

Civilian Supervisory System of Over Police Forces in Ireland and Poland. a Comparative — Legal Study

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Abstract. The police formations in various countries of the European Union are required to ensure the adoption of institutional patterns to increase the efficiency of detection and improvement of the management system. The subject of the conducted analysis described in this article are the adopted solutions, new forms of supervision of police formations in Ireland and in Poland and their assessment. The article details the provisions of the act adopted in 2015 and entitled Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015, in terms of functioning of the collegial supervisory authority named Policing Authority. Knowing the need to confront the Irish solutions with the Polish ones, the provisions of the draft law of 8 March 2017 were also examined amending the Act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and employees of offices supervised by the minister as well as certain other laws under which is to be established Internal Supervision Office of the Ministry of Interior and Administration. The author describes the creation and functions of Policing Authority and the Internal Supervision Office at the Ministry of Interior and Administration, the powers of the members and the specificity of action of the listed institutions. The article not only attempts to organize a synthetic knowledge of Policing Authority and the Internal Supervision Office of the Ministry of Interior and Administration, but also focuses attention on a comparison of tasks, relations between the authorities and the minister and the method of financing and control of their current activities. Author focuses mainly on identifying the similarities and differences in the legal solutions determining the existence of both institutions.

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Introduction

The obligation to meet the new demands and face threats to civilization makes, that police forces in the different countries of the European Union are forced to adopt institutional patterns to ensure an increase in efficiency of the detection work and improvement of the management system. At the same time, in view of the nature of the task placed in front of them, to subordinate to the superiors takes on particular importance. An important challenge in this process increasingly becomes also control of activities of all the specialized services, carried out by public authorities, with direct or indirect legitimacy to govern. In democratic countries mainly parliaments and governments have a right to control and only these institutions stand guard over the respect for rights and civil liberties. An important tool for determining the effectiveness of the implemented policies and activities is also the development of partner and transparent relationship between the regulatory and the supervised body as well as stand guard over the rule of law.

In Ireland the civilian control over the police, known as *the Garda Síochána hÉireann* (irl. Guardians of Peace) has a wide range of institutions. To the fullest extent this entitlement shall be entitled to the *Minister for Justice and Equality*, who as the representative of the government has the powers of management, control and coordination. Large impact on the actual functioning of the police has also the *Minister for Public Expenditure and Reform*, which indirectly determines the amount of financial resources to be granted. In order to combat any fraud and violations of the law at the work of the Irish police, *Garda Síochána Ombudsman Commission* — GSOC is protecting the correctness of their actions¹. While the overall coordination policy since 2015, is performed by the *Policing Authority*².

It should be underlined, that the examined issue was not only limited to the Irish solutions but — mainly for comparative purposes — Internal Supervision Office of the Ministry of Interior and Administration, which is to be established, was presented. In view of the fact, that the scope of the proposed by the Polish legislature changes was so far expressed only as a project, its analysis within the following considerations has subsidizing importance.

The examination of the above issues was based on a method of comparative law making it possible to compare the legal institutions belonging to the Polish and Irish system. The study also uses the legal — dogmatic method involving the presentation of conclusions resulting from the above-mentioned analysis.

Establishment and functions of the Policing Authority and the Internal Supervision Office of the Ministry of Interior and Administration

Policing Authority (irl. *tUdaras Poilneachta*) is an organizational unit, which has a legal personality and which may, with the consent of the Minister for Public Expenditure and Reform, dispose of the entrusted property, other than land and rights to them.

As already has been said Policing Authority is an advisory body of the Minister of Justice and Equality in terms of the internal security of the state and the exercise of the police tasks by Garda Síochána. Its main tasks are therefore the development of recruitment and qualification procedures as well as the principles transparency control of their implementation. It is important that the personnel policy is limited only to appoint or remove people from the highest commanding level and thus the Garda Síochána Commissioner, his deputies, chief superintendents and curators as well as senior officials in the civil service³.

¹ See: Jankowska-Prochot I, The legality of actions of the Garda Síochána officers against functioning civil disciplinary ombudsmen. The Higher Information Technology, Management and Administration School in Warsaw Scientific Booklets, 2016, No. 4 p. 112.

² See part 7 of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49). All Irish normative acts cited in this article are also available at <http://www.irishstatuebook.ie/>

³ Cited by: article 62 of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49). It is worth to emphasize here, that in most cases

Among the tasks legislator also mentions the content assessment and approving of the three-year Strategy of the Garda Síochána, *Code of Ethics for the Garda Síochána*, *Key Performance Indicators* KPIs and other related planning and programming documents⁴. In addition, in order to ensure balanced and sustainable development, the authority shall develop a set of rules or *Policing Principles*⁵. Currently these include the obligation to provide the police services in an unbiased manner, to guarantee respect for human rights and the promotion of Justice as well as the active and intentional involvement in cooperation with the local community.

The authority shall have extensive prescriptive and supervisory powers to take the authoritarian intervention in terms of compliance and adequacy of training and professional development, as well as to adhere to the principles of corporate governance and internal supervision. The authority is also organising and media covering the meetings with the Commissioner of the Garda Síochána and initiating information campaigns on the police activities in the country.

Members of the Policing Authority also coordinate activities related to the development of procedural solutions regulating cooperation the so-called *Joint Policing Committees JPCs*⁶. In addition to their individual organizational units of the Garda Síochána they also include other bodies responsible for safety and risk assessment to the public order. They include: representatives of local governments and local non-governmental communities, volunteers recruited on the expert circles, staff of different organizations, institutions, unions or associations; guard and inspection officers as well as the members and senators of the Irish parliament (irl. *Oireachtas*), coming from the same constituency⁷. Among other these Committees are responsible for: carrying out the criminal analysis diagnosing the most serious social problems occurring in a given territory, the creation of local prevention programs, active and purposeful involvement in solving selected threats and risks, prevention of social pathologies, identifying and defining challenges related to the causes of criminal behaviour as well as the participatory process of developing the local security strategy and the isolation of protected areas⁸.

it also takes form of indication of specific candidates to the designated positions. The final decision however it is up to the Minister for Justice and Equality.

⁴ More about the importance of the strategy documents and efficiency indicators refer to tUdaráis Poilíneachta Policing Authority Draft Strategy Statement 2016 — 2018, page 6 and the following. *Electronic source*: [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/DXMY-AAJD9G103582-en/\\$File/Policing_Authority_Draft_Strategy_Statement_2016-18.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/DXMY-AAJD9G103582-en/$File/Policing_Authority_Draft_Strategy_Statement_2016-18.pdf), accessed: 25.06.2017.

⁵ The term was introduced by the Prime Minister of the United Kingdom, Sir Robert Peel, who developed the so-called 9 police rules. Currently they were regulated in the first part of the fourth section of the cited Act.

⁶ *Electronic source*: http://www.justice.ie/en/JELR/Pages/Joint_Policing_Committees, accessed: 25.06.2017.

⁷ See more: 35th and 36th amendment to the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49).

⁸ About the formation of joint committees and Police action to combat drug-related crime over the years, interestingly writes J. Connolly, Guidelines on Joint Policing Committees. Drugnet Ireland, Issue 19, Autumn 2006. See also: Harrington D, Partners against Crime. A Review of Partnerships in Joint Policing Committees. Dublin, 2011, pp. 3–13.

A special position and the importance of Policing Authority is also stressed by the solution, according to which the authority shall ensure the compliance with the rule of law among police officers, while monitoring the number of conducted by officers of the Garda Síochána Ombudsman Commission, disciplinary proceedings and conducts evaluation of the final results. Then in the form of synthetic report, the Authority shall transmit these data to the Minister of Justice and Equality. The members of the body shall implement the tasks related to the improvement of the image and desire to recover public trust as a result of many scandals⁹.

In addition to the coordination and control powers Policing Authority also supervises directly the implementation of statutory tasks related to the initialization and organising victimisation surveys as well as planning and implementation of all activities aimed at the prevention of crimes, offences or the occurrence of criminal phenomena. This range includes also analysis the selected crime trends, the effectiveness of the law and taking, outsourcing and support for other research projects organised also in the form of a public consultation¹⁰.

The role of the Authority focuses on the current advising the Minister for Justice and Equality, also in matters of good police practices and ways of spending public finances. It consists of the annual collection and presentation of information on the security state in the country and then drawing up recommendations for issuing financial means for the functioning of the Garda Síochána. The members of this institution are also required to conduct information and dissemination actions in the area of the Irish police bodies, promote non-discrimination and equality of opportunity, including all the inhabitants of the island, a limitation on the number of complaints addressed by the citizens about actions taken by the officers and officials. In view of the fact, that the indicated directory is not closed, the president of the authority cooperates on an ongoing basis with the Minister of Justice and Equality, informing him about any procedures regarding political responsibility of the government before the Parliament¹¹.

In Poland at the national level, the supervision over the Police is carried out by the Minister of Interior and Administration. While the detailed scope of tasks including: formulation of the organizational principles of all police units in the country and the methods and forms of tasks conducted by the officers are determined

⁹ Its loss was linked with the disclosure by the Irish press that many officers of the Garda Síochána were corrupt. Allegation levelled at them included, among others, cooperation with criminal organizations involved in the production, trafficking and sale of drugs, detainees' abuse, racism, lack of discipline, and overstepping the powers. See: Irish Police Chief's resignation Vindicates Sacked Investigative Journalists. *The Guardian*, 25.03.2014. *Electronic source*: <https://www.theguardian.com/media/greenslade/2014/mar/25/irish-independent-ireland>, accessed: 4.04.2017; O' Higgins Commission of Investigation. *Electronic source*: http://www.justice.ie/en/JELR/Pages/the_ohiggins_commission_of_investigation, accessed: 4.04.2017; O'Toole T, Garda Corrupted by Sloppiness, Indiscipline and Vindictiveness. *The Irish Times*, 31.05.2016. *Electronic source*: <http://www.irishtimes.com/opinion/fintan-o-toole-garda-corr-upted-by-sloppiness-indiscipline-and-vindictiveness-1.2666240>, accessed: 25.06.2017.

¹⁰ See: An Garda Síochána, Policing Plan 2017, pp. 8–11. *Electronic source*: [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/DCMY-AHYGHX12221226-en/\\$File/Policing_Plan_2017.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/DCMY-AHYGHX12221226-en/$File/Policing_Plan_2017.pdf), accessed: 26.06. 2017.

¹¹ Tasks of the Policing Authority cited after: Article 62 of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statute Book No. 49).

by the Police Commander in Chief.¹² The Metropolitan Police Commander as well as all Voivodship, Municipal and Poviast Police Commanders are subordinated to the Police Commander in Chief. It also has a right to fill post, to reward, to prosecute, to promote and to release the officers and civil employees. These powers are in turn delegated to the employees in accordance with the chain of command.

In accordance with the present legislative proposal contained in the draft law of 8 March 2017 *amending the Act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and employees of offices supervised by the minister and certain other laws* a specific form of supervision over the Police is to be performed by the specially established Internal Supervision Office of the Ministry of Interior and Administration.¹³ However, unlike the Irish solutions, the Polish legislature shall seek, that the authority will take its supervisory activity not only over the Police but also over the Border Guards, Government Protection Bureau and the State Fire Department.

By analysing the list of activities to be performed by the employees of the Polish authority, one can distinguish four categories. The first includes a broadly understood supervision over the implementation of investigations, operational and exploratory activities and disciplinary proceedings as well as the disclosure of behaviour which infringe the rules of professional ethics. The second includes recognition, prevention and detection of criminal acts prosecuted by public indictment and tax offences committed by the employees and officers of all listed services. The third includes the verification of candidates, in particular on the position of commanders, heads, directors and their deputies in the supervised entities. In this way, the officers seconded to carry out the tasks outside the country, as well as those applying to higher positions and ranks also have to be sampled. The verification shall also include the regularity inspection of the control proceedings and checks. The fourth category shall include the enforcement of the operating standards of the services in terms of the law, freedom of persons and citizens as well as the disclosure of possible irregularities¹⁴.

Entitlements of the members of the Policing Authority and the Internal Supervision Office of the Ministry of Interior and Administration

Regarding the structure, the Policing Authority involves the chairman and the so-called eight regular members. According to the act, the position of the chairman is entrusted to a person with especially appreciated experience in the field

¹² See more: art. 7 of the Act of 6.04.1990 on Police (i.e. Journal of Laws 1990, No 30, item 179).

¹³ See: http://www.justice.ie/en/JELR/Pages/Joint_Policing_Committees, accessed: 26.06.2017.

¹⁴ See: art. 1 and art. 11 a 3 of the draft law of the 8.03.2017 amending the act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws. *Electronic source:* <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 25.06.2017.

of security¹⁵. The chairman directs the work of the authority, which is also responsible for the implementation of assumptions, decisions and guidelines of the Irish government. In accordance with the law, electoral quotas shall be applied, when appointing members of the Policing Authority. In other words, four members have to be female and four male. All of them are selected through an open competition procedure, the purpose of which is to select the best qualified candidates. Written or oral references, endorsements and recommendations issued by the representatives of the highest authorities of the state are significantly important. At the end of the qualification procedure, selected persons are appointed members of the Policing Authority. Appointment is however preceded by the assessment of the candidate for good repute and good character¹⁶. The first term of office of each of them is three years and there is only one re-election, this time for a maximum period of 4 years¹⁷.

It is worth emphasizing, that the cited act regulates not only the functioning of the body but also the way of the selection of people included as well as the requirements, which should be fulfilled by the body's possible members. These include among others: knowledge and experience in the field of police issues, human rights and anti-discrimination practices, activities of the public sector, management skills in corporate governance, performance in the communities or voluntary bodies related to the provision of public security or promotion of knowledge in other issues relevant to the police services¹⁸. The lack of these recommendations can be an important obstacle for the applicant, unless as a result of the expanded screening procedure, carried out by the services, proves that the applicant's qualifications, experience and professional knowledge are so unique, that it is possible to opt out the implementation of this condition.

The removal from office before time of a member of the Policing Authority in case of his death, resignation from office, inability to maintain the office or disqualification and dismissal¹⁹. What is interesting and significant shortening the period of service in case of the expulsion or disqualification does not mean lack

¹⁵ Although the conceptual scope of this term is defined in an extremely wide way, there have been indicated spheres, to which in particular the policy makers nominating a candidate should pay attention. They include inter alia: knowledge of sanitary, fire and environmental safety, legal knowledge with particular regard to the police regulations, ability to work under time pressure or ability to take rapid decisions ect. *See more:* tUdaras Poilneachta Policing Authority. Candidates Information Booklet, p. 5. *Electronic source:* [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/LMJE-AKAMGJ163619-en/\\$File/Info%20Booklet%20Chief%20Super%202017%20Final.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/LMJE-AKAMGJ163619-en/$File/Info%20Booklet%20Chief%20Super%202017%20Final.pdf), accessed: 24.06.2017.

¹⁶ *See more:* tUdaras Poilneachta Policing Authority. Candidates Information Booklet, p. 6. *Electronic source:* [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/LMJE-AKAMGJ163619-en/\\$File/Info%20Booklet%20Chief%20Super%202017%20Final.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/LMJE-AKAMGJ163619-en/$File/Info%20Booklet%20Chief%20Super%202017%20Final.pdf), accessed: 24.06.2017.

¹⁷ *See:* art. 62 E (1) and (2) Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015 r. (Irish Statue Book No. 49).

¹⁸ *See more:* art. 62 D of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49).

¹⁹ In accordance with the art. 62 E7 of the aforementioned law, a resignation from the office is made in the form of a written notice to the Minister of Justice and Equality. The termination of the employment relationship shall take place either on the date of the submission

of ability to stand as a candidate in the next recruitment proceedings. A job vacancy does not constitute a problem from the point of view of the further functioning of the authority.

In accordance with the act, the position in Policing Authority shall be incompatible with the mandate of the deputy or senator of the Irish Parliament (irl. *Oireachtas*); the membership of the European Parliament, the local government and the employment in the Garda Síochána or the Garda Síochána Ombudsman Commission. The effect of the infringement of the prohibition of employment on the above-mentioned positions is instant disqualification and the expiry of the mandate of the body member²⁰.

People, who declared bankrupt and their property was under sequestration or are in the course of concluding the agreement on the debt with creditors may also not be appointed as members of the body. Those who have been found guilty of the intentional offence against property, including fraud, corruption or any other offence committed with the motivation deserving particular condemnation are also subject of this ban. The people who are the subjects of an investigation or prosecution according to art. 819 of the Companies Act may also not hold the mandate²¹.

Member of the authority may also be dismissed before the expiration of the term by way of a resolution passed by both chambers of the parliament when in the appropriate manner fails to perform his duties or due to health problems became incapacitated for performing them. A reason for dismissal may also be the so-called inappropriate behaviour. However, since the Irish legislator in no way clarifies what this lack of jurisdiction is, it can be assumed that this is an example of a provision which poses only an appearances of the rules which can be in turn the basis for the release of a discretionary decision. Further doubts, opening the way for a multifaceted interpretation rise from a requirement of the person to resign from the office in the event of a "significant conflict of interest". The source of the difficulties in the interpretation of this concept may not only be the meaning of this "significance" but also personal beliefs of the principals. Notwithstanding the foregoing, the decision of dismissal from the occupied position must be given in written form, in order to be valid. This appeal is tantamount to the termination of employment; however the Irish government should decide whether it will cause the termination of service immediately or within the specified period.

Dismissal from the position requires not only to give reasons but also to inform the employee of his right to appeal. The term is in principle 30 working days from the date of its sending however in exceptional situations the term may be extended²². The person, who therefore disagrees with the initial decision of the government, has

of the report or on the date indicated in the report but in such case, it is necessary to receive a separate consent given by the representatives of the government.

²⁰ Art.62 F (1) of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49).

²¹ The legislator indicates in this case primarily directors of companies to which were issued a final decision regarding the discontinuance of proceedings due to its ineffectiveness or decision on the prohibition of economic activity. *See more:* Companies Act of 2014 (Irish Statue Book No 38).

²² Art. 62 G 4 (b) of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act of 2015. (Irish Statue Book No. 49).

the right to write a letter in order to question the decision. Failure to appeal against the decision within a prescribed period shall be the same as the acceptance of its content. A necessary consequence becomes a request made by the members of the government to both chambers of the parliament to issue an appropriate resolution.

Staffing of the Polish Internal Supervision Office of the Ministry of Interior and Administration should consist of 42 officers and 8 employees. The leading positions will be held by a Director and his deputies and the office will become “an organizational unit at the authority supporting the minister responsible for internal affairs”²³ The Director also has to specify the remuneration and its components of the officers and employees.

Position of a director or deputy shall be reserved exclusively for the Polish citizens, with a higher education, enjoying their full public rights, of good character, whose qualifications guarantee the proper fulfilment of the tasks. One therefore searches in vain for specific areas of knowledge required in these positions.

Excluded is a conviction for an intentional crime or a tax offence, previous service, work or cooperation with the authorities dealing with the state security and the failure of the dignity of the judge office as a result of the breach of judicial independence²⁴. The candidate must also meet the requirements for access to classified information marked with the top secret clause.

The recalling of the director or his deputies from the occupied positions occurs in the event of their resignation from the post, the renunciation of Polish citizenship or acquisition of the nationality of another state. An obstacle in the fulfilment of their duties shall also be the conviction by final judgement for intentional common crimes prosecuted by public indictment or for fiscal offences. As with the Irish law, the discrepancies may give rise to a right of appeal as a result of loss of the capability of the necessary abilities for the post as well as to perform the tasks or activities remaining in the collision with the conducted duties or undermining the trust to their independence or impartiality.

In alia verba, both mentioned by the Irish legislator, “inappropriate behaviour” or “conflict of interest”, and far from being perfect formulation of the Polish legislator about “the loss of the necessary predisposition” or “collision with the duties” intensifies the state of legal uncertainty and makes reference to the dismissal of the authority members conditional on the approval of the decision maker in this respect — the minister performing the direct supervision. The reason for the dismissal may also be but doesn’t have to be a “failure to perform duties due to an illness lasting continuously for more than three months”²⁵.

²³ See: art. 11 a as well as the assessment of the impact of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws. *Electronic source*: <https://bip.mswia.gov.pl/bip/projekt-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 24.06.2017.

²⁴ For more about state security authorities see: article 5 of the act of 19.12.1998 on the Institute of National Remembrance — Commission for the Prosecution of Offences against the Polish Nation (consolidated text in Dz.U of 2016, item 1575).

²⁵ Art. 11 d of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and

In view of the specific nature of the tasks, the staff of the Internal Supervision Office is to be divided into inspectors and experts of the Office. The first category shall include Police officers and Border Guards, the second officers of the Government Protection Bureau and the fire fighters of the State Fire Service. At the same time, by way of conclusion, it is worth noting that each of the officers is to be equipped with a special insert to the official ID card, which in addition to personal data has also to include the letter of the need for providing any help to the bearer of this document while performing official tasks²⁶. The salary and any awards (discretionary and annual) are to be paid to all officers seconded to the Office by the body supporting the minister responsible for internal affairs. While the remaining claims and benefits are to be paid by the home unit²⁷.

The powers of the Director of the Office shall be very broad and to a large extent, they shall be related to the rights of collection of data concerning the results of the operational and reconnaissance activities conducted against the supervised subjects or "phenomena and events" occurring in the supervised services²⁸. Moreover the director shall also be obliged to submit every year, till March the 31st, to the minister competent of internal affairs, a detailed information regarding the activities of the Office.

However, when implementing tasks, the inspectors shall have the right to check ID cards of people in order to establish their identity; observe and record the course of events; request the necessary assistance from the state administration authorities, local government units and entrepreneurs carrying out activities within the scope of public utility. Among other powers, the legislator also mentions the possibility of requesting the indispensable assistance from other entrepreneurs and social organizations, and in case of emergency, from any person. The inspectors shall also have permission to freely enter and move on the supervised facilities without the obligation to prior obtain a pass. They shall also have permission to access and see a variety of documents while having the possibility to collect them against a signed receipt. They shall also take the indispensable copies, excerpts, statements and calculations as well as process personal data and request written or oral explanations²⁹.

employees of the offices supervised by the minister and certain other laws. *Electronic source:* <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 24.06.2017.

²⁶ Art. 11 k 2 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws. *Electronic source:* <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 25.06.2017.

²⁷ Art. 11 kg 12 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws,

²⁸ *Cit. after:* art. 11 g 12 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws.

²⁹ *See:* art. 111.1 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws.

At the same time, it must be stated, that while creating the law in such way, the legislator places a distinct emphasis on disclosure, recognition and detection of crimes committed by officers. In addition to the powers to carry out inter alia: controlled purchase, phone tapping or examination of correspondence, it is also permissible to carry out expertises related to the implementation of statutory tasks, access to operational materials or asset declarations of the officers³⁰.

At the same time the provisions of the proposed act shall bring to the inspectors prohibition to take additional employment with the exception of running an agricultural holding. Among the obligations imposed on them as restrictions can also be mentioned the obligation to inform the Director of the Office about taking up employment or other gainful activities by the spouse or a person cohabiting with them "in entities providing investigative services or the protection of people and property", or the requirement to disclose the ownership of stocks and shares of the above mentioned entities³¹. Legally binding is also the prohibition of political parties' affiliation and the obligation to obtain a written consent of the Director of the Office on the membership in national, foreign or international organizations and associations³².

Mode of action of the Policing Authority and the Internal Supervision Office

Due to its collegial nature, the basic forms of proceeding of the authority are sessions. The right to participate in the sessions belongs, apart from the Commissioner of Garda Síochána, to the representatives of the local or national media, who are authorised to record and transmit the course of sessions in audio-visual version or by means of computer telecommunication. According to the regulations, the sessions are organized not less than four times a year and if necessary be convened at any time. The president has the power to organise, specify the subject matter and lead the session. It also sets the date, time and place of the first session. In case of his absence, the ordinary members shall elect by vote a person from among themselves to perform this function. Voting shall be open and take place by show of hands. A quorum, which in most cases consists of 5 people, is necessary for the result of a vote to be valid. A precondition for admission of specific decisions is their acceptance by a simple majority of the members. In a situation when the votes are

³⁰ Cit. after: art. 11.2 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office that supports the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws. *Electronic source:* <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 25.06.2017.

³¹ Cit. after: art. 11 zc of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws.

³² art. 11 zd of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws.

equally divided, the vote of the president is for a binding importance. The legislator also allows the possibility to organize the agenda using means of mass communication so that all members of the Policing Authority may be heard at the same time.

The President shall also be responsible for obtaining from the Commissioner of the Garda Síochána or other public authorities information, documents and other materials concerning functioning of various police units. He also designates a candidate for the post of The *Chief Executive*, authorized to supervise the respective cases of the police. In this regard, it is important, that the personal dimension of this decision is left to the free approval of the Chief Executive and at least formally not shall be assessed by the Minister of Justice and Equality.

Materials and documents created during the collegial sessions of the Policing Authority shall be published, if the President deems it necessary. He also has a lot of flexibility in the creation of various types of advisory commissions, operating in the fields implemented by the authority. The applicable statutory provisions do not specify neither the nature of these bodies, nor the scope of the matters which are in the sphere of their interest. Consequently, it is possible to create committees of substantive nature and advisory bodies but of a more political character. However the discretion of this decision is limited by the need to approve the cost of their functioning by the Minister for Public Expenditure and Reform as well as by the preservation of gender balance. It needs also to be emphasized that people employed in these commissions, after the termination of the employment relationship are required to maintain the confidentiality of the information and professional secrecy and in particular not to disclose certain information in any form. They include all of these data, of which the unauthorised disclosure would or could lead to the commission of offence, a breach of security of another person including officer or frustration of the prevention and detection of crime. The category of classified information shall also include the identity of the protected person in connection with criminal proceedings, who is a police informant or people whose details have so far not been disclosed to the public. The legislator also protects witnesses or victims of crime, information of which the publication or other kind of dissemination could discourage another person from reporting a crime or give testimonies and the regime of the protection of the right to privacy and personal data in terms of the prohibition of publishing personal information³³.

On the other hand the dissemination of information on the public persons is permissible unless it is connected with the professional positions held by them. The legislator includes to this circle: Commissioner of the Garda Síochána, the Minister of Justice and Equality, *the Director of Public Prosecutions, the Chief State Solicitor* acting as a government advisor on legal matters, *the Head of the Criminal Assets Bureau, Comptroller and Auditor General*, members of the *Garda Ombudsman Síochána Commission* — GSOC, *Revenue Commissioners* responsible for the implementation of the customs, excise and tax policy and members of the both chambers of the parliament.

The legislator restricted regulations devoted to the Policing Authority mainly to indicate that it is an advisory body to the Minister for Freedom and Equality as well as supervisory body to activities of the Commissioner and the individual

³³ See more: article 2 (1) *Freedom of Information Act* of 2014, Irish Statute Book No 30).

units of Garda Síochána. However, he does not have any public authority powers and the expression of his opinion whether in writing or orally is not in any way binding for the minister or the government. The Minister has also exclusive competence to formulate both the way of functioning of the authority, as well as the appointment and dismissal of its members or the President. Nevertheless the authority may represent an important Think tank and a forum for conducting in-depth discussions and analysis concerning issues of national security. It also requires to be emphasized that an important feature of the regarded authority is a separation of the so-called strategic and operational functions. As a consequence, the supervision and coordination over administrative, economic and financial matters carries out at the Policing Authority, the already mentioned Chief Executive, who simultaneously is not a member of the body. He manages the investment activity and reports directly to the Minister of Justice and Equality as well as the Minister for Public Expenditure and Reform. In addition his other tasks include the implementation of policies and decisions of the authority, specifying in agreement with the ministers, number of the posts on which are recruited staff members who are not members of the Policing Authority and executes the organizational activities to optimize the expenditure related to the current functioning. He can also participate in organized meetings and deliberations as well as speak out. The legislator stresses that the Chief Executive should have appropriate professional qualifications and experience and the process of his selection takes effect through an open competition-based procedure.

Shaping a new social order in Poland after 1989, related to the rise of a new normative order, resulted in the creation of the control and supervisory structures in both the Ministry of Interior and Administration, which includes the Department of Inspection and Surveillance or Control Department of the Uniformed Services, and each of the uniformed services. To these structures belong first of all the Internal Affairs Office of the Police Headquarters, the Internal Affairs Office of the Border Guard as well as the Control, Complaints and Petitions Office of the State Fire Service Headquarters. The analysed draft law shows that the basic form of verification of the information obtained by the Internal Supervision Office will be conducting of operational activity. Therefore the powers and tasks of the members of the Internal Supervision Office of the Ministry of Interior and Administration shall include the permission of officers to use the validation documents, obtain and record content of the conversations, correspondence, images, sounds, storage devices or access and control of consignments³⁴.

These tasks apart from the inspectors of the Office shall also be implemented by the designated, on the request of the Chief of the Office, officers of the State Fire Service and the Government Protection Bureau. On this basis, also all managers of the organizational units of the supervised ministries shall also be required to a broader cooperation with the Internal Supervision Office in the implementation of its tasks.

³⁴ See: art. 11 n 5 and 6 of the draft law of the 08.03.2017 amending the act on certain rights of employees of the offices supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws. *Electronic source:* <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24563,Projekt-ustawy-o-zmianie-ustawy-o-niektorych-uprawnieniach-pracownikow-urzedu-ob.html>, accessed: 24.06.2017.

Summary

In terms of the presented legal regulations several general comments can indeed be made. First, the purpose of establishing both of the authorities described in this article, was to extend the scope and improve the ministerial control over the functioning of its subordinated uniformed services. Secondly in both cases the competent minister has extensive powers to the Police and the powers of the Commissioner of the Garda Síochána or the Commander-in-Chief of the Police is a derivative of the powers of a superior body. Consequently, in one and the other institution, the superior authority, entitled to issue binding commands is the Minister. His powers also include the right to establish and liquidate each of the organizational units. However the Irish legislator Irish imposes a duty to obtain a countersignature of the Minister for Public Expenditure.

The relative similarity also affects the way of financing, because in either case measures intended for current activity originate only from the state budget. However the difference is that the control over the transparency and efficiency of the management of their flow in Irish police has specially established for this purpose and acting a little bit as an actuary, the Chief Executive, while in the Internal Supervision Office of the Ministry of Interior and Administration, this position was not created.

However, first and foremost the scope of the tasks of the authorities shall be the most serious differences. In addition to the supervisory function and by virtue of its expert composition Policing Authority acts as opinion-forming body in the field of the state security. Its main task is to ensure a greater effectiveness of the Irish police as well as to verify the economic aspects of spending public funds. Among the tasks, the legislator also mentions shaping of all matters related to the proper setting of goals and standards of the police services, the development of the public partnership and the development of strategic management as a result of the political and administrative leadership.

After discarding specific phraseology contained in the explanatory memorandum to the Polish draft law, it is clear that the Internal Supervision Office of the Ministry of Interior and Administration has essentially a verification role. Whereas support of activities related to the enforcement of standards of the activities are fairly marginal. It is indicated *inter alia* in a statement of the relevant activity of the authority, the role of the so-called whistle-blowers, which means "people interested in eliminating negative phenomena in the activities of the public services (...) searching for a chance to investigate the reported cases by an independent body"³⁵.

The organizational structure in both cases is centralized. The Polish the supervisory authority is however significantly growing, which is not without impact of the fact that except the Police, it also supervises the activities of the Government Protection Bureau, the State Fire Service and the Border Guards Some disclaimers might also come into raise as to the fact that the Prison Service, a subsidiary service to the Ministry of Justice, was not included to the identical supervision although violation of human rights and freedom may occur within its structures. However, this situation may change,

³⁵ *Quoted after:* Justification of the draft law of the 08.03.2017 amending the act on certain rights of employees of the office supporting the Ministry of Interior and Administration as well as officers and employees of the offices supervised by the minister and certain other laws.

because the legislator intends to carry out an assessment of the functioning of the newly established unit after two years of activity and its outcome shall be a starting point for potential work on dissemination of this kind of solution over other services.

In addition, the Polish and Irish legislation differently regulates forms of employment. According to the Irish law, members of the Policing Authority shall sign a contract for the duration of one or two terms of office. This contract shall be automatically terminated at the end of their mandate. The Polish regulations do not limit the duration of employment and the officers of the Internal Supervision Office at the Ministry of Interior and Administration shall serve on the basis of secondment from their home units. However the civilian employees shall be employed on the basis of a contract of employment.

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Streszczenie. Od formacji policyjnych w poszczególnych krajach Unii Europejskiej wymaga się przyjmowania wzorców instytucjonalnych zapewniających wzrost efektywności pracy wykrywczej oraz doskonalenia systemu zarządzania. Przedmiotem przeprowadzonej analizy opisanej w niniejszym artykule są przyjęte rozwiązania, nowe formy nadzorowania formacji policyjnych w Irlandii i w Polsce oraz ich ocena. Szczegółowo omówiono przepisy uchwalonej w 2015 r. ustawy zatytułowanej Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015, w zakresie funkcjonowania kolegialnego organu nadzorczego o nazwie Policing Authority. Uznając przy tym potrzebę konfrontacji rozwiązań irlandzkich z polskimi, przeanalizowano także przepisy projektu ustawy z 8 marca 2017 r. O zmianie ustawy o niektórych uprawnieniach pracowników urzędu obsługującego MSWiA oraz funkcjonariuszy i pracowników urzędów nadzorowanych przez tego ministra oraz niektórych innych ustaw, na mocy którego ma zostać powołane Biuro Nadzoru Wewnętrznego MSWiA. Autorka opisuje utworzenie i funkcje Policing Authority oraz Biura Nadzoru Wewnętrznego MSWiA, uprawnienia członków oraz specyfikę działania wymienionych instytucji. W artykule została podjęta nie tylko próba syntetycznego uporządkowania wiedzy na temat Policing Authority i Biura Nadzoru Wewnętrznego MSWiA, ale także szczególną uwagę skupiono na porównaniu zakresu zadań, relacji między organami a ministrem, sposobie finansowania oraz kontroli ich bieżącej działalności. Autorka koncentruje się głównie na określeniu podobieństw i różnic w zakresie rozstrzygnięć prawnych warunkujących istnienie obu instytucji.

Резюме. От полицейских формирований отдельных стран Европейского союза требуется принять институциональные модели, обеспечивающие повышение эффективности работы по раскрываемости преступлений и совершенствованию системы управления. Предметом анализа, результаты которого представлены в данной статье, являются принятые решения, новые формы надзора за полицейскими силами в Ирландии и Польше, а также их оценка. В работе подробно обсуждаются положения Закона 2015 г. «Гарда Шихана (Policing Authority and Miscellaneous Provisions) Act 2015» о деятельности коллегиального надзорного органа Policing Authority. В связи с необходимостью сравнения ирландских и польских правоположений, был также проанализирован проект Закона от 8 марта 2017 г. о внесении изменений в «Закон о некоторых полномочиях сотрудников Министерства внутренних дел и администрации, а также сотрудниках полиции и управлений, подчиненных данному министру, и некоторых других законах», на основании которого должно быть образовано Бюро собственной безопасности МВДиА. Автор описывает образование и задачи Policing Authority и Бюро собственной безопасности МВДиА, полномочия сотрудников и специфику деятельности данных учреждений. В статье автор пытается не только систематизировать знания о Policing Authority и Бюро собственной безопасности МВДиА, а основное внимание уделяет сопоставлению их задач, отношений между органами и министром, методам финансирования и контроля за их текущей деятельностью. Автор в основном сосредоточивается на том, чтобы определить сходства и различия в сфере правоположений, являющихся основой деятельности обоих учреждений.

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