

CEPOL COURSE 62/2013

Human Rights and Police Ethics

Strategic documents

Constança Urbano de Sousa, 25 june 2013

European Code Police Ethics

- Recommendation of the Committee of Ministers Council of Europe – 19.9.2001
- The main purposes of the police in a democratic society governed by the rule of law are
 - to maintain public tranquility and law and order in society ;
 - **to protect and respect the individual's fundamental rights and freedoms** as enshrined, in particular, in the European Convention on Human Rights ;
 - to prevent and combat crime ;
 - to detect crime ;
 - to provide assistance and service functions to the public.

Strategic documents-Overview

- United Nations
 - Universal Declaration of Human Rights (1948)
- Council of Europe – inter-governmental organisation
 - European Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR (4.11.1950 - Rome)
 - European Code of Police Ethics (2001)
- European Union (Lisbon Treaty)
 - Treaty on the European Union (TUE) - Ex-Treaty of Maastricht (1992): Treaty on the Functioning of the European Union (TFUE) - Ex. Treaty of Rome (1957): European Economic Community (European Community)
 - Charter of Fundamental Rights of the European Union (2000)
 - Area of freedom, security and justice
 - Stockholm Programme
 - Police cooperation
 - COSI
 - Internal Security Strategy (2010)
 - EU-Policy Cycle (2013-2017)

European Code Police Ethics

- Police – in addition to upholding the law – performs service functions in society ;
- Public confidence in the police is closely related to their attitude and behavior towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights, but also other human rights instruments ;
- The respect for the individual's fundamental rights as an objective of the police - symbol of a police service in a society governed by the rule of law. This objective implies
 - obligation to uphold these rights
 - limits as to how far the police may proceed in order to fulfill their other objectives.

European Code Police Ethics

- **I. Objectives of the police**
- **II. Legal basis of the police under the rule of law**
- **III. The police and the criminal justice system**
- **IV. Organizational structures of the police**
 - *General*
 - *Qualifications, recruitment and retention of police personnel*
 - *Training of police personnel*
 - *Rights of police personnel*
- **V. Guidelines for police action/intervention**
 - *general principles*
 - *specific situations*
 - *Police investigation*
 - *Arrest/deprivation of liberty by the police*
- **VI. Accountability and control of the police**
- **VII. Research and international co-operation**

General Principles for Police Action

- Respect of human rights.
- Police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.
- Police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.
- Police must always verify the lawfulness of their intended actions.
- Duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.
- Respect for impartiality and non-discrimination.
- Interference with individual's right to privacy only when strictly necessary and only to obtain a legitimate objective.
- The collection, storage, and use of personal data shall be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.
- Police shall always bear in mind every- one's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.
- Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.
- Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.
- Police personnel shall oppose all forms of corruption within the police.

Universal Declaration of Human Rights

- Proclaimed by the UN General Assembly in Paris on 10 December 1948
 - milestone document in the history of human rights: sets out, for the first time, fundamental human rights to be universally protected
 - All human beings are born free and equal in dignity and rights (art. 1)
 - Everyone is entitled to the rights and freedoms set forth in the Declaration without any discrimination
 - 30 articles
 - Forms part of customary international law
 - Has served for the foundation of several UN binding Conventions
 - International Covenant on Civil and Political Rights
 - International Covenant of Economic, Social and Cultural Rights
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - International Convention on the Elimination of Discrimination Against Women
 - UN Convention on the Rights of the Child
 - UN Convention Against Torture

Universal Declaration of Human Rights – Rights and Freedoms of the individual

- Right to life, liberty and security
- Prohibition of slavery, slave trade, torture, inhuman or degrading treatment or punishment
- Right to recognition as a person before the law
- Equality before the law and prohibition of discrimination
- Right to an effective remedy before the courts against acts violating fundamental rights
- Prohibition of arbitrary arrest, detention or exile
- Right to a fair trial and public hearing by an independent and impartial court.
- Right to presumption of innocence until proved guilty according to law in a public trial with all defence guarantees
- Prohibition of arbitrary interference in privacy, family, home or correspondence
- Freedom of movement and residence – right to leave any country and to return to his/her country
- Right to seek and enjoy asylum from persecution
- Right to a nationality
- Right of men and women to marry and found a family
- Right to own property
- Freedom of thought, conscience and religion
- Freedom of opinion and expression
- Freedom of peaceful assembly and association
- Right to take part in the government of his/her country directly or through freely chosen representatives

Universal Declaration of Human Rights – social, economic and cultural rights

- Right to social security
- Right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment
- Right to equal pay for equal work
- Right to just and favourable remuneration ensuring an existence worthy of human dignity
- Right to rest and leisure (limitation of working hours and holidays with pay)
- Right to an adequate standard of living (health, food, clothing, housing, medical care, etc.)
- Social protection of motherhood and childhood
- Right to education (free at least in the elementary and fundamental stages)
- Right to freely participate in cultural life
- Protection of intellectual property

European Convention on Human Rights (1950)

- Amended by several Protocols – replaced by Protocol n.º 11 (1998) and amended by Protocol n.º 14 (2010)
- Rights and Freedoms enshrined in the ECHR were supplemented by several Protocols
- 3 Sections
 - I (art.2 – 18): Rights and Freedoms
 - II (art.19 – 51): **European Court of Human Rights**
 - To ensure the observance of the ECHR by the Parties
 - Jurisdiction extended to all matters concerning the interpretation and application of the ECHR and Protocols thereto
 - **Inter-State cases:** Any Contracting Party may refer to the Court any alleged breach of the provisions of the ECHR and Protocols
 - **Individual applications:** any person, ONG or group of individuals may claim to be the victim of violation by one of the State Parties of the rights set forth in the ECHR and Protocols
 - The Court may deal with the matter after all domestic remedies have been exhausted
 - III (art. 52 – 59) miscellaneous Provisions

European Convention on Human Rights -Rights and Freedoms

- Right to life
- Prohibition of torture or to inhuman or degrading treatment or punishment
- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law (*nulla poena sine lege*)
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Right to an effective remedy before by human rights violations
- Prohibition of discrimination

Provisions added by Protocols

- Protocol from 1952
 - Protection of Property
 - Right to education
 - Right to free elections
- Protocol 4 (1963)
 - Prohibition of imprisonment for debt
 - Freedom of movement
 - Prohibition of expulsion of nationals
 - Prohibition of collective expulsion of aliens
- Protocol 6 (1983): Abolition of the death penalty (except in time of war)
- Protocol 7 (1984)
 - Procedural safeguards relating to expulsion of aliens
 - Right of appeal in criminal matters
 - Compensation for wrongly conviction
 - Right not to be tried or punished twice (ne bis in idem)
 - Equality between spouses
- Protocol 12 (2000): Prohibition of discrimination on grounds such as sex, race, colour, language, religion, political opinion, national or social origin, birth, etc.
- Protocol 13 (2002): Abolition of the death penalty in all circumstances

EU – Evolution

- 3 European Communities
 - Treaty of Paris (1951)
 - European Coal and Steel Community (1951)
 - Treaties of Rome (1957)
 - European Economic Community (EEC) – European Community (1992)
 - European Atomic Energy Community (Euratom)
- Maastricht Treaty (1992) – Treaty on the European Union
 - European Union
 - European Community (ex-EEC)
 - **EU** citizenship – freedom of movements
 - European Monetary Union
 - Common foreign and internal affairs policy.
 - Justice and home affairs

Lisbon Treaty

- Signed: 13.12. 2007 / Entered into force: 1.12. 2009
 - Treaty on the European Union (TUE)
 - Ex-Treaty of Maastricht (1992): European Union
 - Treaty on the Functioning of the European Union (TFUE)
 - Ex. Treaty of Rome (1957): European Economic Community (European Community)
- Main changes:
 - A strengthened role for the EP (co-decision with the Council)
 - Permanent president of the European Council,
 - Qualified majority voting (55% of the Member States representing at least 65% of the Union's population) in the Council is extended to new policy areas. Ex. Police cooperation
 - Possibility for a MS to withdraw from the Union
 - Introduction of the Charter of Fundamental Rights into European primary law with binding legal force
 - the EU gets an extended capacity to act on freedom, security and justice, which brings direct benefits in terms of the Union's ability to fight crime and terrorism;
 - Etc.

EU aims (article 3 TEU)

- Promote peace, its values and the well-being of its peoples.
- Offer its citizens an **area of freedom, security and justice** without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
- Establish an internal market and a economic and monetary union whose currency is the euro
- Combat social exclusion and discrimination,
- Promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
- Promote economic, social and territorial cohesion, and solidarity among Member States.
- Uphold and promote its values and interests and contribute to the protection of its citizens in its relations with the wider world .

EU Values (article 2 TEU)

- The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Promotion of EU values in the world (article 21 TEU)

- Guiding principles of the EU in the international scene: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
- Objectives of the EU external action:
 - safeguard its values, fundamental interests, security, independence and integrity;
 - consolidate and support democracy, the rule of law, human rights and the principles of international law;
 - preserve peace, prevent conflicts and strengthen international security
 - foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
 - encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - Help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
 - assist populations, countries and regions confronting natural or man-made disasters; and
 - promote an international system based on stronger multilateral cooperation and good global governance.

Respect for human rights (art. 6 TEU)

- The EU recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union - has the same legal value as the Treaties.
- The EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).
- Fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Respect for Human Rights

- Respect of Human Rights by the EU
 - Human Rights as Primary EU Law have to be respected by EU secondary Law
 - The Court of Justice shall review the legality of EU secondary law-annulment action vis-à-vis EU primary law (art. 263 TFEU)
- Only an European State which respects the values of the EU and is committed to promoting them may apply to become a member of the EU (art. 49 TEU).
- Respect of the EU values (article 2) by MS – article 7 TUE
 - **prevention mechanism:** clear risk of a breach of EU common values by a MS
 - Determined by the Council (acting by a majority of 4/5, after the consent of EP and after hearing the MS concerned)) on a reasoned proposal of 1/3 MS, by the EP or by the EC – Recommendations addressed to the MS
 - **penalty mechanism:** serious and persistent breach of values mentioned in art. 2 by a MS
 - Determined by the European Council (acting by unanimity, after the consent of EP and after hearing the MS concerned)) on a reasoned proposal of 1/3 MS or by the EC
 - Allows for the suspension of certain rights of the MS concerned decided by the Council acting by QM

Accession of the EU to ECHR

- Art. 216 TFEU: EU competence to conclude international agreements with one or more third countries or international organizations.
- Art. 218: TFEU: procedure
 - Council: authorize the opening of negotiations, adopt the negotiations directives and authorizes the signature of the agreement by QM (Exception: unanimity by the accession of the EU to ECHR)
 - Commission (or HR in the field of FASP): negotiator
 - Council adopts the decision concluding the agreement after consent of the EP
 - The decision concluding the concluding the agreement on accession to the ECHR shall enter into force after it has been approved by the MS in accordance with their respective constitutional requirements.

EU Charter on Fundamental Rights

- 7 Chapters – 54 articles
- Addressees of the Charter (art. 51)
 - EU institutions and bodies
 - Member States when implementing EU Law
- Conditions for limitations of the exercise of the rights recognised by the Charter (art.52)
 - must be provided by law
 - Must respect the essence of those rights
 - Observe the principle of proportionality
 - Only if they are necessary and meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.

EU Charter on Fundamental Rights

- **Chapter I: Dignity**

- Respect and protection of human dignity;
- right to life;
- right to physical and mental integrity;
- prohibition of torture and inhuman or degrading treatment or punishment;
- prohibition of slavery and forced labour

- **Chapter II: Freedoms**

- Rights to liberty and security, private and family life,
- protection of personal data,
- Right to marry and to found a family
- Freedoms of thought, conscience and religion, of expression and information, of assembly and of association, of the arts and science
- Right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, right to property,
- Right to asylum, prohibition of collective expulsions; protection against removal expulsion or extradition to a State where there is a serious risk that he/she would be subjected to death penalty, torture or other inhuman or degrading treatment or punishment

EU Charter on Fundamental Rights

- **Chapter III: Equality**

- Equality before the law;
- Non-discrimination; respect of cultural, religious and linguistic diversity;
- equality between men and women;
- Rights of the child (to protection and care; to maintain contact with the parents, unless that is contrary to his/her interests);
- Rights of the elderly to lead a life with dignity and independence;
- right of persons with disabilities to benefit from measures to ensure their independence and integration in the life of the community

EU Charter on Fundamental Rights

- **Chapter IV: Solidarity**

- Workers' rights to information and consultation within the undertaking;
- right of collective bargaining and action;
- right of access to placement services; protection against unjustified dismissal;
- right to fair and just working conditions (limitation of maximum working hours and annual period of paid leave),
- Prohibition of child labour;
- Legal, economic and social protection of family and right to paid maternity leave;
- Right to social security benefits;
- right to access to health care;
- Access to services of general economic interest;
- High level of environmental protection;
- high level of consumer protection

EU Charter on Fundamental Rights

- **Chapter V: Citizens' Rights**

- Right of the EU citizen to vote and to stand as a candidate at elections to the EP and municipal elections in the MS of residence
- Right to good administration: right to have his/her affairs handled impartially, fairly and within a reasonable time by EU institutions/bodies; right to be heard before any individual measure which would affect him/her adversely is taken; right to access his/her file; right to write to the institutions in one of the official EU languages and have an answer in the same language.
- Right to access to EP, Council and Commission documents
- Right to refer to the EU Ombudsman cases of maladministration in the EU institutions or bodies
- Right to petition the EP
- EU citizen's freedom of movement and residence
- Right to diplomatic and consular protection

- **Chapter VI: Justice**

- Right to an effective remedy and to a fair trial
- Presumption of innocence until proved guilty
- Right of defence
- Principles of legality and proportionality of criminal offences and penalties
- Right not to be tried or punished twice for the same criminal offense

- **Chapter VII: General Provisions**