

# IPCAN

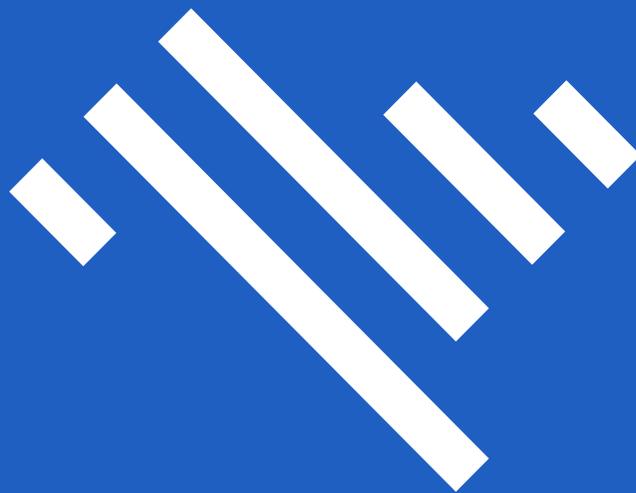
INDEPENDENT POLICE COMPLAINTS  
• AUTHORITIES' NETWORK •

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**EXTERNAL POLICE OVERSIGHT AGENCIES:  
EMERGENCE AND CONSOLIDATION**

**A COMPARATIVE STUDY OF 25 AGENCIES IN 20 COUNTRIES**  
SYNTHESIS





## SUMMARY

Once the preserve of a small clique of countries, external Police Oversight Agencies are now a truly global phenomena established in a wide array of democratic political regimes, and in almost all European countries.

As a result of the repetition of police misconduct (violence, discrimination, corruption), a new consensus in democracies has emerged that officers' behavior must be better regulated and controlled.

The main idea of the new conception of regulation is that greater impartiality is necessary to guarantee the effectiveness of the protection of rights. External agencies have been designed for this purpose. This is a revolution in the conception of oversight, a new category of controller that is added to the judicial or internal oversight of the police (with military status such as the gendarmerie or civilian, private or public). The idea is now so widespread that there are associations of oversight offices or agencies in Canada (Canadian Association for Civilian Oversight of Law Enforcement, CACOLE), in the United States (National Association of Citizen Oversight of Law Enforcement, NACOLE), in the Commonwealth countries (International Network of Independent Oversight of Policing) and IPCAN in Europe (Independent Police Complaint Authorities' Network).

Based on original data collected in 20 countries, this research describes the variety of bodies that exist in Europe. It is found that Police Oversight Agencies (POAs) have been established in large numbers since the 1990s. The study reveals that the types of POAs are very different. They are public agencies that are not run by elected officials and have relative independence. All handle complaints and can make recommendations to the government. But very few have decision-making powers (e.g., disciplinary, prosecutorial, or more systemic, such as procedural). More importantly, their ability to do so is conditioned by their independence and also by their resources. Thus, for example, the study shows that the number of complaints received is

proportional to the resources available to POAs. A typological analysis reveals two categories of POAs by combining two criteria, the degree of formal ("de jure") independence and financial resources: the "weakly independent-resource-rich" on the one hand, and the "independent-resource-poor" on the other hand.

Thus, we highlight that governments that guarantee the independence of POAs give them less material means to carry out their mission. This is particularly the case in France, which has the lowest resources in Europe per police officer in its jurisdiction. Conversely, the Police Ombudsman for Northern Ireland has the largest resources per officer, but less formal independence. In addition, we explored the determinants of the different types of agencies. Unsurprisingly, resource-rich POAs tend to be found in wealthier countries, which raises many questions. These POAs are also found in institutional systems where justice is most independent de facto (not de jure), suggesting that the institutional ecosystem or network of institutional bodies in which POAs are embedded also explains their characteristics.

Finally, we conclude that in order to study the performance of POAs in a comparative manner, standardized information on officer misconduct in Europe should be collected and made public by police forces. Without sufficient police transparency, rigorous evaluation of the effect of the actions of jurisdictional and non-jurisdictional rights protection agencies cannot be achieved.

# FOREWORD

## THIS STUDY WAS CARRIED OUT WITH THE FINANCIAL SUPPORT OF THE FRENCH DEFENDER OF RIGHTS.

### Which governments have relied most heavily on external agencies to enhance their credibility in protecting human rights and promoting impartial oversight of police?

The focus of the present research is on public agencies, administrations that are delegated regulatory functions, are not headed by elected officials, and have relative independence from government. POLDEM is a research project whose objective is to describe some of the characteristics of external organizations in charge of police oversight in twenty Western countries.

The characteristics of these agencies depend on the political authorities that set them up: they are administrations to which the political power (executive or legislative) delegates part of its prerogatives, under certain conditions. In particular, their degree of independence and their level of resources is decided by the political power, and therefore conditions the volume of work that is carried out (for example, the number of complaints handled). It is therefore important to acknowledge that our analysis of the functioning of the agencies is not a judgement on the individual performance of the agents who work there. Indeed, this functioning is mainly the result of the way in which they have been established by the political authority. In this report, we are not interested in the efficiency of the agencies in relation to each other, all other things being equal, although this subject would obviously deserve attention. We must first understand what "*capacity to do*" they have, because this determines their effectiveness.

In an unprecedented way, POLDEM attempts a comparative analysis of external oversight of the police based on a systematic collection of data in Europe (in the EU countries and

in Switzerland, UK, Serbia and Norway) and in Quebec. It reveals the great inequality of external oversight between countries, and identifies those in which it has been the subject of significant development, and the others.

The results are particularly instructive. However, it is important to keep in mind the multi-dimensionality: an agency may be strong on one measure, weak on another. In this sense, POLDEM is a comparative tool that is not intended to offer an exhaustive and contextualized description of each individual agency. Each POA has a particular history and evolves within a unique social, legal, and political configuration, and thus cannot be reduced to the dimensions under study. Despite these limitations, POLDEM allows for the classification of government-established agencies on different dimensions, similar to research on the education system or the health care system.

To measure the different dimensions of agency characteristics, POLDEM relies on a robust methodology derived from the analysis of independent regulatory agencies (IRAs)<sup>1</sup>. This synthesis presents some of the results, in particular those concerning the degree of formal independence from the executive branch, the scope of their action, the formal powers, and the resources that these agencies hold. We have also created a typology of these agencies on the basis of the data collected, and tested a number of hypotheses regarding the date of their creation according to whether they belong to one type or another (do ombudsmen and specialized agencies emerge at the same time?), as well as on the links between wealth of resources and formal independence from the executive (are the richest agencies also the most independent?).

## DEFINITIONS: AGENCIES AND POLICE

In this work, we refer to police oversight agencies (POAs) as bodies that oversee human rights and police ethics that are external from the police force and established by a political authority (the executive or legislative branch). The latter delegates to them certain powers to regulate the police. These agencies are not under the direction of an elected official and are relatively independent of the government.

This independence is an essential element of the status of POAs. We have approached it from the point of view of the legal guarantees granted to them by the political authority. For this reason, we have used the term "*formal*" or "*de jure*" independence. We do not measure "*de facto independence*", a behavioral concept that is difficult to operationalize at this stage of the survey. Whether or not agents feel independent, i.e. "*subjective independence*", is not considered either.

By the term "*police*" or "*police forces*" we mean the bodies that, on a legal or regulatory basis, coerce citizens, sometimes by the use of force, whether their status is private (employees of companies in contact with the population, in transport, places like supermarkets or others) or public, and if they are public whether their condition is military (gendarmes, carabinieri, civil guards, guarda, etc.) or not (agents of national, regional, municipal police)<sup>2</sup>.

This research encompasses novel results, but also a number of limitations. POLDEM takes into account the extent of the agencies' mandates, as well as the size of the police organizations within the agencies' boundaries. However, even though almost all EU agencies participated in the survey, we are in the context of a so-called medium-sized study with 25 participants. It is therefore impossible to control for several factors at once when calculating correlations between independent and dependent variables. This means that context, administrative and judicial traditions, for example, could play a role that we were not able to verify here.

Furthermore, POLDEM is based on criteria of an objective nature - both the legal foundations of the agencies and their measurable volumes of activity. Thus, autonomy, which refers to an agency's ability to decide on its own priorities, was not measured here, nor was the subjective appreciation felt by the agents<sup>3</sup>. The study therefore allows us to estimate the degree of formal independence of the agencies, but this is neither equivalent to the subjective independence that their agents feel in their work nor to the impartiality they demonstrate in handling individual cases. Formal independence is generally considered to be a condition for *de facto* independence and impartiality, but is not a direct measure of it.

# INTRODUCTION

**In 1748, Montesquieu wrote *The Spirit of the Laws*. He is often considered the precursor of the concept of oversight because he divides government into three "branches" or "powers" (legislative, executive and judicial).**

Today, the idea of a new kind of external oversight and regulation has gained favor among political elites and is spreading in almost every democratic country. Police misbehavior has fueled the need for a reformed oversight framework: after flagrant cases of police violence<sup>4</sup>, the effectiveness and impartiality of internal mechanisms have been questioned, both in the United States and in Europe, and particularly in France<sup>5</sup>. But the emergence of external oversight is part of a more general movement known as "agencification", whereby governments entrust the regulation of a sector to an independent authority, whether it be the audiovisual sector, central banks or public transport, to give a few examples. To give an idea of the importance of agencification, it should be noted that some scholars have described the birth of external bodies as the "4<sup>th</sup> branch" of government. They embody one of the most important transformations in governance in the last fifty years.

Police organizations operate within a legal, ethical and organizational framework. NGOs and international rights protection bodies such as the Council of Europe have emphasized the guarantee of the "right to an effective investigation" into alleged serious crimes committed by the police and other state agents. Governments have recognized the inadequacy of existing protection of rights, and for example in France in 2008 "proposal no. 76 of the Balladur Committee, relating to the institution of a Defender of Rights (...) proceeds from the observation that the 1958 Constitution does not offer sufficient guarantees in terms of the protection of rights and freedom"<sup>6</sup> and aims to give "an effective translation to the fundamental rights of citizens by opening up new ways for them to assert their rights"<sup>7</sup>. The same applies to the Defensor del Pueblo (Spain) or the Provedor de Justiça (Portugal). More broadly, a real

normative shift is underway regarding the right way to oversight the police. There are now 160 active dedicated local agencies in the United States, compared with seven in the mid-1970s, and in Europe between 30 and 35 (depending on how one counts), compared with three. This trend has led to clashes between defenders of the old internal model (in particular the police unions, for example in the United States<sup>8</sup>, in the United Kingdom<sup>9</sup> and in France<sup>10</sup>) and the new model, which bases impartiality on externality to the police and political power. But what exactly are these agencies? How are they established? What norms govern them and how do they function?

A "police oversight agency" (POA) in the police sector complements the pre-existing accountability mechanisms, primarily judicial oversight and internal review. At a minimum, POAs deal with citizen grievances and disputes between citizens and the police, either as part of a general body (often an ombudsman) or in a more limited setting (such as a dedicated, specialized police body). Some have more prerogatives and set standards or decide on sanctions. At present, a large majority of European states have established a POA (and almost all EU member states except Italy, Lithuania, Austria, Czech Republic). In Germany, only 3 out of 16 Länder have established such a mechanism.

This report presents the existing mosaic of POAs in European and North American countries, their emergence, their main characteristics (independence, specialization, and resources), and the means by which governments maintain control over them. A comparative analysis of these characteristics is proposed.

# 1. THE NORMATIVE SHIFT TOWARDS THE DELEGATION OF POLICE OVERSIGHT

**This study seeks to understand the logic that may have led governments to want to delegate their powers to bodies over which they apparently have only limited control.**

According to the literature, there is generally a game between the executive and the administrative agents to whom oversight authority is delegated: the latter try to strengthen their autonomy while the former seeks ways to maintain optimal supervision<sup>11</sup>. And this game is anticipated by the government when it sets up an agency.

For a government, delegating to an agency may be motivated by the search for credibility by demonstrating the sincerity of its commitment to protecting human rights to the public, or by the desire to draw on expertise that it does not have. But it also puts it at risk. Delegating may work against its own interests, either by diminishing its own control, especially as it involves police forces on which it relies to act in troubled conditions, or by exposing itself to more criticism of its police policy (particularly in relation to the use of force or weapons) as a result of the agency's action. How do governments balance these gains and risks?

Police officers are vested with broad powers and significant discretion in the exercise of their duties. They have the power to interfere with the rights of citizens in specific circumstances defined by law, a power they may also use in other circumstances, i.e. illegally. The general consensus in democracies is that these powers, which by definition threaten rights and freedoms, must be regulated and controlled. The main idea of the new institutional conception of oversight, of the agencification of human rights, is that greater impartiality is necessary to properly regulate the behavior of police officers *vis-à-vis* citizens.

Impartiality is a precondition for effective policing. Only independent agencies would be able to fully guarantee it. These external agencies are said to be independent when they operate autonomously from government and are not directly accountable to the voters or their elected representatives. Thus, in France, legal experts believe that the independence of the Defender of Rights remains the "primary basis of [his] credibility"<sup>12</sup> and, conversely, that his actions will always remain suspect if he does not have real independence from the executive.

The POAs have the ambition to guarantee the rights of citizens and the good governance of the police system. Central to the emergence of this new institutional architecture of police governance is a new emphasis on the public and citizens' rights. This shift in values seems to be at the root of the transformation of legal norms. We cannot fully engage in such a discussion here, but we will recall several elements. Research on police legitimacy has also emphasized the role of equal treatment of citizens and efficiency in reducing violence, and shown that external oversight fosters a positive evaluation by the public<sup>13</sup>.

While the legal principles underpinning the agencies appear to be shared, it remains to be thoroughly examined how national policymakers have interpreted the notions of independence or autonomy when establishing POAs in each country.

## 2. METHOD

**The objective of the study is to conceptualize and then measure with a comparative method the characteristics of external police oversight agencies in twenty Western countries.**

It draws on members of the IPCAN network<sup>14</sup>, as well as several other agencies (Map 1). Data collection took place from May 2021 to March 2022, based on a standardized questionnaire completed by all participating organizations.

In an unprecedented way, this study presents the similarities and differences in the formal independence, resources of these agencies, their remit and working methods, based on data specifically collected for this purpose (first hand). The project is based on a comparative methodology and the calculation of standardized indices.

Within this framework, "*portable concepts*", i.e. valid in different contexts, have been developed to evaluate the "*capacity to do*" or capability<sup>15</sup> of POAs, for example by measuring their formal independence or the resources available to them. Indeed, an agency that has resources but is not given sufficient independence, or conversely, that is given independence but no resources, has a priori limited capacity to do. We speak of the agency's "*capacity to act*" rather than its "*power*" because we cannot, with this study, observe the power exercised in the sense of the actual modification of police behavior under the influence of the agency's action.

A variety of quantitative indices were generated to describe key characteristics of POAs, including the scope of their missions, their formal (de jure) independence, their financial endowment, their handling of complaints, and their other actions. Each index is a normalized sum of a set of variables capturing the underlying dimensions of a concept.

For example, the index of formal independence is the average of four sub-indices: independence of appointment of the head, independence of action, independence of the head during tenure, and statutory independence from the police force and its parent department. Normalizing the indices from 0 to 1 allows for comparison of the position of different POAs on a given aspect, and for comparison of the different scores of all POAs.

### MAP 1

#### **MAPPING OF THE TERRITORIES COVERED BY THE POAS PARTICIPATING IN THE STUDY**

Among the variables measured in the study were:

1. The date of creation.
2. Competences and missions.
3. Formal independence.
4. Legal powers.
5. Complainant rights and transparency.
6. Resources.
7. Complaints.
8. Actions taken by the organization.



## 3. RESULTS: THE DIVERSITY OF AGENCIES

### 3.1. THE WAVE OF POA CREATION

The development of a general civilian (non-police/non-gendarmerie/non-military) oversight mechanism for public officials originated in Europe with the ombudsman about 200 years ago. In Sweden, it was created in 1809. In Finland, the basic law of 1919 (Hallitusmuoto) provides for a parliamentary ombudsman, and the law creating it was passed in 1920. The purpose of the ombudsman is to oversee all the administrations (including the police). During the inter-war period, it focused on the courts and prisons, and only after 1945, with the growth of its resources, did it begin to really deal with complaints against the police<sup>16</sup>.

In the United States, specialized, citizen-based police-specific bodies, the Civilian Review Board, emerged in the 1920s with few volunteers and few resources in a few municipalities, and began to be adopted more widely in the 1970s, before becoming more widespread in the 1990s. The idea is now so widespread that there are associations of review agencies in Canada (Canadian Association for Civilian Oversight of Law Enforcement, or CACOLE), the United States (National Association of Citizen Oversight of Law Enforcement, or NACOLE), Commonwealth countries (International Network of Independent Oversight of Policing) and Europe (IPCAN).

The creation of POAs has taken the form of a temporal wave: a majority of the POAs studied were created between the 1980s and 2000. Today, having such organizations has become the rule in Europe, although not all countries have them yet (e.g., Italy), while another, such as Germany, has them only in some regions but has recently announced the creation of such a body at the federal level. Before the 1980s, only five states in the sample had an independent authority. By 2001, when the Council of Europe published its *"Code of Police Ethics"*, which includes the standard of establishing an external oversight body, there were more than 15.

### 3.2. WHAT ARE THE MISSIONS OF THE POA?

Some agencies have many functions, such as ombudsmen (e.g., the Croatian ombudsman ranks first in terms of the number of functions assigned to it, with the Defender of Rights in France falling into the same category, but below). Other agencies have few functions, especially specialized police oversight agencies (e.g., the Independent Office for Police Conduct in England and Wales, Committee P in Belgium).

Some agencies cover only some of the police forces, others cover all (public and private, national and local, civilian and military). The French Defender of Rights and the Finnish Parliamentary Ombudsman both achieve the maximum score because they cover all public and private forces in their countries.

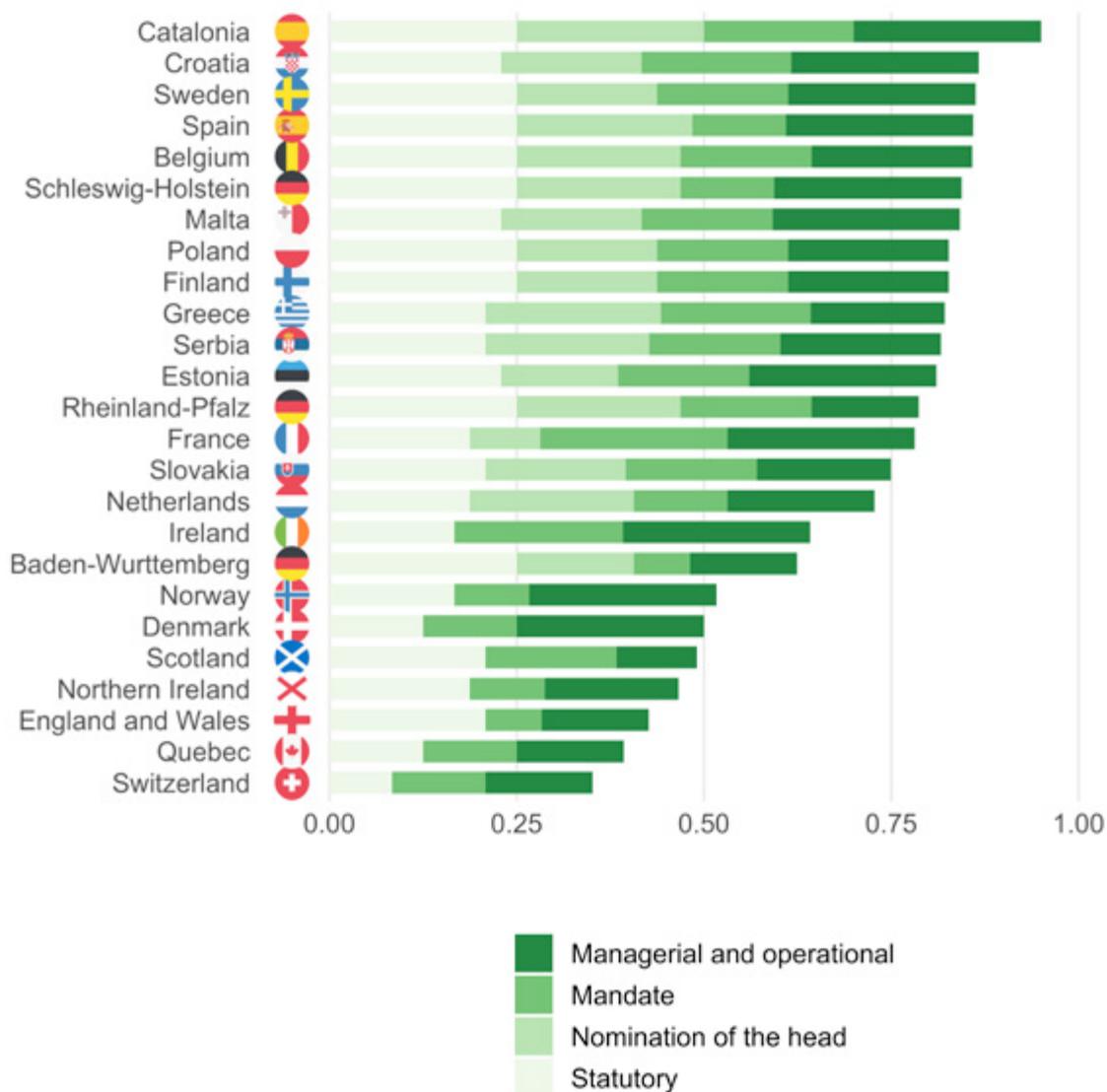
Finally, there is a great deal of diversity in the definition of POA missions regarding police forces. The Finnish parliamentary ombudsman achieves the highest score because its missions include monitoring breaches of the penal code, ethics/deontology, human rights violations, fighting corruption, and doing mediation between citizens and police forces; in addition, the organization is among the institutions that set standards for the handling complaints by police forces. In contrast, at the lowest level of this sub-index, the three regional ombudsmen in Germany are only involved in mediation between citizens and police forces.

Only six agencies have responsibility for setting standards for the handling of complaints by police forces: the Dutch National Ombudsman, the Finnish Parliamentary Ombudsman, the Estonian Chancellor of Justice, the Independent Office for Police Conduct (IOPC) in England and Wales, the Police Investigation and Review Commissioner in Scotland, and the Police Mediation Office in Geneva. France does not belong to this category.

A key distinction separates specialized and non-specialized agencies. One group of POAs specializes in oversight of police forces. The second group of POAs, which we can call the "ombudsman type", covers organizations other than police forces.

**CHART N° 1**

**FORMAL INDEPENDENCE OF POAS**



### 3.3. WHAT INDEPENDENCE IS GUARANTEED BY LAW?

Most of the POAs studied are members of the IPCAN network, where the "I" stands for "*independent*". But how is this independence legally guaranteed?

We measured the formal independence of POAs by adding four sub-indices: one that captures the statutory independence from the police force and their ministry of affiliation, a second that measures the independence of the appointment of the head, a third that gauges the independence of the head during his or her tenure, and a final one that assesses the independence of action of the organization.

Formal independence is highest in countries as different as Spain and Sweden, and lowest in Switzerland, England and Wales. France has a higher average position. This ranking, which puts Danish and British agencies at the bottom of the scale, may be surprising. However, formal independence should not be confused with capability (capacity to act). The latter notion is of a distinct nature and depends on formal powers and resources.

### 3.4. WHAT RESOURCES?

To assess the resources of the agencies, we used the number of employees (in full-time equivalent) dedicated to police oversight in 2021. This variable is highly correlated (positively) with the agency's euro budget.

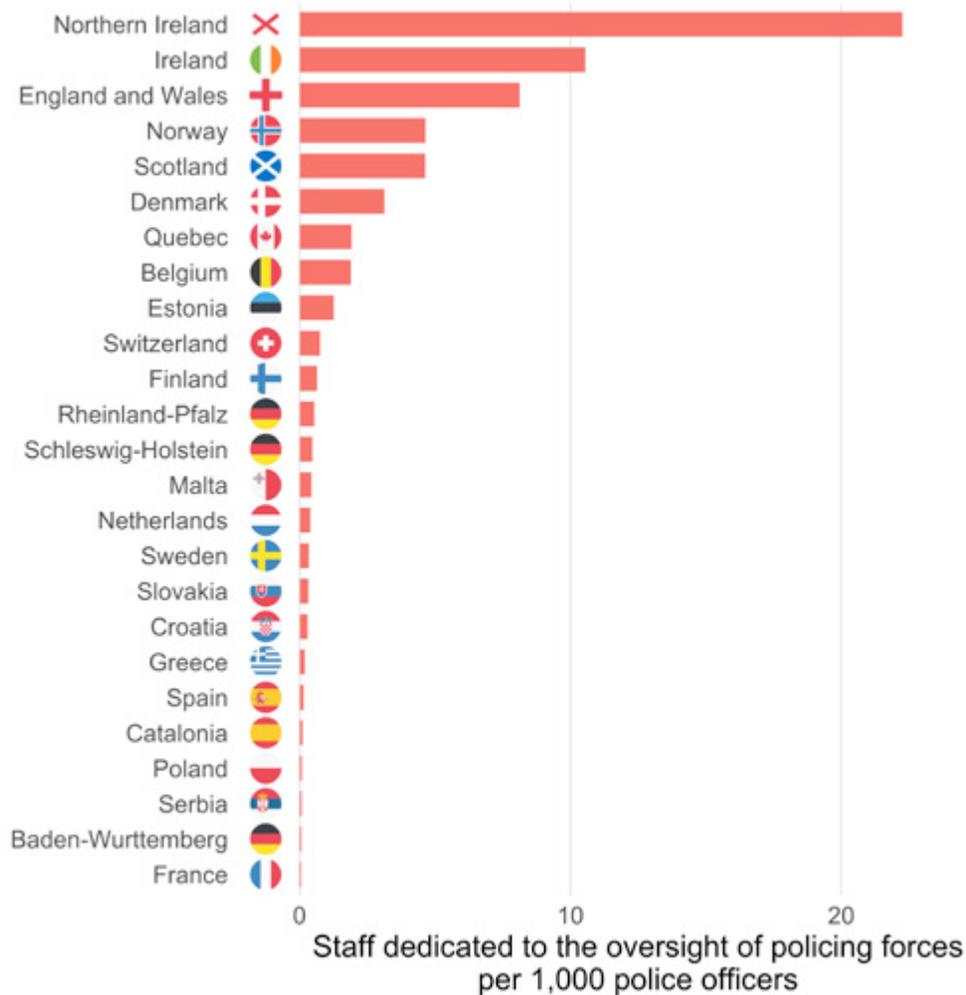
The ratio between the number of POA officers dedicated to police force oversight and the size of the police forces involved in the territory shows considerable disparities (Figure 2). The organizations with the highest relative number of staff are, in descending order: Northern Ireland's Police Ombudsman (with 22 employees per thousand police officers), Ireland's Garda Ombudsman (with 11 employees per thousand police officers), the Independent Office for Policing in England and Wales (with 8 employees per thousand police officers), followed by the Norwegian Police Investigation Bureau and the Police Investigation and Supervision Commissioner in Scotland (both with just under 5 employees

per 1,000 police officers). Conversely, the organizations with the lowest relative staffing levels are, in ascending order: the French Défenseur des droits (with 0.05 employees per thousand police officers), the Baden-Württemberg regional parliamentary ombudsman (with 0.06 employees per thousand police officers), the Serbian Citizens' Ombudsman (with 0.07 employees per thousand police officers), the Polish Human Rights Commissioner (with 0.08 employees per thousand police officers), and the Catalan parliamentary ombudsman (with 0.1 employees per thousand police officers).

The study reveals that the French Ombudsman is the worst funded agency relative to the size of the police force it covers. The French government, for example, allocated 400 times less resources than the government of Northern Ireland, and 150 times less than the government of England and Wales. Resources are the condition of the agencies' capacity, and the under-resourcing of some of them in Europe raises questions about the strategy that leads governments to make such contrasting choices with regard to them, and about the sincerity of their commitment to establish impartial oversight. This is the subject of the next section.

CHART N°2

POA HUMAN RESOURCES PER 1,000 AGENTS



## 4. RESULTS: WHAT EXPLANATIONS FOR THE DIVERSITY OF THE POAS?

### 4.1. THE CREATION OF THE POAS

How can we explain the genesis of POAs and the different forms they take today?

A first possibility is that the POAs appear in the wake of an evolution of citizens' rights and democracy. There would be a consolidation of civil rights and freedoms, which would be concomitant with the emergence of POAs as guarantors of the respect of these rights and freedoms by the police. This can be measured by indicators such as the uninterrupted duration of democracy (the Swedish parliamentary ombudsman was created in 1809, before the current democratic system began), or by the date on which women were granted the right to vote in national elections. But the results do not show a correlation between the age of the current democratic regime or of women's right to vote and the age of the agency. Older democracies do not, on average, create agencies earlier than others.

A second explanation for the emergence of POAs is the international diffusion of a standard. In particular, the European Union would have a role in disseminating the standard of external oversight of the police in the member countries and especially among the candidate countries. It can be seen that various countries created a mechanism a few years before their formal entry into the EU - such as Spain, Malta or Slovakia, but no effect is seen on the historical members of the EU (Italy or Austria don't have such a mechanism). It is not possible to argue that the European Union is the unique cause in the overall diffusion process of decisions to create POAs.

A third hypothesis is that the creation of POAs is the result of a country's economic situation: based on the principle that this type of organization requires resources and a developed administration, one might think that the prerequisite for the creation of POAs is a certain level of economic prosperity.

However, there is no significant effect of the level of economic development of the country (at the time of creation) on the decision to create agencies.

A final hypothesis relates to the political ideology of those in power. One might expect that parties on the right of the political spectrum would be more inclined not to institute POAs: they are less critical of police violence, have no links with the social movements most targeted by police violence that are on the left, and are less close to social mobilizations against police violence (which are a determinant of the creation of municipal Civilian Review Boards responsible for external oversight of the police in the United States<sup>71</sup>). We analyzed the extent to which the political character of national governments in the years of POA creation differs from the "average" political character of national governments outside of the POA creation (over the remaining years of the observation period). The results show that the presence of right-wing parties in government is negatively associated with agency creation.

### 4.2. AGENCIES AND THE NUMBER OF COMPLAINTS RECEIVED

Receiving and handling of complaints is a core task for all agencies. There are large differences in the relative number of complaints received (per 100 police officers): a factor of 400 separates the agency with the fewest complaints (the Malta Ombudsman) and the most complaints (the Police Ombudsman for Northern Ireland).

Two hypotheses can be put forward to understand why some agencies receive more complaints than others. The first is that the number of complaints is directly related to the intensity of the public's problems with

the police. The second is that the number of complaints is more a reflection of the greater ability of some POAs to handle them (under-resourced agencies do not have the resources to market themselves to the public and respond to complaints). The results of the study support the second hypothesis: the number of complaints received is directly related to the number of staff working in the POA.

An important consequence of this result is that the number of complaints against officers cannot be taken as a reliable measure of the reality of the problems on the ground, but rather of the willingness of the political authority to know about them. Thus, to say that there are few complaints against the police is not to say that officers are "*exemplary*", but rather that the resources allocated to deal with them are too limited.

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### 4.3. EXPLAINING RESOURCE ALLOCATION

Several hypotheses were tested to explain the resourcing of POAs. First, resources could reflect the range of missions (monitoring criminal code violations, ethics/ethics, human rights violations, anti-corruption) that a POA must carry out. Contrary to what might be assumed, we find that the resources of the agencies depend little on the scope of their missions. The political authority does not seem to adjust the budget (which determines the capability) to the scope of the task entrusted to it.

Second, resources may be the product of a long-term consolidation process, in which an organization asserts its role and gains influence over the political authorities that decide on its budget. This assumption is not borne out: the best resourced institutions - such as the Police Ombudsman in Northern Ireland, the Garda Ombudsman in Ireland and the Independent Office for Policing in England and Wales - are not among the oldest institutions studied.

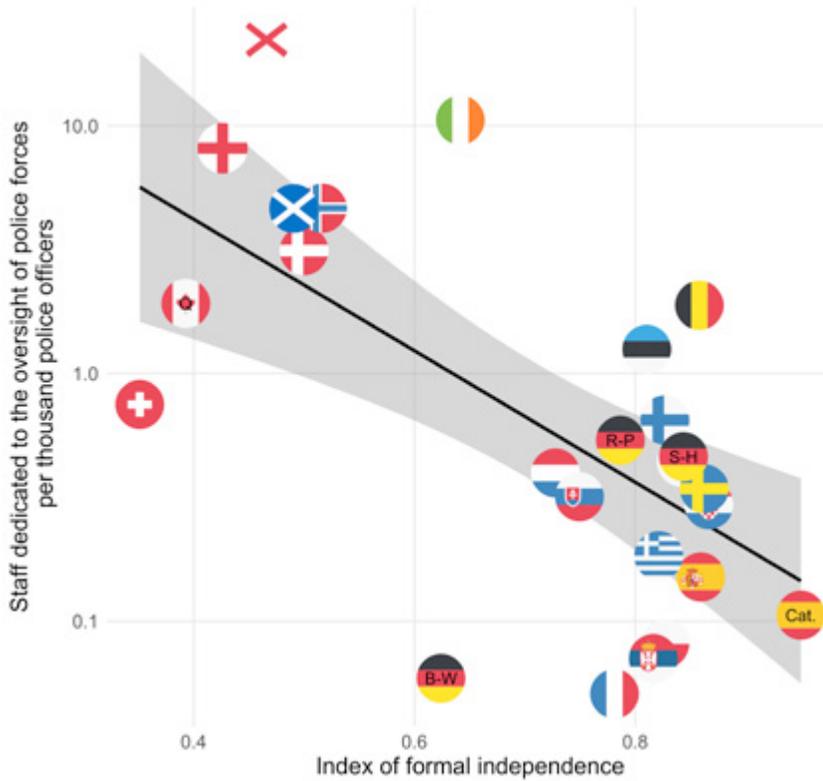
Third, governments seem to seek a trade-off between maintaining their direct or indirect control over a POA (as POAs can publicly

expose individual or systemic problems in policing), on the one hand, and satisfying public aspirations for transparency fairness/ impartiality on the other. By granting full legal independence to an agency, political authorities tend to satisfy public demand for transparency and impartiality. However, by committing resources to an agency, political authorities run the risk that the agency will use them in ways that do not serve their interests.

The results indicate that formal independence is negatively correlated with relative agency resources. The more independence an agency is granted, the fewer resources it obtains. These results reveal that governments would adopt two strategies: they would either create agencies that meet all the independence standards but have limited resources to accomplish their mission (independent-poor in resources), or agencies that have significant resources but over which they retain significant influence (weakly independent-rich in resources). However, the combination of both is never observed ([Figure 3](#)). France is in the group of agencies with high independence and low resources (independent-poor in resources).

CHART N°3

POA RESOURCES AND DEGREE OF FORMAL INDEPENDENCE



**4.4. WHAT ASPECTS OF THE NATIONAL CONTEXT EXPLAIN THE RESOURCE ALLOCATION?**

We seek to determine whether "weakly independent-resource-rich" agencies thrive in a certain type of national context. We consider socio-economic (measured by GDP/capita) and institutional variables

In terms of resources, POAs are neither better nor worse off in countries with high rule of law or democratic quality scores. Similarly, they are neither better nor worse off in political systems where the parliament is elected by a proportional method (more representative of the balance of power of the different political currents) than in plurality-majority systems or in countries with a high-resource parliament.

Socio-economically, the "weakly independent/resource-rich" POA tend to be found in wealthy countries, while the "independent/resource-

poor" POA tend to be found in relatively poorer countries. A simple conclusion is that resourcing POAs is costly, and that such an expense comes only when a state sees it as a priority and can afford it. From this perspective, the French Human Rights Defender is an "exception" because France is more prosperous than the countries of Southern or Central Europe but enjoys very limited resources.

Most importantly, our main finding concerns the relationship between external oversight of police officers by POAs and control of legality by judges. Various researchers have observed that there are two dimensions to characterize the degree of independence of judicial systems: *de jure* independence (in law) and *de facto* independence (the independence actually enjoyed by judges)<sup>19</sup>. These two dimensions, measured on the highest court in each country (which can overrule lower courts), are weakly correlated. Some states may have a high level of *de facto* judicial

independence without legal provisions for independence that meet the highest standards - such as the United Kingdom - while other states may have legislation that meets the highest standards of judicial independence but offer relatively little autonomy in practice to judges - such as Greece.

Using *de facto* judicial independence country scores in our analyses, we find that POAs are more formally independent in countries with a political system that does a good job of guaranteeing the *de jure* independence

of judges, but that POAs are significantly less well-resourced in these same countries. The best resourced POAs are found in countries with highly *de facto* independent justice systems.

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## 5. PERSPECTIVES: MEASURING THE EFFECTS OF POAS ON POLICE BEHAVIOUR

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Agencies, especially *de facto* independent<sup>19</sup> and well-resourced ones, can be expected to have a direct influence on individual cases through their handling of complaints. In addition, agencies may have a direct influence on police policies (e.g. on complaints handling or crowd management and use of force policies) through their auditing and recommendation to police ministries and police departments, but also through their training of police forces.

It is hoped that the number of people killed during police operations, police corruption, the rate of discriminatory screening of minorities, or the level of distrust in the minority and majority population may decrease as a result

of the work of these agencies. The report presents various attempts to explore the effects of POAs. And the evidence suggests a short-term effect of the creation of POAs on public trust. But it is tricky to go further because of the lack of available data.

Indeed, without both a longitudinal comparison and control for several factors, it is impossible to ensure that the links observed at time *t* between two variables<sup>20</sup> are not influenced by other national characteristics. For example, the creation of an agency may occur when corruption is high, but it cannot be inferred that the creation of an agency is the cause of the development of corruption and *vice versa*.

## 6. CONCLUSION

### The quick establishment of POAs on a large geographical scale is in itself a major event.

It reflects the cultural revolution in the norms and standards of police oversight that has taken place over the past thirty years in Western countries. Quality police oversight is now thought of in terms of independence and impartiality, and not simply in terms of technical competence to gather evidence in response to a complaint. The very nature of the notion of oversight or regulation is being transformed. The practical translation seems to be following this evolution, with a certain time lag and with the limits we have underlined.

While having a POA is now a standard feature of European states, the variation among these agencies remains immense. Comparative analysis reveals considerable heterogeneity within our sample (EU countries, Switzerland, and Quebec) with respect to the degree of independence, resources, and influence tactics of POAs.

Ideally, in order to influence police behavior, agencies should dispose of a combination of strong formal independence, formal powers to act, and capability based on sufficient resources. Thus, installed by the political authorities, they would be able to act freely and effectively to monitor compliance with the ethics and rules that apply to police. Yet this capacity of influence of POAs, defined by an accumulation of three traits, is not found empirically.

Instead, our study reveals two main patterns of agencification of police oversight. On the one hand, we find the "*weakly independent / resource-rich*" agencies, mainly in Northern Europe (England and Wales, Scotland, Northern Ireland, Ireland, Denmark, Norway), but also in Switzerland and Quebec. These are specialized organizations with significant resources, but with relatively weak guarantees of formal independence. These bodies are not enshrined in national constitutions and, probably for this reason, have generally changed their name

and/or status over the course of their history. However, these POAs receive large volumes of complaints, suggesting that their resources give them a real capacity to be accessible to the public and to detect problems.

On the other hand, there are agencies that have strong formal guarantees of independence but are poorly staffed for police oversight tasks, and can be described as "*independent/poor in resources*", mainly in Southern and Eastern Europe (in Spain, Poland, Estonia, Slovenia, Croatia, Slovakia, Serbia, Malta, Greece), but also in Central Western Europe (France, Germany, the Netherlands), or in the Nordic countries (Sweden and Finland). These are often generalist agencies ("*ombudsman-like*" type), which are not only concerned with the oversight of the police, but also perform several other tasks – in the field of human rights protection, equality, control of places of detention or protection of children's rights – over all public administrations. These agencies are generally enshrined in the national constitution and have strong formal guarantees of independence. They are also characterized by strong stability over time.

On the other hand, the lower number of staff responsible for overseeing the police forces of these POA countries probably reflects the reluctance of governments to provide resources to agencies over which they have no means of control, even though they are likely to challenge their political choices in the management of the police or expose them to blame.

We have observed that the forms taken by POAs are related to different contextual elements: "*weakly independent-resource-rich*" POAs are more likely to be found in wealthy countries with a highly endowed and independent de facto – rather than de jure – justice system.

Conversely, "*independent-poor resource*" POAs are more likely to be found in relatively poor countries with a proportional parliamentary system and a highly independent de jure, rather than de facto, justice system. This suggests a distinct historical process of creation for these different types of agencies.

For example, "weakly independent-resource-rich" POAs were generally created in the old, prosperous democracies, whereas the young regimes of Southern Europe (Spain, Malta, and Greece) and Eastern Europe (Slovakia, Poland, Croatia, Serbia) quickly established independent but poorly resourced POAs during their democratization. The creation was probably decided in order to send a signal to convince of the democratic nature of the regime and/or to harmonize with the standards of inter-governmental organizations such as the EU.

With regard to the effect of agencies on police practices, the research shows that neither the POA nor other types of organizations (which compile information from the police or gendarmerie at the international level) currently have databases that provide the information necessary for a study of their effectiveness or efficiency at the European level. Thus, even for the most serious cases of violence or death as a result of action by the forces, only partial data are available, from heterogeneous sources. Data on discrimination are not collected in a regular and stable way over time in the different countries. Similarly, only some useful but limited to some aspects of trust in the police indicators are included in the European Social Survey (ESS).

The lack of comparable and standardized information on police forces, the trust they enjoy, and their practices across Europe is a considerable obstacle to assessing the effect of the actions of rights protection agencies, POAs, but also the judicial system, over the police. We must deplore this state of affairs and draw the attention of national and European authorities to the importance of being able to rigorously measure various aspects of the functioning of the police and its effects on society, as well as that of external police oversight agencies, in order to guarantee the rights of citizens and to know the efficiency of publicly funded systems.

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## NOTES DE FIN

<sup>1</sup> See in particular Gilardi, F. (2009). *Delegation in the regulatory state: independent regulatory agencies in Western Europe*. Edward Elgar Publishing.

<sup>2</sup> Policing echoes 'all explicit efforts to create visible crime-fighting agents, whether by government or non-governmental institutions' as defined by Bayley, D. H., & Shearing, C. D. (1996). The future of policing. *Law and society review*, 585-606.

<sup>3</sup> We agree with the idea that independence is a matter of structural separation of political power from the agency, and that independence exists in a situation where the agency is structurally isolated from political interests, and has the means for its survival, including resources. Autonomy is defined as the extent to which an agency can decide for itself on matters of human resource management, its strategy, the use of its financial resources (Jackson, C. (2014). Structural and behavioral independence: An analysis of the meaning of agency independence in the field. *International Journal of Administrative Sciences*, 80, 261-280).

<sup>4</sup> Although the term police violence is sometimes half-heartedly accepted, sometimes rejected by the executive branch in France, it is commonly used by academic journals and police science, but also by monitoring bodies such as Committee P in Belgium, or by the United Nations. Here, police violence refers to the physical violence (fatal or not) exercised by a police officer in the course of his work against a citizen.

<sup>5</sup> For instance, following the aggressive management of the Yellow Vests movement documented by a large number of videos, 7 out of 10 French people (70%) think that the General Inspectorate of the National Police should be reformed to make it independent of the Ministry of the Interior. The survey was conducted by 1,008 people representative of the French national population aged 18 and over. The survey was conducted online, on the YouGov France proprietary panel for HuffPost from November 30<sup>th</sup> to December 1<sup>th</sup> 2020.

<sup>6</sup> Löhner, D. (2013) The non-judicial protection of fundamental rights in comparative constitutional law. The example of the Portuguese, Spanish and French specialised ombudsman, University of Pau, p136.

<sup>7</sup> *Une V<sup>e</sup> République plus démocratique - Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la V<sup>e</sup> République, op. cit.*, p. 85.

<sup>8</sup> Lambert, J. (1986), *Police Powers and Accountability*. London: Croom Helm.

<sup>9</sup> Seneviratne M. (2004) Policing the police in the United Kingdom, *Policing and Society*, 14:4, 329-347

<sup>10</sup> See various public statements, e.g. "The Human Rights Defender has no legitimacy" [https://www.liberation.fr/checknews/2020/07/20/quelle-est-la-legitimite-du-defenseur-des-droits-dans-sa-mise-en-cause-des-forces-de-l-ordre\\_1794317/](https://www.liberation.fr/checknews/2020/07/20/quelle-est-la-legitimite-du-defenseur-des-droits-dans-sa-mise-en-cause-des-forces-de-l-ordre_1794317/)

<sup>11</sup> Maggetti, M. & Verhoest, K. (2014). Unexplored aspects of bureaucratic autonomy: state of the art and perspectives. *Revue Internationale des Sciences Administratives*, 80, 243-260.

<sup>12</sup> A.-M. Frison-Roche, *Étude dressant le bilan des AAI*, in P. Gélard, Rapport sur les AAI, Tome II, Office parlementaire d'évaluation de la législation, Ass. nat. n° 404, 15 June 2006, p. 10.

<sup>13</sup> De Angelis, J., Rosenthal, R. S., and Buchner, B. (2016). *Civilian oversight of law enforcement: Assessing the evidence*. US Dept of Justice, Office of Justice Programs, Washington.

<sup>14</sup> [IPCAN | Independant Police Complaints' Authority Network](https://IPCAN.org). <https://IPCAN.org>

<sup>15</sup> *Capability* can be defined as the condition of being able to do something, to perform a function or to exercise a power.

<sup>16</sup> Tero Erkkilä (2020) *Ombudsman as a Global Institution*. London, Springer.

<sup>17</sup> Olzak, S. (2021). Does Protest Against Police Violence Matter? Evidence from US Cities, 1990 through 2019. *American Sociological Review*, 86(6):1066-1099.

<sup>18</sup> Gutmann, J. and Voigt, S. (2020). Judicial independence in the EU: A puzzle. *European Journal of Law and Economics*, 49(1):83-100. Hayo, B., & Voigt, S. (2007). Explaining *de facto* judicial independence. *International Review of Law and Economics*, 27(3), 269-290.

<sup>19</sup> Ali, M. U. & Pirog, M. 2019. "Social Accountability and Institutional Change: The Case of Citizen Oversight of Police." *Public Administration Review*. 79(3):411-426.

<sup>20</sup> Correlation between the creation of an agency and changes in police behaviour.



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