

The Report of the State Comptroller of Israel, 56A
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Chapter 2

**The systemic handling of complaints about police violence
and inappropriate conduct**

Summary

According to the Police Ordinance (new version), 1971 (hereafter – Police Ordinance), the role of the police is to prevent and detect crime, to apprehend criminals and bring them to justice, to securely guard prisoners and to maintain public order and the security of life and property. To enable the police to fulfill its role, police officers are given authorities that can potentially harm human rights, and the use of these authorities is justified only if done lawfully and not excessively. The carrying out of police duties, including the use of the authorities provided for this role, entails frequent contact with the public and complaints from the public about police conduct are not uncommon.

Up until the beginning of the 1990s, the police was assigned to investigate all of the complaints against police officers. In 1992, a department for investigating police officers (hereafter – Mahash [the Hebrew acronym]) was established in the Justice Ministry and assigned to investigate police officers suspected of committing offenses. The establishment of Mahash was intended, among other things, to respond to public criticism claiming that many investigations were not fully pursued due to the fact that the police was investigating itself. The investigation of complaints on the disciplinary level for inappropriate police conduct and flawed performance of its duties remained in the hands of the police, with the exception of disciplinary infractions involving the illegal use of force; the investigation of these violations was also assigned to Mahash.

Public committees that studied the illegal use of force and inappropriate conduct by the police noted the distinction between the criminal or disciplinary aspects of complaints against police officers concerning the illegal use of force or inappropriate conduct and the operational or systemic aspects that arise from each of the individual complaints and from the complaints as a whole. The committees noted that the effort to derive lessons and the attitude toward complaints requiring attention by the command echelon have been insufficient or totally lacking. Therefore, the committees recommended increasing the involvement of the police command in handling the phenomenon of police violence. Despite the fact that the committee recommendations were accepted by the police command and by the relevant government ministers, nothing has been done to implement them.

Due to investigation constraints and in light of the high level of proof required in criminal and disciplinary proceedings, Mahash does not investigate many of the complaints it receives regarding the use of force. However, Mahash did not issue a warning to the police about the high proportion of complaints it fails to handle, and did not refer these complaints to the police for inquiry and handling

on the command-administrative level. This is liable to foster a lack of awareness on the systemic level about the scope of the phenomenon and its characteristics, and could be interpreted by police officers as an ambiguous message legitimizing improper conduct and by the public as a lenient attitude regarding the seriousness of complaints about the illegal use of force, as the public committees on this issue have noted.

Most of the cases that Mahash investigated during the years 2002-2003 were closed for lack of sufficient evidence and only a few of them resulted in the policeman facing criminal or disciplinary proceedings. Suspicion about the use of illegal force was not dispelled in all of the cases that were closed, but nonetheless the police does not examine whether it is appropriate in these cases to take any measures on the command or administrative levels. This hinders the ability of the police to develop tools for systemic treatment of the phenomenon of police violence, and sends a message of clemency regarding the phenomenon of police violence.

The State Comptroller's Office examined a sample of complaints about the illegal use of force received by Mahash in 2002 and found that in nearly half of the investigated cases pertaining to the illegal use of force in which the identity of the suspected police officers was known, Mahash failed to report to the police about the opening of the investigation, as required by order of the national police headquarters. As a result, and in violation of police regulations, police officers were promoted in rank during the period in which Mahash was investigating complaints against them.

Most of the complaints about the inappropriate conduct of a policeman or the faulty performance of his duty, which were supposed to be clarified by the police in the framework of a inquiry file ("green file"), were examined in a different process of inquiry (in police parlance, a "brown file"), which is not anchored in procedure. The second inquiry process is not recorded in the personal file of the policeman against whom the complaint was filed and is thus more lenient compared to the inquiry mandated by police procedure. Practically speaking, this constitutes a circumvention of procedure. No difference was detected in the character or severity of the complaints in the two types of cases.

The complaints that the police have been authorized to address have not been handled systematically in accordance with procedure: There is no rigorous attempt to record a statement from the complainant, to collect testimony from witnesses, to prepare summaries of inquiries or to confirm the findings and measures required vis-à-vis the complaint by the authorized echelon.



1. Public confidence in the state's authorities and its public servants, including police officers, is conditional on their decent and efficient functioning and on their acting in accordance with the law and limiting as much as possible the infringement of human rights to cases where there is authority to do so and relevant necessity.

According to the Police Ordinance [new version], 1971 (hereafter – Police Ordinance), the role of the police is to prevent and detect crime, to apprehend criminals and bring them to justice, to securely guard prisoners and to maintain public order and the security of life and property. To enable the police to fulfill its role, each policeman is lawfully endowed with authorities, including the authority to exercise force, which can potentially harm protected human rights. According to constitutional principles anchored in the Basic Law: Human Dignity and Liberty,

the use of these authorities is only justified if done in accordance with the authority granted by law, for an appropriate purpose and in a degree that does not exceed what is required.

According to police regulations,¹ “The use of force will not be allowed unless the law authorizes such use, when the policeman’s job requires this and it is essential and justified in the circumstances of the matter. Police personnel are authorized to exercise force only in instances stipulated in police ordinances, and only the extent of force essential for achieving the purpose for which the use of force was required.” The orders issued by the national headquarters and permanent orders of the police stipulate the circumstances in which it is permissible to exercise force: to conduct an arrest when there is resistance or an attempt to escape arrest;² to carry out an external body search of a suspect who does not allow this to be conducted;³ during active resistance to legal arrest or to prevent an attempt to escape legal arrest, to disperse riotous crowds, to defend against attack and prevent crime entailing violence.⁴ The permanent orders also state that even in the stipulated circumstances, only the degree of force required to achieve the goal for which the use of force is exercised should be employed. (The use of force that is not in accordance with one of these will be referred to in this report as “illegal use of force”).

According to the Police Ordinance, “The use of force on a person in the framework of fulfilling one’s job contrary to the orders of Israel Police or any other directive legally issued” constitutes a disciplinary infraction. The use of illegal force is even liable to amount to a criminal violation of assault.

Exercising the authorities of the police – questioning suspects and witnesses, detaining or arresting suspects and maintaining order in public places, including on the roads – entails frequent contact with the public and requires a constant effort to find the proper balance between, on the one hand, the need to protect the interests of society and enable the police to fight crime and on the other, the need to protect the interests of the individual and prevent violation of his rights.

Against the background of the police’s use of its authority, complaints are lodged against police officers for illegal use of force, inappropriate conduct or unsuitable job performance. The conduct of police officers and the method complaints against their job performance are investigated can affect public confidence in the police and the extent of its cooperation with the police, and consequently can have an impact on the functioning of the police and the effectiveness of its activity.

To inculcate constitutional principles into the work of the police and to prevent inappropriate conduct by police officers and illegal use of force, it is especially important to thoroughly and exhaustively address complaints against police officers. This should include investigation of the complaint and full application of the law – on the criminal or disciplinary level – for those found guilty, implementation of measures by the command echelon such as training or commander’s reprimand, administrative steps such as job transfer and even dismissal when necessary, as well

1 Ordinance 4.03.02 – “The Use of Force.”

2 Order from national headquarters, 14.01.43 – “Detention, arrest and release.”

3 Order from national headquarters, 14.05.02 – “External search on the body of a suspect.”

4 Permanent order 06.02.15 – “Unnecessary use of force”

as deducing systemic lessons from the investigation of complaints, including those which do not result in indictment.

2. Changes have occurred over the years in the handling of complaints against police officers for illegal use of force, inappropriate conduct and irregularities in performing their duties: Until the early 1970s, police units handled these complaints. In 1973, a unit for handling public complaints was formed at the national police headquarters; this unit coordinated the handling of complaints, which were investigated by public complaint officers at the regional or district police level. It should be noted that in 1978, following the recommendation of a public committee studying crime in Israel (the Shimron Committee), a department of internal investigations was established as part of the police investigations division. The department was assigned to investigate police officers suspected of criminal violations entailing moral turpitude, but it did not handle the investigation of complaints against police officers regarding the illegal use of force. In 1982, a national squad was formed in the bureau responsible for complaints from the public. The squad was assigned to handle complaints about the illegal use of force against prisoners in custody or during interrogation; upon completion of the investigation of the complaint, the file together with the recommendations were sent to the State Prosecutor's Office, which decided whether the policeman should face criminal or disciplinary proceedings, or whether the case should be closed.

In the early 1990s, in the wake of public criticism about the impropriety of the police investigating itself, the authority for investigating complaints against police officers was transferred from the police to the Justice Ministry.

In 1992, the Police Ordinance was amended and a chapter was added addressing the investigation of violations by police officers and Shin Bet [General Security Services] employees. The amendment stipulated that the investigation of criminal violations that police officers are suspected of committing⁵ would not be conducted by the police, but rather by the Police Investigation Unit (hereafter: Mahash) in the Justice Department. It was argued during discussions in the Knesset plenum on revising the Police Ordinance that assigning the investigation of police officers suspected of committing criminal acts to the Justice Ministry, an body external to the police department, would help protect the integrity of police officers and boost public confidence in the police. In June 1992, Mahash began operating.

According to the Police Ordinance, inquiring into complaints regarding disciplinary infractions,⁶ including inappropriate conduct and faulty performance of duty, is in the hands of the police units assigned to handle public complaints. Under a September 1993⁷ directive from the State Prosecutor's office, which was also prescribed in orders issued by the police national headquarters,⁸ it was stipulated that a suspicion about the [inappropriate] use of force by a

⁵ As described in the first supplement to the Police Ordinance: any offense except for those stipulated in the supplement, including crimes whose sentences does not exceed one year in prison, traffic violations and offenses committed by policemen that another authority – such as the customs and tax authorities – are authorized by law to investigate.

⁶ As stipulated in the second supplement to the Police Ordinance.

⁷ Directive 14.4 – “Authority for investigation and indictment in complaints against a policeman.”

⁸ Order 06.03.03 – “Investigation of police personnel by the police and by the Police Investigation Unit in the Justice Ministry.”

policeman in the course of duty, even if it only entails a disciplinary violation, would be

investigated by Mahash and not by the police's units responsible for handling public

complaints.

3. During the years 1979-2000, several public committees discussed and examined the issue of police violence and how to address it: In 1979, a public committee was formed (hereafter - the Sirota-Eitan⁹ Committee) to study complaints about the illegal use of force employed by police personnel during the interrogation and arrest of suspects, and to examine the police's handling of complaints from the public on this issue. In January 1980, the committee submitted its conclusions and recommendations to the Interior Minister (who was then responsible for the police) and the Justice Minister. In 1993, the internal auditor of the Police Ministry [currently the Ministry of Internal Security] published a report on the systemic handling of the phenomenon of police violence. Following this report, Mr. Moshe Shahal, the Public Security Minister at the time,¹⁰ appointed a committee headed by Professor Mordechai Kremnitzer (hereafter: the Kremnitzer Committee) to examine the systemic handling of police violence. In June 1994, the committee – whose members, among others, included the director of Mahash at the time and senior police officers – submitted its conclusions and recommendations¹¹ to the Public Security Minister. In November 1998, Professor Menachem Amir prepared a comprehensive study for the Public Security Ministry's chief scientist on violent behavior by police officers.¹² The report presented the scientific background for the development of a model for Israel's investigation of police violence and abuse against citizens. Thus, the Public Security Ministry and police initiated research on police violence towards citizens (hereafter – the chief scientist's study). The study was directed by a steering committee that included representatives from the Public Security Ministry, the police and academia. The report¹³ on the research was presented to the Public Security Ministry and the police in December 2000.

The public committees and researchers who have dealt with the phenomenon of the use of illegal force and inappropriate police conduct have noted that there is an ambiguous message in the police in everything related to police violence, which is expressed in a gap between the view presented during police training, which emphasizes the limits on the use of force, and the attitude of commanders in the field, who adopt a policy of “closing one's eyes and unspoken approval.” They emphasized the importance of revealing the truth, of an unequivocal stance by commanders against cover-ups of police violence, and of the responsibility of the command-echelon to handle complaints made regarding illegal use of force which are not addressed through criminal proceedings. The committees and studies also pointed out the need for the police command to regularly conduct review proceedings, emphasize the importance of questioning commanders and collecting and analyzing data in order to track patterns of illegal or inappropriate behavior (in certain units or among particular police officers). The ongoing monitoring of police behavior should unequivocally state that inappropriate action must not be used. The police command and the relevant government ministers adopted the recommendations of the committees.

⁹ The members of the committee included Ms. Sarah Sirota, who was the state prosecutor in the central district, and Mr. Shmuel Eitan, who was the auditor of the Police Ministry.

¹⁰ In November 1995, the Police Ministry was assigned responsibility for public security and its name was changed to the Public Security Ministry.

¹¹ Police Ministry, **Committee Report on the Systemic Handling of Police Violence** (June 1994).

¹² Menachem Amir, **The Power of Supervision, Violent Behavior of Policemen: People, Situations and Organization**, Public Security Ministry, Chief Scientist's Office (November 1998).

¹³ Avraham Carmeli, Naama Shamir, Pilat, Ltd., **Police Violence towards Citizens, Research Report**, Public Security Ministry, Chief Scientist's Office (December 2000).

4. In 1985, the State Comptroller's Office studied the police department's handling of

complaints against police officers on illegal use of force¹⁴ and conducted a follow-up

¹⁴ See Annual report 36 of the State Comptroller (1986), page 544.

review approximately two years later.¹⁵ The findings of the review indicated complaints

¹⁵ See Annual report 38 of the State Comptroller (1988), page 436.

about the illegal use of force were not handled in accordance with the recommendations of the Sirota-Eitan Committee, which stipulated that the investigation of police officers should be done in accordance with the standard procedures of criminal investigations. Some of the investigations were deficient due to the failure to collect testimony from complainants and coordinate evidence as required, including the results of medical examinations, polygraph tests and police lineups. It was also noted that the handling of complaints at the police and State Prosecutor's Office was long and drawn-out. In 1986, the State Comptroller's Office studied the handling of criminal violations committed by police officers.¹⁶ It studied this issue again in 1989 and focused on the treatment of police suspected of perpetrating criminal or disciplinary offenses.¹⁷ The findings of the review indicated serious shortcomings, including the failure to transfer investigation material about police officers to the State Prosecutor's Office as required, the failure to fully pursue investigations and delays in investigation that sometimes made it impossible to bring the suspects to justice. The state comptroller raised the need to create additional control and supervisory mechanisms, external to the police, which would closely monitor police investigations to ensure a thorough and in-depth investigation of every suspected criminal act committed by a policeman and to prevent inappropriate influence during the course of the investigation.

5. During the months of April-September 2004, the State Comptroller's Office reviewed the systemic handling of complaints of police violence and inappropriate police behavior or their faulty performance of duty.¹⁸ The review was conducted on Mahash and at the police. The review of Mahash focused on the investigation of complaints against police officers for the illegal use of force and on aspects of organization. The review of the unit for public complaints at the national police headquarters and at the police's district and regional units for public complaints focused on the inquiry procedures for complaints against police officers regarding inappropriate conduct and faulty job performance. The review was conducted via a sample of 305 files (hereafter: the sample)¹⁹, including 202 investigation files opened by Mahash²⁰ and 103 files of inquiry opened at the units for public complaints at the police districts or regions.²¹ Complementary inquiries were also conducted by the Public Complaints Unit in the Public Security Ministry and by the State Prosecutor's Office in the Justice Ministry.

Mahash's handling of complaints about the illegal use of force

As previously stated, Mahash is responsible for investigating police officers suspected of committing criminal acts, or criminal or disciplinary offenses pertaining to the illegal use of force. Mahash is a department within the State Prosecutor's Office. It is subordinate from a professional and

¹⁶ See Annual report 37 of the State Comptroller (1987), page 615.

¹⁷ See Annual report 40 of the State Comptroller (1990), page 424.

¹⁸ The report does not deal with other criminal offenses investigated by Mahash, or with the activity of investigating officers or investigating committees that are not appointed to inquiring into complaints about violations of illegal use of force.

¹⁹ The Research and Statistics Department of the Planning Division at police headquarters prepared the sample, which was taken in a layered, random method from 5,874 Mahash files and cases of public complaints opened during 2002.

²⁰ 193 files were found and studied.

²¹ 93 files were found and studied.

organizational standpoint to the State Prosecutor's Office, and its director is a prosecutor employed by the Justice Ministry. In September 2004, Mahash's staff numbered 76 employees, including 45 investigators and intelligence personnel on loan from the police department. The rest of those working for Mahash are Justice Ministry employees – prosecutors, law clerks and administrative personnel.

Complaints submitted to Mahash are delivered to the department's prosecutor for review. If the prosecutor decides that the case should not be investigated, he passes it on to the director of Mahash with his recommendations. The director of Mahash or his deputy is authorized to decide not to investigate a complaint if they believe that there is no public interest in the investigation. If the prosecutor believes that an investigation should be opened, he sends the complaint to an investigator to handle. When the investigation is completed, the case and the recommendations are returned to the director of Mahash who decides whether to pursue a criminal indictment or disciplinary action (for violations of illegal use of force)²² or to close the case under one of the clauses stipulated in the Criminal Code Ordinance (consolidated version), 1982 (hereafter: Criminal Code Ordinance) – that is, absence of guilt, lack of sufficient evidence or lack of public interest.

Failure to investigate complaints

1. According to data from Mahash,²³ it received 6,355 complaints against police officers in 2002, including 3,409 complaints pertaining to the illegal use of force. In 2003, Mahash received 6,702 complaints against police officers, including 3,916 on the illegal use of force. Below is the distribution of complaints about the illegal use of force, indicating the way they were handled:

Graph1: Complaints regarding the use of force received by Mahash in 2002, sorted by treatment of cases

Disciplinary action 3%; Criminal indictment 2%; Not investigated 65%; Investigated and closed 30%

Graph2: Complaints about the use of force received by Mahash in 2003, by treatment of cases

Disciplinary action 3%; Criminal indictment 1%; Not investigated 64%; Investigated and closed 30%

22 According to Paragraph 19(B) in the second supplement to the Police Ordinance, disciplinary action over the illegal use of force is the purview of the attorney general, who authorizes the director of Mahash to do so.

23 A statistical report on the activity of the Justice Department in 2003 and data from Mahash.



The charts indicate that in 2002, there were 2,227 cases pertaining to the illegal use of force (65% of the complaint cases pertaining to the use of force) that were dismissed without being investigated; and in 2003, 2,497 of these cases were dismissed without an investigation (64% of the complaint cases pertaining to the use of force).

An examination of the sample showed that in about 73% of the cases that were not investigated, based on a lack of public interest. Other cases were not investigated due to the absence of violations. The reasons noted in cases dismissed without an investigation for lack of public interest were as follows: a lack of cooperation on the part of the complainant (45%), the force that was exercised was “minor” (34%) and other reasons (21%).

In a December 2004 response to the State Comptroller’s Office, Mahash noted that “lack of public interest” is stipulated in the law as a reason for dismissal and that Mahash employed it in accordance with criteria defined over the years under the direction of the attorney general and state prosecutor and is in line with court rulings. Mahash also noted that every complainant has the legal right to appeal to the attorney general about a decision to dismiss his complaint due to a lack of public interest, and that Mahash is diligent in informing the complainants of their right. Mahash added that it is first and foremost a criminal investigative authority and, as such, due to limited resources, it must allocate its resources for conducting investigations that have the most potential to include the degree of evidence required in a criminal proceeding; if the complainant does not cooperate, if the complaint entails a minimal use of force employed during the performance of lawful duty, or if the arguments presented in the complaint pertaining to the use of force contain substantial contradictions, there is no way it can fully pursue the investigation – both from the investigative aspect and from the perspective of a future judicial proceeding. In its response from April 2005, Mahash added that in 2001 the attorney general conducted an ongoing review of the cases Mahash dismissed without investigation for lack of public interest, and found that Mahash’s conduct in this context was appropriate.

2. It is worth noting that Mahash is not required to report to the police about complaints that it decided not to investigate. (In regard to the obligation to report about cases that are investigated, see below.) However, in practice, it reports to the police about complaint files that were opened and subsequently dismissed without investigation. The complaints are recorded in a computerized police file, but the report is not brought to the attention of the commanders and is not entered into the policeman’s personal file. The police do not conduct any reviews or inquiries regarding these complaints and does not implement any subsequent command measures when required at the personal or organization level.

It turns out, therefore, that complaints about serious criminal offenses pertaining to the use of force are handled on the criminal or disciplinary level. Complaints of disciplinary infractions, including inappropriate conduct and faulty performance of duty, are handled on the disciplinary level, as well as the educational and command level (see below). Complaints of violations involving the use of force that are not suitable for criminal or disciplinary investigation because the complainant’s refusal to cooperate with Mahash investigators or because the force exercised against the complainant was minor in Mahash’s estimation – and these comprise more than half of these complaints – are not handled at all, even though some of them unfortunately are no less serious than complaints of inappropriate conduct or faulty performance of duty.

In the view of the State Comptroller’s Office, the Attorney General and State Prosecutor should instruct Mahash to refer such complaints to be addressed and clarified at the administrative-command level. The failure to investigate such a high proportion of complaints and their dismissal without continued treatment by the

police on the command level is liable to lead to a lack of system-wide awareness of the scope and characteristics of the phenomenon and could be interpreted by police officers as legitimizing inappropriate behavior and could be interpreted by the public as a lenient attitude toward complaints of the irregular and illegal use of force. This also harms the ability of the police to draw conclusions from the investigation of complaints and to formulate tools for the systemic treatment of police violence.

The investigation of complaints of the illegal use of force

1. One of the salient characteristics found in the investigation of illegal use of force by police officers is the existence of contradictory versions from the complainant and the suspect and a lack of objective evidence to support one version over the other. For this reason, it is difficult to collect amount evidence required for criminal proceedings – that is, beyond reasonable doubt.

The Kremnitzer Committee emphasized that “one cannot claim that all of these complaints are groundless, and one can assume that some of them, at least a few of them, have a real basis but that the burden of proof do not allow them to be firmly established.” According to the committee, even if it is impossible to attain evidence through investigation that can serve judicial needs, the police system is obligated to uncover the truth for functional-command needs and to keep close tabs on the tendency of police officers toward violence. Indeed, in a system like the police, with such important and sensitive role and such far-reaching authorities, the command echelon must know exactly what happens in each of its activities.

Therefore, the Kremnitzer Committee concluded, the legal-criminal sphere should be separate from the command sphere, so that in the command sphere each policeman would have an unconditional duty to report the truth to his commander, and that the law should stipulate that the policeman’s report would not be used as legal evidence against him. According to the committee, the police command has sufficient information – even if it cannot be used in legal proceedings – to take command measures, which do not require an evidentiary infrastructure like the one required for establishing a criminal conviction. It should be noted that the Kremnitzer Committee believed that a distinction should be made between the question of a policeman’s suitability for police service and the matter to be decided in a criminal proceeding; thus, when a case is closed because it is impossible to reach a decision on the criminal level, the police command should examine the possibility of exercising vis-à-vis the suspected policeman one of the measures at the disposal of the police system, including education and training, transfer to another position and even dismissal.

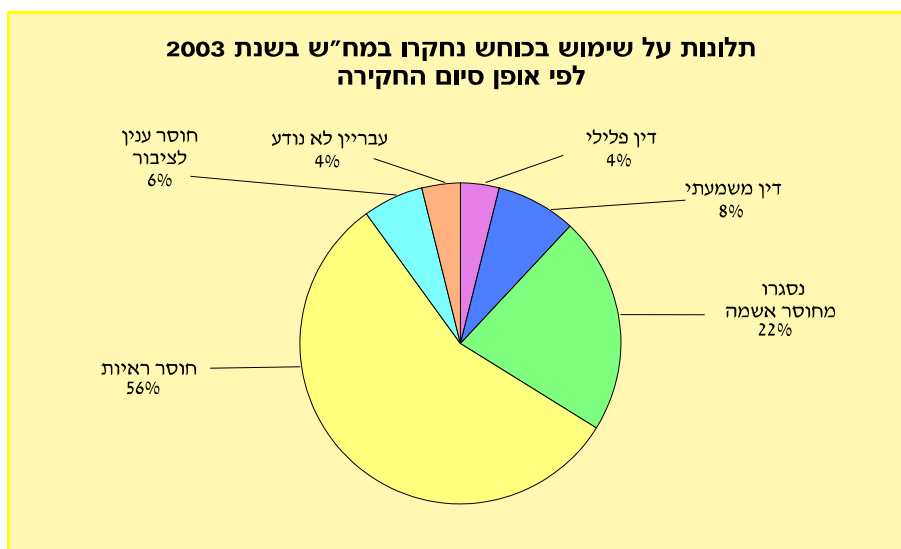
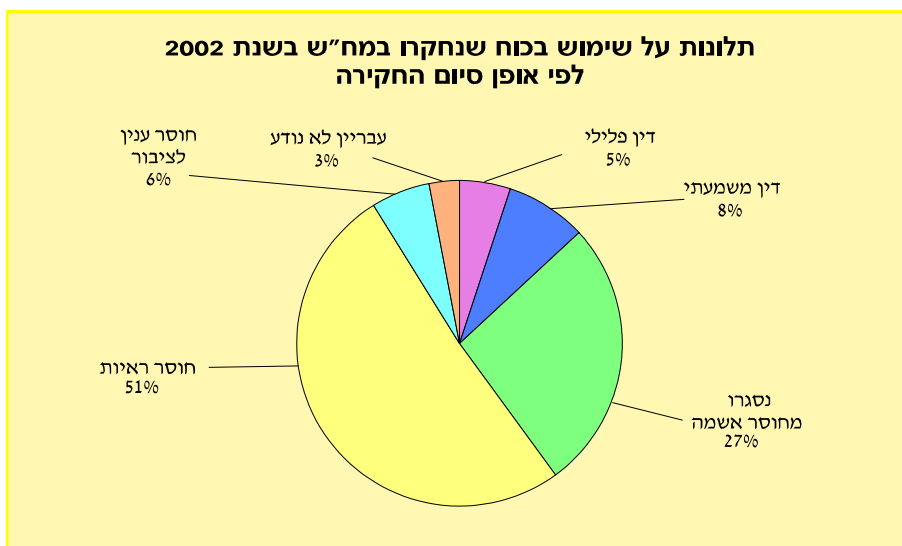
2. Here is the distribution of complaints of the use of force that were investigated by Mahash, sorted according to how the investigation concluded:

Graph: Complaints of the use of force that Mahash investigated in 2002, sorted by conclusion of investigation

Lack of public interest (6%), Offender unknown (3%), Criminal trial (5%), Disciplinary proceeding (8%), Lack of evidence (56%), Closed for lack of guilt (22%)

Graph: Complaints about the use of force that Mahash investigated in 2003, by conclusion of investigation.

Lack of public interest (6%), Offender unknown (4%), Criminal trial (4%), Disciplinary proceeding (8%), Lack of evidence (51%), Closed for lack of guilt (27%)



(A) The graphs indicate that 605 (51%) of the 1,182 cases investigated in 2002 were closed due to a lack of sufficient evidence because the investigation failed to reconcile the contradictory versions offered by the complainant and the suspect. In 2003, 800 (56%) of the 1,419 cases investigated were closed for this reason.

Mahash said in its response to the State Comptroller's Office that, as a rule, if the investigation of complaints of the use of illegal force comes down to the complainant's version versus the policeman's version with no additional evidence that enables a decision to be made between the versions, the investigation file is closed due to lack of sufficient evidence because in these circumstances the chances of convicting the policeman in a criminal trial are low.

In regard to the police's handling of the cases that were investigated and whose files were closed by Mahash for lack of sufficient evidence, it was found that the police do not verify whether there is room to take command-level measures in these cases in order to fully address the aspects that are not criminal or disciplinary.

(B) The graphs also show that in 2002 Mahash decided to send 53 (5%) of the investigated cases to criminal trial and 93 (8%) of the investigated cases to disciplinary proceedings; the rest of the cases were closed due to one of the reasons stipulated in the Criminal Code Ordinance. In 2003, Mahash decided to send 58 (4%) of the cases that were investigated to criminal trial and 119 (8%) to disciplinary proceedings; the rest of the cases were closed due to one of the reasons stipulated in the Criminal Code Ordinance.

In its response to the State Comptroller's Office, Mahash noted the difficulty and complexity of investigating complaints pertaining to the use of force by police officers in light of the fact that police officers are legally authorized to use force under certain conditions. While under the law even a minimal action by a citizen such as grabbing or pushing constitutes use of force. Therefore, there are situations involving the use of force by a regular citizen that would constitute a criminal offense of assault and justify an indictment, while sometimes the same situations do not justify an indictment when it involves a policeman on duty.

In all of the cases in which police officers were not sent to criminal or disciplinary proceedings, there was no command-level investigation to inquire into the circumstances of the event described in the complaint, and the police did not check whether there was room in these cases to take any command or administrative action.

Reporting on the opening of an investigation

Directives from national police headquarters place restrictions on the promotion of police personnel involved in committing offenses. These directives stipulate that a policeman who is under investigation – in regard to a file opened against him by Mahash or a inquiry proceeding opened against him by a unit for public complaints – will not be promoted and will not be assigned to a more advanced position unless this is approved by the head of the Human Resources Department or police commissioner. It also is stipulated that if the proceedings culminate in the policeman's acquittal or the case is closed for whatever reason, his promotion will be considered retroactively from the date on which he was initially recommended for promotion, and in accordance with his disciplinary profile. Police procedure²⁴ states that any assignment of a policeman to a course or training will only be done after reviewing his disciplinary background. The aforementioned testifies to recognition, in accordance with police ordinances and procedures, of the importance of the fact that a policeman is under investigation and the influence this has on his continued training and advancement in the police...

Directives from national police headquarters state that when Mahash decides to open an investigation against a policeman under to suspicion of committing an offense, Mahash must notify all of the following police entities: the head of the Human Resources Department, the suspect's senior commander and his direct commander, and the head of the Investigations & Intelligence Department. When an investigation is opened against a policeman with the rank of superintendent or above, this must also be reported to the Minister of Public Security and the Police Commissioner. Mahash is also required to report on the conclusion of the investigation to several police entities, including the head of the National Internal Audit Union, the policeman's senior commander and direct commander. As stated previously, no such reporting obligation is stipulated for complaints that Mahash decides not to investigate.

1. The sample data indicates that in 48% of the cases (44 of 91) in which investigations were conducted and the identity of the suspected policeman was known, (the policeman's details were recorded in the investigation file), Mahash did not report to the police on the investigation when it was opened; in a large number of cases (33 of 44), Mahash reported to the police on the investigation only upon its conclusion and noted that it did not report on the opening of the case because of "professional considerations," without providing details about the nature of these considerations.

In its response to the State Comptroller's Office, Mahash said that "as a rule, Mahash does indeed inform the police about the opening of an investigation against a policeman. However, for obvious reasons, this type of notification is not provided if there is doubt concerning the identity of the policeman suspected of committing the offense: Reporting on the opening of an investigation has direct implications on the suspected policeman (delays his promotion in rank, prevents him from going to courses and training, delays his assignment to certain positions, etc.)." Mahash also said that "There are certain cases that Mahash, out of professional considerations, does not report to the police ... or when the investigations involve sensitive personal matters (such as conflicts between couples) and reporting about them is liable to create disproportional harm during the initial stage of the investigation, before all of the relevant facts come to light." In its response in April 2005, Mahash added that in order to report to the police on the opening of an investigation, but it is not enough to know for certain the identity of the suspect; an evidentiary infrastructure is also required

²⁴ Internal directive 03.02.09 – "Reviewing the disciplinary aspect of a candidate for a course."

to establish a reasonable suspicion of the suspect's involvement in committing the offense. In regard to its obligation to report stipulated in the directives from national police headquarters, Mahash said that it indeed makes a practice of collaborating with the police in anchoring reciprocal procedures of cooperation and operates in accordance with the agreed upon procedures. But its role as a department in the State Prosecutor's Office is administratively and professionally subordinate to the Attorney General and State Prosecutor. Mahash is not subordinate to the directives of the national police headquarters and these directives are not incumbent upon it.

In the view of the State Comptroller's Office, it is not the role of Mahash, which is responsible for investigating the criminal and disciplinary aspects of complaints against police officers, to weigh considerations pertaining to the impact the report may have on the promotion, professional training or personal affairs of police officers who become the subject of investigation. These considerations should be left in the hands of the police because of the difference between the evidentiary infrastructure required for criminal cases and those required for command and administrative needs. In its decision whether or not to inform the police on the opening of an investigation, Mahash in effect is exercising a judgment that should be reserved for the police on how to act toward its employees on the administrative level.

It should be emphasized that in the overwhelming majority of the sample cases in which Mahash did not report to the police about opening an investigation, no documentation was found indicating the existence of professional considerations, such as concern of obstructing the investigation, or sensitive personal matters (including disputes between couples), which would warrant a decision not to report to the police regarding the opening of the investigation. There is no foundation for Mahash's claim that an evidentiary infrastructure is ostensibly required to establish a reasonable suspicion of the suspect's involvement in committing the offense. The establishment of a reasonable suspicion is the accumulation of an investigation and in many cases only coalesces upon its conclusion. According to the Police Ordinance, the opening of an investigation is enough to prevent the promotion of police officers whose conduct is under investigation. In regard to Mahash's claim that the directives of the national police headquarters are not binding upon it – if Mahash disagreed with its reporting obligation, it should have presented its position to the police and notified it that the reporting does not reflect all of the investigations that were opened concerning police officers suspected of the illegal use of force. This would offset potentially misleading the police to believe that the reporting covers every single case.

2. The State Comptroller's Office reviewed the police's personal files of some of the suspected police officers in the sample in an effort to learn whether not reporting on investigations against these police officers influenced the implementation of the directives about freezing the promotion of police officers who are under investigation. In a random check of the personal files of 50 police officers, it was found that in 22 cases in which Mahash investigated complaints and did not report about the opening of the investigation, five police officers (22%) were promoted in rank during the period of investigation.

In the view of the State Comptroller's Office, not reporting on investigations and the promotion in rank of police officers who are under investigation for illegal use of force, conveys a double message to police officers: On one hand, it is made clear to police officers during their training and in police directives that the illegal use of force is unacceptable; while on the other hand, there is no implication regarding their promotion when Mahash is still conducting an investigation against them. Thus, Mahash should be diligent in reporting to the police about every investigation that is opened against a

policeman so that the police will have all of the necessary information when considering the promotion of its police officers.

In response to the State Comptroller's Office, the police said that in order to prevent sending police officers who are under investigation to a course, it approached Mahash and worked out an agreement that if an investigation is initiated against a policeman who is a candidate for officers' course, Mahash will notify it, even if the investigation is secret. It should be noted that this arrangement does not provide the police a solution to execute its directives pertaining to the promotion freeze for police officers against whom Mahash has initiated an investigation.

In the view of the State Comptroller's Office, not reporting on the opening of an investigation should be based on procedures and should only be allowed in isolated cases, in rare and extraordinary circumstances, and after receiving approval from a senior official authorized to do so.

Reporting on the use of force, investigation and drawing conclusions

1. All of the public committees that discussed the systemic handling of police violence emphasized that of the commanders are responsible for dealing with this phenomenon. The committees recommended defining a method of investigation aimed at identifying deficiencies and failures in the conduct of police officers, while setting limitations on the use of the information provided by police officers during investigation as evidence in a criminal proceeding against them. The committees believed that the fundamental importance of upholding the norm of telling the truth, the substantial difficulty of exposing the truth and the vital need for uncovering it when investigating complaints about the illegal use of force, justify sacrificing the use of material provided by the policeman during investigation when disciplinary or criminal proceedings are taken against him. The Kremnitzer Committee noted that this does not mean that absolutely no conclusions can be drawn from what is reported – since conclusions will be drawn on the administrative level – and this does not mean that a criminal or disciplinary proceeding based on other evidence cannot be pursued. According to the committee's report, it is possible to implement the recommendation to refrain from using a policeman's report as legal evidence against him based on a decision by the attorney general and police command. However, it is preferable for this recommendation to be anchored in law.

It should be noted that the committee acknowledged that police commanders "closed their eyes" and refrained from addressing violent incidents in which their police officers were involved. The Kremnitzer Committee, which discussed this issue when that Mahash was first established, believed transferring the authority for investigating violent incidents from the police to Mahash might lead to a situation in which commanders do not regard themselves as responsible for the phenomenon and for addressing it. The committee emphasized the need to find a way for the commanders to conduct investigations into such incidents promptly after they occur in order to draw conclusions from them independent of investigations required in the future. The recommendations of the Kremnitzer Committee were not implemented, but, as stated above, they were adopted in 1994 by the police command and the relevant government ministers.

And, indeed, in a study conducted by the chief scientist in December 2000 on the topic of police violence citizens – a study that was undertaken several years after the formation of Mahash – it was noted that when a complaint on an act of violence was submitted against a policeman, his commanders refrained from taking an active part in inquiring into the circumstances of the act because the law limits the extent of their involvement in handling the complaint. Also in this study, it was recommended that commanders be regarded as central players in confronting the phenomenon of police violence and that they be assigned to deal

with this phenomenon as an inseparable part of their positions and in the framework of their command responsibilities.

The review indicated that the police did not define a procedure for commanders to conduct investigations into police violence, and no legislative amendment was instituted to limit the admissibility of statements made during such investigations as evidence in a criminal proceeding. Such a procedure can be found, for example, in the Military Justice Law – 1955,²⁵ which stipulates arrangements about admissibility of information provided during a military investigation. This law states that statements made during an investigation, the protocol of the investigation, any other material prepared during the investigation, as well as the investigation's summaries, findings and conclusions, "will not be accepted as evidence in court, with the exception of a case about giving false testimony or concealing an important detail in an investigation." In the explanation of the proposed legislation,²⁶ it is noted that a military investigation is a tool in the hands of army authorities for identifying deficiencies and failures in the functioning of the army or in the functioning of those serving in it. The knowledge that the testimony given during an investigation and its conclusions will not be submitted as evidence in court serves to encourage those involved in the investigation to provide truthful testimony. [The police] also did not define ways to increase the involvement of commanders and failed to establish methods for their to address police violence in a way that does not clash with the activity of Mahash.

In the view of the State Comptroller's Office, in addition to the individual treatment of a policeman on the criminal, disciplinary or command level, systemic attention is also needed, including, among other things, a professional-command investigation of every case, in order to identify deficiencies and failures in the functioning of the police or by its staff, and to point out ways of correcting them. This is especially needed in light of the difficulty in many investigations to gather evidence that could lead to a criminal indictment. In any event, the police should find ways to increase the involvement of commanders in inquiring into violent incidents in which their subordinates are involved, and to make commanders responsibility for the behavior of their subordinates. This should be done without hindering the investigation processes at Mahash.

2. In regard to the disciplinary treatment of police officers against whom complaints are submitted, the police issued an internal directive in April 2003, stipulating that:

Once a year, the unit's discipline officer will review the disciplinary data of each policeman in his unit. If he finds that a number of complaints regarding the use of force or disciplinary infractions have accumulated against a policeman, he will prepare an evaluation of the policeman and submit it to the commander of the unit, and the commander of the unit will summon the policeman for an interview. If the commander of the unit decides that the circumstances do not warrant summoning the policeman for an interview, he will explain his decision in writing, and the decision will be filed in the policeman's personal file. A policeman who is the subject of an investigation by an investigative unit²⁷ will be summoned by the commander of the unit for an interview with his direct commander. If during the course of the policeman's service other investigations have been opened against him (with the exception of cases that were closed for lack of guilt), and no administrative or command-level disciplinary steps were taken against him, he will be summoned for an interview with the unit's

²⁵ Paragraph 539A of the law.

²⁶ Bill to amend the Military Justice Law – 1955 (33) (Committees of Inquiry and Military Investigation), 1997, Bill 2597

²⁷ Mahash, a police investigation unit or any other investigative body authorized by law to conduct an investigation.

commander. If the reason for conducting an investigation against the policeman is due to suspicion of illegal use of force, the commander will emphasize to the policeman that the police regards this phenomenon with the utmost severity and will order him to be diligent in his contact with the public to act only within his authorities and with complete restraint and tolerance. The commander will inform him that his future in the police force will be assessed in light of the results of the investigation. The interview form will be saved in the policeman's personal file.

Based on the aforementioned review of the 50 police personal files, it was found that this directive is not implemented in practice. In 28 of the 50 files in which Mahash reported to the police that an investigation was initiated, there were no documents indicating that the direct commanders had summoned police officers for an interview after a number of complaints of illegal use of force had been filed against them. Furthermore, no explanation was found for deciding not to summon them for an interview as the directive requires. The failure to implement the directive reveals the ambiguous message that the police force sends to its police officers. On one hand, it issues a directive about the illegal use of force. And on the other hand, it turns a blind eye to complaints submitted against police officers.

3. Public committees have emphasized the need to collect and analyze data on the complaints against police officers for illegal use of force, even if no investigation was opened following the complaint, in order to draw lessons from this data on the personal and systemic levels. The committees recommended conducting a standard process of deriving lessons from every incident involving any use of force.

Since the police does not conduct any review following complaints against police officers for illegal use of force that were not investigated by Mahash due to lack of public interest or were investigated and closed due to insufficient evidence, the police force is unable to derive lessons based on systematically examining the incidents that generated the complaints.

In the view of the State Comptroller's Office, the police force bares the main responsibility for combating the phenomenon of police violence. In order to properly confront this problem, an investigation by Mahash into the criminal aspects of the particular incidents is not enough. The police should inquire into the circumstances of the events that led to the complaints and, in the appropriate cases, should take the command and administrative measures at its disposal against the police officers. In addition, the police should monitor the distribution of the complaints among the various police units and examine the profiles of the police officers against whom the complaints are submitted and the profiles of those submitting the complaints in order to draw conclusions about systemic failures and to improve work methods related to the exercise of police authorities that have the potential of harming citizens. The police command must also be diligent in conveying an unequivocal message prohibiting the use of illegal force and should intensify the involvement of commanders in inculcating this message.

4. It is the responsibility and authority of the Attorney General and State Prosecutor for conducting oversight and control of what is done in this area based on their overall responsibility to preserve the rule of law and to assignment Mahash the responsibility to investigate police violations. It should be noted that the conduct of police officers is likely to have an impact on the matters under deliberation in judicial proceedings, such as arguments about confessions obtained through improper means.

The Attorney General's department said in a response to the State Comptroller's Office in April 2005 that, as a rule, the Attorney General and State Prosecutor believe that in regard to the oversight and control of Mahash's work there is no

justification to distinguish between Mahash and the other units in the State Prosecutor's Office. The Attorney General's department went on to say that in addition to the report on Mahash, that is part of the Justice Ministry's annual report, Mahash initiated a practice of conducting an annual summary together with the director-general of the Justice Ministry, the Attorney General and the State Prosecutor, during which a comprehensive review is submitted regarding all of the department's areas of activity during the preceding year. This report is delivered to the Justice Minister, Attorney General and State Prosecutor. The Attorney General's department also said that the Justice Ministry is in the midst of an organizational reform and that in the framework of this reform it is working to institutionalize and improve the internal working procedures in the area of reporting, oversight and control.

In the view of the State Comptroller's Office, it would be worthwhile to consider mechanisms for the Attorney General and State Prosecutor to oversee and control the ways of the systemic handling of complaints about police violence, since this does entail damage to the operation of governmental authority.

The police's handling of complaints of inappropriate conduct and faulty performance of duty

Inquires into complaints against police officers for inappropriate conduct and faulty performance of duty are carried out through the police's process of complaint inquiry, which operates on three levels – the national headquarters level, the district level and the regional level – and employs a total of 35 police personnel. The Public Complaints Unit operates at the national level. It is the headquarters unit responsible for the national array of public complaints officers. In each of the police districts, there is a public complaints officer responsible for handing complaints against members of the district police staff and traffic police. This officer is also authorized to discuss and rule on complaints handled at the regional level. A public complaints officer also operates in each of the regions, and reports on the command level to the regional commander and on a professional level to the district public complaints officer; the regional public complaints officer handles the majority of complaints.

A permanent police order²⁸ stipulates which matters should be handled by the public complaints system and how they should be handled. According to the definition in this order, "a complaint" is a written complaint from the public alleging that a policeman committed a disciplinary violation as defined in paragraph 50 of the Police Ordinance. As stated, according to the directive of the State Prosecutor, a complaint about the use of force by a policeman in the line of duty, even if only a disciplinary offense is suspected, should be investigated by Mahash.

Following the establishment of Mahash, in mid-1988, the police prepared a draft of a new permanent order designed to replace the permanent order that regulates the handing of public complaints.

When the review was concluded (September 2004), six years after the drafting of the new permanent order, a final and updated version of the directive had yet to be formulated, though the draft directive had become standard practice.

The draft of this permanent order stipulates that a complaint against a policeman serving in a regional unit will be clarified, as a rule, by the regional public complaint officer, while a complaint against a policeman serving in a district unit or in a unit of the national traffic police

²⁸ Order 06.03.01 – "Handling Public Complaints."

will be clarified by the district public complaints officer. After the inquiry is concluded, the person who conducted the inquiry will submit his findings and recommendations for approval by the commander of the unit.²⁹

Classifying complaints and inquiries

1. The procedure of the public complaints unit³⁰ is intended to define uniform criteria for classifying complaints. According to the procedure, complaints pertaining to a policeman's inappropriate conduct, abuse of authority, exploitation of status, inappropriate appearance or abusiveness, are to be classified as complaints about inappropriate conduct. Complaints pertaining to the arbitrary treatment due to prejudice, unauthorized action, disturbing a citizen without cause, faulty performance of duty and refusal to provide individual details will be classified as complaints about faulty performance of duty.

The procedure stipulates that, as a rule, an inquiry file ("green file") will be opened when a complaint is received. If a complaint is submitted that does not contain sufficient details, the person conducting the inquiry will decide whether to open a green file in this case after recording a detailed statement from the complainant. A decision not to open a green file should be explained in writing by the person conducting the inquiry, and the complaint will be filed in the general inquiry file. The procedure also states that undertaking an inquiry concerning a complaint against a policeman through opening green file will be noted in the policeman's personal file.

The review indicated that the public complaint units did not inquire into most of the complaints by opening green file, but rather through initiating what the police calls a "brown file," which is not based in [any] procedure. This type of inquiry is not recorded in the personal file of the policeman who is the subject of the complaint. In 2002, 1,331 of 2,037 (about two thirds) were clarified through brown files, despite the fact that procedure required them to be clarified in through green files. It should be noted that there is no distinction between the nature and severity of complaints in the two types of files except for the fact that an inquiry of a complaint through a brown file is not recorded in the personal file of the policeman against whom the complaint was submitted. This constitutes a lenient attitude toward the policeman and, in fact, a circumvention of procedure.

The State Comptroller's Office regards with severity the police's use of this channel that circumvents the inquiry of public complaints, which is not in line with directives and procedures and without criteria having been defined for the use of this channel, thus creating an opening for its unequal use. This is particularly serious because it is being done a police branches responsible for maintaining the professionalism and moral conduct of police personnel, and it does not conform with the police's declarations about its commitment to wage an uncompromising fight against inappropriate conduct by its personnel toward the public.

The police stated in its response to the State Comptroller's Office in March 2005 that it has abolished the handling of complaints through brown files and that all complaints will be handled in accordance with the directives of procedure.

2. The permanent order regarding the handing of public complaints stipulates that at the conclusion of the inquiry process, the person who conducted the inquiry must submit a inquiry summary report and, among other things, note his/her findings of recommendations on steps to be taken in the wake of the inquiry. According to procedure, the conclusion of the person conducting the inquiry can be one of the following: The complaint is justified; the complaint is partly justified; the complaint is not justified; the complaint is not proven; or the complaint was not fully clarified. The recommendation, if provided, can be to take one or more of the these steps: training; a reprimand from the direct or senior commander; sending the policeman to a disciplinary hearing before a single judge; sending the policeman to a disciplinary hearing before a disciplinary court; or taking administrative disciplinary

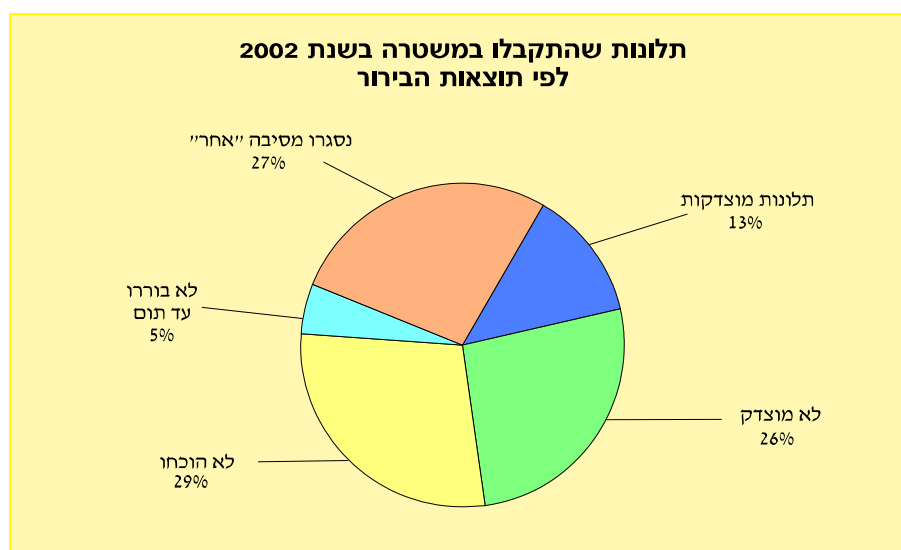
²⁹ At the regional level – the regional commander (or his deputy); at the district level – the district commander (or his deputy)

³⁰ Procedure "Classifying public complaints by subject of complaint," April 1996.

measures³¹ subject to approval by the head of the Human Resources Department. The permanent orders stipulate the obligation to provide written confirmation of the receipt of a complaint, as well as a response to the complainant at the conclusion of the inquiry. According to police data,³² in 2002, the regional public complaints officers completed handling of 1,861 complaints against police officers for inappropriate conduct and faulty performance of duty. Below is the distribution of complaints clarified in 2002 by the results of the inquiry:

Graph: Complaints received by the police in 2002, by results of the inquiry

Justified complaints (13%); Not justified (26%); Closed for “other” reasons (27%); Not fully clarified (5%); Not proven (29%)



31 According to permanent order 06.01.021 “Administrative disciplinary measures – Police personnel suspected of committing an offense or whose case has been Adjudicated.” The administrative disciplinary measures are: dismissal, suspension, request to take a vacation leave, transfer from position, transfer from the unit.

32 **Annual Report 2002 – The Public Complaints Unit and Freedom of Information**, National Police Headquarters, Jerusalem (When the review was completed, the report for 2003 had not yet been published.)

The State Comptroller's Office reviewed a sample of 103 inquiry files³³ opened by the police in 2002. It was found that the results of the inquiry in the sample were distributed as follows: In 22% of the files, it was determined that the complaints were justified or partially justified; in 28% of the files, it was determined that the complaints were not justified; in 44% of the files, it was determined that the complaint was not proven; and in 6% of the files, the complaint was not fully clarified. In the cases in which the complaint was found to be justified or partially justified, these steps were taken: In 55% of the files were handled at the command level (training); in 40% of the files disciplinary command treatment (commander's reprimand³⁴) took place; and in 5% of the files disciplinary steps were taken (judicial hearing before a single judge).

The review also revealed that in 16% of the sample cases, the regional public complaints officer did not take a statement from the complainant, despite the fact that the complaint lacked sufficient details. (In about half of them, it was determined that the complaint was not proven.) In 25% of the files, the regional public complaints officer did not gather testimony from witnesses, even though the names, addresses and details of witnesses were included in the file. (In about half of them, it was determined that the complaint was not proven.) And in 18% of the files, the regional public complaints officer did not prepare inquiry summary reports. This data indicates that the inquiry process was not fully implemented in many of the complaints.

The review of the sample files also indicated that the echelon in police units that approves the decisions based on the findings and the steps to be taken after undertaking inquiries into complaints did not act as required. In 28% of the files, the decisions were approved by the regional public complaints officer (who also made the decisions); in 16% of the complaints, they were approved by the district public complaints officer; and in only 56% of the complaints were they approved by the unit commander or his deputy, as required.

The handling of complaints by the Public Security Ministry

The Public Complaints Unit at the Public Security Ministry is subordinate to the ministry's internal auditor and serves as the arm of minister in all things related to the handling of complaints made by citizens pertaining to the area of responsibility of the ministry; the police and the Prisons Service. The unit includes a staff of five: the director of the unit (an officer with the rank of brigadier general who is loaned from the police to the Public Security Ministry), three complaint coordinators and a special task officer, who conducts visits to prisons and, in this framework, receives and handles complaints from prisoners.

The handling of public complaints was established through the procedure of the Public Security Ministry, which authorizes the employees of the Public Complaints Unit to enter, with advanced notice, any facility and unit of the police and Prisons Service and to gather information necessary for inquiries of complaints. According to the procedure, the inquiry of a complaint against a policeman that raises suspicion that a criminal act was committed, will be sent to Mahash and the inquiry of a complaint like this against a prison guard will be sent to the ministry's unit for investigating prison guards. An inquiry of a complaint that does not raise suspicion of committing a criminal offense can be conducted via a direct and unmediated review with the parties involved or by receiving written responses from officials in the police or Prisons Service. The person conducting the inquiry will determine the method to be used, taking into consideration the subject of the complaint, its nature,

³³ A random-methodical layered sample: The layers of the sampling were determined by the type of file and the subject of the complaint (use of force, fault job performance, inappropriate conduct). 93 of 103 files were found and examined (48 green files and 45 brown files).

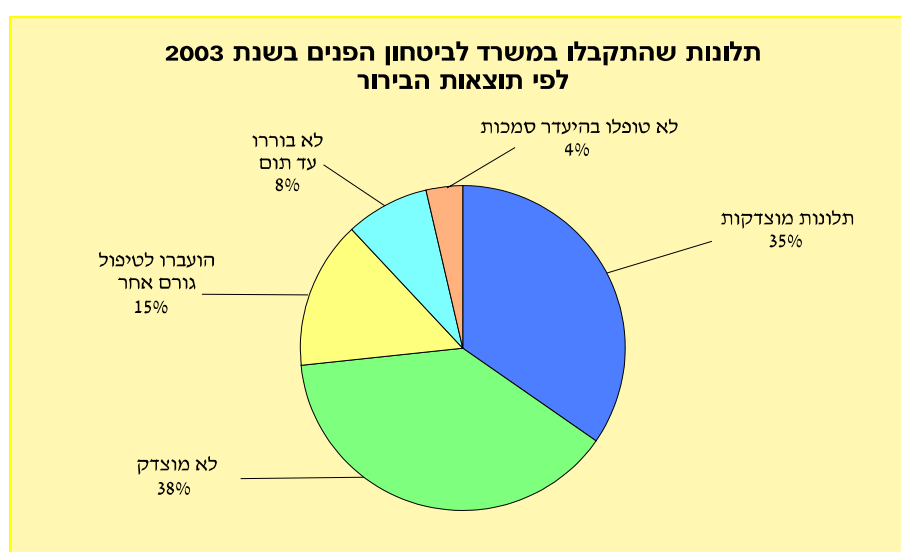
³⁴ It should be noted that according to the permanent orders, a commander's remark is not a disciplinary measure.

circumstances and sensitivity. Upon concluding the inquiry, the person conducting the inquiry is authorized to note the need to rectify the shortcoming of the police in question or institute steps, including disciplinary measures.

According to the report summarizing the activity of the Public Complaints Unit³⁵ in 2003, the unit received 1,951 complaints that year and completed an inquiry in 1,682 of them. The results of the inquiry were as follows: 584 complaints were found to be justified or partially justified, 650 were found to be unjustified, 249 were sent to a non-police entity for further handling, 137 were not fully clarified and 62 were not handled due to lack of authority. The distribution of complaints according to the results of the inquiry is as follows:

Graph: Complaints received by the Public Security Ministry in 2003, by results of inquiry

Justified complaints (35%); Not justified (38%); Not handled due to lack of authority (4%); Not fully clarified (8%); Transferred to another entity (15%)



It turns out that most of these complaints were handled by transferring them to the police units of the police officers against whom the complaints were lodged, and these units passed them on to the regional public complaints officer to handle. In these circumstances, it is doubtful whether there is justification for the existence of the ministry's Public Complaints Unit. Moreover, the directive of the State Prosecutor³⁶ that defines the division of authorities between Mahash and the police public complaints units in handling complaints against police officers stipulates: "A suspicion about a policeman committing a disciplinary violation will be investigated by a public complaints officer of the police." Thus, some of the complaints clarified by the ministry's Public Complaints Unit are also included in the scope of complaints handled by the police's public complaints units.

In a response to the State Comptroller's Office in December 2004, the Public Security Ministry said that its Public Complaints Unit is responsible for providing an answer to citizens who approach it with complaints pertaining matters under the minister's jurisdiction – the police and Prisons Service – and assists the minister in the supervision and control of his ministry and the

³⁵ Internal Auditor of the Public Security Ministry – Summary report of activity in 2003, Internal Auditor & Public Complaints Unit (March 2004).

³⁶ Directive No. 14.4 – "Authority for investigation and indictment in a complaint against a policeman."

entities under his jurisdiction. The ministry noted: “The complaints arriving at the unit ... serve as a management tool for the Minister of Public Security and the Ministry’s internal auditor to identify deficiencies whose implications extend beyond the isolated complaint.” The ministry added: “There is no division in regard to the way complaints of this sort are handled, and both entities handle every complaint we receive. That is, the citizen, the complainant, is the one who determines which entity handles his complaint.” In the ministry’s response of April 2005, the Minister of Public Security instructed the ministry’s internal auditor to examine the handling of complaints that the police’s public complaints is supposed to handle and to submit proposals for preventing overlap in handling; the ministry’s Public Complaints Unit prepared staff work on this subject and the recommended alternative is that “the unit for public complaints in the Israel Police and Prisons Services will handling all of the types of complaints that are transferred to it for handling by the Public Security Ministry’s Public Complaints Unit. The ministry’s Public Complaints Unit will establish an appeal venue for complainants about the response they received from the branches, and their appeal will be examined via direct review.”

Complaints about police officers pertaining to faulty performance of duty or inappropriate conduct should be handled according uniform procedures and processes. In regard to the Public Security Ministry’s statement that its Public Complaints Unit serves as a management tool for identifying deficiencies whose impact extends beyond the isolated complaint – the State Comptroller’s Office believes that in order to identify such deficiencies and to receive a complete picture of the conduct of police officers, it is not enough to handle complaints about police officers that are referred to the Public Security Ministry on a random basis, and that it should make sure to receive a report on all of the complaints made against police officers; that is, including those clarified by the police and those investigated by Mahash.

The organizational structure of Mahash and its format of activity

Mahash was established, as stated above, in June 1992. Prior to its formation, an inter-ministerial committee conducted work regarding international police investigations on behalf of Justice Ministry and took the practical steps required to establish Mahash. Members of the committee included representatives of the Justice Ministry, police, Civil Service Commission, and Finance Ministry. The committee determined that during Mahash’s first two years of activity, personnel on loan from the police would be responsible for investigations and [gathering] intelligence, and that the head of Mahash would be a prosecutor employed by the Justice Ministry. Within two years of operation, Mahash would become a civilian entity through a gradual process coordinated with the police, the Finance Ministry and the Justice Ministry. The committee believed that the aforementioned changes would enable effective oversight by the State Prosecutor’s Office of investigations of police officers would improve the image of the police and prevent bias in investigating police officers.

Civilianizing Mahash

1. The issue of civilianizing Mahash investigators was discussed at the Justice Ministry in April 1993. Participants included representatives of the Justice Ministry, the Civil Service Commission, Mahash and the police. The police representative at the meeting promised that the police would continue to provide investigators to Mahash as long as Mahash was interested and would even replace the investigators as needed and at the request of Mahash. The director of Mahash noted that the unit could be civilianized in stages after finalizing the term of employment for investigators, and that it would not be possible to pay the police

officers who remain in the unit and the new civilian hires according to different pay scales. As a result, a uniform pay scale should be formulated for all of the investigators based on the salary level of the police personnel. The Justice Ministry representative suggested postponing the civilianization until after studying the matter with the Civil Service Commission. The representative of the Civil Service Commission asked to receive job descriptions and proposed rankings for the positions slated for civilianizing and a suitable organizational structure of Mahash.

In January 1994, about half a year prior to the end of the loan period of Mahash personnel, the director of Mahash informed the State Prosecutor's Office that it would be unable to meet the timetable set out for civilianizing Mahash due to the complexity of the civilianizing process. He noted that the main obstacle to civilianizing "derives from the significant gap in salary conditions of police officers working in the department today versus the salary conditions that can be offered to them as employees of the Justice Ministry," and that "the significant deterioration in salary would lead to a situation in which no one currently working in the department would be interested in continuing in the department as a civilian." The director of Mahash emphasized that "the great advantage [of Mahash employees] is their rich experience in investigative and intelligence work, and no investment is needed for training them. There are also significant advantages in their daily work and this is due to their familiarity with the police system and its formal and informal pathways ... civilianizing the department will require at least partial training of the candidates in a range of work practices that the department's employees deal with, and even then a significant period of work will pass before the ministry can enjoy the fruits of their labor." Nonetheless, the Mahash director claimed that "As long as the department is not civilianized, the arguments and criticisms will continue to be raised that, with the exception of the management echelon, police officers continue to investigate themselves" and that "it will ultimately be best to complete this work and civilianize the department." At the conclusion of his letter, the Mahash director recommended extending "the loan period for a substantial period so that during [this time] practical actions can be taken to civilianize the department or undertake a different decision."

In the wake of this letter, the Justice Minister asked the Police Minister [Police Commissioner] in July 1994 for a three-year extension of the loan period of police personnel employed at Mahash in order to provide Mahash with more time to carry out the civilianization process by gradually hiring civilian investigators and training them for the position.

About a year later, in May 1995, the Director of Mahash again wrote to the State Prosecutor's Office and pointed out the difficulties in civilianizing Mahash, especially in terms of recruiting suitable candidates and the training they required, and the average salary for an investigator employed according to the civilian pay scale. In his letter, he rejected the arguments of opponents, such as the argument that Mahash investigators identify with police personnel who are under investigation, that the fact that some of the investigators wish to return to work for the police affects the quality of their work, or that due to the employment of police personnel at Mahash, the police force is still perceived as investigating itself. According to the Mahash director, in practice only a very low percentage of investigators returned to the police force; prosecutors from the State Prosecutor's Office supervise and guide Mahash investigators, and the professional achievements of Mahash investigators are good. The Director of Mahash summarizes his position as follows: "I would like to emphasize that there is no doubt in my mind that the civilianizing of the department in the current climate might satisfy the critics, but it is liable to lead to a significant decline in the

level of investigations in the department.” The Mahash director proposed forming a new steering committee to study whether it is best to civilianize the department or to continue in its present constellation, and, alternatively, to continue with existing practices for a period of time to be defined, during which solutions could be found for all of the problems.

2. In 1997, an inter-ministerial committee was formed to study the civilianization of Mahash investigators. The director-general of the Justice Ministry headed the committee, whose members include representatives of the police force, Civil Service Commission and Budgets Division of the Finance Ministry. During the committee’s discussions, Mahash expressed opposition to civilianizing its investigators out of concern of damaging the quality of the investigations. Mahash advocated that it continue operating in its existing framework, in which investigations are conducted by investigators on loan from the police and under the supervision of prosecutors from the State Prosecutor’s Office. The police did not oppose this view and the Justice Ministry accepted Mahash’s position. The committee decided that “against the background of all these things, the committee does not recommend civilianizing the unit’s investigators.” The committee also decided to appoint a subcommittee “that will be responsible for formulating proposals to improve the existing model at Mahash and particularly the points where it overlaps with the Israel Police, in everything related to transitioning from this organization to another, professional training and other matters requiring resolution.” (Hereafter: the subcommittee).

Though the police did not oppose the aforementioned view of Mahash during the deliberations of the inter-ministerial committee, in a discussion held in May 2000 between representatives of the Justice Ministry and representatives of the Public Security Ministry, the police force presented a clear position advocating the civilianizing of Mahash. In August of the same year, the police submitted the position it had formulated to the Director-General of the Justice Ministry. It explained: “Israeli Police has always favored civilianization in principle. However, from a practical perspective, it decided not to oppose Mahash’s position, and assuming that the development of a single-direction system of transfer for investigators (from Israel Police to Mahash only), the establishment of a separate path of promotion for Mahash and other practical problems will be worked out. In time, the view of Israel Police also grew more strongly in favor of civilianizing and against the current situation.” The police emphasized: “Israel Police now opposes the continuation of the existing situation, and certainly is opposed to turning it into a permanent model, both from the ideological-ethical perspective and on a practical-organizational level; that is, it unequivocally advocates the civilianizing of investigators and others at Mahash.”

The police explained the reasons for its stance, including: the great importance that appearance plays in establishing public confidence in the fairness of the inquiry; the fear of biasing investigations due to the non-objective position of investigators who are police personnel toward the individuals under investigation or toward the police system, or due to considerations regarding their future promotions. Furthermore, it noted the problematic organizational situation in which the police force remains responsible for promoting its personnel serving in Mahash but cannot evaluate their performance for this purpose, while Mahash is responsible for their work but cannot promote them in accordance with their performance. In regard to the organizational problems raised by Mahash – such as finding investigators who are not police officers and training them – the police noted that these problems could be resolved as they have been in other public authorities.

After hearing the police’s position, the inter-ministerial committee convened again in October 2000. The Director of Mahash expressed opposition to the police stance and rejected the civilianization of Mahash. He noted, among other things, that the fact that Mahash is subordinate

to the state prosecutor creates an essential distinction between the existing situation and the one that preceded it, in which the investigation of police officers was part of the police force, and this negates the claim of those advocating civilianizing Mahash that the fact that Mahash investigators are police personnel damages public confidence in the fairness of the investigations, also noting that in leading Western countries the investigation of police personnel is conducted by the police officers under external supervision; and because attempts to civilianize the investigating bodies have not produce good results. Representatives of the Justice Ministry also expressed opposition to civilianizing out of concerns of a decline in the level of investigations and the relatively low salaries offered to civilian investigators. The representative of the police then reiterated the reasons for its argument for civilianizing Mahash.

The Director-General of the Justice Ministry proposed renewing the work of the subcommittee so that it could recommend options for solving the problems presented by the police, “either through a model based on a civilian-police mix, through reform of the existing model that responds to existing problems, or through civilianization that responds to the inherent problems with implementing a model of this sort.” It was decided that the subcommittee would submit its conclusions and recommendations by January 7, 2001, and that these would be discussed in the plenum of the inter-ministerial committee.

In March 2004, the Director of Mahash wrote to the Director-General of the Justice Ministry and noted that “the subcommittee brought before the plenum of the inter-ministerial committee the requested recommendations for improving the existing model, but so far no progress has been made in this matter, and in fact the inter-ministerial committee has yet to make a significant decision on this issue.” Thus, the Director of Mahash made a request to consider reconvening the aforementioned committee. As of September 2004, when the review was completed, this request was not put into action.

It is evident from what is described above that the issue of civilianizing Mahash has accompanied the activity of Mahash for about 12 years and has yet to be resolved. Decisions regarding the steps required for civilianization were not implemented, and no other clear decisions were made on this matter. The aforementioned entities stopped dealing with this subject and it has been completely neglected in recent years.

Mahash said in its response to the State Comptroller’s Office in December 2004 that it is one of the units of the State Prosecutor’s Office and that there is no police involvement in the investigations conducted at Mahash; and that the personnel issue at Mahash is only handled by the Director of Mahash or his deputy, and in practice there is no subordination whatsoever of police personnel on loan to Mahash to police officials. Nonetheless, Mahash said that, “There are quite a few difficulties stemming from the dependence of Mahash on the police, among other things, in the police’s human resources – both in recruiting suitable police officers and professional training for investigators, and in regard to investigators on loan to Mahash who seek to return to the ranks of the police force. Moreover, there is, of course, also the matter of how things appear from the public’s perspective.” Mahash also wrote in its response that “recently the Justice Minister instructed the Director-General of the Justice Ministry to take action toward reconvening the inter-ministerial committee... so, in any case, the issue would be reexamined in the broadest view possible.” The committee has held two meetings since December 2004 and even appointed a subcommittee that is supposed to submit operative recommendations on the subject of civilianizing Mahash within about two months.

Filling the positions of investigators at Mahash

Due to the high level of professionalism required for its work, Mahash classified the positions of investigators and intelligence personnel at officer's rank (chief inspector and higher). Mahash is dependent on the police for providing police personnel who met the job requirements to fill these positions.

It was noted that a third of the investigators the police loaned to Mahash (15 of 45) did not have officer ranking and that most of the Mahash investigators (82%) fill positions defined for higher ranking personnel: 12 of 15 of the investigators who did not have officer ranking (staff sergeant majors) were assigned to jobs that required the rank of chief inspector, and 25 of the 30 officers with the rank of chief inspector were assigned to positions that required the rank of superintendent.

The aforementioned indicates that a significant proportion of Mahash investigators loaned from the police force do not have the required rank for the positions they fill. In the view of the State Comptroller's Office, if the management of Mahash does not think it is necessary to fill the positions of investigators with those who meet the requirements defined for these jobs, and that manning them with those who do not meet these requirements does not hurt the quality of the investigations conducted by Mahash, then Mahash should redefine the requirements for these positions. If the management of Mahash holds this perspective— Mahash should make sure to assign these jobs only to investigators who met the requirements.

In a response to the State Comptroller's Office, Mahash wrote that "the management of the department acts with great diligence in selecting investigators recruited for the ranks of the department, and this includes, of course, that all investigators accepted for work in the department have extensive experience in investigations, a high level of personal capabilities and can work well as part of a team." Mahash added that standards that establish the ranks defined for investigators represent an optimal situation, but that due to various constraints it must balance between essential components, including professional and personal capabilities and professional experience, and other components that "are mainly declarative such as the actual rank of the investigator."

It should be noted that the ranks of the investigators defined by the standards are supposed to express the level of capabilities and experience required of Mahash investigators, and once they were defined they should be not be regarded as a merely a declarative component.

While studying the issue of Mahash's organizational structure, the advantages and disadvantages of civilianization should be taken into consideration along side the difficulties in civilianizing Mahash. Also to be taken into consideration is the problematic nature of operating a unit in which some of its employees are administratively subordinate to the Justice Ministry and some to the police, and when there is a differential between the salaries paid to each group. The dependence of Mahash on the police force for filling positions in the areas of investigations and intelligence should also be taken into account.

In order to enable police officers to carry out their job, the law provides them with authorities that can potentially violate fundamental rights enumerated in the Basic Law: Human Dignity and Liberty. Thus, police officers are required to be diligent in exercising these authorities reasonably, proportionately and in accordance with the

law. Police offenses, including violent offenses, harm the values of democracy, public confidence in the police and the government system, and the ability of the police force to perform its job. And, therefore, it is important that complaints against police officers about the irregular use of their authorities will be handled appropriately.

The systemic confronting of police violence should be based on a combination of approaches, both on the criminal and disciplinary level and on the command and administrative level. Therefore, the function filled by Mahash, which entails investigation and prosecution on the criminal and disciplinary level, does not exhaust everything that is required to prevent the illegal use of force by police officers.

In addition to investigating the individual, criminal or disciplinary aspect of the illegal use of force by police officers, comprehensive treatment is also required for the professional and command aspects of exercising the authority to use force. The overall responsibility for combating police violence rests with the police. In the view of the State Comptroller's Office, in confronting this phenomenon, the police should not rely on investigations into the criminal and disciplinary aspects of violations by Mahash. It should conduct appropriate investigations and draw conclusions both on the individual and systemic level, even if the investigation file on the use of illegal force was closed for lack of sufficient evidence.

In order to enable the police force to do this, Mahash must provide it with complete and detailed information on every violent offense attributed to police officers under its purview. The police force should formulate an orderly system for receiving and analyzing this information, drawing lessons and implementing the required conclusions. Only the comprehensive and integrated action of both of these bodies will enable proper treatment of the problem of police violence. Similarly, it would be appropriate to consider instituting supervisory and control mechanisms by the Attorney General and State Prosecutor of methods of systemic handling of complaints about police violence.