Federal Government (e.g. overseeing the use of personal data by the police, video-surveillance, etc.). The data protection officers of the Länder have similar competences.

In addition, the Commissioner for Data Protection also represents Germany in the Article 29 Working Party of the European Union and in the European and international conferences of Commissioners for Data Protection and Freedom of Information. Moreover, she is involved in the Joint Representative Controlling Bodies for Europol and the Schengen Information System (SIS).

Every two years, the Commissioner for Data Protection informs the public and the Federal Government about major developments in data protection in an activity report, in which instances of maladministration are explicitly pointed out.

The Commissioner is subject to the supervision of the Ministry of Interior and of the Federal Government. The Commissioner for Data Protection is therefore not completely independent. This has also been repeatedly reprimanded by the European Court of Justice\textsuperscript{47}, whereupon the Federal Government is now reacting. In a recent legislative procedure, an independent and effective control of data-protection should be ensured (Federal Government’s bill, 10-13-2014).\textsuperscript{48}

7.7.2. National Agency for the Prevention of Torture

The National Agency for the Prevention of Torture has been mandated in 2008 to serve as an independent national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.\textsuperscript{49}

However, deficits remain, among other things, in the equipment of the independent body. In an examination of the year 2011, the UN has demanded\textsuperscript{50} that the Federal Government provides the National Agency with sufficient human, financial, technical and logistical resources for enabling it to carry out its functions effectively and independently. Up to now, this has not been sufficiently achieved.


\textsuperscript{48} Draft of a second law for the change of the Federal Data Protection Act (Entwurf eines Zweiten Gesetzes zur Änderung des Bundesdatenschutzgesetzes – Stärkung der Unabhängigkeit der Datenschutzaufsicht im Bund durch Errichtung einer obersten Bundesbehörde), BT-Drs. 18/2848 v. 13.10.2014.


\textsuperscript{50} United Nations, Committee against Torture, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Germany, No. 13: “The Committee recommends that the State party provide the National Agency with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently, in accordance with article 18, paragraph 3, of the Optional protocol to the Convention and Guidelines n°11 and 12 of the Sub-Committee on Prevention of Torture, as well as ensure its regular and timely access to all places of detention at the federal and Länder levels, without the requirement of a prior consent to the visit by the respective authorities.”
7.7.3. Prisons/Detention Centres managed by ISFs

The penal system is allocated in an independent area of the judiciary administration in all federal states of Germany. The judiciary administration, which exercises control over all penitentiaries, is part of the executive branch of government. The supervision is incumbent on the ministry of justice of each state.

An advisory board is allocated to each penitentiary, which is superior to the prison’s warden and takes on the role of public representation as well as supervisory tasks and consultation. In accordance with §§ 162 ff. Criminal Executive Code (Strafvollzugsgesetz – StVollZG), the members of a Prison Advisory Board are citizens working on a voluntary basis in an institutionalized role to perform tasks mandated by law. The advisory board acts as an independent point of contact for inmates and staff alongside the prison’s warden, members of the Oversight Agency, the prisons pastoral care (spiritual guidance) and the Government’s Penal System Appointee. Additional inspections are performed by experts of National Agency for the Prevention of Torture. The appointment of members of the Prison Advisory Boards is conducted differently in each state. In some states, they are appointed by the minister of justice, in others through the judiciary administration or the prison’s warden. In most cases, these appointments follow the recommendations of city council factions. In its sessions, the Prison Advisory Board can hold hearings with the prison’s warden or staff. The purpose is to support the inmates after their release from prison.

In some states, prisons are further monitored by a Government’s Penal System Appointee. His role is to work towards a penal system, which is set on the principles of human rights as well as a social and constitutional state. He advises the Ministry of Justice on the fundamental principles of the penal system as well as its continuous development. Furthermore, he is a contact person for all incarcerated people and additionally Penal System Ombudsman. The work of the Government’s Penal System Appointee is independent and has to comply only with the law. If prompted by the Government’s Penal System Appointee, the penal system administration has to disclose information (oral or in writing) or admit access to all their publicly administered facilities. The Government’s Penal System Appointee must be granted the possibility to conduct confidential hearings within these facilities. If needed, he shall be granted the necessary financial resources or manpower.

7.8. Italy

7.8.1. The Guarantor Authority for the Protection of Personal Data

The ‘Garante per la protezione dei dati personali’ (Guarantor Authority for the Protection of Personal Data) is an independent administrative authority established by the Law No 675/1996, for the protection of rights, fundamental freedoms and dignity in data processing operations. This first law aimed at introducing the EU directives of 1991 on free movement of individuals and the protection of personal data. In the following years, there were numerous corrective measures designed to increase the guarantees of independence of the authority and effectively regulate specific fields of activity. Finally, in 2003, Legislative Decree No. 196 approved the New Data Protection Code (known also as ‘Privacy Code’), which has now
become the basic legislation in Italy on the protection of personal data.

The Authority is chaired by the Board of the Garante, a collegiate body composed of four members, of whom two are elected by the Chamber of Deputies and two by the Senate through a specific voting procedure. The members are chosen among persons of high moral character, ensuring independence and with proven experience in the field of law or computer science. The members elect their President; the eldest prevails in the case where votes are equal. The incumbent President of the Garante is Antonello Soro.

To ensure the independence of the Board, the President and members hold office for seven years and their appointment cannot be renewed. For the entire term of their office, President and members are not allowed – under penalty of losing office – to carry out professional or advisory activities, manage or be employed by public or private entities or hold elective offices. An internal Code of Ethics extends this period to two years following the end of their office.

7.8.2. The Defence of Citizens’ Rights against Police Forces

Unlike many other European countries, there is no independent body in Italy appointed to meet the complaints of the population against any abuses committed by ISFs in the line of duty.51 The only body with similar tasks is the Observatory for Security against Acts of Discrimination (OSCAD). OSCAD was established in September 2010 to protect the victims of hate crimes, to help individuals who belong to minorities enjoy their right to equality before the law and guarantee protection against any form of discrimination. OSCAD is operated jointly by the Police and the Carabiniers and is within the Department of Public Security – Central Directorate of Criminal Police.

In short, OSCAD:

- receives reports of discriminatory acts ‘relating to the world of security’, from institutions, professional or trade associations and private individuals, in order to monitor the phenomenon of discrimination based on race or ethnic origin, nationality, religion, gender, age, language, physical or mental disability, sexual orientation and gender identity;
- based on the reports received, OSCAD starts up targeted interventions at local level to be carried out by the State Police or the Carabiniers;
- follows up the outcome of discrimination complaints lodged with the police agencies;
- maintains contact with associations and institutions, both public and private, dedicated to fight discrimination;
- prepares training modules to qualify police operators for anti-discrimination activity and participates in training programs with public and private institutions;
- puts forward appropriate measures to prevent and fight discrimination.

Reporting an act of discrimination to OSCAD in no circumstances replaces a formal denunciation to the police or judicial authorities or an emergency call.

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51 Italy currently does not meet this EU mandatory requirement
Therefore, OSCAD is a body which has defined limitations with respect to its operability:

a. first, it is not external to police forces, but it is an inter-agency observatory inserted into the Department of Public Security of the Ministry of Interior;

b. furthermore, it is activated only when the violated right is connected to a discriminatory behaviour (in the broad sense) that could affect internal security, intended in a broad sense. This act could be committed also by national or local police officers, or any other person in charge of public security tasks;

c. finally, OSCAD powers are limited to reporting the complaint to the State Police and Carabiniers service with territorial competence. The latter shall carry out the investigations and then activate the judicial or disciplinary proceedings, depending on the kind of offense committed with the discriminatory behaviour.

OSCAD collects all these complaints to monitor them, suggest measures to prevent discriminatory behaviour and construct training courses on how to manage this behaviour. But the result of this collection is currently not made public through reports or on-demand access to information.

For citizens’ complaints or claims against all police activities which are considered illegal or abusive (but not concerning a discriminatory act), the possibilities provided by the Italian legal system are:

1. a complaint to the Judiciary, if the illegal conduct is a crime;
2. a complaint to the Public Relation Office (URP) of any Questura or Provincial Command of the Carabiniers Corps, as part of the new opening of these agencies to the surveys of customer satisfaction.

7.8.3. Ombudsman for the Defence of Human Rights

In Italy there is not yet a national authority for the protection of human rights, despite the formal commitments that Italy had taken with the United Nations Human Rights Council (UNHRC) for the establishment of an Independent National Commission for the Promotion and Protection of Human Rights, in accordance with resolution no. 48/134 of 20 December 1993. The project of law that would introduce this national agency has been stopped since 2010 during the approval process at the Parliament. The latest version of the law would be characterized by the creation of an agency based on the model of independent authorities in the United Kingdom and Ireland (Equality and Human Rights Commission) with powers rather incisive and quasi-judicial. At present, however, it seems that we are still far away from its final approval.

In the absence of a national authority, the only guarantees against any possible abuse of public administration against the citizens' human rights are the Judiciary (for crimes or legal offences committed by public servants) and the local Ombudsmen, provided in the regional, provincial or municipal regulations. The powers of these local Ombudsmen depend on the statutes of each local entity, but generally they have to intervene for the protection of all citizens who complain about abuses, malfunctions, failures or delays from
bodies, offices and services of the regional / provincial / municipal governments. They are elected by the municipal council among people with proven experience and independence.

Regarding the protection of minorities against any discriminatory behaviour, in Italy UNAR - Ufficio Nazionale Antidiscriminazioni Razziali (National Office against Racial Discriminations) was created in 2003. This national agency was established within the Presidency of the Council of Ministers (Department for Equal Opportunities), with the general task of promoting equal treatment and removing any discrimination based on racial or ethnic origin. The board is headed by a Chair appointed by the Prime Minister and composed of personnel of other governmental departments (including judges, lawyers and state prosecutors), as well as experts and external consultants. In particular, UNAR has the following tasks:

- providing legal assistance in administrative or judicial proceedings to people who consider themselves damaged by discriminatory behaviour;

- carrying out inquiries to verify the existence of discriminatory phenomena, while respecting the competences and functions of the Courts;

- promoting the adoption, by public and private entities, of specific measures, including positive actions, to prevent or compensate for disadvantages related to race or ethnic origin;

- raising the awareness about the actual means of protection, also through public campaigns on the principle of equal treatment;

- making opinions and recommendations on issues related to racial or ethnic discrimination, as well as proposals to amend the existing legislation;

- preparing an annual report to the Parliament on the actual application of the principle of equal treatment and the effectiveness of the mechanisms of protection, and an annual report to the President of the Council of Ministers on the work performed;

- promoting studies, research, training and exchange of expertise, in collaboration with associations and institutions engaged in the fight against discrimination.

When the acts of racial discrimination relate with the field of public security, UNAR transmits the complaints to OSCAD, which then carries out the actions within its competence as set out by a specific collaboration agreement signed in 2011.

7.8.4. Committee for the Prevention of Torture

In Italy there is no national body that deals with reporting or preventing acts of torture; however, Italy has signed the two main international conventions against torture: the United Nations Convention against Torture and the European Convention for the Prevention of Torture.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly on 10 December 1984. The Convention and its Optional Protocol provide for a number of obligations for States, including the authorization for UN inspectors and observers to conduct unannounced visits.
in prisons to verify the respect for human rights, and the right of asylum for people who may be subject to torture in the country of origin. Italy is one of the 156 states parties of the Convention, but has never signed the Optional Protocol of the Convention. Thus the effectiveness of the controls operated by the Committee against Torture (CAT) in Italy is far less sharp than in countries that have signed the entire Convention.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a collegiate body of the Council of Europe that has the duty to prevent cases of torture and inhuman or degrading punishment in the states that have signed the relevant European Convention. This Convention was adopted in 1987 by the member states of the Council of Europe, including Italy, and allows the CPT members to visit all ‘places of detention’ of the state’s parties. The most recent visit of the CPT to Italian prisons and detention centres took place in May 2012. After the visit in 2013, a report was published, in which, in addition to several requests for the immediate adoption of measures in some visited detention institutions, the CPT asked the Italian government to provide as soon as possible for the introduction of the crime of torture in the Italian criminal code. In fact, despite numerous public petitions in this regard (the most recent in April 2014) and over 20 years of futile discussions in Parliament, the crime of torture is still not present within the Italian legal system.

7.8.5. Oversight Board on Detention Conditions

In Italy there is no public authority that has the task of overseeing the conditions of detainees in Italian prisons and administrative detention centres. Since 2006 an Observatory on Prison Conditions has been created by the Union of Italian Penal Chambers (an association of penal lawyers), in collaboration with some NGOs (primarily, the Association Antigone) that deal with detainees conditions. The experts of this Observatory study legal and practical problems of the penitentiaries and prison life, follow the legislative production regarding prisons, and monitor the detainees’ condition through visits in Italian prisons.

As far as this last issue is concerned, we must notice that Italy is among the most condemned countries by the European Court of Human Rights in Strasbourg for violation of article 3 of the Convention, due to the ‘inhumane and degrading treatment of detainees’.

7.9. Turkey

The Constitution of the Republic of Turkey recognizes the principle of integrity of administration (Cons. Art. 123) and the administration of Turkey has been organized in accordance with this principle. According to this system:

- The integrity of central administration is provided by a system of hierarchy (hiyerarși).
- The integrity of decentralized administrative authorities is provided by the administrative tutelage (idari vesayet) in which the influence of central administration is lesser than in the hierarchy.

There are also administrative authorities that have independence recognized in the Constitution and laws.
7.9.1. Independent Oversight Mechanisms

7.9.1.1. The Institution for Public Inspection (Kamu Denetçiliği Kurumu)

The Institution for Public Inspection (Kamu Denetçiliği Kurumu) is a kind of Ombudsman that took ground in the Turkish legal system through the 2010 constitutional amendment. Since the Ombudsman is subordinated directly to Parliament, appointment of the Chief Ombudsman is made by the Parliament. Its organizational Law shall be enforced by the Parliament. In the 12th Article of its organizational law entitled Independence and Impartiality, it is regulated that no authority, organ, institution or person can issue orders or instructions or circulars or advices to the Chief Ombudsman. Contrary to administrative courts, the Ombudsman is charged with not only the authority to review the legality, but also the opportunity of administrative actions.

When a complaint is about human rights, fundamental rights and freedoms, women and children rights, the examination and investigation may be conducted on-site and relevant administrative authorities shall provide all necessary information. However, the Ombudsman cannot always conduct on-site investigations because his authority is regulated by an administrative Regulation and not by its organizational Law. This competence has a great importance particularly in complaints related to torture and maltreatment in prisons, police and gendarmerie stations. Besides, the Ombudsman has no authority to act ex officio, to investigate without a complaint. This leads to non-examination of cases where the Ombudsman is informed about situations where persons do not have a chance to access him/her, such as when they are in custody or arrested.

The data and documents which the Ombudsman may request shall be submitted within thirty days following the date of notification. Upon request of the Ombudsman, the relevant authority shall launch an investigation on those who refuse to submit the documents or information requested without any justifiable reason. Additionally, all of the requested information and documents shall be given during an investigation of the Ombudsman. However, the data or documents that constitute state secrets or trade secrets may not be submitted to the Institution by the highest ranking superior or board of the competent authorities after providing justifications for such refusal. Data or documents which are state secrets may be examined on the spot by the chief Ombudsman or an Ombudsman personnel assigned by the chief Ombudsman.

In the end of 2013, the Ombudsman issued 64 recommendations to the administrative authorities, a list not limited to ISFs (only 3 of them were about ISFs), of which only 7 out of 64 were accepted by authorities. The authority of the Ombudsman is therefore facing obstacles.

In the 2013 report of the Office of Ombudsman, complaints related to the security sector (Justice, National Defence and Security) are 6% (5th type). Complaints under Human Rights (7th type) are 3.4 percent. Complaints made against the state, the MoJ, the National Police Directorate and the General Command of Gendarmerie are 5.6 percent of the total.
7.9.1.2. The State Supervisory Council (Devlet Denetleme Kurulu)

In the Constitution of Turkey, another mechanism named State Supervisory Council has been established. It can be considered as an independent external oversight mechanism. The State Supervisory Council is directly attached to the Office of the President, not to the central administration. Its chairperson and members are appointed by the President of the Republic whose duty is to ensure basic principles of the constitution (rule of law, secularism, separation of powers etc.).

The Council, upon the request of the President of the Republic, investigates and inspects a particular issue and sub-commissions are formed. Relevant authorities and persons are obliged to submit all sorts of data and document requested in the examination, investigation and inspection conducted by the Council. During inspections, the Council may review:

- The legality of administration (review of legality) and/or
- Whether it operates regularly and efficiently (review of proportionality).

Inspections conducted by the Council may be based on a specific problem. It may also take place without any specific problem: an institution may be inspected generally. An inspection can be related to a concrete dispute or to a general economic, social, political and legal problem. It has to be mentioned that the State Supervisory Council operates infrequently. The Council generally examined the events and issues which have major political and social consequences. Inspections launched by the Council have political and social impacts.

7.9.1.3. The Human Rights Institution of Turkey (Türkiye İnsan Hakları Kurumu)

The Human Rights Institution of Turkey (Türkiye İnsan Hakları Kurumu) was established through Law 6332 on Human Rights Institution on 21.06.2012. As a public entity, independence, administrative and financial autonomy and pluralist structure of the Institution has been guaranteed in its organizational law. The Institution has its own detached budget and it shall execute its duties independently and no authority, body, office or individual shall give orders instructions or recommendations. Protective provisions have been envisaged excluding the dismissal from his office of the chairman and members of the Institution before the expiration of their office terms.

The Human Rights Institution of Turkey is considered as an independent external oversight mechanism. Duties of the Institution are:

In general:

- to carry out activities in order to protect and promote human rights and to prevent violations,
- to address torture and maltreatment,
- to take step for solving problems and for this aim to run training programs and carry out research activities in order to monitor and evaluate the developments taking place in the area of human rights.
In concrete cases:

- **to review and research claims of violation ex officio or upon application, and follow-up their consequences.**

It has the power to examine, investigate and do on-site visits. Restrictions due to reasons such as confidentiality or state secret have not been prescribed. Moreover, no public institutions have been exempted from on-site visits. The Institution can only issue opinions and recommendations and it has no authority to issue compelling decisions such as the imposition of a sanction. The Institution could perform on-site visits such as police stations and prisons. Although its annual reports are made public, only some decisions of the Institution are published.

### 7.9.2. Semi-Independent Boards under the Auspices of Central Administration

#### 7.9.2.1. The Public Officials Ethics Board (Kamu Görevlileri Etik Kurulu)

The Public Officials Ethic Board has been created under the auspices of the Prime Ministry by Law 5176 for observing the implementation of ethical principles such as transparency, impartiality, honesty, accountability, to which public officials should abide. Members of the Board are appointed by the Government. The Board has the power to investigate and request official documents without any restriction.

Duties of the Board are listed as follows:

**General duties:**

1. **to determine by regulations the ethical principles to be abided by the public officials,**
2. **to perform studies in order to establish the ethical culture within the public.**

**Investigation of concrete cases:**

3. **to conduct the necessary investigation and ex officio research or upon the personal claim that the ethical principles are violated and to inform the relevant authorities regarding the result of this investigation and research.**

The Board has no authority to impose a sanction and only issues opinions. Whilst the Board does not belong to the central hierarchy, it is considered only a partially independent external oversight mechanism.

The Gendarmerie and Coast Guard Command are outside the scope of authority of the Board on the basis that personnel of these internal security units are also members of the Turkish Armed Forces. For what concerns “general duties,” officers and managers of internal security units are under the authority of the Board. However, they are outside the scope of the Board with regards to concrete case inspection. During the inspection of concrete cases, only one person, the General Director in the General Directorate of Police falls under the authority of the Board. Up to now, there has been no decision of the Board regarding the General Directorate of Police.
Until 2010, decisions of the Board used to be published in the Official Gazette in case of a violation of ethical principles including naming the officers who violated the ethical principles as a means of influencing behaviour. However, since then decisions are not published in the Official Gazette, on the ground that the legal provision which enables decisions to be released to the public were cancelled by the Constitutional Court.

7.9.2.2. The Review Board of Access to Information (Bilgi Edinme ve Değerlendirme Kurulu)

The Review Board of Access to Information (RBAI) has been created in order to use the right to obtain information as prescribed in the 74th Article of the Constitution. The RBAI has been created in order to secure the right to obtain information in accordance with the principles of equality, impartiality and openness. The duty of the Board is to review complaints for obtaining information from administrative authorities. The Board is under auspices of the Prime Ministry and secretarial services are provided by the Prime Ministry. The Board consists of 9 members as of the 3 judges, 3 academician, 1 attorney at law and 2 civil servants.

Complaints can be made to the Board if negative or ambiguous replies are made by internal security units.

There are restrictions in the Law on the Right to Obtain Information with regards to the right to obtain information from ISFs. Data and documents related to the civilian and military intelligence, the economic interest of the country, state secret and acts which are not subject to the judicial review in accordance with the Constitution are outside the scope of the Law. Article 16 of the Law states that the information and documents qualified as state secrets, the disclosure of which would clearly cause harm to the security of the state or foreign affairs, national defence and national security, are out of the scope of the right to information.

7.9.2.3. The Police Oversight Commission (Kolluk Gözetim Komisyonu)

A draft law related to the establishment of the Police Oversight Commission was submitted to the Parliament by the Government in 2010; however it became obsolete because it was not enacted within the same legislative period.

It was re-submitted on the 5 March 2012, and put on the agenda of the Parliament. The law on the Police Investigation Commission which is likely to be enacted in the beginning of 2015 will be considered in this section as it is in the Parliament's agenda. In the 3rd Article of the draft law, it is specified that the Commission would perform its duties independently and no authority, organ, institution or person could issue orders or instructions or circulars or advices to the Commission in order to affect its decisions.

However, in the same article it is emphasized that the Commission would be operated as a permanent organization under the auspices of the MoI. It is regulated in the draft law that under the chairmanship of the Undersecretary of the MoI, the Commission would consist of representatives of the Ministries of Interior and Justice and members who would be appointed by the Government from amongst the academics and lawyers proposed by the Ministries of Interior and Justice.
The National Police Department, Gendarmerie and Coast Guard Command are within the remit of the Commission. Duties of the Commission are the following: providing coordination, requesting the launch of investigation, preparing reports and making suggestions. The Commission has no authority to conduct ex officio disciplinary investigation; it can only request the Inspectorate Board of the Mol to launch an investigation related to actions of ISFs for disciplinary purposes. A central database system will be created by the Mol for the Commission, affiliated institutions and governorships with the purpose of tracking disciplinary and criminal acts of administrative authorities.

7.10. Comparative Overview

As is seen in the Table 7, there is no major gap about the legal existence of external mechanisms. In Turkey, the Ombudsman and Human Rights Institution are in place, a number of independent external oversight mechanisms that aim at the protection of human rights and at dealing with citizen complaints are found. However there is no special mechanism on highly sensitive human rights issues such as torture, personal data protection, rights of minorities and prisons.

In France a number of independent administrative authorities are operating: the Torture Prevention Committee (CPT), Personnel Data Protection Commission (CNIL), the General Controller on Facilities where People are Deprived from Liberty, the Defender of Rights. The Defender of Rights heads a board in charge of ethics in the field of security, the board in charge of the fight against discrimination and equality promotion, and the board for children rights defence. All have been designed to serve as external oversight bodies on the internal security sector.

In Spain, the Defender of the People, on behalf of parliament serves as an external audit body. Its head has the rank of a Minister and is elected by the Parliament. The Agency for Data Protection, an independent structure is endowed with necessary powers to support in the protection of citizens’ constitutional rights and freedoms.

In the UK, a series of Non Departmental bodies operate: the Equality and Human Rights Commission, Independent Police Complaint Commission (IPCC), Office of Police Ombudsman for Northern Ireland (OPONI). In Germany there are institutions at the federal level such as Commissioners for Data Protection and Freedom of Information, Prison Advisory Board and National Agency for the Prevention of Torture. An Ombudsman and Torture Prevention Commission are also adopted in Portugal and Denmark. Contrary to the UK, Denmark, and France regarding the CNIL, independent institutions in Turkey have no authority to impose a sanction.
### Table 7: Independent External Oversight Mechanisms in Selected EU Member States and Turkey

<table>
<thead>
<tr>
<th>Independent Oversight Bodies</th>
<th>Country</th>
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</thead>
<tbody>
<tr>
<td><strong>Defence of Rights</strong></td>
<td><strong>France</strong></td>
<td>Defender of Rights</td>
<td><strong>Spain</strong></td>
<td>Defender of the People</td>
</tr>
<tr>
<td><strong>Internal Security Forces</strong></td>
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<td></td>
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<tr>
<td><strong>Focus on ISF Independent Mechanisms’ Powers:</strong></td>
<td></td>
<td></td>
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<tr>
<td>-Investigation</td>
<td>Yes but not independent from police</td>
<td>Yes but with powers not comparable to those of the Courts</td>
<td>Yes &amp; independent from police (graduated)</td>
<td>Yes</td>
</tr>
<tr>
<td>-Sanction</td>
<td>No</td>
<td>No</td>
<td>Sanction:</td>
<td>Yes</td>
</tr>
<tr>
<td>-Publicity</td>
<td>Yes</td>
<td>Yes</td>
<td>Publicity of reports:</td>
<td>Yes (via Parliament)</td>
</tr>
<tr>
<td><strong>Personal Data Protection</strong></td>
<td><strong>France</strong></td>
<td>Personal Data Protection Commission (CNIL)</td>
<td><strong>Spain</strong></td>
<td>Personal Data Protection Agency (ADPD)</td>
</tr>
<tr>
<td><strong>Prisons/Detention Centres Managed by ISFs</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>General Controller of Facilities Where People are Deprived from Liberty</td>
<td>For detention centres managed by Police and GC – IPSS</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>For Prisons, specific Inspectorate. Ombudsman for both</td>
<td></td>
<td></td>
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<tr>
<td><strong>Torture</strong></td>
<td><strong>France</strong></td>
<td>Torture Prevention Committee (CPT)</td>
<td><strong>Spain</strong></td>
<td>“National mechanism for prevention of torture” – as foreseen in UN protocol – at the Ombudsman (Defender of the People).</td>
</tr>
<tr>
<td><strong>Human Rights / Minorities</strong></td>
<td><strong>France</strong></td>
<td>Defender of Rights</td>
<td><strong>Spain</strong></td>
<td>Ombudsman / NGOs</td>
</tr>
<tr>
<td>Independent Oversight Bodies</td>
<td>Country</td>
<td></td>
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</tr>
</tbody>
</table>
| **Defence of Rights**  
**Internal Security Forces** | Denmark | Portugal | Germany | Italy |
| Independent Police Complaint Commission (PCC) | Ombudsman | None | OSCAD, only for hate crimes & discriminatory acts |

**Focus on ISF Independent Mechanisms’ Powers:**  
- **Investigation:** Yes, and independent from police.  
- **Sanction:** In disciplinary cases: can express criticism (after which The National Commissioner can decide on disciplinary sanctions).  
  In criminal cases: PCC investigates, but the regional commissioners make final decision on indictment/prosecution.  
- **Publicity of reports, decisions:** Yes, on line.

**Personal Data Protection**  
Yes, Police not covered by Danish Data Protection Agency (DDPA) when it comes to information regarding criminal investigations, but rules in The Danish Administration of Justice Act, and The Danish Public Administrations Act  
Yes: Portuguese Data Protection Authority (CNPD)  
Commissioners for Data Protection and Freedom of Information (Federation and Länder)  
Guarantor Authority for the Protection of Personal Data

**Prisons/ Detention Centres Managed by ISFs**  
Yes, the Ombudsman  
For places of detention managed by security forces – IGAI  
For Prisons, specific Inspectorate (from Ministry of Justice)  
Ombudsman for both (and international organizations like CPT)  
- Prison Advisory Board  
- Penal System Appointee (several Länder)  
None

**Torture**  
The Ombudsman, The Danish Institute for Human Rights  
Portugal ratified in 2012 the Optional Protocol to the United Nations Convention against Torture (OPCAT)  
Torture Prevention Committee (CPT)  
National Agency for the Prevention of Torture as foreseen in UN protocol  
No national board: EU Torture Prevention Committee (CPT)

**Human Rights / Minorities**  
The Ombudsman, Board of Equal Treatment and The Danish Institute for Human Rights, and NGO*  
Ombudsman, ACIDI (High Commission for Equality and Intercultural Dialogue), NGO’s (like Amnesty International)  
None  
No National Ombudsman (only Local Ombudsmen against malfunction of local administrations) / UNAR against racial discriminations:  
- Board directed by a responsible nominee by PM  
- Powers of investigation, stimulation, legal assistance, divulgence  
- National Public Agency
7.11. Gaps

- **Turkey has no personal data protection agency or institution. The establishment of such an agency is a requirement of the Schengen Convention.**

  Necessary law related to the protection of personal data in accordance with the Schengen Convention was not enacted in Turkey. As a result, Turkey has no personal data protection agency contrary to all the countries studied in this work: France (the Personal Data Protection Commission), Spain (the Spanish Agency for Data Protection), Germany (the Commissioner for Data Protection and Freedom of Information), Portugal (the Portuguese Data Protection Authority) and United Kingdom (the Information Commissioner’s Office). In Turkey, a draft law for the establishment of a Personal Data Protection Agency has been prepared but is not yet enacted.

- **The Ombudsman has no authority to initiate ex officio investigation.**

  The Ombudsman in Turkey has no authority to act ex officio investigation without a complaint. In France or Portugal for instance, oversight institutions have this possibility. The ombudsman could not conduct on-site investigation because its power is regulated by an administrative regulation and not by its organizational Law. Also, on-site visits and in-depth investigations are possible in EU countries. In Northern Ireland for instance, the OPONI has teams of investigators with full police powers. Nevertheless, the power to impose sanctions is rather exceptional, as it circumscribed to the UK and Denmark.

- **Pending (Draft) Police Oversight Commission in Turkey has limited independence.**

  Appointment of board members is made by the central administration, and the Commission has not full financial and administrative independency. In Turkey, oversight instruments of the Commission are limited as it cannot decide sanctions. Also, the Chief Inspector of Constabulary (HMIC, the British inspectorate), which is responsible for conducting inspections of police forces in England, Wales and Northern Ireland, is independent both of the Home Office and Police and approved by Parliament.

- **The Public Officials Ethics Board is not an independent mechanism.**

  The Public Official Ethics Board is not a mechanism independent from central government. Powers of the Board on ISFs are quite restricted. The Board cannot decide to impose a sanction. After a cancellation of the provision which enables the decisions of the Board to be published, it has limited power of influence. In the UK, the Committee on Standards of Public Life is in charge of monitoring the adherence of civil servants to core values such as selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Most public bodies in the UK have incorporated them into Codes of Practice and other internal standards.

- **Some areas are exceptions to the right to obtain/access information.**

  Restrictions in the Law on the Right to Obtain Information with regards to right to obtain information from ISFs are notable. In Turkey, data and documents related to the civilian and military intelligence, economic interest of country, state secret and acts are not subjected to the judicial review otherwise required by the Constitution. Complaints made in the context of the right to obtain information from internal security units can legally be refused.
• **Independent external mechanisms on sensitive human rights issues seen in the selected EU countries are not adopted in Turkey.**

In selected EU countries many special independent commissions are formed so as to work in sensitive human rights issues. The protection of minority rights is among the most important EU priorities: France, the UK, Denmark, Portugal and Italy have institutions that are in charge of monitoring discriminations on ethnic or racial grounds. Independent oversight of prison, detention centres are provided by independent oversight mechanisms in France, Spain, Germany and Portugal. Special mechanisms working on issues of torture are also found in many of the selected EU countries.

In EU countries, the independence of the Ombudsman from ISFs is guaranteed several provisions, one of them being the appointment/revocation procedure of its head. In France, the Defender of Rights is appointed by the President, but his 6-year term is non revocable and non-renewable. In Denmark or Portugal, the Ombudsman is elected by the Parliament. In the UK, more specifically in Northern Ireland, OPONI is fully independent of the police and has teams of investigators from various professional backgrounds (*lawyers, insurance experts*...).
8. The Involvement of Citizens and Local Authorities’ Involvement in Security

8.1. Roles and Functions

The participation and engagement of citizens, local stakeholders, professional and civil society organisations into security policies design and evaluation is another essential element of civilian oversight. It is also a contemporary democratic security service provision approach in overseeing the internal security sector.

8.2. France

At the beginning of the 1980s, these oversight functions did not arise from formal powers but revealed the increasing wish of the city mayors to be concerned with security issues and the important demand of the population about this topic. That form of influence gives these bodies the capacity to exert a civilian oversight over the police and the gendarmerie. These contribute to a degree of oversight by civil society on the various policing agencies.

The two main trends are

1. involving local elected leaders into the local governance of the policing forces and
2. involving associations in the development of local public policy. Locally elected bodies are used as a channel to consult and associate citizens with the definition of local security policies.

Crime prevention schemes have given a voice to local communities in the provision of internal security services at local level either through their elected representatives such as the mayors or through the local associations. Mayors are frequently questioned on security even if national police or gendarmerie is responsible for this issue.

Various circulars have been enacted since the early 1980s and onwards on the creation of partnerships on security matters. The “crime prevention councils” created in the early 80’s were co-chaired by the relevant préfet and mayor. As of 2002 they were replaced by “security and prevention local councils” placed under the chairmanship only of the mayor. It is interesting to underline the growing role that is given by the law (more competencies) to the municipal police and the fact that their agents are becoming more numerous. In relation to the involvement of associations, an example is the partnership that was built with victims associations. These groups have been invited to help to improve the relationship between the public and the gendarmerie or the police. They also play a role in the definition of public access to law and procedures.

Crime prevention councils at municipal and département levels were introduced by a ministerial decision in 1983. The first tranche of crime prevention councils was created on a voluntary basis and chaired by the mayor with 850 of such councils established. The second tranche were systematically established and chaired by the préfets. Their role was to bring together the state public service representatives and the local communities along with some local partners mainly associations with a view to agree on local security strategies. As
this was a new process with unprepared partners, the practical results were limited.

The 1995 “security orientation and planning” law (LOPS) confirmed the role of the mayor especially regarding his leadership over the municipal police but left aside citizens even if the mayor as a representative of the local population was associated with crime prevention activities.

The 2002 “security orientation and planning” law (LOPSI) went further. Accordingly, crime prevention councils became local security and crime prevention councils with a clear role to express the expectations of the citizen, to draft a local security strategy and to be the framework in which the police and the gendarmerie could issue information. Citizens were not taking a direct part in the council but local elected representatives (municipal councilors) and local associations’ representatives were their representatives on the councils. These representatives sit together with state officials. There are currently 650 local security and crime prevention councils in France.

The 2007 crime prevention law has reaffirmed the role of the mayor who has to be informed by the police, the gendarmerie and the prosecutor about the local crime situation. He has to work with the préfet to define security plans, operations and actions. There are no detailed provisions about the way the information is conveyed and its format but crime statistics must be given to the mayor.

Since 1997 a stronger emphasis has been placed on understanding citizen’s fears and expectations. Regulations made it compulsory to gauge public feelings about crime. The same year, a national crime victims surveys was carried out for the first time by the INSEE, a governmental body in charge of statistics in France. The results are published on a yearly basis or in information notes on specific subjects. ICVS surveys have been carried out since 1988 in France but not under the French government’s auspices. In 1999 a national internal security council (CSI) defined the local security contracts in the framework of which the state offered various resources such as subsidies, direct funding or police and gendarmerie manpower. In 2005 there were 672 local security contracts but only two thirds of them had real ongoing operations. The 2007 crime prevention law has organised the inter-ministerial funding budget that financially assists the municipalities to implement security projects. For 2014, the annual budget is 54.6 M euros.

The participation of civilian authorities, mostly academics, in the selection panel of police managers or gendarmerie officers can also be seen as part of civilian oversight by the civil society. Similarly the fact that large parts of the education and training of police and gendarmerie managers or officers is carried out by civilian professors, most of the time under the auspices of civilian universities must also be seen as a form of influential oversight. Similarly the undertaking of research, especially in the field of political sciences or sociology within the gendarmerie and the police and consequently the presence of academics inside these police bodies is another form of informal oversight.
8.3. Spain

Experiences with civil society participation in oversight of security service units in Spain are quite recent and their institutionalisation, in terms of legal texts and regulations, is still rather weak. There exists a National Council for Citizen’s Security with a wide representation from civil society organisations and similar councils have been established at regional and, in many cases, local level. However, these Councils are not regulated by a Law or even by a Government (Council of Ministers) Decree, but by a simple “Instruction” of the State Secretary for Security and their role is largely consultative.

Despite their weak legal foundations, local security plans are established. These plans are implemented by Regional and Local Councils for Citizens’ Security which are chaired by the Regional Delegate of Government and the Mayors. Here partnership is understood in the sense of a link between the population and the public administrations.

In addition to these plans and councils, another set of mechanisms can be found that aims to increase the participation of civil society. All over the country, Regional and Local Security Boards (Juntas) act as coordination bodies for State and regional/Local public security authorities and forces. This can be defined as a tool for institutional partnership. It is often referred to as an ‘interagency approach’ in other EU countries.

Since 2009 the National Mechanism for the Prevention of Torture established in the Optional Protocol to the UN Convention on such subject is carried out by the Spanish Ombudsman (Defender of the People).

Surveys (governmental or non-governmental) are another modality of civilian oversight which are regularly used. In Catalonia a yearly public security survey is conducted with a focus on citizen’s victimization. The data issued from this survey are crosschecked with police statistics and used for drafting the local security plans. At national level, Spain participated in the International Crime Victimization Surveys for the first time in 1988.

8.4. England

The United Kingdom, as with the United States, has a long history of localized policing which has been centred on the community and neighbourhood levels. Increasingly, however, debates in the UK about the delivery of local policing have tended to emphasize what is termed “partnership policing” in preference to “community policing”. It is argued that “community policing” exaggerates the degree to which communities can be said to be homogenous when the reality is a heterogeneous mix of diverse and pluralistic “communities” all of whom place certain demands on the police and who require that policing be tailored to their demands and requirements. In addition, community policing, historically, has tended to advantage dominant groups and often further marginalize and disadvantage those at the margins of society.

Arguably partnership policing which exists on a statutory footing is well-developed in the UK – perhaps more so than in any other EU jurisdiction. This process towards partnerships and community consultation was begun in the aftermath of the riots that engulfed Brixton in South London in 1981 and where the deplorable state of police relations with
black youth in urban inner-city areas were blamed by Lord Scarman as being responsible for much of the ensuing violence. Many of Lord Scarman’s recommendations were eventually incorporated into the Police and Criminal Evidence Act [1984] and there was a statutory requirement under PACE to establish ‘Police Consultative Groups’ (PCGs) in each police area which are funded and linked to Police Authorities. The key objectives of consultative groups are to undertake community engagement with the police and in particular to identify specific issues of community concern in relation to the conduct of policing. This tailoring of policing to local needs also assists the police in meeting the EU equality and anti-discrimination directives.

The Crime and Disorder Act [1998] put Crime and Disorder Reduction Partnerships (CDRP) on a statutory footing and made them a requirement in each police area and established partnerships between the police, local authorities, probation service, health authorities, the voluntary sector, and local residents and businesses.

These partnerships work to reduce crime and disorder in their area by establishing the levels of crime and disorder problems in their area, and consulting widely with the population of that area to make sure that the partnership’s perception matches that of local people, especially minority groups, such as members of ethnic minorities, devising a strategy containing measures to tackle those priority problems. This is to include targets, and target owners for each of the priority areas. The strategy will last for three years, but must be kept under review by the partnership.

The Police Reform and Social Responsibility Act 2011 added further to the dimension of local community involvement in Policing. The elected Police and Crime Commissioners have the responsibility to secure an efficient and effective police for their area and in addition to their responsibilities previously described will set the police and crime objectives through a police and crime plan, set the force budget, determine the charge on local taxation and bring together community safety and criminal justice partners to ensure local priorities are joined up.

Again it needs to be noted that the UK scenario goes beyond a mere rhetorical commitment to community policing by the police, to a scenario whereby local communities are actively consulted about policing priorities in their local area. In Northern Ireland the degree of local community input into policing is further enhanced by the existence of District Policing Partnerships (DPPs) in each local council area.

Also created by the same legislation are local Police and Crime Panels, comprising one elected representative from each local authority within the area and two independent members. Its task is to hold the Police and Crime Commissioner to account between elections. For this purpose, they are given specific powers to investigate complaints about the PCC and can veto the proposals for local taxation and for the appointment of a new Chief Constable.

The UK is the most advanced country in Europe when it comes to use of national surveys aimed at understanding citizens’ fear, expectations, encounters with police officers and the like. The largest opinion poll was established in the early eighties under the name “British Crime Survey” and has been repeated since then. It is now considered the most
authoritative source about crime trends. It is supplemented by local surveys (into London’s police boroughs for example). The police forces also work out random surveys on the use of police services by the customers in order to better assess what can be improved.

In the United Kingdom, active NGO’s can be found in that field. The National Community Safety Network is a practitioners’ association with the motto "Sharing good practice to make a difference". The association intends to bring together representatives from community safety, police, fire and other related organisations to participate in critical debate, promote and develop community safety knowledge that is practitioner-led, enable idea generating and problem-solving discussion between delegates, and contribute to evidence-informed policy and practice that will be passed onto government. Its aims are very close to the French Forum for Urban Security.

8.5. Denmark

8.5.1. Local Authorities Engagement in Security Policies

There are no municipal police or National Councils in Denmark. The partnerships with local authorities (municipalities) and local communities have a non-binding, coordinating and advisory function. The Police and local authorities meet in district councils 52 where questions of general nature concerning the cooperation between the police and the community are discussed.

Crime prevention is a highly prioritized area in Danish policy on internal security. Here, the cooperation between the police and other stakeholders is considered vital. Towards this aim, The National Centre for Crime Prevention under the National Police have made efforts to bring together stakeholders in order to gather knowledge and to create better methods and practices in crime prevention. The goal is to facilitate a common ground for exchange of information and ideas from the police and all other stakeholders (governmental, public service, NGO’s and the private sector).

An example of this is the “Co-Creation”-partnerships, which are facilitated by the National Police, in order to prevent juveniles from getting into a life of crime and anti-social behaviour. In this effort the stakeholders and main instruments are:

- The SSP–Cooperation (School, Social services in municipalities and Police) 53
- National-, Regional and local Councils
- National Staffs and Task–Forces – e.g. against crime from bikers and gangs.
- Special programs in vulnerable neighbourhoods.
- Working groups involving participants from relevant organizations (private and/or public)
- International intelligence led projects.
- EUCPN – European Crime Prevention Network

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52 A coordination and advisory council where the police, public officials and local politicians in the municipalities meet to discuss general issues.
53 The Cooperation called SSP is particularly important within crime prevention in regard to children and youths and is a priority on a local level in all police districts. SSP is based on prevention of crime and not on investigation or punishment. Within the SSP-cooperation the representatives of each organization (school, social services in municipalities and the police) can legally exchange information about individuals that give rise to concern in order to prevent a life of crime.
8.5.2. The Danish Crime Prevention Council

An important institution when it comes to crime prevention in Denmark is the Danish Crime Prevention Council. The Council was established in 1971, and is an independent council financed by Parliament. It is not part of the government or part of any public authority. It handles its own finances and hires its own personnel. The council consists of a wide range of stakeholders with a chairman. Some of the stakeholders include the Bar Council, the Danish Union of Teachers, the Danish social worker association, the police, the Danish Youth Council and several others, about 40-50 members. The council publishes opinions, reports and books dealing with crime prevention matters. Already in the 1970s, the Council took the initiative of a formalized cooperation between individual police districts and municipalities, at a local level in order to lower crime rates among children and adolescents, the so-called School-Social-and Police cooperation (SSP). This cooperation has since then expanded to include socially vulnerable persons, including former prisoners. Cooperation is now enshrined in the Administration of Justice Act § 114. The law also authorizes wider cooperation between local authorities and the police.

8.5.3. Private Security Firms

An essential part of security in most European countries is the existence of private security companies. The National Chief of Police in Denmark must approve such companies and the local police must approve the individual employees. The training to become a security guard is quite short. The companies must act in accordance with “The Rules of Danish Security Companies”. Companies can operate on private territory, but they are prohibited from acting in any other way than an individual citizen is permitted. Due to special licenses, the security companies patrol public places such as parks, beaches, etc., although the conditions here are very restrictive. The guards are especially used in large shopping malls, where they have taken over some security tasks (securing order and initial apprehension of shoplifters, etc.). Presumably, there are at least as many operational guards working as there are policemen. There are no formal rules on how the police cooperate with the security companies, but the police do supervise the companies.

8.5.4. National Tools for Examining Citizen’s Expectations

There are different national tools for examining citizen’s expectations regarding the police. In Denmark, surveys are regularly made of the citizen’s confidence and satisfaction with the police both by the Ministry of Justice and by researchers at the Universities, through public research.

The Danish Act on Police Activities in Denmark states that safety is a key element of the duties of the police. It has therefore been decided, on a political level, to monitor safety in large parts of society – especially in the disadvantaged housing areas. The Police Safety Index was developed and implemented in 2013, and is an important supplement to this monitoring. The Police Safety Index measures the fear of crime in all of Denmark, the 12 police districts, the five largest cities, and in 34 disadvantaged housing estates. It consists of
a Survey Index, which is based on a survey consisting of more than 12,000 responses, and the Reports Index, which is based on data from the administrative system of the Danish police (reports from the public concerning incidents, violations and crime).

The purpose of the Police Safety Index is, with a focus on crime and fear of crime, to monitor safety in selected areas, based on the citizen's feeling of safety, in order to have a supplement to traditional crime statistics. The survey is conducted with a questionnaire featuring questions on fundamental safety and trust in the police, the occurrence of neighbourhood problems and the feeling of insecurity caused by these neighbourhood problems. The survey uses qualitative questions as well as background variables (gender, age, socio economic status, etc.), and is based on more than 12,000 responses.

The results of the first survey from 2013 showed that the Danish citizens to a large extent feel safe and have confidence in the police. In short, at least 80 percent of the Danish citizens stated that they feel fundamentally safe to a large degree, and about 85 percent stated, that they have confidence in the police. The results on the feelings of safety are very similar in areas with little crime and areas with more crime. From the survey, it seems that the less crime you experience in your neighbourhood – the more serious it is deemed. If you do not expect crime, it scares you more when it occurs.

The results of the Police Safety Index are used in the police cooperation with local partners (e.g. municipalities), and as a supplement to local risk assessments. The goal is for the Police Safety Index to become an effective tool for analysis of local crime prevention initiatives. The plan is that the Police Safety Index in the future will also be a part of the foundation of contract negotiations between the National Police and the commissioners of the local police districts.

8.5.5. Victim Support Denmark

Victim Support Denmark (Offerrådgivningen), Help the Victims of Violence and the National Organization of shelters are some of the voluntary organizations (NGOs) that are especially important in Denmark. Victim Support Denmark has a branch in each police district. The organization helps victims of crime and witnesses to crime. The services are free and available to everyone, whether or not the crime has been reported and regardless of when it happened. Victim Support Denmark is independent of the police, the courts or any other criminal justice agencies. It focuses on helping people to cope with going to court, by providing information and support. It supports witnesses for both the prosecution and defence. Victim Support Denmark is a member of Victim Support Europe and has existed since 1998. Victim Support Denmark cooperates with the police and the social services in every municipality and police district.
8.6. Portugal

The Portuguese legal framework does not provide many competences to local actors with regard to internal security. Even issues such as local projects of video surveillance are decided centrally by the Mol. Being a competence of the government, it cannot be the object of a referendum (or citizen's initiative), which can only be the case for local level competences.

The Municipal Police has been present in the Constitution since 1997, which defines the public security functions that are entrusted to them. The law establishes the regime and the form of creation of a Municipal Police. The Municipal Police is especially dedicated to administrative work, however it also participates in maintaining security and public peace (Article 237 of the Constitution). However, the Municipal Police is not integrated in the ISF group and has eminently administrative functions.

The Municipal Police law was approved in 2000. The two main Portuguese municipalities, Lisboa and Porto, have special arrangements concerning Municipal Police. The Municipal Police jurisdiction is part of the municipal organization, reporting directly to the Mayor. Despite not having the status of security force, the Municipal Police has some security functions while pursuing its mission, in cooperation with the police forces operating in the municipality, for the maintenance of public order and the protection of local communities. Coordination takes place in conjunction with the Mayor and the Commanders of the competent ISF in the municipal area. The following examples are taken from the Municipal Police Law: surveillance of public areas, particularly in areas surrounding schools, in coordination with the security forces, or monitoring in local urban transport, also in coordination with security forces (Article 3, No. 2 of the Municipal Police framework Law).

There are currently about three dozen municipalities (of 308 existing) with a Municipal Police.

The Mol can determine the investigation of facts indicating serious violations of rights, freedoms and guarantees of citizens practiced by the staff of the Municipal Police in the exercise of their police functions (Article 10 Municipal Police law).

One of the major challenges faced today in terms of security is finding territorial mediators, which can be, for example local authorities. The promotion of Municipal Security Councils, created by law in 1998, may be an example of a public policy on security in collaboration with different entities.

These councils act at a local level and have advisory, cooperation and information functions. Their objectives are, among others, fundamentally to contribute to the information and knowledge of the security situation in the municipal area, formulating opinions and proposals to various entities, as well as participating in preventive actions.

In its composition are included, among representatives of the various municipalities (like the mayor), a representative of the local prosecutor, the commanders of the security forces in the municipality, as well as representatives from NGOs, professional associations and citizens of recognized merit.

The local councils are therefore an organic form of consultation with civil society.

Still regarding partnerships and co-operation in the field of crime prevention at a local
level, it is important to mention local safety contracts. These are tools of cooperation strategies, at territorial level, involving the State, Local Authorities and Civil Society. They are intended to enhance security, increase the feeling of security and the level of confidence of the population, approaching the Security Forces of the needs of citizens, improve the effectiveness and efficiency of the police service, enhance community policing programs and involve the people in the security process.

These contracts are signed between the Ministry of Interior and Municipalities.

Local Security Councils are involved in determining the needs of the municipality.

In the late 2000s, these contracts were encouraged by the Government and in 2010 there were 32 of them in effect, with a focus on crime prevention through mediation, community policing and partnerships that, without diminishing the role of the state, called for participation and co-responsibility in public security policies. Currently, there are only few of these contracts (e.g. Loures municipality, where more than 50 local partners are involved - civil and religious associations, economic and institutional actors, schools and residents).

There are also Crime Prevention Local Plans (especially with regard to domestic and gender violence), involving public and private entities.

The Portuguese Forum for Urban Security works as a think tank, bringing together practitioners, national and locally elected politicians (promoting partnerships). Its aim is intended to strengthen the implementation of policies that reduce crime and to promote the role of local authorities at national and international level.

At a national level, another civil society organization that has been closely monitoring security issues is the Security, Organized Crime and Terrorism Observatory (OSCOT), where academics and former politicians with a role in Home Affairs politics collaborate, with the aim of training experts and informing (mainly through the media) civil society on security matters.

A useful tool within security policies is victimisation surveys, which can help to learn about crimes that are not reported to authorities. Portugal has not conducted this kind of survey for a few years, although Portuguese authorities recognise their importance. In the early 1990s, three of these surveys were conducted (91, 92 and 94). Since then, they have been rare, mostly because of financial constraints.

8.7. Germany

In the matter of local security policy, the relevant public authorities in Germany are the police on the one hand and municipalities on the other hand.

- The police in Germany are a matter for the states, or Länder. They are under the control of the Ministries of Interior and are independent of the municipality. The police are responsible for public security and public order. Their tasks include threat prevention on the one hand and prosecution/law enforcement on the other hand. As a 24/7 institution, the police also fulfil the duties of other public order authorities when they are unable to act or not able to act in time or in cases in which force is or might be needed.

- There are no municipal police forces. Cities in Germany have a specific responsibility for public order on the basis of acts of regulatory authorities (also within the legislative compe-
tence of the Länder). The municipalities’ departments of public order mainly work in an office and give out permits. But they also have a municipal guard working in the street (sometimes in uniform). The municipalities are in addition responsible for all aspects of fire security, rescue services and – in collaboration with the Land – disaster control.

Local security is not, however, entirely the responsibility of the public administration. Although law enforcement remains the sole responsibility of the state, other aspects of safety and security are divided between public and private players and their agents (private security firms).

In principle, the responsibilities of managing urban security are well established. The police authorities on the one hand and the local authorities on the other appear competent at their jobs and they often collaborate successfully.

8.7.1. Partnerships and Local Security

Local authorities and the police are jointly responsible for the leadership of urban security management. But, acknowledging the increasing importance of private security and the decreasing ability of the state and municipalities to provide security, new forms of security architecture have been developed. It is still the duty of the state (including also the municipalities) to manage security by delivering central services (licensing, orders) and law enforcement. Although the authorities have to take the lead, other players can deliver some operational services. This makes it necessary for the authorities to build up firm forms of multi-agency partnership, inter-agency policing and security governance.

Besides the collaboration of the police, local authorities and private security firms on aspects of presence, surveillance and control, co-operation in Crime Prevention Councils and Public Order Partnerships has gained importance since the 1990s. Unlike for example in England and Wales, where partnerships are compulsory and regulated, partnerships in Germany are just suggested or requested by the Ministry of Interior. The city government and the local police force (as the main players) establish partnerships for urban security at their discretion. So there is a wide range of councils, round tables, working teams, etc., which sometimes are meetings of chiefs and senior representatives. Whereas some try to discuss the broad spectrum of security problems in the city, others concentrate on specific challenges such as domestic violence, drugs and drug-related crime or young people as offenders and victims.

The representatives of the involved stakeholders, with regard to actual or structural problems, mainly set up the agenda of the committees. Also the local media influence this agenda with their reports. Quite seldom, citizens’ expectations are gathered systematically and integrated in the debate. There is no standard procedure for the analysis of the expectations and the use of questionnaires, complaint management or other instruments is seldom. Only few police forces installed a monitoring system to gather information and the views of the people.
8.7.2. Involvement of Citizens and Non-Statutory Partners

The police’s mission statement of being community oriented meets new or changed challenges for granting safety and security in the cities. Not only are the police able and in charge of protecting people and enforcing the law, but also other agencies have duties and competences in this field. The collaboration between various stakeholders gains more importance. Secondly the citizens in Germany’s developed democracy expect more communication, more involvement and more satisfaction of the people’s needs and demands from the public services. State, municipalities and administration cannot act in an authoritarian manner but have to seek legitimacy in dialogue.

Since the early 1990s, the collaboration of the police with other public authorities and the involvement of citizens and non-statutory partners increased. But the institutionalized connection of police and community is a tradition in the states which were governed by American and British occupying administrations during the post-war period. In North Rhine-Westphalia, the British military government installed the police and – following the British tradition – “watch committees” in local or regional police forces in 1946. In 1953 their role was newly defined and the name changed to “police advisory board”. The members of these boards are elected members of the city or county council. These boards shall bridge the gap between police and community, build up trust, should discuss matters of local safety and security and give advice in aspects of policing. The competences are very restricted and concentrate on counselling and consultancy.

Crime Prevention Councils (CPC) have been built up since 1993, initiated by a decree of the Minister of Interior. This decree calls upon the police to initiate crime prevention councils and suggests inviting several other agencies. The decree names the local authorities with their departments for public order, education, sports, youth, social affairs, health, equality, traffic, building and finances, as well as public transport, science (local/regional universities), economy, chamber of industry and commerce, unions, professional associations, judiciary, media, churches, private (welfare) agencies, citizens’ initiatives and representatives of ethnic minorities. The decree lists city planning, integration of particular sections of population, particular crime (e.g. drug abuse, violence, vandalism/graffiti) as important fields of action. Every crime prevention council is free in its decision about its members, its procedures or its activities. As a sort of standard, the co-operation of police and municipalities, education, welfare/social services (including victim support organisations) and judiciary is the core of CPCs, while the involvement of other partners differs considerably. Individual citizens are rarely seen in these councils.

The CPCs often have a small budget for their own activities, but mainly use the finances and manpower of the participating partners. The most important tasks of CPCs are:

- communication about the local situation of public order, safety and security,
- initiation and support of primary and secondary crime prevention, and
- discussion of local security policy.
However the role of CPCs is concentrated on debating and counselling and they have no decision-making power binding the police.

8.8. Italy

The growing importance of local police forces is linked to the new role given to local governments in the field of internal security. In fact, in the early 1990s, the mayors (and, to a lesser extent, Presidents of the Provinces) acquired a new relevance in the policy-making processes, and urban safety came to occupy the centre of the political agenda. At the same time, however, the mayor also became the preferred target of protests by the local population, even in relation to issues of local security. Therefore, this new decision-making capacity demanded a mayor increasingly able to give prompt responses to the citizens’ concerns.

Local police forces have been required by local governments to play an increasingly important role in the field of urban security. Municipal police forces are a historical presence that characterizes the Italian scenario from the ‘communal guards’ of the late nineteenth century. Its agents have traditionally been engaged in tasks of traffic surveillance and administrative police. In the last twenty years, however, the municipal police have greatly expanded the horizon of their control activities, also dealing with the repression of petty crimes. In fact, these organizations had to translate political input into concrete action, going along with the wishes of their local government. The municipal police have thus played the role of gate-keeper between population and local administration for security issues, by executing the mayors’ ordinances against prostitution and begging, by creating units specialized in the repression of petty crimes and anti-social behaviour, or by increasing the reassuring presence of police uniforms in neighbourhoods. As set forth by Law no. 65/1986, the Municipal Police plays the role of ‘auxiliary force in the field of public security’, and the mayors can participate in the main table of inter-agency coordination on security at the local level: the Provincial Committee for Public Order and Security. In this consultation board, the local police is an actor of increasing importance, both for forces, equipment (often more abundant than the national policies) and for good knowledge of the territory.

In the absence of a new national framework for municipal police forces (the Consolidated Law dates back to 1986 and the reform stopped in Parliament in 2009), the regional legislations have confirmed these transformations in the field of internal security. The innovative tasks are connected to the involvement of these forces in the field of ‘urban security’. This concept is not exactly defined by the Italian legislation. We can specify it, on the one hand, by excluding all matters directly related to public order and security (which remain an exclusive competence of national police forces); on the other hand, by including all the local government functions pertaining to the protection of the citizens’ quality of life and the prevention of the feelings of insecurity. In Italy most of the regional statutes define the local police as police forces with general competences in the field of urban security, serving their respective local governments.
8.8.1. The Partnerships between National and Local Institutions in Security Policies

In Italy the main inter-agency consultation board is the 'National Committee for Public Order and Security', which meets regularly at the Ministry of Interior to define common strategies and policy criteria concerning internal security, at a national level. While the National Committee defines the national policy criteria, the Provincial Committees of Public Order and Security elaborate, at a local level, the actual inputs that guide the coordination of national and local police forces in terms of security and the everyday management of public order. This provincial board is chaired by the Prefect, as a representative of the Government, and consists of the provincial heads of the five national police forces, the President of the Province, the Mayor of the province capital and other local authorities, who can be invited by the Prefect. Meetings generally take place at the Prefecture and are scheduled once a week, in order to define programmatic goals and policy objectives for operations, aiming at the coordinated management of public order and security between national and local authorities. This consultation board was created in 1981, but in the last decade the representatives of local governments have acquired an increasing importance. Alongside these institutional boards, in Italy there has been an increasing use of pacts of collaboration between national institutions and local governments in the field of public security. This kind of agreements had been signed since the mid-1990s, but they were infrequent and mostly related to specific critical situations, without uniformity.

Since the end of 2006, we are witnessing a new phase, characterized by a new generation of Security Pacts. This change comes from the need to encourage the collaboration between the State and local governments in the fight against urban criminality, partly because of a sharp reduction of the budgets of national and local administrations. The Budget Law for 2007 has authorized Prefects to enter into agreements with Regions and local governments to carry out special programs to improve police services, also by accessing logistical and economic resources that those local actors intended to devote to these purposes.

Based on this Law, on 20 March 2007 a Security Pact was signed between the Ministry of Interior and the National Association of Italian Municipalities (ANCI). This agreement has represented the model for the next Security Pacts, in a framework of strict cooperation between national agencies and local governments. These new Security Pacts consist of an agreement between the Ministry of Interior, the Prefecture and the relevant Provincial and municipal governments. The main goal is to grant the citizens' right to safety and quality of urban life, through a progressive elimination of areas of decay and anti-social behaviours in Italian cities. In order to achieve this goal, a stronger coordination between the State and local administrations is required. In particular, these pacts are meant to focus on some specific deviant activities, such as: the presence of Roma people within non authorized areas, the phenomena of counterfeit and forms of unauthorized commercial activities, the exploitation of prostitution, begging, and other phenomena linked to street criminality and urban decay.

The Security Pacts are arranged within the Provincial Committees for Public Order and Security, which identify general purposes and operational priorities, to achieve through a
dedicated fund allocated to the Prefectures. The pacts have generally an annual duration and are tested every six months, always within the Provincial Committees.

In addition to interventions in the field of internal security promoted by Security Pacts, the urban security policies activated by the local governments have taken a more and more important role in recent years. They are the result of the leading role in the prevention of citizens’ insecurity that mayors and other local authorities have developed over the last two decades. In Italy, every local government has its own vision on security, gives political direction to the activity of its Municipal Police, develops a series of interventions coherent with this view, assigns a substantial part of the budget to its implementation, tries to increase the presence of police forces in the central neighbourhoods and aims at strengthening the electoral support on the basis of these measures. Despite the reduction of the budgets of local governments, numerous interventions have been promoted in urban areas in the field of security, with a strong prevalence of ‘situational prevention’ tools (primarily, the redesign of public spaces and installation of video-surveillance systems, connected with the headquarters of national and local police forces).

A key role in co-financing and coordination of these urban security policies has been played by Regions. In the field of internal security, Regions promote forms of dialogue and cooperation between national and local authorities, encourage economically local security policies, coordinate and form municipal police forces, promulgate regulations on urban security issues.

Another partner of local governments for the development of urban security policies is the Italian Forum for Urban Security (FISU), an association that since 1996 has brought together over 40 cities, provinces and Italian regions, with the aim of promoting a common view on this field. The Italian Forum identifies in the Municipalities the key-actors for the development of these new policies. FISU is the Italian Section of the European Forum for Urban Security, which consists of more than two hundred cities and local administrations of ten different European countries.

FISU also collaborates with the National Association of Italian Municipalities (ANCI), the Conference of Presidents of Regions and Autonomous Provinces and with the Union of Italian Provinces (UPI) to promote a modern national legislation on urban security and integrated training activities for local police forces. These goals are pursued through agreements with other partners interested in the promotion of local security policies, and a constant lobbying activity conducted within local and national institutions.

In Italy there are few statistical tools used to measure rigorously the effectiveness of security policies developed by national and local institutions, and the citizens’ demand for security. In addition to traditional data about complaints and crimes produced by national police forces and Judiciary, since 1997 ISTAT (the National Institute of Statistics) has introduced in Italy national surveys on victimization. These surveys have two basic purposes. First, they try to detect unreported crimes, by estimating the number of people who were victims of certain crimes in a given number of years prior to the survey (3 years, with more detailed questions on the last 12 months). Secondly, they aim to measure the perception of security of respondents in their area of residence, through a set of questions related to their
habits and level of fear connected to everyday experiences.

Victimization surveys in Italy take place every five years; oversampling and local disaggregations are possible, in the case of specific agreements between ISTAT and the regional or local governments concerned. Italy also participates in the implementation of the International Crime Victim Survey - ICVS from 1992 (second survey) and in the realization of EUICS (European Union Survey on Crime and Safety) since the first survey in 2005.

8.8.2. The Citizens’ Involvement in Security Policies

In Italy, the citizens’ collaboration was seen in the past with suspicion and discouraged by the heads of the Ministry of Interior and national police forces, for many reasons. The military status of police forces, their operational priorities, the attachment of the heads for their exclusive skills and competences led police officers to act independently and to only reluctantly accept the active collaboration of the population (with the exception of a few informants). Only in the last twenty years have we witnessed a gradual approach of police to citizens. This shift is visible through the enhancement of police activities directly conceived as services for citizens (the introduction of community policing, the attention for the victims of crimes, the opening of Public Relation Offices within the local headquarters of police corps, etc.). But in these last years, we can also notice an increasing acceptance of forms of collaboration with the population by the police.

In Italy these partnerships between police and citizens have two basic characteristics: on the one hand, they are not very formalized and depend mostly on the openness of the police officers and local governments; on the other hand, they refer only to groups of organized citizens, while maintaining a strict distinction between the actual police tasks and the activities performed by citizens. In particular, in the Italian scenario, there are two phenomena that can be subsumed under the forms of citizens’ involvement in security policies.

The first phenomenon – the ‘neighbourhood committees’ – did not have any kind of formalization. A neighbourhood committee is a spontaneous group of citizens, which comes into existence in a perceived emergency situation and implements various forms of protest tended to affect the strategies of the actors involved in urban security policies. The neighbourhood committees active in the field of urban security are the result of the growth of the feeling of insecurity of the population that has characterized many Italian cities since the early 1990s. Their development has had an erratic path over the years, but has spread to all regions of the country.

Local governments and police forces are often sensitive to the influence of these local actors in the field of security. The most charismatic or representative committees have been rapidly involved in various initiatives by municipalities, with the aim to reduce the level of social alert in their neighbourhoods. They have also actively contributed to the building of forms of collaboration with police forces, as the latter strived to develop partnerships to improve endogenous control. The direct counterpart of neighbourhood committees are often municipal police patrols, which collect reports and suggestions by groups better organized and then bring these reports (if they are based) to the attention of the national
police forces. In some cases, however, the heads of national security forces directly organize meetings or request reports and information useful for the activities of their patrols.

The second phenomenon is represented by the 'associations of volunteer observers' that have been regulated for the first time by the Law no. 94/2009 and its implementation decree. These associations are stable and organized groups of citizens (so, not active only in periods of emergency, like the neighbourhood committees), that physically patrol urban areas to provide reports and information to the police and to oversee the neighbourhoods against the presence of various forms of undesirable persons (individuals who would disrupt public order and security).

This law has established that ‘the mayors, in agreement with the Prefect, may take advantage of the collaboration of associations of unarmed citizens, in order to report to national or local police forces any events that may disturb the urban security or situations of social disease’. These associations must have as statutory purpose volunteer work in the field of urban security. They also cannot receive financial resources from other actors than their members.

The Italian legislation provides numerous constraints for this type of citizens’ collaboration. The first is connected to the type of problem reported to police forces: it must be a situation that concerns urban security, while for matters of public order and security only national forces can intervene. Second, there are filters for the legitimacy of these groups to offer their partnership: the immediate counterpart is the mayor, who decides whether or not to establish a partnership with these associations. Finally, there is a double formal constraint: the groups must be constituted in a registered association. These associations must be certified by their inclusion in a register kept at the Prefecture. The Prefect is in charge of controlling the fulfilment of all these requirements and monitoring the associations regularly, with the support of the Provincial Committee for Public Order and Security. In case of registration, the associates have to follow training courses on urban security issues, organized by Regions and held by the local police trainers.

Because of this series of constraints and limits, very few associations have applied to the Prefectures and have enabled this form of collaboration; almost all these associations consist of retired officers of police forces.

8.9. Turkey

In Turkey, the inputs of citizens regarding internal security services are conveyed through elections at national level. Apart from elections, citizens and non-governmental organizations (NGO) are not directly involved in the preparation of local security policies.

8.9.1. Activities of NGOs related to the Security Sector

NGOs are involved in the civilian oversight of internal security forces by monitoring activities of internal security agents. The monitoring is not limited only to the security sector. Another contribution of NGOs with regards to democratic oversight and supervision of security sector is awareness-raising. Many human rights violations committed intentionally or negligently by internal security personnel were disclosed to media by research and investigations conducted by NGOs.
8.9.2. Municipal Police (Zabita)

In Turkey specialized police units at local level have limited powers (municipalities). There are differences between general national police and municipal police called zabita with regards to their duties and authority to use force. Zabita is in charge of enforcement of local laws and regulations for purpose of preservation of public order, promotion of public health, safety and morals, and low level sanctions for those who do not comply with the orders and restrictions brought by the Municipal Council.

8.9.3. The Practice of Community Policing (TDP)

The Police supported by the Community (Toplum Destekli Polistik) is a kind of unit created under the auspices of the Directorate of the Public Order of the National Police in order to ensure participation and support of the community to combat crime. It also helps to meet the social expectations and demands of the public. The TDP is an organization devoted to the realization of the objectives of strengthening the relations between police and community, enhancing quality of life areas, and providing efficient crime-prevention through finding the causes of the problems.

**The Provincial Security Advisory Board (PSAB):** In each city, the Provincial Security Advisory Board of Community Policing is formed under the coordination of the governor for the purpose of enhancing security services, designating provincial security problems and providing support and participation of community to services performed in relation to general security of province.

**The District Security Advisory Board (DSAB):** In each district, the District Security Advisory Board of Community Policing is formed under the coordination of the sub-governor for the purpose of enhancing security services, designating district security problems and providing support and participation of community to services performed in relation to the general security of the district.

Creating Areas of Responsibility is a practice of dividing areas of responsibility of police into sub areas and assigning one or two TDP police officers in these areas or regions. The area consists of certain streets or a neighbourhood.

Meetings on Public Peace in Area of Responsibility: in order to provide participation of the community to police services, public peace meetings are held in relation to security services which are performed in the area of responsibility of relevant police departments. Police departments can sign protocols with all relevant institutions and organizations on purpose of achieving goals. Protocols can be prepared with the consent of local authorities. Action plans must be prepared.

8.10. Comparative Overview

Placing a statutory requirement on the police to actively consult with communities is an important mechanism for accountability and oversight, as well as a tool in enhancing police relations with disadvantaged and excluded groups.

In Turkey, public participation with the police and coordination between institutions
were implemented in several articles of a regulation on “community supported policing services” introduced in 2009. The principle of citizen’s contribution to security is asserted. Two main aspects with respect to civil society involvement are:

a. the creation of Urban and District Security Advisory Boards composed mainly of representative of public organizations, local or national and of volunteer citizens. They are chaired by a deputy governor in provinces and district governor in sub-provinces and convene twice a year;

b. police stations organize meetings on “responsibility and peace”, in which a large array of administrative services or private entities as well as NGOs can participate (see box).
Regulation on “Community Supported Policing Services” in Turkey

(Approved 18 Feb. 2009)

In each province and sub-province under the coordination of the governors, Urban Security Advisory Boards and district Security Advisory Board are established to enable the participation of the public in connection to the security services, in order to provide support and to determine local problems with respect to security and to improve the services rendered.

Urban Security Advisory Boards are chaired by a deputy-governor designated by the governor and District Security Advisory Boards are chaired by the sub-governor. The board gathers at least twice a year in March and September based upon the decisions of the last board. Representatives of the municipalities, moukhtars, training institutions, universities, health and social services, police, civil public organizations, and volunteer citizens participate in these meetings. Other civil institutions and organizations representatives’ participation is ensured as well. (Art.59–60). The participation of citizens to the Advisory board is based on the volunteer principle.

In order to enable public participation to security services, meetings on “tranquillity” are organized by the police stations within the responsibility area. The representatives of the security units in charge of responsibility, public institutions, municipalities, training institutions, health institutions, building managers, private security representatives, non-governmental organization (STK), associations, trade association, neighbourhood headman, family and volunteers, section of the public at risk are invited to periodical meetings which are held every three months (Art.58).

Communication mechanisms are established in order to overcome factors that can lead to the occurrence of crimes and behaviour negatively affecting the quality of life, to discuss and to find out solutions to these problems or the general situation of the population. The building’s administrator and street representatives, families and volunteers participating security services, owners of accommodation places, civil associations, youth organizations, trade associations and business centres, sport clubs and other social content institutions are cooperating on security servicing issues (Art.66).

Within the scope of urban planning, the identification of problematic areas for crime and in order to eliminate security problems, to allocate spaces for socio-cultural and sportive events in cooperation with municipalities is mandatory.

In order to establish general security training, the institution’s cooperation is required and the participation of the families of students is encouraged. In schools and other training institutions programs are a duty given to community support police in order to improve security services. Informative meetings are organized by police in order to increase awareness of students, their families and teachers on security issues. Cooperation with universities is also a duty in order to improve security services at a scientific level (Art.62–63–64).

Within the scope of the community policing services the security departments can sign protocols with institutions and organizations if necessary in order to be able to perform the application. Protocols are presented for the approval of the governor and after approval are put on application and prepare an action plan (Art.67).

Citizen Participation Programs (VKP) are organized in order to inform and increase awareness of the public in relation to security services and the fight against crime and to enable the organization of the participation of citizens. Within the scope of the Citizen Participation Programs (VKP) projects are started. These programs (VKP) shall encompass any social event where the principle of benevolent participation is essential. (Art.78).
As is seen in the Table 8, in Turkey zabita enforces municipal laws in a way in part comparable to Italy, France, Spain and Portugal. However, in EU countries, local forces have limited judicial powers which are not given to zabita.

Gaps are found regarding citizen and local authorities’ engagement into local security policies. In the selected EU member states and Turkey, local authorities are involved in the governance of security issues in many forms, however, the way this is done and the efficiency of these ways varies considerably between Turkey and selected EU member states. In the UK, elected Police and Crime Commissioners oversee police in a territorial police area. In France, Italy, and Spain, the mayors act as chief of their own police forces and also participate as chairs of the coordination committees where the Prefect is invited. In Germany, a local security and safety partnership is provided by Crime Prevention Councils and Public Order Partnerships chaired by the local chief of police. Partnerships between local communities and ISFs in Denmark are provided by non-binding district councils, where police and local authorities meet for cooperation. In Portugal, coordination is provided by local security councils chaired by the mayor and formalized in local safety agreements.

In Turkey several platforms for discussion with the police are found, but citizens are not associated to the design of local security policies. Contrary to France (National Council of Internal Security), Spain (National Council for Citizens’ Security) and UK (National Partnership Strategy), in Turkey there is no mechanism bringing citizens and practitioners together. Security councils, consultation mechanisms at the local level and the development of specific tools (victim and security surveys) ensure citizen consultation in security policies in France, Spain, Italy, UK, Denmark and Portugal.
### Table 8: The Mechanisms for Citizen and Local Authorities Engagement into Security Policies in Selected EU Member States and Turkey

<table>
<thead>
<tr>
<th>Mechanisms for Citizen and Local Authorities Engagement in Security Policies</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existence of Municipal Police</strong></td>
<td>Large municipalities have a police force</td>
<td>Municipalities of more than 5000 pop have civilian, armed police force</td>
<td>No municipal police</td>
<td>Zabita (<em>weak</em> local police)</td>
</tr>
<tr>
<td><strong>National Councils</strong></td>
<td>National Council for Internal Security</td>
<td>National Council for Citizens’ Security; Mol-civil society organisations</td>
<td>National Partnership strategy (Home Office), Partnership Policing, “Citizen focus programme”</td>
<td>None</td>
</tr>
<tr>
<td><strong>Legal Status of Consultation with Population</strong></td>
<td>Modalities are discretionary. Conclusions not binding.</td>
<td>Modalities are discretionary. Conclusions not binding.</td>
<td>Mandatory, Conclusions binding.</td>
<td>Mandatory, Conclusions not binding.</td>
</tr>
<tr>
<td><strong>Integration of Consultation into Policing Plans</strong></td>
<td>No exact legal definition of the process of integration</td>
<td>No exact legal definition of the process of integration</td>
<td>Yes. Development of Local Police and Crime Plan based, inter alia, on consultation with CRDPs.</td>
<td>No exact legal definition of the process of integration</td>
</tr>
<tr>
<td>Mechanisms for Citizen and Local Authorities Engagement in Security Policies</td>
<td>Denmark</td>
<td>Portugal</td>
<td>Germany</td>
<td>Italy</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Existence of Municipal Police</td>
<td>No</td>
<td>Yes (most large cities, some medium size)</td>
<td>No municipal police, but municipalities’ public order departments (Ordnungsamt) with restricted competences</td>
<td>Provincial and Municipal police, involved in the IS tasks (urban security issues)</td>
</tr>
<tr>
<td>National Councils</td>
<td>No</td>
<td>None</td>
<td>None. But some councils without any competences for decisions and only for discussion and opinion formation</td>
<td>National Committee for Public Order and Security</td>
</tr>
<tr>
<td>Partnerships:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Local security plans / Local councils / chair</td>
<td>None-binding partnership with the local community. Police and local authorities meet in district councils were questions of general nature concerning the cooperation between police and the community are discussed.</td>
<td>Local security councils (chaired by the mayor) Local safety contracts</td>
<td>Local security and safety partnerships (Crime Prevention Councils and Public Order Partnerships) Regional police forces (in North Rhine-Westphalia) have a “police advisory board”, chaired by the local chief of police. Regional police forces in North Rhine-Westphalia set up a “safety plan”</td>
<td>Local (provincial) Security Plans: Mol + Province + Municipalities Provincial Committee for Public Order and Security / Prefect</td>
</tr>
<tr>
<td>Legal Status of Consultation with Population</td>
<td>Only advisory function for the Commissioners of the police districts.</td>
<td>Not provided</td>
<td>The police work is based on law and the decisions of legitimated leaders. The consultation with the people is not binding for the police.</td>
<td>Modalities are discretionary. Conclusions not binding.</td>
</tr>
<tr>
<td>Integration of Consultation into Policing Plans</td>
<td>No exact legal definition of the process of integration</td>
<td>Not provided</td>
<td>Only facultative.</td>
<td>No exact legal definition of the process of integration.</td>
</tr>
<tr>
<td>National Tools for Examining Citizen’s Expectations/ Date of 1st Usage</td>
<td>Regular surveys of confidence and satisfaction with the police. Newest procedure: The Police Safety Index 2013</td>
<td>National Victim surveys are rare (1st in 1991)</td>
<td>No obligatory tools and no obligatory use.</td>
<td>National victimization &amp; security survey (with local disaggregation upon request) by ISTAT / 1997</td>
</tr>
</tbody>
</table>
8.11. Gaps

- **Mayors are not leaders in local coordination mechanisms.**
  
  In Turkey, local coordination mechanisms are not chaired or co-chaired by locally elected politicians (*i.e.* mayors or their representatives, Crime and Police Commissioners) as in France, the UK, or Spain (*selected cities*). Attendance of mayors at local coordination councils formed within the scope of community policing practices is accepted in Turkey.

- **In Turkey, there is no national consultation mechanism between the Mol and the public.**
  
  Despite the fact that local councils exist in order to promote coordination between ISFs and communities, in Turkey there is no national consultation mechanism between the Mol and the public. Amongst the selected EU states, in France there is the National Council of Internal Security, in Spain there is the National Council for Citizens’ Security and in the UK there is the National Partnership between the Mol and the public.

- **In Turkey, no national opinion poll to study public preferences and satisfaction for the provision of services is found.**
  
  In the selected EU member states, research and statistics organizations working to measure expectations and needs of the community and for crime analysis exist. EU states such as France, Spain, UK, Denmark and Portugal have forged such a tool. And the EU is undertaking opinion polls on a regular basis regarding the trust and confidence in ISFs and such issues as minority relations with police.

- **Community Policing Practice is not carried out by all ISFs.**
  
  The Community Policing Practice is confined to the National Police Directorate, and the Gendarmerie has not adopted this concept. Servicing citizens is a priority in most EU states, especially in Northern European states.

- **Local consultation mechanisms in Turkey are not compulsory for designing local security policies.**
  
  In all the selected EU member states there is a kind of forum for discussing urban security issues, acting as a think tank, and bringing together practitioners and locally elected politicians with wide participation of civil society organizations. This is especially marked in the north of Europe, but Italy has a very active “Forum for Internal Security” as well as France. In Turkey, consultation bodies were given existence by an administrative regulation in 2009 and have started to be implemented. However, no statutory mechanism is in place to ensure that local communities have an active say about ‘how’ they are policed.
9. Video Surveillance and The “Rights And Duties” of Law Enforcement Officers

There are some other legal points that need to be discussed beyond the subjects that were considered in the previous sections. In the context of civilian oversight these issues are also brought into consideration below:

i. The legal framework in relation to video-surveillance,
ii. The representation of collective interests of ISFs’ agents and “the rights and duties” of law enforcement officers.

9.1. Video Surveillance

9.1.1. France

In France, video surveillance has also been considered as a new device that can intrude on individual rights and freedoms even it is a beneficial tool in solving security issues in problematic areas of cities. The first regulation dates back to 1995, restricting the usage of video surveillance in public places. Municipal ethics boards for video surveillance have been established to oversee the use of video camera pictures in the security field. This new type of board was originally set up in the city of Lyon and is now spreading to other large metropolitan areas, including Paris. In Lyon, the ethics board is chaired by a councillor of state (a member of the Council of State) and is composed both of majority and opposition elected politicians as well as NGOs.

9.1.2. Spain

In Spain, the use of video-cameras in public spaces by security forces and corps is presently regulated by an Organic law (LO 4/1997). There is also an implementing regulation (Decree 596/1999). The Law sets out a number of rules and submits such use to prior authorisation by civilian authorities responsible for public security.

The Law on video surveillance foresees a particular oversight mechanism: a special Commission chaired by a member of the Higher Regional Court and on which members of the security administration cannot have a majority.

9.1.3. UK

In England and Wales, the Regulation of Investigatory Powers Act [2000] (RIPA) puts a regulatory framework around the investigatory powers available to public bodies such as the police, particularly in relation to electronic surveillance and the interception of communications. This regulatory arrangement aims to ensure that the surveillance powers are used lawfully and in a way that is compatible with the European Convention on Human Rights. It also requires, in particular, those authorising the use of covert techniques to give proper consideration to whether their use is “necessary and proportionate.”

A national code of conduct exists in respect of public video surveillance systems. These
are generally run by municipalities for safety, security and traffic congestion purposes (although other systems exist for example in the railway network) with links established to the police and other emergency services should a response be necessary.

9.1.4. Denmark

The Danish Act on Video Surveillance provides a ban on video monitoring of public places by private persons, and an obligation for public authorities to provide information on television monitoring of places or premises where there is universal access, and workplaces. Processing of personal data in connection with video surveillance must only take place if the laws’ fundamental principles of fair information practices, objectivity and proportionality are met. The rules also entail a requirement that the information must not be misused, e.g. by unauthorized showings. Video surveillance obtained by private citizens or companies is only allowed to be handed over to the police for crime prevention purposes or to help solve crimes. Housing Organizations etc. in vulnerable neighbourhoods may permit television monitoring of the housing area and land directly relating thereto, for example pathways and parking lots, when monitoring is essential for crime prevention. Private persons and corporation’s video surveillance in violation of the Danish Act on Video Surveillance is punishable by a fine.

The Danish Act on Video Surveillance is supplemented by The Danish Criminal Code article 264 a, which prohibits unauthorized video surveillance of persons in areas that are not freely accessible.

The Danish Act on Video Surveillance does not regulate when public authorities have the right to video surveillance. The powers of police to surveillance of private citizens in the context of criminal investigations are regulated in the Administration of Justice Act.

The Danish Act on Video Surveillance is monitored by the Danish Data Protection Agency. The Police’s video surveillance as a crime prevention measure - which does not take place as part of a concrete criminal investigation - will be subject to the rules of the Danish Data Protection Act, and subject to and monitored by the Danish Data Protection Agency. Video surveillance by the police in criminal cases/criminal investigations is regulated by the Administration of Justice Act and is subject to judicial review by the courts.

9.1.5. Portugal

In Portugal, the use of video surveillance by forces and security services in public places is regulated by law since 2005 (Law 1/2005). The use of video surveillance can only be authorized in the following cases:

i. protection of buildings and public and respective access facilities;
ii. protection of facilities relevant to defence and security;
iii. protecting the safety of persons and property, public or private, and prevention of crimes, in places where there is a reasonable risk;
iv. prevention of terrorists acts.
The installation of fixed cameras is subject to authorization by the Mol, preceded by an opinion of the CNPD (a favourable opinion is not mandatory since 2012). In practice, currently the decision is entirely up to the Mol.

In 2013, in the GNR jurisdiction, there was just one video surveillance project in operation (Fatima sanctuary). In the PSP, there were 13 projects waiting for authorization/operation, in nine cities (according to RASI 2013).

9.1.6. Germany

In the German acts for law enforcement – the police laws and the Code of Criminal Procedure – a lot of varying regulations dealing with the use of cameras are found. But all those regulations depend on facts pointing to specific and actual hazards or the suspicion of a criminal act.

In the last years, many state police acts introduced provisions permitting video recordings at endangered places and objects such as central stations or Jewish cemeteries and also at so called criminal hot spots. There are as well laws on video surveillance of demonstrations in Germany.

However video surveillance in Germany is very limited compared to Britain and other Western European nations. This might be the result of the jurisprudence of the Federal Constitutional Court about privacy. With its Volkszählungsurteil ("Census Verdict") the German Federal Constitutional Court established a right to information privacy (Basic Right on Informational Self-Determination) also for the public space, and declared all surveillance a violation of the fundamental right to personal freedom. It ruled, that an infringement of this right to information privacy was only justified in the "prevailing general interest" provided a clear and constitutional legal basis and in line with the principle of proportionality.

The Commissioners for Data Protection and Freedom of Information of the Länder have wide-ranging powers to monitor the implementation of video surveillance systems. As policing falls under the jurisdiction of the Länder, these are in charge of the regulation of most forms of police surveillance.

9.1.6.1. Video Surveillance on Criminal Hot Spots

The right to information privacy sets certain limitations to police use of video surveillance in public spaces. In order to be legitimate, the threat to public safety must outweigh the need for privacy. For this reason most Länder have introduced legislation more or less like that of North Rhine-Westphalia, for example, where § 15 North Rhine-Westphalia Police Act (Polizeigesetz Nordrhein-Westfalen - PolG NRW) allows police to survey and record in various (broadly defined) geographic areas where actual indications justify the assumption that, in this type of place or at objects of this sort, offences will be committed (so called "Kriminalitätsschwerpunkte" - criminal hot spots).

The surveillance needs to be known by citizens (the secret use of cameras is therefore not permitted). Video surveillance needs to be indicated by means of signs or pictograms.
9.1.6.2. Video Surveillance of Demonstrations in Germany

The laws of assembly of the Länder regulate the video surveillance competencies of the police. Following this, filming is only allowed if significant circumstantial evidence is given that public security is considerably endangered. Public security refers to legally protected interests like health, property, and freedom. Most laws do not distinguish between simple camera-monitor surveillance and videotaping with storage of the data. The former is often used at demonstrations. Judges contend that the right to informational self-determination is infringed upon, owing to the uncertainty of those assembled as to whether they are under surveillance or not. Thus, there may be an impact on behaviour just because of the potentiality of surveillance and the general availability of the option for an officer to press the record button at any time. Demonstrators do not know, if they are being filmed in the moment or if their pictures are “only” transferred to a monitor where other police officers are watching.

The law determined that recordings had to be deleted immediately after an assembly except when they were needed for criminal proceedings.

9.1.6.3. Video Surveillance for the Protection of Detained Individuals

In some Länder (for example Hamburg; Hessen, and Baden-Württemberg), the video surveillance of places of detention is permitted. This kind of video surveillance shall serve to protect the detained individual and also shall prevent torture and ill-treatment by the police.

9.1.7. Italy

In Italy the treatment of personal data through the use of video surveillance-systems is not disciplined by national laws. Therefore, CCTV systems are subject to the general provisions regarding the protection of personal data or interceptions. However, the size of the phenomenon led the Guarantor Authority for the Protection of Personal Data to intervene with a specific regulation, to find a balance between the needs of security, prevention and suppression of crime, and the citizens' right to privacy and personal freedom.

The Guarantor issued this regulation on 8 April 2010. These measures apply to all companies and people that want to use video-surveillance systems and establish specific guarantees for the privacy of the persons whose data are collected and eventually processed through these systems.

The Guarantor’s regulations, in particular, take into account the most recent international regulations and the new possibilities offered by technology. Special attention is dedicated to the guarantees in terms of the awareness of CCTV systems for people transiting public areas. Information signs are always mandatory, except for cameras installed for public security. Moreover, strict limits are established on the storage of data collected through the surveillance cameras: it may exceed 24 hours only in special cases, such as criminal investigations or banks security. In all other cases, the images collected have to be destroyed after 24 hours.
9.1.8. Turkey

In Turkey, particularly internal security forces and local administrations (municipals) are using MOBESE in order to prevent crime to be committed and for public order. According to information obtained from press, in the year of 2013, the city of Istanbul had more than 5549 cameras. In many of the cities, surveillance is conducted by security cameras and MOBESE based on administrative circulars issued by provincial governors.

There is no legislation which explicitly enables public and private authorities to use this system and which regulates how and for what purpose this system would be used. Art. 7/1 of the Law 2559 on Duties and Authorities of Police is usually indicated as the legal basis for MOBESE usage by public authorities. It states that police shall be engaged in an activity in order to taking protective and preventive measures related to general security and providing public order and security. It enables police to use MOBESE in order to perform its duties according to conditions and needs at a given moment.

In EU states, the law that is applied to video surveillance is not specific, but based on national data protection laws and EU regulations. Its introduction dates back to 1995 with the European Data Protection Directive (Directive 95/46/EC).

9.2. Rights and duties of law enforcement officers / Code of Ethics

9.2.1. France

In France, ethics for the police were a very debated and politically sensitive subject at the end of the 20th century. An ethics code was introduced in 1986 (Le code de déontologie de la Police Nationale, 18 Mach 1986). Article 1 notes that the police contribute to the guarantee of liberties, the defence of institutions, public peace and public order, and the protection of persons and property. It does so in respect to the Declaration of Human Rights and International conventions (article 2). Article 7 states that the “police civil servant is loyal to the Republican institutions”.

It confines the use of force to “legitimate defence” which relies on two principles: proportionality and simultaneousness. It states that when a person is placed under arrest, he is under police responsibility and protection (article 10). Any breach makes the agent subject to disciplinary sanctions notwithstanding penal sanctions.

The code places responsibility on person in command for the execution of orders by the subordinate agents. The police agent shall not conform to an illegal order. When confronted with such an order the agent should object to the authority that issued it. If the order is maintained and if the agent persists in challenging its legality, he refers to any superior authority that he can reach. His opposition shall be recorded (article 17).

A personal card summarizing ethical principles is given to every police agent in active service and he has to carry it with him at all times. A practical guide to ethics was worked out in 1998 by the High Council of Ethics of the National Police.

In 2003, the code of ethics was adapted to the municipal police forces in France by a decree (2003-735). They have fewer powers in terms of judicial police and detention of firearms.

In 2014, as the Gendarmerie was in same standard as Police, inside the Minister of

\[54^{*}\text{Le fonctionnaire de la Police Nationale est loyal envers les institutions républicaines*}.$$
Interior, a common Code of Ethics was adopted. With 32 articles, the new Code is longer than the old police one. Chapters are also different and concern a wider part of the ISF's activities and duties. There are prescriptions about Authority (agents and senior officers), Duties (secrecy, honesty, discernment, impartiality, banning of other activities), Relationship with public (courtesy, use of strength, identity checks, arrested people, help for victims, use of personal data), Control of the Police (Role of Inspections, Defender of the rights). The High Council of Ethics of the National Police established in 1993 was replaced by an independent administrative authority the CNDS "Conseil supérieur de la déontologie de la sécurité" or Ethics and Security Superior Council in 2000. Then, after a 2008 constitutional reform, the newly created Defender of Rights became the authority in charge of monitoring ISF ethics.

The right to form a union was first given to civil servants in France in the 1946 Constitution. It is guaranteed by article 8 of the law 83-634 of 13 July 1983. National Police agents have the right to unionize. There are numerous unions in the Police Nationale and they are specific the various ranks of the force (there are unions for regular police officers, unions for middle-management and unions for commissioners). However, members of ISFs in France do not have the right to strike.

In October 2, 2014, France has been sanctioned by the European Court of Human Rights because of the prohibition of workers union in the gendarmerie and since then a union was legally established.

9.2.2. Spain

In Spain the key legal instrument of all security forces is the Organic Law 2/1986, which lays down the basic principles of action (Code of Conduct) applying to all internal security forces that exist at state, regional and local level, as well as the basic rules concerning their legal status and common functions. This Organic Law also sets a limited number of "common statutory rules" for all security forces, as well as specific rules applying to state, regional and local polices. As for the Guardia Civil (Gendarmerie), its basic functions are also laid down in this Organic Law, but the specific statute of this security force is set, at present, in other separate instruments: Law 42/1999 (on professional statutory regime of Guardia Civil); Organic Law 11/2007, on rights and duties of the members of Guardia Civil; and Organic Law 12/2007 on the disciplinary regime of the Guardia Civil.

The basic rights and duties of the members of the National Police Corps are laid down in the Organic Law 2/1986; while the disciplinary regime of the National Police is established in the Organic Law 4/2010.

In Spain, the concept of “democratisation” of the security forces also includes the introduction of democratic mechanisms within the internal statute and organisation of all security forces to the maximum extent that is compatible with their hierarchical structure. Both within the structure of the National Police (CNP) – since the late 80’s – and more recently within the structure of the Guardia Civil, a mechanism of representation and discussion of professional problems and interests and of consultation has been established. These mechanisms (“Councils” of CNP and of Guardia Civil) gather an equal number of representatives from the civilian authorities responsible for security – at the highest level – and
professional representatives of the members of the respective force, democratically elected by all members of the respective force. In the Guardia Civil, the Council was established by L.O 11/2007 and the first democratic election of representatives was held in January 2009.

9.2.3. UK

In England and Wales, the new conduct procedures are also supported by a new code of ethics - the Standards of Professional Behaviour - which provides the yardstick by which the conduct of police officers is to be judged.

In 2006 the Home Office published a new Code of Professional Standards for police officers in the UK. These were based on the Principles of the Council of Europe on Police Ethics. It was incorporated into police conduct regulations in December 2008, enshrining the values of fairness and equality in policing, as well as being easier to understand. The Code of Professional Standards reflects these standards and the principles enshrined in the European Convention on Human Rights. It does not seek to restrict police officers' discretion; rather it aims to define the parameters of conduct within which that discretion should be exercised. A breach of these high standards may damage confidence in the police service and could lead to disciplinary action, which in serious cases could involve dismissal.

The office of constable is unique because it is the duty of police officers to protect life and property, preserve order, prevent the commission of offences, and where an offence has been committed, to take measures to bring the offender to justice. To fulfil these duties, police officers are granted extraordinary powers and a wide discretion with which to exercise them. Therefore, the public and the police service have the right to expect the highest professional standards of behaviour. The principles set out in this Code reflect these expectations and every police officer must attain these standards. Anybody who falls short of these standards will have his or her conduct examined.

Police officers in the United Kingdom may not belong to a Union, nor may they strike. Representation of the unique office of 'Constable' is achieved through the Police Federation for officers of the rank of Constable to Chief Inspector, the Superintendent's Association for Superintendents and Chief Superintendents and the Association of Chief Police Officers for Chief Officers (Assistant and Deputy Chief Constables and Chief Constables).

9.2.4. Denmark

The Police in Denmark have the right to unionize. Police officers unionize in the Danish Police Union (Politiforbundet), which represents approx. 12,000 members. The union negotiates on matters affecting salary, working conditions, annual leave, and pensions, and provide comprehensive legal advice and assistance service for police officers, especially in disciplinary cases. Traditionally, the Danish Police Union has had a strong political influence in Denmark, but police officers do not (as one of the very few in professions in Denmark) have the right to strike.

The Danish Police have adopted a code of ethics in 2011 called "Ethics in the police" which in a readable language outlines the ethical guidelines that apply to the police - for example in relation to appearance, uniforms, use of police identification, use of police
records, etc. The guidelines are based on the so-called Dignity Requirement set by the Civil Servants Act § 10, and further defined in the National Police practice in disciplinary matters. It does not seek to restrict police officers' discretion; rather it aims to define the parameters of conduct within which that discretion should be exercised. The code is available in folder form on line at www.politi.dk, on the police intranet and is distributed in printed form to all new staff officers.

The Danish government participated in the development of the European Code of Police Ethics adopted by the European Council of Ministers at the 765th meeting on September 19th 2001. The European code of Police Ethics is non-binding and there is no formal decision from the Danish government to implement it, but the Danish police comply with the code.

9.2.5. Portugal

In Portugal, regarding the right to collective interest representation, it should be noted that GNR officers have a right to professional association, and PSP members have this prerogative since 1990. They have also been given the freedom to unionize since 2002.

However, the law restricts the right to strike either on GNR and PSP. This restriction (of a fundamental right) is allowed by the Constitution, in Article 270 (Restrictions on the exercise of rights): Strictly to the extent required by the specific demands of the respective functions, the law may establish restrictions on the exercise of the rights of expression, meeting, demonstration, association and collective petition by (...) agents of the security services and forces, and on their legal capacity to stand for election. In the case of the security forces, even when their right to form trade unions is recognized, the law may preclude the right to strike.

Security services, such as the Judiciary Police (criminal investigation police, although not a security force), have the right to strike.

The European Code of Police Ethics - REC (2001) 10, was implemented in the Portuguese law by the Resolution of the Council of Ministers No 37/2002 of 7 February 2002, approving the Code of Ethics of the Police Service, that applies to the PSP and GNR.

This Code of Ethics aims at promoting the quality of police service, enhancing the reputation and dignity of the security forces as well as contributing to the creation of objective and subjective conditions that, in the context of law enforcement, can ensure the full exercise of rights, freedoms and guarantees of citizens.

As fundamental principles, the Code of Ethics prescribes the respect for the law, serves the public interest, defends democratic institutions, protects all persons against illegal acts and respects human rights.

When acting, members of the security forces owe absolute respect for the Portuguese Constitution, the Universal Declaration of Human Rights, the European Convention on Human Rights, the Community legality, under international conventions, by law and by this Code. The Code disposes inter alia on the respect for fundamental rights of the human persons, namely when in detention (article 3 and 4).

The use of force is only authorised when necessary and proportional. Members of
internal security forces use coercive means appropriate to the restoration of law and order, public security and tranquility only when they are deemed essential, necessary and sufficient for the proper performance of their functions and when all means of persuasion and dialogue are exhausted.

The members of the security forces shall avoid the use of force except in cases expressly provided by law, when it proves to be legitimate, strictly necessary, appropriate and proportionate to the objective pursued. In particular, the use of firearms is considered an extreme measure which may only be used when it appears absolutely necessary, appropriate, proven there is danger to the lives of police officers or third parties and in other cases exhaustively prescribed by law (article 8).

The Code of Ethics also states that members of security forces take responsibility promptly for their mistakes and promote the repair of the negative effects that eventually result of police action (article 10). Regarding cooperation in the administration of justice, the code provides that the members of the security forces respect the independence of the courts and collaborate promptly in implementing the decisions of the judicial authorities. The Code of Ethics determines the prediction of a module training on ethics of the police service and is compulsory in the curriculum of training courses, practical and university, given to security forces agents.

9.2.6. Germany

The Gewerkschaft der Polizei (Trade Union of the Police) is a trade union in Germany. It represents about 180,000 police employees, and is one of the eight industrial affiliations of the German Confederation of Trade Unions (DGB). The Gewerkschaft der Polizei is one of the three trade unions for police employees in Germany, the other two being the Deutsche Polizeigewerkschaft - affiliated with the German Civil Service Federation - and the Bund Deutscher Kriminalbeamter, which is exclusively for members of the Kriminalpolizei.

The Gewerkschaft der Polizei joined the German Confederation of Trade Unions on April 1, 1978. On a European level, the Gewerkschaft der Polizei is part of the European Confederation of Police (EuroCOP). The Union is open to all employees of the police - including police officers, customs agents of the Bundeszollverwaltung, administration workers, etc. It represents the job-related, social, economic, ecological, and cultural concerns of employees and former employees of the police. It seeks especially an improvement of their work and living conditions and of civil service and Labour law. To achieve this, the organization takes part in social and political discussions.

The different Police Trade Unions have no legal right to collective action including strike action.

The Bundesarbeitsgemeinschaft kritischer Polizistinnen und Polizisten (Federal Working Group of Critical Police Officers) is an alternative to Police Trade Unions with a special focus on civil rights.
9.2.7. Italy

Regarding the Ethics codes for ISFs, we must underline the serious delay of Italy in comparison with many other European countries. In fact, there are no codes of Ethics that determine the basic standards to be applied to the police action in a democratic society, following the example of the European Code of Police Ethics or similar modern Codes of Ethics.

The rights and duties of the State Police officers are contained in two legislative texts: the Law 121/1981, which established the State Police and its basic organizational norms, and the Presidential Decree no. 782/1985. The latter is emphatically called “Code of Conduct”, but actually contains only a few general principles on professional behaviour deemed correct, and the procedures for the establishment of disciplinary proceedings in case of misconduct. For instance, art. no. 12 provides the “personnel duties” and requires police officers not to abuse their professional position, not to denigrate the police, not to incur debts with colleagues or criminals, not to have encounters with “people who do not enjoy good reputation” outside the service, and not to be around persons involved in “immoral activities” arousing public scandal. Art. no. 13 sets the “general rules of conduct”, and requires that the personnel of the State Police must behave with fairness, impartiality and courtesy and must maintain an irreproachable conduct, in order to increase the estimate, trust and respect of the population. Police officers must also refrain from behaviour or attitude that could be detrimental to the honour of the police when either on or off duty.

Most of the other rules concern the duties linked to the respect of the hierarchical organization, and seem to be largely influenced by the military past of the State Police. Another interesting point is that the ‘Code of conduct for employees of the Public Administration’, promulgated on 28 April 2000, excludes police forces from the applicability of its norms, although the Law no. 121/1981 had established that the State Police officers were subject to all the regulations relating to civil servants.

As far as Carabiniers are concerned, there is no specific Ethics code for its members. The key legal instrument is the Code of Military Discipline (adopted with the Presidential Decree no. 545/1986), which provides the general principles of conduct for all branches of the Italian army (especially with regard to the respect of military hierarchy). A specific section of the Code establishes the basic criteria and procedures relating to the adoption of disciplinary measures against military personnel.

In addition to the Code of Military Discipline, the Guardia di Finanza Corps has adopted a specific Ethics code in 1995. In fact, it is a short text (with a total of 16 articles) that focuses on respect for the uniform (related to the military status of the Corps), transparency of the police conduct, and value limits for gifts received by officers. Other important ethics issues, such as respect for human rights, are not regulated.

In this regard, we must also consider that the Italian government has not yet formally adopted the ‘European Code of Police Ethics’ (CEEP), issued by the Council of Europe with Recommendation Rec(2001)10. With that act, the Council of Europe recommended ‘that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police
Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

The State Police has recently begun to describe the content of the European Code of Police Ethics during lectures and seminars for its officers and officials and has adopted the Code as basic text in several training courses. But the actual implementation has not yet taken place and the adoption of a modern Ethics code for the two main national law enforcement forces still seems far away.

Since 1981 (with Law no. 121 and the demilitarization of the State Police), it has been possible for the State Police officers and officials to associate in trade unions for their collective interest representation. Currently there are a dozen police unions in Italy, including those most representative: SIULP (with over 26,000 subscribers) and SAP (with about 20,000 subscribers).

A similar right for collective representation of their professional interests is not allowed for Carabineers. The military status of the Corps, in fact, precludes any possibility of association in trade unions to Carabineers.

9.2.8. Turkey

In Turkey, rules regulating the duties and responsibilities of law enforcement officers are included in the Constitution, in the organizational law and regulations of each internal security unit and in other relevant statutory laws. There is no explicit restriction on the right of law enforcement officers to establish and join a union. However, in the 15th Article of Law 4688 on Public Official Union and Collective Bargaining, law enforcement officers are listed amongst those who cannot unionize. The Constitutional Court decided that Law 4688 is not unconstitutional.

There is no constitutional provision which grants the right to strike to public officials and internal security personnel. In the 54th Article of the Constitution, the right to strike is an entitlement only given to workers. In addition to the responsibilities of internal security forces regulated in the relevant laws, the police ethical principles were prepared in 2007 (they are applicable to all internal security personnel). In this regulation, it is stated that law enforcement officers rely on the principles of rule of law, common good, impartiality, participation, transparency, accountability, being focused on the result of the service and permanent improvement. And it is also emphasized that in the sphere of their duty and responsibility, law enforcement officers aim at increasing the happiness of public by focusing on demands and needs of the society, thus gaining the respect and the trust of society.

In the Police Ethics Principles, principles for law enforcement officers while they exercise their duties are listed. Principles of accountability and supervision of law enforcement officers are as follows:

- Law enforcement officers are subjected to supervision of legislative, executive and judicial branches that are within the scope of legislation.

- All complaints against law enforcement officers are immediately and impartially investigated. Investigation is undertaken in a way so that no doubt arises about its efficiency and
impartiality. The result of the investigation is notified to the complainant.

- Complaints relating to the duty of law enforcement are also inquired carefully.

The fact that Police Ethics Principles were prepared by taking into account the Constitution, ECHR, the European Council Guide of Police Ethical Principles as reference and that they comprise all internal security forces is an asset for aligning Turkey with EU norms. These principles are regulated by an administrative regulation (circular) which takes places at the lower echelon of legal text. In case of contradiction of these principles with laws, bylaws and regulations, these principles would not prevail.

9.3. Comparative Overview

Table 9 above allows us to see that the major gap in Turkey compared to selected EU states is the nonexistence of a legislative basis for video surveillance. In contrast to the selected EU states, in Turkey the use of video surveillance related technologies has not been subject to a law or an ethics board. The second major gap in Turkey is concentrated on unions and right to collective interest representation of ISFs. The right to defend their collective interest is given to internal security agents in all selected EU countries; the right to strike is not granted in the majority of selected states although in Portugal, the Judicial Police has the right to strike.

Ethics codes are adopted in each selected EU country except Germany. Ethics rules are enforced by councils across all ISFs in all selected EU country, except Germany. In Turkey, ethics principles that cover all internal security forces including gendarmerie and the coast guard were adopted on 24.10.2007. Infringements of ethics principles are sanctioned under the relevant disciplinary policies, but there is no special council observing and enforcing these principles.
Table 9: Other Legal Arrangements and Considerations in Relation to Civilian Oversight in Selected EU Member States and Turkey

<table>
<thead>
<tr>
<th>Country</th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Collective Interest Representation</td>
<td>Police has the right to unionize. Gendarmerie has the right to unionize since 2014. Strike not allowed.</td>
<td>Organic Law on Security Forces and Corps. Common Statutory Rules Right of Professional Association (Guardia Civil) and Trade Unionism (Police)</td>
<td>Police have no legal right to collective action in UK (strike). They have a right to professional association via the Police Federation</td>
<td>No union rights for ISFs</td>
</tr>
<tr>
<td>Country</td>
<td>Video Surveillance Laws/Mechanisms</td>
<td>Right to Collective Interest Representation</td>
<td>Adopted Code of Ethics/Date</td>
<td>European Code of Police Ethics</td>
</tr>
<tr>
<td>------------------</td>
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<td>--------------------------------</td>
</tr>
<tr>
<td>Denmark</td>
<td>The Act on Processing of Personal Data: Monitored by The Danish Data Protection Agency</td>
<td>Police has the right to unionize. This happens in The Danish Police Union (Politforbundet)</td>
<td>Yes / 2011</td>
<td>Adopted by police</td>
</tr>
<tr>
<td>Portugal</td>
<td>Video surveillance law (since 2005)</td>
<td>ISF have the right to professional association and to unionize; but not to strike Security Services, like Judiciary Police (not Security Forces) have both the right to unionize and to strike</td>
<td>An identical succinct document, based on the European Code of Police Ethics applies to both forces (from 2002)</td>
<td>Adopted by police and gendarmerie</td>
</tr>
<tr>
<td>Germany</td>
<td>Law on Video Surveillance</td>
<td>Yes, but strike not allowed</td>
<td>None</td>
<td>Yes</td>
</tr>
</tbody>
</table>
9.4. Gaps

• **Turkey has not yet any statutory law on the use of video surveillance (MOBESE).**
  
  In Turkey, there is no legislation which explicitly enables public and private authorities to use this system and which regulates how and for what purpose this system would be used. This issue is of importance with regards to the protection of fundamental rights and constitutes a gap compared to selected EU member states. The basic standard which is surpassed often by national law remains the 1995 European Data Protection Directive (Directive 95/46/EC).

• **Ethics: Rights and duties of law enforcement officers in Turkey are not regulated in law.**

  In Turkey, rights and duties of law enforcement officers are regulated in various laws and administrative regulations such as bylaws regulations and circulars, and a law is missing. The European Code of Police Ethics (Council of Europe, 19 Sept. 2001) is a standard. Differences remain between rights and duties of the Gendarmerie and Police personnel, while the trend in EU countries is towards the integration the two forces under the same code (see France, recently in 2014).

• **In Turkey, a right to form a union or interest representation for internal security forces agents is not available.**

  In Turkey, a right to unionize or interest representation of all ISF is not available. In the Law 4688 on Public Official Union and Collective Bargaining, law enforcement officers are listed amongst those who cannot act so. In the Constitution, the right to strike is only entitled to workers. In all selected EU member states, right to unionize for ISFs has been adopted, but not to go on strike. In some countries like Portugal, the right to strike for judicial police has been recognized. Moreover, in October 2, 2014, France has been sanctioned by the European Court of Human Rights because of the prohibition of workers unions in the gendarmerie. Since then a union was established legally.
10. Conclusions: A Summary of Legal Gaps

A number of principles presided over the drafting of the report and its conclusions:

i. A clear statement of the core values that are agreed upon and their inclusion in the highest level of legislation are key to democratic civilian oversight,

ii. Lower level regulation derive from the explicit core values that are outlined in the higher level legislation,

iii. The legal framework should be clear and precise in order to allow civilian oversight (there should be no blurring and overlapping boundaries of authority).

After comparing constitutions, oversight powers of parliaments, civilian executive bodies (such as Mols, governors) internal and external audit institutions (like inspectorates, ombudsman), judicial mechanisms, participation of citizens and engagement of local authorities in security policies design and implementations, considerations of other legal practices of selected EU member states and Turkey, from the perspective of civilian oversight, it may be said that legal foundations exist for improving civilian oversight in Turkey. However these legal provisions are not designed as core principles; civilian oversight is not enforced in an identical manner across internal security forces; the judicial oversight mechanisms lack independence. The Turkish system can be further improved by making use of the legal framework and best practices of selected EU member states.

It should be noted here that no single country should be taken as an example for all its regulations (constitution, laws, decrees etc.) and mechanisms founded by law. Since the political, administrative, social and cultural structures of each country differ, their practices of civilian oversight can also differ. However, the core principles that should orientate the existence of civilian oversight and legal organization are often common in the three selected EU countries.

Recommendations and Guidelines developed based on the findings of this study are placed in Part 2 of this book.
PART 2
Guidelines and Recommendations
Introduction

Based on a comparative analysis of civilian oversight this part provides recommendations on how to improve the civilian oversight of internal security forces (ISFs) in Turkey.

The first section recalls the definition and key principles of civilian oversight. The second section presents the constitutional gaps in Turkey and corresponding recommendations. Following this under the appellation "vertical oversight" the third section presents gaps and recommendations in relation to parliamentary oversight, judicial oversight, remits and oversight functions of Ministries of Interior and the roles of the representatives of the state at the local level. Gaps and recommendations for independent oversight mechanisms are presented in the fourth section.

The following section (fifth) deals with "horizontal oversight" which is organized around the notions of transparency and cooperation. Gaps and recommendations are enumerated for citizens' and local authorities' engagement in security policies. The same method is employed in the sixth section "the rights and duties of law enforcement bodies".

The last section of this part includes a summary of recommendations and conclusive remarks.
1. Definitions

1.1. What is Civilian Oversight?

Oversight is an ongoing multi-level monitoring of policing activities *(carried out by the police, the gendarmerie and the coast guards notably)* and the policies that they operate under with a view toward holding all policing organizations accountable for the conduct of all their members, the processes used and the quality of the services that they provide.

Civilian oversight designates the monitoring of ISFs activities under the authority of the elected representatives of the people and the government *(including its agents at the local level)* as well as the judiciary, Parliamentary and the independent bodies established. This first dimension is referred to as “vertical oversight” in the report. Civilian oversight also designates the transparency and cooperation processes between public authorities and civil society. This second dimension is referred to as “horizontal oversight” in the report. Both horizontal and vertical overights are coined “civilian” when neither placed under the authority of police bodies nor military bodies.

The definition of constitutionally guaranteed fundamental human rights and freedoms and their protection, the improvement of democratic rights of citizens are at the heart of civilian oversight.

1.2. The Key Principles of Civilian Oversight

The key principles of civilian oversight are subordination and accountability to civilian authorities, lawful policing, vertical control *(by the parliament, the government and their representatives, the judicial authorities, independent authorities)* and horizontal transparency, partnership with citizens and public institutions.

The fundamental issues that guide our work on improving civilian oversight in Turkey are:

i. How can a political regime ensure that all members of internal security forces use their authority in compliance with the law and for the benefit of the people?

ii. Is the existing legislation of Turkey in relation to civilian oversight compatible with EU principles and standards?

iii. Are recommended by international agreements and EU compatible oversight organizations and mechanisms in place in Turkey?

1.3. Guidelines and Recommendations

In this study we are making recommendations about the main directions for improving civilian oversight of internal security forces in Turkey with a view towards a more democratic governance of internal security and also towards EU accession.

Our recommendations are basically to strengthen the rule of law by making the relevant changes in the Constitution and other key legislations, lift contradictions among different pieces of legislation, increase the capacity of the Parliament, strengthen independent oversight as well as the capacity of the MoI for assigning targets to and auditing ISFs, build
a more unified "internal security sector" (notably in terms of accountability lines, functioning of the inspections and disciplinary regime) and develop a citizen focused approach and partnership with civil society and local administration by creating dedicated mechanisms at the local and central level.

As far as policing duties of ISFs are concerned, a whole range of recommendations are made including recommendations on:

i. amending the constitution,
ii. increase Parliament’s capacity for overseeing all IFSs,
iii. improving the independence of the judiciary by modifying existing legislations,
iv. specifically in relation to the oversight functions of the governorates, modifying several laws in order to solve the conflict among laws and enhance the accountability lines,
v. clarifying the remit of the Ministry of Interior in order to ensure the accountability of all internal security forces (including the gendarmerie) to the government,
vi. strengthening the inspectorate system of the MoI and ISFs,
vii. simplifying and unifying the disciplinary regime of all internal forces,
viii. developing cooperation mechanisms between the ISFs, the public administration system at the central and local level,
ix. creating laws and independent oversight mechanisms (including for personal data protection and video surveillance).
2. Constitutions and Core Values

Enshrining the key notions of civilian oversight into the constitution will lead all legal texts to be drafted in compliance with the constitutional requirement. As a result, accountability, performance management, audit and evaluation will be rendered possible at all level of public administrations.

Supremacy of law, human rights, fundamental rights and duties are enshrined in Turkish constitution. However, there are important core principles that should be constitutionally designed according to EU principles and standards. The main gaps in the constitution are analysed below.

2.1. Gaps

i. At the level of core principles, the Turkish constitution makes many references to limitations of Human Rights for “national security” reasons and the notion of “national security” is not defined,

ii. The supremacy of law is questioned when the constitution does not exclude that unlawful written orders should be executed,

iii. High military council decisions (a council that decides on the promotion of the highest ranking army personnel and dismissals of army personnel) are excluded from judicial examination,

iv. The notion of accountability of all administration and forces (including the internal security forces) to the people and their representative is not present in the constitution,

v. There is a lack of definition ofsubordination to Civilian Authority (for Police, Gendarmerie and Coast Guards),

vi. No definition for internal and external security is given (this makes the definition of responsibilities more complex for overseeing security forces; conflicts between laws involving the two domains cannot be easily dealt with),

2.2. Recommendations in Relation to the Constitutional Framework

Recommendation 1. In order to improve civilian oversight at constitutional level, we recommend the integration of a number of core principles and concepts shared by EU member states into the Turkish constitution.

The constitution should commit to recognize, promote, and protect human rights and fundamental freedoms. A Human Rights declaration (for example the Universal Declaration of Human Rights) should be integrated in the constitution, as an annex and these rights should be granted without any restriction.

The constitution should not allow unlawful behaviour (be they a criminal offence or not) under any circumstances.

The principles of public accountability and subordination of state administration and forces, including all internal security units, to civilian authority should be enshrined into the Turkish constitution.
The two concepts of internal security and external security should be precisely defined in the constitution. Internal security missions should be assigned to the policing forces under the responsibility of the Ministry of Interior and external security to the army under responsibility of the Ministry of Defence.

Protection of liberties should be assigned as a mission for ISF’s in the constitution. The concept of "state security" should be abandoned and replaced by "citizen security" in Turkish constitution.

High Military Council decisions should not be excluded from judiciary examination.
3. “Vertical” Civilian Oversight

Vertical civilian oversight refers to hierarchical oversight powers and mechanisms defined by the legislation. The hierarchical oversight powers are those detained by elected politicians and appointed administrative or judicial bodies over internal security forces. Those powers are to formulate policies, to command the forces and to monitor agents' behaviour. In order to be effective, the hierarchical oversight powers should allow public authorities to appoint the heads of the internal security forces, to instruct the forces to act (define their objectives), to review and audit the policies implemented, the expenditure, individual behaviour and the lawfulness of the processes used. Recently, independent authorities specialized on internal security forces and the protection of personal data were set up and given powers in EU countries (as well as in other democracies) in order to increase the fairness of oversight.

3.1. Parliamentary Oversight

Our overview spots two gaps between the selected EU member states and Turkey when it comes to the existence of the legal processes of which the Parliament can make use in order to oversee the internal security forces. The review of parliamentary oversight found a limited role of Turkish Grand National Assembly committees since the main role of the committees is to scrutinize legislation. They do not examine the performance of internal security sector bodies – both what they do and how they do it.

3.1.1. Gaps

i. There is no oversight commission in the Parliament in charge of all aspects of internal security and of all ISFs.

ii. In the absence of national yearly plan for the internal security forces, the Parliament cannot be presented with such a document and therefore cannot exercise its control on the direction of policy.

3.1.2. Recommendations in Relation to Parliamentary Oversight

Recommendation 2. We recommend that a national policing plan be established and submitted to the Parliament together with the budget examination.

Recommendation 3. We recommend the establishment of a unique and specialized control mechanism to be used by Parliament over all internal security forces and policy formulation with the remit to oversee all aspects of the internal security agencies including strategy, budgets, performance, effectiveness and efficiency. We recommend that a substantial, dedicated and full-time central unit should be established to support and service the Parliamentary Commission in ensuring that the internal security agencies operate effectively, efficiently and fairly; that they are achieving their agreed strategic objectives; and that - through the implementation of Law 5018 – transparency of resource management and a clear link between budgets and performance are fully established in
the policing area. The central unit should be resourced from public funds and would function independently of the Government.

**Recommendation 4.** The powers and resources to carry out their duty should be given to the parliamentary committees. Answering the questions of the existing Human Rights Investigation Commission’s should be made compulsory for all public institutions and forces.

### 3.2. Judicial Oversight

Judicial oversight constitutes one of the cornerstones of oversight of the policing forces. The effective functioning of oversight mechanisms depends on last resort on judicial oversight in most EU countries. This is why the notion of judicial independence is key to effective oversight. Penal judicial oversight allows determining individual responsibilities. Administrative judicial oversight allows probing policy orientations and bureaucratic practices.

#### 3.2.1. Gaps

Gaps in the field of judicial oversight are as follows.

i. In the selected EU countries, no restriction on the role of courts is asserted in the constitution when it comes to checking the interpretation by courts of the use of the powers bestowed to the executive branch.

ii. In the selected EU countries, no special protection against judicial investigation is given to civil servants including internal security forces agents. Judicial proceedings for crimes that are committed by public officials including police and gendarmerie members do not differ from those committed by lay citizens. Prior consent of relevant central directorates is not necessary for investigation and prosecution of the members of security forces including the heads of the security units.

iii. In the selected EU countries, the public prosecutor has a stronger grip on the judicial police and gendarmerie agents. The public prosecutor can request and obtain an investigation from the units in charge of inspecting internal security forces. In two of the three EU countries, police investigators are required to obtain a special status. Investigation officers are evaluated by public prosecutors.

#### 3.2.2 Recommendations

**Recommendation 5.** We recommend that the public prosecutor is the sole authority in charge of investigating all cases of alleged penal crimes by internal security personnel and that the public prosecutor can directly obtain an investigation from the inspectorates of internal security forces to be conducted under his authority.

**Recommendation 6.** Judicial authorities should participate more actively for the professional development of judicial polices.
3.3. Structures, Remits and Oversight Functions of the Ministry of Interior

Turkey has a dual policing system (civilian police and gendarmerie) to which is added a coast guard force. The organization of the police and gendarmerie is based on mutual territorial exclusion. The oversight principles and mechanisms are not homogeneous across all policing forces (appointing, auditing, disciplinary regime). The Mol of Turkey is given oversight power for the police in terms of the appointment and dismissal of the national head of the police, provincial police heads and for disciplinary matters. Less power is given to the Mol in relation to the oversight of the gendarmerie and the coast guards. The authority of the Mol even differs between the police, gendarmerie and the coast guards. The Mol inspectors' board has jurisdiction on both the police and the gendarmerie. However, although performing policing duties, the gendarmerie and coast guard both are a part of the armed forces. The head of the Gendarmerie is a land forces general (not a general specialising in policing activities). The Mol has limited influence over the appointment/dismissal of the general commander of the gendarmerie and does not have a say on the appointment/dismissal of provincial heads of gendarmerie. The Mol Inspectors' Board has limited operational independence from the top echelons political hierarchy. It cannot audit a unit without authorization of the minister of Interior. The police and gendarmerie have their own inspection systems. Police and gendarmerie function under different disciplinary regimes; there is not a single discipline mechanisms for all internal security forces within the remits of oversight capacity of the Mol. The disciplinary regime of the police is complex and fragmented.

3.3.1. Gaps

1. In the selected EU countries with a dual policing system, gendarmeries have preserved their military status under the Ministry of Defence (and not the chief of the general staff) and are placed under the authority of the Ministry of Interior as far as policing activities are concerned.

2. In the selected EU countries with a dual policing system, the status of all internal security forces is clear in terms of hierarchical and reporting lines with the top of the line reaching the Mol.

3. In the selected EU countries with a dual policing system, the national head(s) of the police as well as of the gendarmerie are designated by the Council of Ministers or the Ministry of Interior, sometimes by proposal of the Minister of Defence but neither by decision or proposal of the Chief of the General Staff.

4. In the selected EU countries with a dual policing system, the national head of the Gendarmerie is a civil administrator, a judge or a Gendarmerie general (not an Army general in the name of the separation between internal and external security). The national head of police and of gendarmerie have equal status. They both have ranks placed below the cabinet of the Minister (in Turkey, the equivalent is Mr Undersecretary).

5. The appointment of a Land Forces General as the head of the Gendarmerie in
Turkey is contrary to two decisions of constitutional court (1977 and 1979).\textsuperscript{55}  
6. In the selected EU countries with a dual policing system, the provincial heads of the police and the gendarmerie are exclusively appointed by civilian authorities.  
7. In the selected EU countries with a dual policing system, both police and Gendarmerie ISFs’ budgets are under the control of the Mol.\textsuperscript{56}  
8. In Turkey, there is no common legal text or code of ethics which is applicable to all internal security forces.  
9. In Turkey, some articles of the Gendarmerie Regulations are not in harmony with some legal texts superior to it.  
10. The investigation/audit system of police, gendarmerie, Mol and the ministry of Justice is more integrated in EU countries.

- Serious and less serious discipline infringements are differentiated and legally defined. Once this differentiation is made, all police officers whatever their rank can be investigated and sanctioned by the same specialized unit (Only in the UK are disciplinary investigations and sanctions for high level police officers are carried out by Police Authorities);  
- Oversight principles tend to be more integrated in EU countries with a dual police system: Police and Gendarmerie inspectorates work under the same principles in Spain and France. In Spain, the disciplinary regime is fully unified.

xi. The internal investigation/audit system is more independent of government:  
- Audit inspectorates can initiate work without being required to do so by the minister of Interior in France, Spain and the UK;  
- The Chief Inspector of Constabulary (HMIC the British inspectorate) is independent both of the Home Office and Police and appointed by Parliament.

- In the selected EU countries, the public prosecutor/crown prosecution service is fully in charge of any penal investigation (initiation, monitoring and designation of investigation officers) carried out by inspectorates of police/gendarmerie.

xii. The investigation/audit system is more legally defined.

- Turkey lacks a clear and legal definition of serious versus non serious crimes for triggering the appropriate internal investigation mechanism (local or national).

3.3.2. Recommendations

Recommendation 7. Definition of a common set of norms. Ensuring internal security is a duty which is different from ensuring external security. We recommend that all internal security forces be gradually placed under a common set of norms and principles so that this sector is regulated in a coherent and homogeneous way. We recommend that all internal security forces are unambiguously placed under the oversight of the Ministry of Interior as far as policing duties are involved. In order to ensure a unified implementation system in the field of internal security we recommend that there shall be a new legal regulation that applies to all ISF’s prepared.


\textsuperscript{56} Law Number 5018 Public Financial Administration and Control Law Table (I) provides that the budgets of General Directorate of Security, General Command of Gendarmerie and Coast Guard are not contained under the budget of Mol.
**Recommendation 8.** A dual organizational structure that acknowledges the specificity of policing. We recommend that the military nature of the gendarmerie and the coast guard is preserved but that their nature as ISFs is fully taken into account. Gendarmerie and coast guards are of military nature however they should not be defined as an army but as an ISF. Careers and promotion should remain determined under the army, however, it should be made very clear that their status is different from the land forces and the navy in particular. The gendarmerie, coast guard and police budget should be established and voted in Parliament as one single specific budget issue. A gendarmerie general should be the head of the gendarmerie. A new position of “gendarmerie commander for internal security matters” should be created in parallel with the Coast Guards. He will be under the authority of the Undersecretary of the Ministry of Interior. The appointment and dismissal of the head of the gendarmerie and police should be identical. Appointments/dismissals of provincial heads of gendarmerie and coast guards should be made by the tripartite decree.

**Recommendation 9.** To deal adequately with the core tasks of issuing regulatory guidance, designing annual strategic planning, managing performance, and managing senior police officers, we recommend the modification of the Undersecretariat for Public Order and Security at the Ministry of Interior level. It would expand its coordinating functions from terrorism to all policing issues. The Undersecretariat should be headed by an Undersecretary for Public Order and Security and its organization and staffing allow performing adequately the tasks assigned to it.

**Recommendation 10.** A common internal security yearly plan. We recommend that the Mol gives strategic direction to the internal security policy. On an annual basis, the Mol should lead the drafting of a “national internal security plan” (*policing priorities and targets for all security forces*) to be presented to the Parliament. The strategic plan should conform to modern management of public security and include sets of performance indicators to be achieved nationally by the policing institutions. This would facilitate the evaluation of performance to be undertaken by the relevant inspectorates.

**Recommendation 11.** Accountability: In order for the common set of norms and principles to be enforced in all internal security units, we recommend that all internal security units are accountable also in practice to the district governors, governors and Minister of Interior. In the case of the Gendarmerie and the coast guards, we recommend that they are accountable in practice as well to both the Minister of Defence and the Minister of Interior. An operational permanent mechanism should be established between the Ministry of Interior and the army to ensure coordination (*Local Boards for Crime Prevention*).

**Recommendation 12.** A more integrated and operationally independent audit mechanism. We recommend that all internal security forces be subject to joint audits. An audit “task force” should be established gathering the police inspectorate and the gendarmerie inspectorate under the leadership of the Mol inspectorate. In addition, all units in charge of the internal investigation/audit system should be more operationally independent of
government and given a right to take action when aware of malfunctions without having to wait for the hierarchical line approval. Inspectorates should be able to initiate work without being required to do so. The selection of members of all inspectorates should be strengthened (definition of criteria, set up of test). To reflect the institutional integration of all police forces under the leadership of the Ministry of Interior, a more integrated audit system should be created. Under the leadership of the Mol Inspectorate, unified guidelines should be edited, joint audit conducted more often, one single reporting system should be created and the “task force” (that could be also called Policing Steering Group) should be conceived as a review and follow-up mechanism for serious cases of performance.

**Recommendation 13.** Within the remits of the Ministry of Interior, we recommend strengthening the strategy (and planning) unit and its tasking with policy research and the promotion of interagency and social dialogue across ISFs.

**Recommendation 14.** Within the remits of the Ministry of Interior, we recommend the creation of a “prevention of crime” unit for establishing a national prevention strategy, financing and supporting the local prevention initiatives in the Local Boards.

**Recommendation 15.** Code of Conduct. Scattered legal texts on police practices in relation to the limitation of fundamental rights and freedoms and the use of force (stop, search, handcuffing, use of data etc.) should be integrated into one code of conduct to apply to all security forces. New police coercive means such as electroshock guns (Tasers) should be regulated. To accompany the code of conduct, a unified/harmonized guide integrating all instructions on the use of police coercive means should be issued by the Ministry of Interior. Integrating all policing regulations and related legislation in respect of the use of force and the means of constraint in one single document for police practices makes it easier to monitor inspection and evaluation of all activities of the security forces.

**Recommendation 16.** In order to reach equality in front of the law regarding internal inspection bodies and disciplinary issues, new legislation is required for building an homogeneous sanction system valid for all ranks and all ISFs personnel. A central body of investigation of misconduct should be in charge of all investigations and the personnel should be independent from provincial forces where the alleged crime or misbehaviour took place.

**Recommendation 17.** A clear definition of serious and less serious disciplinary infringements is needed. Investigation and sanction of serious disciplinary infringements should be under the remits of external independent public bodies such as IPCC or Police Ombudsman. The two-year timeout period for serious disciplinary infringements should be extended.

**Recommendation 18.** For less serious disciplinary infringements, establishment of a fully unified discipline regime under administration of the Mol is a necessity. In line with
a unified discipline regime a common inspection body with common principles for all ISF’s similar to professional standard units (PSU) which has the power for disciplinary investigation and improvement of professional standards should be established.

**Recommendation 19.** Within the remits of the Ministry of Interior, we recommend the creation of a “Human Rights” unit. It will act as the single unit for all HR related issues, and focal point in the MoI for all organizations including the Defender of Rights. It will establish a national data set on violations / misbehaviour / crimes by all internal security personal and should publish a report open to the public on this issue on a yearly basis.

**Recommendation 20.** We recommend the drafting of a secondary legislation that would allow the creation of a national repository centralizing statistics and reports on the use of police force and firearms.

### 3.4. The Role of the Representatives of the State at the Local Level

Turkish governors have more oversight power than their counterparts in France and Spain, notably a power to inspect the internal security forces. However in EU countries, the competencies of the governors have a strong legal basis without conflict of laws or restriction by agreements signed with the army. As far as citizens’ complaints are concerned, governors can trigger an investigation by circulating the relevant information to the prosecutor but do not interfere in the penal process.

#### 3.4.1. Gaps

The main gaps and differences within the area of oversight powers of governors are summarized below.

i. Turkish governors are given with more powers over internal security sector units than their French and Spanish counterparts. They have investigative powers that their European counterparts do not have *(in EU countries, the governor would alert the central directorate that would then investigate).*

ii. In Turkey, the role of governors is to launch investigations on the complaints of the citizens involving the ISFs administrative duties. Based on their result, the governor filters and transmits the complaints to the judiciary. In EU countries, the prosecutor is fully in charge.

iii. In Turkey, Governors’ powers have been extended to include judicial powers.

iv. Governors powers are nor consistent across all ISF’s. EU states with a governorate system have clearly defined the roles and authority of the governor which applies to all internal security forces.\(^57\) There is a conflict between law 5442 and other ISF organization laws (3201& 2803&2692) regarding the governor’s disciplinary role over ISFs.

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\(^{57}\)3201Art.84/2, governors are authorised to give sanctions for officers of the rank of chief superintendent and below including reduction in rank, warning, reprimand and reduction of salary for 10 days.

5442Art.13/c, governors are authorized to give sanctions for all public servants warning, reprimand and reduction of salary for 5 days. For gendarmerie and coast guards, no discipline power.
3.4.2. Recommendations

**Recommendation 21.** We recommend that the role of the governors regarding the oversight of internal security forces is established unambiguously with more legal precision. In particular, we recommend the preparation of new legislation to solve the conflict between laws 5442 (provincial administration law) and 2803 (law on gendarmerie organization and duties), 3201 (law on police organization), 2692 (law on coast guard) governors’ inspection/sanction of Police Gendarmerie, Coast Guard, so that the governor can have identical oversight powers over all and internal security forces.

**Recommendation 22.** Institutional capacity of governorships and sub governorships are deemed to be developed (for example by establishment of legal and inspection units within governorates or for a set of governorates or else by establishing a task force that can be mobilized by governors). The production of standard inspection guidelines to be used by inspection units will also be an important contribution.

**Recommendation 23.** Powers of governors shall not include judicial aspects.
4. Independent Oversight Mechanisms

Independent or external oversight institutions (ombudsman, personnel data, protection agency etc.) are neither chaired / administered by elected politicians or member of the public administration nor are they part of the government’s organigram. These independent organizations have the authority of demanding from relevant units or carrying out investigation themselves depending on the country. They usually provide guidance at policy level for the setting up of the legal or institutional framework. They can for some require that sanction over actions of internal security agents are taken through the disciplinary procedure or by informing the public prosecutor.

4.1. Independent and Regulatory Oversight Bodies

Turkey has established various institutions in the field of human rights. However, since these institutions are managed by elected or government officials or are set up as a part of the public administration system they cannot be independent entities. Independent oversight mechanisms of internal security forces are set up in order to increase efficiency and fairness.

A “personal data protection agency” is required in order for countries to exchange police information while protecting human rights. Such independent national agencies are a cornerstone of the Schengen Agreement; Recommendation No R (87)15 of 17 September 1987 of the Council of Europe, ratified by many countries, request also setting up such independent bodies for data protection. Europol and the Prüm Treaty. All apply this latter recommendation as a condition for exchanging data.

The creation of an Independent Police Complaint Commission is derived from the jurisprudence of the European Court of Human Rights, an Opinion published in March 2009 by the Commissioner for Human Rights of the Council of Europe, and the practice of an increasing number of states.

As video surveillance (called “MOBESE systems” in Turkish) widens in the field of public security throughout countries and since it can be an intrusive tool into individual rights and freedoms, regulatory bodies and legislations are needed to oversee the usage of these systems. Video surveillance regulations and institutions are in place to oversee the usage of video camera pictures in the security field in all selected EU countries. In Turkey interception of communications is regulated through several laws (5271/135; 2559/Ad-7; 2803/Ad-5). But no mechanism was set up to oversee the use of video surveillance. The data protection agency can be task with this mission.

4.2. Gaps

According to universal definition of independent (also called non-majoritarian) institutions Turkey has not established an external independent oversight body in the country.

i. Turkey has no personal data protection agency. The establishment of such an agency is a requirement of the Schengen Convention, of Recommendation No R
(87)15 of 17 September 1987 of the Council of Europe, and of Europol. Exchange of police information in Europe is increasingly made dependent of the existence of such a national agency with partner states. The police and gendarmerie powers and accepted practices regarding collection, use and storage of data should be very specifically addressed in the law and for this reason we recommend a complementary specific law on police files. The law would define conditions to create police files and main principles about the functioning of police files. The laws should conform to the principles stated by the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (not yet ratified by Turkey) and the Council of Europe Recommendation No R (87)15 of 17 September 1987.

ii. Turkey has no independent police complaints commission (as in the UK) or body with investigative powers (National Council for Security Ethics in France, Defender of the People in Spain).

iii. Turkey has no law on use of video surveillance for protecting human rights and liberties. Turkey has not set up a mechanism to regulate the use of video surveillance,
5. “Horizontal” Oversight: Transparency And Cooperation

Horizontal oversight usually refers to NGO’s and media scrutiny over the actions of internal security forces on the one hand and to interagency cooperation on the other hand. Oversight issues related to NGO’s and media have not been addressed in this report. Interagency cooperation and the involvement of local politicians in the governance of internal security was mainly achieved through “local security contracts” or “partnerships” and through police doctrines as “community oriented policing” or “proximity policing”. These police doctrines are “citizen focused” in the sense that they aim at integration the people’s expectations into police priorities and strategic plans.

5.1. Citizen and Local Authorities’ Engagement in Security Policies

Municipal authorities in Turkey have only recently been vested with increased powers, although not in the field of policing. The notion of interagency partnership is still new. There are few grass root NGOs active in the field of civilian oversight. A regulation on Community Supported Policing Services was put into force in 2009 in Turkey. Hence, public participation and local involvement in security policies could gain momentum in Turkey in the field of policing.

5.2. Gaps

i. In Turkey, local coordination mechanisms are not chaired or co-chaired by locally elected politicians (mayors or their representatives).

ii. In Turkey, there is neither a national mechanism dedicated to monitor the development of the local partnerships for prevention of crime nor a national consultation mechanism with civil society. Moreover, there is no national mechanism or body to offer guidance to local partnership and coordinate national prevention campaigns.

iii. In Turkey, there is an absence of a national statistical tool to study public preferences and expectations in the field of security provision by the public authorities.

5.3. Recommendations

**Recommendation 25.** Consultation of the policing forces with the public and coordination across public administrations and forces should be made compulsory. The mechanisms should not be limited to the National Police areas but include the Gendarmerie areas. We recommend that local security contracts are established and that they are run by local security councils under the authority of the governors and deputy governors in association with judicial authorities and elected local politicians. After a transition period, local coordination mechanisms should be deputy-chaired by locally elected politicians. To mirror decentralization, local coordination and consultation mechanisms should take place at local level, which is the municipal level. In order to ensure a wide level of citizen
participation and engagement of local authorities as well as other stakeholders including gendarmerie, coast guards and judiciary representatives, a new law is needed. The regulation on community supported policing should be further enhanced as a law.

**Recommendation 26.** Acknowledging the interagency and cross-government nature of the prevention of public disorder, accidents and crime, a National Prevention Board should be instituted at central level. The board should be composed by senior representatives of key ministries, the judiciary, local authorities, and civil society. The board would define national guidelines regarding prevention and manage best practices of partnership policing. It would further establish a community prevention trust fund and finance prevention projects to be defined in local security contracts locally.

**Recommendation 26.** A national mechanism at the MoJ in charge of consultation with civil society and of monitoring the development of interagency cooperation should be established ("Council for consultation with civil society") within the “National Crime prevention office”. This national mechanism should in addition develop rigorous national statistical tool to be used to study public preferences and expectations in the field of security provisions by the public authorities.
6. The “Rights and Duties” of Law Enforcement Officers

Professional interests and problems are discussed through consultation mechanisms between the elected representatives of security forces and government officials in the selected EU countries. It can be through trade unions (as in the police) or through mechanisms for professional representation (as in the French Gendarmerie where unions are not allowed). Representatives of internal security forces are associated to mechanisms where disciplinary sanctions of agents are at stake so that their rights are better protected.


i. In Turkey a right to union or professional representation to internal security forces agents is not available. The EcHR as acknowledge a right to form a union to gendarmerie personnel as off last year (2014).

6.2. Gaps

Recommendation 26. We recommend that a new law is drafted in order to establish mechanisms allowing professional interest to be expressed according to the nature of each internal security force.
7. Summary of Recommendations and Conclusions

We have carefully reviewed the laws and mechanisms related to civilian oversight of internal security forces found in Turkey with an aim to improving them as well as in the perspective of EU accession.

7.1. A Summary of Recommendations

In summary, we recommend:

 ii. To amend the constitution to include core notions of democratic oversight of the security sector: accountability and the distinction between internal and external security; to clarify the position of ISFs (and therefore the gendarmerie and coast guard) with respect to subordination to civilian authorities. To make the necessary changes so that an ombudsman type body can be created in Turkey.

 iii. To increase the role of the Parliament in the realm of civilian oversight, and notably that a yearly policing plan (for all internal security units) is presented, that a specialized committee on internal security forces is created, properly resourced.

 iv. The authority to launch a probe into the ISFs agents and heads should be fully with the judiciary authorities. To annul all procedures for judicial investigation given to civil servants including internal security forces and preliminary approval before a judicial investigation can be launched.

 v. To modify the institutional organization of the Ministry of Interior and of the gendarmerie in order to allow for an homogeneous oversight of all security forces by the Ministry of Interior. While the gendarmerie and coast guard remain of military nature, they need to be reorganized in order to cope with the fact that they perform policing functions. Those two organizations have to be account able both to their hierarchical line and to the Ministry of Interior in practice. The Mol should be the suggesting authority for the appointment of the heads of the gendarmerie and coast guards and these commanders should be accountable to the Minister of Interior as it is the case for the head of the police.

 vi. To make the internal investigation/audit system of internal security forces stronger, more operationally independent of government (allowed to initiate thematic inspections without ministerial notice).

 vii. To increase the monitoring of the use of firearms and use of force and create a national repository for police use of force and firearms,

 viii. To give police and gendarmerie a unified disciplinary regime ruled by common principles and a common code. To reform the complex and fragmented disciplinary system of the police in order to make it more understandable and arranged so that equal treatment is given to all agents regardless of their rank and function.

 ix. To create the independent or external oversight institutions for personal data
protection (including the use of video surveillance), and one for processing the complaints against policing forces.

x. To draft a law in order to establish mechanisms allowing professional interest to be expressed in the internal security forces.

xi. Establishment of a central Internal Security Council for Consultation with Civil Society and Improving Interagency Coordination.

7.2. Civilian Oversight Legislation that Exceeds the Authority of the Ministry of Interior

i. Enshrinement of constitutional core principles of EU member states and amendment of articles of constitutions which contradict EU principles and standards,

ii. Improvement of parliamentary oversight over all internal security forces,

iii. Establishment by law of a personnel data protection agency.

7.3. Civilian Oversight Legislation within the remit of the Ministry of Interior

As a reminder, the main gaps found in relation to the functioning of the MoI are as follows:

i. the principles and mechanisms allowing effective civilian oversight are not homogeneous across all policing forces;

ii. in practice there is no unified organizational structure corresponding to legally defined policing tasks and responsibilities of ISF’s;

iii. the mechanisms for auditing the forces (inspectorates) are not given operational independence;

iv. police and gendarmerie disciplinary regimes are not unified by common principles and a common code; the disciplinary regime of the police is complex and fragmented;

v. the role of the governors are not consistent across all ISF’s;

vi. enactment of a framework law (law on common principles and duties) that applies to all ISF’s;

vii. preparation of a regulation called “code of conduct” that integrates all police practices in relation to the limitation of fundamental rights and freedoms and use of force (stop, search, handcuffing, use of data etc.) to apply all security forces;

viii. amendment of laws 2803 and 2692 in order to change the nature of gendarmerie and the coast guard as ISFs while preserving their military nature;

ix. abolition of law 4483 which contradicts judicial independence;

x. abolition of legislation on special protection for internal security unit heads serving in province and sub provinces (5271/161-5; 2802 Art. 82) in cooperation with ministry of Justice;

xi. a new regulation on “certificate of accreditation” for judicial police;
xii. enactment of a new legislation to regulate use of video surveillance by the internal security forces including the establishment of an oversight mechanism;
xiii. amendment of related legislation on the appointment of gendarmerie general commander among gendarmerie generals; appointments of provincial heads of gendarmerie and coast guard. Creation of a new position of “Commander of Gendarmerie for internal security” with a rank equivalent to the director of National Police under the authority of Mr. Undersecretary of Mol;
xiv. a new legislation for establishment of a fully unified discipline regime under administration of Mol;
xv. definition of serious and less serious disciplinary infringements. For serious discipline infringements establishment of an external independent body. For non-serious disciplinary infringements establishment of a common body for all ISF’s is necessary;
xvi. preparation of a secondary legislation on establishment of a national office for prevention of crime, in charge of preparing a doctrine, supporting the Local Boards, and maintaining a data repository on violations, misbehaviours, crimes by ISF’s personnel;
xvii. eradication of conflicts between Law 5442 and other security legislation (2803, 3201, 2692);
xviii. establishment of legal bureaus to support governors on legal issues and inspection units for effective audit of ISF’s;
xix. preparation of standard inspection guidelines for governors and district governors;
xx. enactment of a new legislation on citizen’s participation and local involvement on local security policies in aiming to ensure participation of all stake holders including gendarmerie and coast guard;
xxi. a new law in compliance with the decision of the ECHR and establishment of mechanisms allowing professional interest to be expressed in the internal security forces;
xxii. establishment of a National Council of Internal Security for consultation with civil society and improving interagency coordination.

7.4. Conclusions

Reviewing the legislation, regulations and mechanisms of civilian oversight (both horizontal and vertical) in Turkey has driven us to make several dozen recommendations in every aspect.

It is obvious that endorsing and implementing all these recommendations would require time and above all a strong political leadership leading to a shift in the institutional culture.

In fact, we recommend the introduction of changes which are all related to key notions of civilian oversight: the subordination of all forces to both elected civilian authorities and their appointed representatives, separation between the notions of internal and external
security, the need for a strengthened parliamentary oversight power and capacity, the rule of law, the control of courts but also of independent authorities, a new governance of security which is based on the involvement of civil society and partnerships among organizations.

The rights of internal security forces agents also have to be strengthened, and notably the right to professional representation. In addition, civilian oversight should not be understood as a threat to operational independence. If the recommendations are implemented the juridical safety of agents will be improved because their tasks and responsibilities will be better defined in parallel to the development of accountability.
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