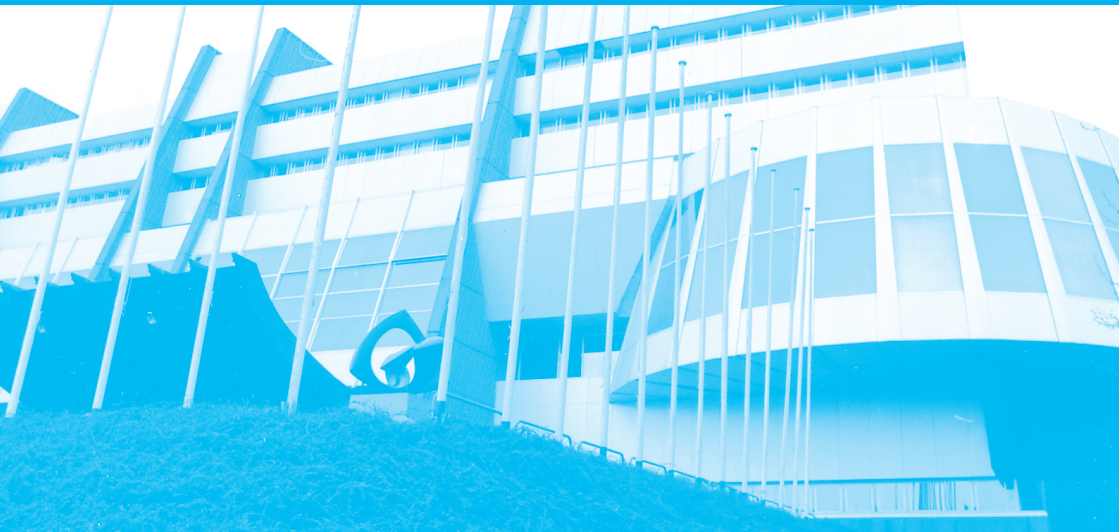


THE EUROPEAN CODE OF POLICE ETHICS



Legal instruments

Recommendation CM/Rec(2001)10
and explanatory memorandum

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

THE EUROPEAN CODE OF POLICE ETHICS

Recommendation Rec(2001)10
adopted by the Committee of Ministers
of the Council of Europe
on 19 September 2001
and explanatory memorandum

French edition :

Le code européen d'éthique de la police (Recommandation Rec(2001)10 et exposé des motifs)

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2. The publication contains the text of Recommendation Rec(2001)10 and the explanatory memorandum thereto.

Recommendation Rec(2001)10

of the Committee of Ministers to member states on the European Code of Police Ethics

*(Adopted by the Committee of Ministers on 19 September 2001
at the 765th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system;

Aware of the need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that police efficiency is dependent on public support;

Recognising that most European police organisations – in addition to upholding the law – are performing social as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour 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;

Considering the principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters – criminal, civil and public law as well as human rights aspects – as adopted by the Committee of Ministers, decisions and judgments of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the diversity of police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individuals' rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

Definition of the scope of the code

This code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes.

I. Objectives of the police

1. The main purposes of the police in a democratic society governed by the rule of law are:
 - to maintain public tranquillity 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.

II. Legal basis of the police under the rule of law

2. The police are a public body which shall be established by law.
3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.
4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public.
5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

III. The police and the criminal justice system

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.
7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.

8. The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities.

9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.

10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring an effective right of access to legal assistance, in particular with regard to persons deprived of their liberty.

11. The police shall not take the role of prison staff, except in cases of emergency.

IV. Organisational structures of the police

A. General

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.

13. The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.

14. The police and its personnel in uniform shall normally be easily recognisable.

15. The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.

16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.

19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.

20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.

21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

B. Qualifications, recruitment and retention of police personnel

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.

24. Persons who have been convicted for serious crimes shall be disqualified from police work.

25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.

C. Training of police personnel

26. Police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

27. General police training shall be as open as possible towards society.

28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.

29. Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case-law, shall be included in police training at all levels.

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.

D. Rights of police personnel

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.

33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.

34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

V. Guidelines for police action/intervention

A. Guidelines for police action/intervention: general principles

35. The police, and all police operations, must respect everyone's right to life.

36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

38. Police must always verify the lawfulness of their intended actions.

39. Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.

40. The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.

41. The police shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.

42. The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

44. 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.

45. Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.

46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

B. Guidelines for police action/intervention: specific situations

1. Police investigation

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.

48. The police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.

49. Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons.

50. Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind paragraph 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons

for the interview as well as other relevant information. Systematic records of police interviews shall be kept.

51. The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular where there is a risk of intimidation of witnesses.

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

2. Arrest/deprivation of liberty by the police

54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.

VI. Accountability and control of the police

59. The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

62. Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.

63. Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

VII. Research and international co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

Explanatory memorandum

I. Introduction

1. Codes of police ethics

Much that has been written about the police takes the form of descriptions of how they do or would act in various situations. There is tendency, except in a moralising manner, to set aside questions of how the police should act: to make clear the values and standards that are required of police in a modern, democratic society. The provisions of the European Code of Police Ethics provides a basis for just such a framework. It could not be more timely. Many European countries are reorganising their police structures to promote and consolidate democratic values. They are also concerned to secure common policing standards across national boundaries both to meet the expectations of increasingly mobile Europeans, who wish to be confident of uniform, fair and predictable treatment by police, and to enhance their powers of co-operation, and hence their effectiveness, in the fight against international crime. The provision of the code also supports the Council of Europe's aim of achieving greater unity between its members.

A glance at the role of the police in a democracy reveals the particular relevance of a code of ethics for the police. People within democracies have organised their states to secure maximum freedom for themselves within the rule of law. Likewise, the criminal justice systems have been developed with the purpose of providing individual liberty and security. In democratic societies where the rule of law prevails, the police undertake the traditional functions of preventing, combating and detecting crime, preserving public tranquillity, upholding the law, maintaining public order, and protecting the fundamental rights of the individual. Moreover, in such societies the police provide various services to the public that are of a social nature, which support their other activities.

They are granted discretion to fulfil these functions. The police in democracies help to sustain the values of democracy, and are themselves imbued with the self-same values. In general, the public consent to and, indeed, welcome the exercise of legitimate authority by the police so long as the police are seen to carry out their tasks towards worthwhile, democratic ends in an ethically acceptable manner. In turn, when they fulfil these conditions, the police have every right to expect that the public will trust them to carry out their responsibilities, and support and co-operate with them in their activities when doing so. These ideas about policing within democracies are at the heart of Council of Europe policies.

Although a code of police ethics is only the beginning of any process to secure common police standards, without one such a process has little hope of succeeding. By laying the foundation for ethical norms, a code of police ethics enhances the possibility that ethical problems are more readily identified, more fully understood, analysed more carefully and more readily resolved. It also prompts questions about the values served by the police as an organisation, and their proper application. Key concepts within the police, such as "loyalty", "consent", "impartiality", "discretion" and "professionalism" all benefit from the common reference and shared meaning, and hence understanding, made possible by a code. Moreover, it can help articulate personal standards of conduct, which capture a sense of pride in being members of a police organisation. This is of particular importance to police recruits, who need to know from the outset the core values that should define and govern their work. The mention of police recruits is a reminder of how important codes are for police training. Without some such objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be argued for, with the risk that they are seen as merely local and the creation of no one but the trainer. It should be added that a police code of ethics has merit at all levels of training.

As has been mentioned, police services are greatly enhanced if the police enjoy the consent and close co-operation of the public. The public is dependent upon the responsible delivery of police services for which the police are invested with considerable authority, including discretion, which constitutes a virtual monopoly of legitimate coercion. For this

reason the public has a need for assurance. A well publicised police code of ethics, by underlining the common standards, purposes and values of the police, can help to promote public trust in the police and further good public relations and co-operation. The same standards, by making clear the range and scope of police services, help safeguard the police against unwarranted, frivolous and vexatious demands, and, above all, limit their liability for failures of service.

Moreover, a police code of ethics can work as a regulatory instrument for the internal organisation of the police. This is one of the striking features of the European Code of Police Ethics. By providing minimum standards, values and ethical frameworks, it may serve a regulatory function in at least four ways: to maintain quality control of the personnel of the police organisation (including civilian staff); to help in the exercise of leadership, management and supervision; to make senior members of the organisation more accountable; and to provide a norm for the adjudication of difficult, internal disputes.

In terms of its possible influence upon police practice, a police code of ethics recommends best practice for the police, and is a specialised version of habitual, everyday, common-sense principled conduct. There are, however, a number of meanings for the word "ethics". Aristotle established the most widely understood meaning of the word. For him, it refers to the critical discipline that focuses upon everyday ethical conduct and beliefs for its subject matter. This is not the meaning of the word intended in the title the European Code of Police Ethics. Modern societies and their police are partly organised under the twin principles of division of labour and co-operation. People find themselves engaged in a large number of specialised activities. While their everyday relationships employ common standards of conduct, they often have need of more specialised understanding and guidance when it comes to their particular jobs and occupations. This is because their work focuses upon particular aspects of human conduct in ways that highlight ethical dilemmas that are regularly repeated, and which their occupational roles require them to cope with and resolve. This is particularly the case with those working in the public services, where the public entrust their well-being to occupational specialists. In this context the word "ethics" refers to that body of principled requirements and prescriptions that is deemed fit to regulate the conduct of the occupation. It is

important to note that “ethics” in this sense represents an attempt to apply everyday ethics to the specialist demands and dilemmas of public organisations. It is in this sense that “ethics” is used in the European Code of Police Ethics.

The police objective of upholding the rule of law encompasses two distinct but interrelated duties: the duty of upholding the properly enacted and constituted law of the state, including securing a general condition of public tranquillity, and the related duty of keeping strictly within prescribed powers, abstaining from arbitrary action and respecting the individual rights and freedoms of members of the public.

The rule of law is focused not only on what is done but on how it is done. In carrying out their duties, police need to respect citizens’ individual rights, including human rights, and freedoms and avoid arbitrary or unlawful action. This is fundamental to the meaning of the rule of law and therefore to the whole meaning and purpose of police duty in a democracy.

Above all, the rule of law requires that those who make, adjudicate and apply the law should be subject to that same law. In other words, the police should be subject to the self-same law that they apply and uphold. It is the mark of the police in a fully-fledged and mature democracy that they bind and subject themselves to the very law that they are pledged to uphold. The police role in upholding and safeguarding the rule of law is so important that the condition of a democracy can often be determined just by examining the conduct of its police.

The European Code of Police Ethics aims to provide a set of principles and guidelines for the overall objectives, performance and control of the police in democratic societies governed by the rule of law, and is to a large extent influenced by the European Convention on Human Rights. The code is concerned to make specific and define the requirements and arrangements that fit the police to meet the difficult, demanding and delicate task of preventing and detecting crime and maintaining law and order in civil, democratic society. Even if the recommendation is aimed primarily at governments the guidelines are drafted in such a way that they may also be a source of inspiration to those dealing with the police and police matters at a more pragmatic level.

2.The background to the European Code of Police Ethics

From its earliest days, the Council of Europe has had police matters on its agenda. Indeed, the police play such an important role with regard to the protection of the fundamental values of the Council of Europe (pluralistic democracy, the rule of law and human rights) that the Council of Europe provides a natural platform for European discussion on the role of the police in a democratic society.

Considerable case-law relating to the police has been established by the European Court of Human Rights. Moreover, guiding principles relevant to the police have been developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The European Social Charter and its case-law comprises important principles with regard to the social and economic rights of police personnel. The European Commission against Racism and Intolerance (ECRI) has developed principles for the police in its specific field of competence. Moreover, the European Commission for Democracy through Law (Venice Commission) has adopted texts on constitutional aspects of the police. The Group of States against Corruption (GRECO) has the mandate to evaluate national administrations, including the police, with regard to corruption.

Police organisations have also been subject to the requirements of local and regional authorities, and this work has also been linked to problems of urban insecurity. Police and ethnic relations is another area of interest. Moreover, the Council of Europe has developed activities designed to promote human rights awareness within the police. Through this work, police practitioners and human rights experts, representing both states and non-governmental organisations, have been brought together to deal with problems of human rights in a professional police context. The training of police personnel in human rights, and a large number of documents, such as handbooks on police and human rights issues, are some of the concrete results of this work. It has served to develop an understanding within national police services of the necessity for raising awareness of human rights at all levels of the police.

The Declaration on the Police (Resolution 690 (1979)), adopted by the Parliamentary Assembly of the Council of Europe in 1979, was an early attempt to provide ethical standards for the police. It has been a source

of inspiration for answering policy questions on the police in many European states. While the Committee of Ministers shared the Assembly's view of the necessity to apply particularly high ethical standards to the police in democratic societies, they did not give the declaration unqualified support, and it did not become a legal instrument of the Council of Europe.

The traditional intergovernmental standard-setting work of the Council of Europe, carried out under the authority of the Committee of Ministers, has focused on the police with regard to criminal justice policies, criminal law and criminology (criminal procedure, crime prevention, victim and witness protection, juvenile delinquency, custody, organised crime, corruption, public prosecution, etc.) and public law (personal integrity and data protection, etc.). Legal instruments – conventions and recommendations – of relevance to the police have been developed within this framework.

Starting in 1989, changes occurred in central and eastern Europe, which led the Council of Europe to intensify considerably its activities with regard to the police. Within the framework of programmes aiming at supporting legal reform as well as the reform of public administration, including the police, a large number of activities (seminars, training sessions and the dissemination of legal expertise) were implemented under themes such as “the role of the police in a democratic society”, “police ethics”, and “police and the rule of law”.

It was in this context of police reform that the need for a normative, pan-European framework for the police was again highlighted. As a result, the Committee of Ministers established the Committee of Experts on Police Ethics and Problems of Policing (PC-PO) under the authority of the European Committee on Crime Problems (CDPC).

The terms of reference of the PC-PO were adopted by the CDPC at its 47th plenary session in 1998, and confirmed by the Committee of Ministers at the 641st meeting of their Deputies in September 1998.

PC-PO terms of reference

“The police play an important role within the criminal justice system. As opposed to other professional groups within that system,

few international instruments apply to the police. At the moment many European countries are reorganising their police as a crucial part of the process to promote and consolidate democratic ideas and values in society. Police ethics have thus become an important topic in several member states of the Council of Europe.

The committee of experts should prepare a study of police ethics in the broad sense, taking into account such questions as:

- the role of the police in a democratic society and their place in the criminal justice system;
- the objectives of policing under the Rule of Law: prevention of crime, detection of crime etc;
- control of the police.

The committee of experts should consider, in particular, aspects of police ethics related to certain situations that occur in daily police work, such as the interrogation of suspects and other functions of investigation, the use of force, the exercise of police discretion etc. Ethical aspects of police management in general as well as their inclusion as a training subject would also be covered. In this respect the differences between ethical codes, codes of professional conduct and disciplinary codes should be taken into consideration. In carrying out this task the committee should bear in mind the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as Assembly Resolution 690 (1979) on the Declaration on the Police. It should take into account the work of the Committee of Experts on Partnership in Crime Prevention (PC-PA) as well as other relevant activities of the Council of Europe.

The outcome of the work should be a report and/or a recommendation on police ethics, which could be used as a guiding framework for member states when police reforms and national codes of police ethics are being considered."

The PC-CO¹ was composed of experts from Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Lithuania,

1. See the appendix to this publication.

Moldova, Poland, Portugal, Romania, Slovenia, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and the United Kingdom. The PC-CO included experts coming from ministries of the interior, ministries of justice, the police, the prosecution and the judiciary. The PC-CO was chaired by Mr Karsten Petersen, Deputy Police Commissioner, Denmark. Two scientific experts – Mr Amadeu Recasens i Brunet (Director of Escola de Policia de Catalunya and Professor at the University of Barcelona, Spain) and Mr Neil Richards (Director of Chief Police Officers Development Programme, National Police Training, Bramshill, United Kingdom) – were appointed to assist the committee. The Secretariat was provided by the Directorate General of Legal Affairs, DG I, of the Council of Europe.

The European Commission, ICPO-Interpol, the Association of European Police Colleges (AEPC) and the International Centre of Sociological, Penal and Penitentiary Research and Studies (Intercenter) were observers to the committee. The Association for the Prevention of Torture (APT), the European Council of Police Trade Unions (CESP), the European Network of Police Women (ENP), the European Federation of Employees in Public Services (EUROFEDOP), the International Federation of Senior Police Officers (FIFSP), the International Police Association (IPA) and the International Union of Police Federations (UISP), were consulted in the final stages of the work.

The PC-CO based its work upon legal instruments (conventions and recommendations of the Council of Europe and other international organisations) as well as principles established by the European Court of Human Rights and other bodies of the Council of Europe, mentioned above. The committee organised hearings with representatives of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the European Committee of Social Rights. Moreover, the PC-CO was informed of projects and activities related to the police carried out by the various Directorates General of the Council of Europe. The work of the PC-CO was presented and supported at the 12th Criminological Colloquium, organised by the Council of Europe in November 1999, on the theme “Police powers and accountability in a democratic society”, and at the High Level Conference between European Ministers of the Interior, in June 2000.

The PC-CO held six plenary and three working group meetings between December 1998 and March 2001. Following a request by the Parliamentary Assembly, the Committee of Ministers agreed that a provisional draft recommendation be sent to the Parliamentary Assembly for its opinion. The opinion of the Assembly was taken into account by the PC-CO at its sixth meeting.

The text of the draft recommendation, the European Code of Police Ethics, and its explanatory report were finalised at the sixth meeting of the PC-CO in March 2001, and submitted for approval and transmission to the Committee of Ministers at the 50th plenary session of the European Committee on Crime problems (CDPC), held in June 2001. At the 765th meeting of their Deputies on 19 September 2001, the Committee of Ministers adopted the recommendation and authorised publication of the explanatory memorandum thereto.

II. Preamble to the recommendation

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system;

Aware of the common need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that the police efficiency is dependent on public support;

Recognising that most European police organisations – in addition to upholding the law – are performing social functions as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour 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;

Considering principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters – criminal, civil and public law as well as human rights aspects – as adopted by the Committee of Ministers, decisions and judgments of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the diversity of different police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individuals' rights in democratic societies governed by the rule of law;

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

Commentary on the preamble

Since its inception, the Council of Europe has worked to establish and promote common principles in its member states' laws, practices and systems. The criminal justice system has been one of the priorities in this respect, as crime fighting demands the direct, practical application of the principles on which the Council of Europe was founded and

which it is expected to uphold, namely the rule of law, democracy and human rights.

Moreover, the effectiveness of responses to crime depends to a large extent on their being harmonised within a coherent and concerted European policy. That requirement is increasingly becoming more important with the existence of crime phenomena, such as organised crime and corruption, which often have an international dimension, in respect of which national systems risk proving inadequate.

Traditionally, the elaboration of common standards applicable to law enforcement bodies, such as the police, has not been as developed, for example with regard to the judicial side of criminal justice or the implementation of sanctions. The adoption of the Council of Europe Committee of Ministers' Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, as well as the present recommendation is, however, a new trend in this respect. Moreover, the recognition of the police as a component of the criminal justice system, thus bringing justice and home affairs closer to each other, is likely to provide a solid basis for continued harmonisation of standards applicable to the police.

In a Europe where national borders become less important the focus on the police and their powers from an international perspective is unavoidable. The debate concerns to a large extent the efficiency of the police in combating crime that is increasingly operated over national borders, such as organised crime and corruption. However, the debate is not limited to this perspective. In a democratic society police powers are restricted with regard to what is acceptable from the point of view of individuals' fundamental rights and freedoms, as laid down in the European Convention on Human Rights. A proper balance between these interests must be found and it is here that the international ethics of the police come into play.

The police are accountable not only to the state but also to the public in such a society and their efficiency is to a large extent depending on public support. In this respect the social function and the public service side of the police are important also for the carrying out of law enforcement.

The European Convention on Human Rights and its case-law has been considered a basic framework for the drafting of the present recommendation. Moreover, principles of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have been incorporated into the text. The work has also, in relevant parts, been influenced by the European Social Charter and its case-law. Moreover, other international texts, particularly applicable to the police, such as the United Nations Code of Conduct for Law Enforcement Officials, and Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police, have not only been considered in depth, but have also been influential sources for the drafting of the present recommendation.

The following Council of Europe texts, which offer guidance in matters relating to the present recommendation, have been given the closest attention:

- Framework Convention for the Protection of National Minorities (ETS No 157);
- Resolution (78) 62 on juvenile delinquency and social change;
- Recommendation No. R (79) 17 concerning the protection of children against ill-treatment;
- Recommendation No. R (80) 11 concerning custody pending trial;
- Recommendation No. R (83) 7 on participation of the public in crime policy;
- Recommendation No. R (85) 4 on violence in the family;
- Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure;
- Recommendation No. R (87) 15 on regulating the use of personal data in the police sector;
- Recommendation No. R (87) 19 on the organisation of crime prevention;
- Recommendation No. R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families;
- Recommendation No. R (96) 8 on crime policy in Europe in a time of change;

- Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence;
- Resolution (97) 24 on the twenty guiding principles for the fight against corruption;
- Recommendation No. R (99) 19 concerning mediation in penal matters;
- Recommendation No. R (2000) 10 on codes of conduct for public officials;
- Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system;
- Recommendation Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer;
- ECRI general policy recommendations; European Commission against Racism and Intolerance.

It should also be mentioned that several other texts (instruments and handbooks, etc.) produced within the Council of Europe relating to police matters, such as police and human rights, police ethics, media, racism and intolerance, equality and minority questions, have been considered.

The present recommendation has been drafted from the viewpoint that there are big differences between member states in terms of how their law enforcement/police tasks are being implemented. This is particularly noticeable in terms of the status and the organisation of the forces/services as well as their operating methods. At the same time there are great similarities, in particular as regards the objectives of the police and the problems they face in their daily activities. Having this in mind, the recommendation consists of major guiding principles that are considered crucial in a well-established democracy, both for the efficiency of the police and for their acceptance by the public.

The establishment of common standards is very timely. Police reforms are being carried out throughout Europe and, particularly in the newer

democracies, police reforms are part of a general move towards consolidating democratic principles such as the rule of law and the protection of human rights, in public administration.

The present set of principles may serve as guidance and a source of inspiration when police systems are being reformed. However, it is clear that a reasonable margin of appreciation must be left to member states, not least with regard to the differences in historical heritage and levels of development. A foundation for continued efforts relating to the police has been achieved with this recommendation and the Council of Europe has made police matters one of its priorities.

III. Appendix

Definition of the scope of the code

This code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society and, who are empowered by the state to use force and/or special powers for these purposes.

Commentary

The definition of the scope of the code at the outset of the recommendation serves the purpose of establishing its applicability. In order to make the code relevant to as many police systems as possible and considering the variety of different police systems existing in Europe, in particular their different stages of development and organisational structures, the definition is made wide. The definition used in this paragraph makes the code applicable to “traditional” police in all member states. (It is worth noting that this definition should not be confused with the recommended objectives of the police, which are included in Article 1 of the code.)

For the reasons referred to above, the definition of the scope of the code contains only the hard-core characteristics that are entrusted to all existing public police bodies in Europe, that is the power to use force in order to maintain law and order in civil society, normally including upholding public order, prevention and detection of crime. Having this definition as

the lowest common denominator for the applicability of the code, there is no need to establish a detailed description of the various types of police to be affected. Thus, this code applies to all police organisations responsible for police activities in civil society. The code applies regardless of how such police are being organised; whether centralised or locally oriented, whether structured in a civilian or military manner, whether labelled as “services” or “forces”, or whether they are accountable to the state, to regional or local authorities or to a wider public.

Although the intention is to have as wide a range as possible for the code, certain specific types of police are excluded from its scope. The reference to “traditional” police should be regarded as being the opposite to “special types” of police, which are set up for specific purposes other than keeping law and order in civil society. Examples of police that do not come within the scope of the code are military police when exercising their military functions and secret security services. Another category not covered by the code is “penitentiary police”, which in the countries where they exist, are limited to performing their duties in penal institutions.

It should be added that private security companies are not covered by this recommendation.

I. Objectives of the police

1. *The main purposes of the police in a democratic society governed by the rule of law are:*

- to maintain public tranquillity, 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.*

Commentary

Paragraph 1 contains a selection of the most important objectives of the police in a democratic state governed by the rule of law.

Maintaining tranquillity and law and order in society are the classical overall objectives and the full responsibility of the police, often referred to as “public order” policing. This concept covers a wide variety of police activities among which providing for the safety and security of persons (physical as well as legal) and property (private as well as public) and law enforcement between the state and the individual as well as between individuals should be mentioned.

The respect for the individual's fundamental rights and freedoms as enshrined in the European Convention on Human Rights as an objective of the police is possibly the most significant symbol of a police service in a society governed by the rule of law. This objective implies not only a separate obligation to uphold these rights, but that there are limits as to how far the police may proceed in order to fulfil their other objectives.

The wording “notably the European Convention on Human Rights” is chosen in order to indicate a specific and precise reference to a particular instrument, without excluding the importance of other relevant human rights texts in this respect.

Crime prevention is dealt with differently in member states, however, this is most commonly, regarded as an overall responsibility of the state. Crime prevention is often divided between social and situational prevention, both of which apply to the police.

As follows from the Council of Europe Committee of Ministers' Recommendations No. R (83) 7 on participation of the public in crime policy, and No. R (87) 19 on organisation of crime prevention, effective crime prevention requires active participation by the community at large, including the public. In recent years “partnership in crime prevention” has been a frequently used term, which indicates that crime prevention is not seen as a task exclusive to the police. The crime prevention activities of the police, other agencies and the public therefore need to be coordinated. Even if in most states the ultimate responsibility for crime prevention policy does not rest with the police, it is none the less one of their main objectives as a society governed by the rule of law which requires safeguards to curb abuse.

Crime detection is one of the classical primary objectives of police in all states. Even if crime detection often amounts to a limited part of the total police work, it is a vital component of the activities of the police.

People expect much of the police in terms of their crime detection. Effective crime detection has also a preventive effect in itself, and is thus crucial for promoting public confidence in criminal justice.

Crime detection is organised differently in various states; in some states it is the responsibility of the general police, whereas in other states it is carried out by special branches of the police, such as criminal police or judicial police. The independence of the police from the prosecution authorities also differs to a large extent. However, the problems the police are facing in their crime detection are identical all over Europe. This code does not challenge the centrality of the crime-fighting side of police work, but it underlines the importance of upholding a proper balance between the efficiency of the police and the respect for individuals' fundamental human rights, which is particularly difficult in crime fighting. The principle of "presumption of innocence" and its accompanying safeguards are certainly of great importance for persons suspected of crime. In addition, the respect for individual rights in crime detection, also comprises the rights of other persons affected, such as victims and witnesses, towards whom the police also have responsibilities. Safeguards in crime detection are dealt with in section V.B.

The provision of assistance to the public is also a feature of most police bodies, but such functions are more or less developed in various member states. The inclusion of service functions under the objectives of the police is somewhat different as it changes the role of the police from that of being a "force" to be used in society into a "service" body of the society. For some years there has been a clear trend in Europe to integrate the police more fully into civil society, to bring them closer to the public. The development of "community policing" in several member states serves such a purpose. One important means used to do this is to give the police the status of a public service body rather than a pure law enforcer. In order to make such a shift a bit more than a semantic exercise, the service side of the police should be included as one of the purposes of a modern democratic police. Whereas assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other authorities or social services, the service side of the police is more vague and thus difficult to define. It should not be confused with certain

administrative duties given to the police (issuing passports etc). In general, the police as a public service body is connected to the role of the police as a resource for the general public, and easy access to the police is one of the basic and most important aspects in this respect. The service side of the police has more to do with police attitudes towards the public than with giving the police far-reaching service functions in addition to their traditional duties. It is clear that the police cannot be charged with too heavy a responsibility for service functions in society. Member states should therefore establish guidelines for police performance and duties in this respect.

II. Legal basis of the police under the rule of law

2. *The police are a public body, which shall be established by law.*
3. *Police operations must always be conducted in accordance with the national law and international standards accepted by the country.*
4. *Legislation guiding the police shall be accessible to the public and sufficiently clear and precise and, if need be, supported by clear regulations equally accessible to the public.*
5. *Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may be justified only for reasons of the proper performance of police work in a democratic society.*

Commentary

This section establishes the legal framework based on the rule of law for the police as an institution as well as for its actions. The section also contains some fundamental legal requirements, some of which are deduced from the European Convention on Human Rights and its accompanying case-law. Paragraphs 2 to 5 summarise some of the principles behind the concept of the rule of law with regard to the police.

Paragraph 2 underlines the idea that the police as an institution is a public body. It means that public authorities, ultimately the state, cannot evade their responsibility for the police and that the police as an institution cannot be made into a private body. Another thing is that some police functions/powers can be delegated to private bodies.

Moreover, paragraph 2 states that police organisations should be established by law. This implies that the police as an institution, is based on the national constitution and/or ordinary legislation, however, this does not exclude detailed regulation of the police by subordinate instruments, such as governmental decrees or instructions of the head of service, provided that these are given under delegated powers in conformity with the constitution/legislation.

Paragraph 3 spells out the principles that should always guide police operations; they must be lawful, both with regard to national legislation and relevant international standards. As regards the latter, the European Convention on Human Rights and related instruments are of particular importance.

Paragraph 4 sets out two general additional principles contained in the “rule of law concept”, which have been referred to in the European Court of Human Rights case-law. In order to be in a position to protect his/her own rights against police powers, the citizen must be aware of which legal rules apply. Firstly, this implies that regulations are accessible to the general public and, secondly, the norm, whether primary legislation or a subordinate regulation, must be formulated with sufficient precision. These two requirements are necessary to give the citizen the possibility of foreseeing the consequences which a given regulation may entail. It is clear that consequences never can be foreseeable with absolute certainty and, in addition, laws and regulations must keep pace with changing circumstances. Therefore, the recommendation does not go any further than the European Court of Human Rights’ dicta, and uses the wording “sufficiently clear”. There must be a good balance between the details and the flexibility of a police regulation, concerning both the basis for the organisation and the performance of operations. The importance of these principles cannot be underestimated in respect of state powers used against individuals. This is the reason for having them spelled out in the recommendation.

A cardinal principle of the rule of law, contained in paragraph 5, is that the law applies equally to all citizens, including those who execute the law, such as police personnel. Exceptions to this rule should be allowed only when it is necessary for the proper performance of police duties.

Paragraph 5 also implies that, unless there are special reasons, police personnel should, as a rule, be subject to ordinary legislation as well as to ordinary legal proceedings and sanctions. Internal disciplinary measures fall outside the scope of this rule. The European Court of Human Rights has established case-law concerning the distinction between disciplinary matters and criminal matters. In essence, it is not feasible for a state to label what, according to international law, should be considered a criminal matter or a disciplinary matter, and thus disregard procedural safeguards provided for in Article 6 of the European Convention on Human Rights.

III. The police and the criminal justice system

6. *There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.*

Commentary

As already stated, the police are one of the four components of the criminal justice system; police, prosecution service, the courts and the correctional system. Even though this model of the criminal justice system sees each element as independent, it is widely accepted that the system should incorporate a number of checks and balances in order to ensure that the total system, and its constituent elements operate according to the law and in an efficient way. At the same time, this model of the criminal justice system, in which individual cases are seen as passing from one element to another and thereby justifying the criminal justice process, requires that these elements are independent and autonomous to a certain degree with regard to each other. Such a system is more likely to provide safeguards for those passing through it.

Paragraph 6 underlines the importance of a separation of the role of the police from the other components of the criminal justice system. The police, who are the first link of the chain, should have no controlling functions over the other bodies in the criminal justice system.

7. *The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.*

Commentary

Paragraph 7 deals with the integrity of the criminal justice system. The independence and the impartiality of the judiciary is one of the corner stones in a society governed by the rule of law. The police, as part of the criminal justice system, are necessarily close to the judiciary and must never act in a way that may prejudice, or be seen to affect the impartiality of the judiciary. On the other hand, the judiciary should respect the police as a distinct professional body and not interfere with their professional arrangements.

The police are subject to the judiciary in judicial decisions, which they must scrupulously respect and often implement, provided these are legitimate. The legitimacy, or lawfulness, is related to national law as well as to international (human rights) law, see also paragraph 3.

The second part of this paragraph would normally imply that the police must respect all judgments and decisions of courts and even do whatever is appropriate to enable their execution. However, the way in which the paragraph is formulated opens a possibility for the police not to play the role of "blind implementers" in situations when the requirements for justice in a democratic society governed by the rule of law are clearly set aside. It follows from paragraphs 3 and 38 that the police always must check the lawfulness of their actions.

This paragraph does not prejudice the rights and freedoms of police personnel as private citizens.

8. *The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission made by the police affecting individual rights, before the judicial authorities.*

Commentary

As an exception to the main rule of strict separation of powers between the executive and the judiciary, the police may in certain situations be entrusted with judicial powers. The recommendation emphasises that the police should be in a position to exercise judicial powers only to a limited extent, normally with regard to minor offences where the facts

are simple and where the offender admits guilt, the sanctions are limited, and often standardised. It is crucial that these decisions by the police, based on delegation of judicial powers, can be challenged before a court and that the offender is made aware of this. This follows from Article 6 of the European Convention on Human Rights, which ensures everyone's right to a fair trial by a court of law. Paragraph 8 allows these police decisions to be challenged before the judicial authorities.

9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.

Commentary

Paragraph 9 reflects the principles contained in the Council of Europe Committee of Ministers' recommendation on the role of public prosecution in the criminal justice system (Rec(2000)19) concerning the relationship between the prosecution and the police. Due to the different systems prevailing in Europe, that recommendation makes a distinction between member states where the police are independent from the prosecution and those where the police are placed under the authority of the prosecution service. Irrespective of what kind of system, that recommendation gives two general functions to the prosecution *vis-à-vis* the police; to scrutinise the lawfulness of police investigations, and to monitor whether human rights are respected. Moreover it indicates that there should be appropriate and functional co-operation between the public prosecution and the police.

In countries where the police are placed under the authority of the prosecution service, the said Recommendation (Rec(2000)19) states in its paragraph 22 that "the state should take effective measures to guarantee that the public prosecutor may :

- a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with

respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution, etc.;

b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;

c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;

d. sanction or promote sanctioning if appropriate to eventual violations."

Paragraph 9 of the present recommendation mirrors the above-described rules for the prosecution service in relation to the police. States should therefore see that there is functional and appropriate cooperation between the police and the prosecution service, including a police perspective. In particular, measures should be taken to ensure that the police receive clear and precise instructions from the prosecution. Such measures could be instructions through legislation or subordinate forms of regulations, accompanied by training, even co-training between the police and the prosecution etc. On the other hand, cooperation also requires that the police be obliged to inform the superior investigating authority of progress in policy matters and, in particular, in specific cases. Reporting back to the prosecution/investigating judge should preferably be regulated in detail, and equally requires training.

10. *The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access to legal assistance is effective, in particular with regard to persons deprived of their liberty.*

Commentary

One of the corner stones in a rule of law society is to provide everyone with equal access to law and justice. Generally, this also implies the provision of effective legal assistance to everyone whose rights and interests are threatened, see Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer. Moreover, paragraph 6 of the European Convention on Human Rights contains the specific

provision that everyone charged with a criminal offence has the right to defend himself/herself in person or through legal assistance of his/her own choosing (see also paragraph 48 of the present recommendation).

Paragraph 10 highlights that the police must respect the role of defence lawyers in the criminal justice process. This implies *inter alia* that the police shall not interfere unduly into their work or in any sense intimidate or harass them. Moreover, the police shall not associate defence lawyers with their clients. The assistance of the police with regard to an offender's right to legal assistance is particularly needed when the person in question is deprived of his/her liberty by the police.

11. *The police shall not take the role of prison staff, except in cases of emergency.*

Commentary

Paragraph 11 is complementary to paragraph 6, and has been included to emphasise the absolute difference of police functions from those of dealing with convicted and sentenced offenders; that is, the police in their judicial role are concerned only with pre-trial procedure. According to Council of Europe standards concerning the administration and management of probation and prison systems, for example the European Prison Rules (Rec. No. R (87) 3) and the Recommendation on staff concerned with the implementation of sanctions and measures (Rec. No. R (97) 12), it is clear that the professions of probation and prison staff are completely different from those of the police, in particular in their crime detecting function. Accordingly, personal qualifications, recruitment procedures and training are all very different. This rule indicates an important principle for the separation of powers within the criminal justice system, before and after sentencing. However, it does not preclude that police can be called for in emergency situations.

In some member states, correctional staff are referred to as "penitentiary or prison police". As was mentioned in the commentary to the definition of the scope of the code, this category of staff are not covered by the recommendation.

IV. Organisational structures of the police

A. General

12. *The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.*

Commentary

Paragraph 2 embodies a principle, which is a key to the identity of a police organisation in a democratic society governed by the rule of law. Police work in such a society succeeds best if it is carried out with the consent of the population (“earning public respect”). Therefore, it is crucial for the police to establish a mutual understanding and co-operation with the public. This is true for most of the functions with which the police are entrusted.

The organisational structures of the police should preferably be such as to promote confidence building between the police and the public. One important aspect in this respect is to develop a high level of professionalism within the police. Another aspect is to develop the police organisation into a transparent public service body. In such a way the public may regard the police more as a service at their disposal than as a force imposed upon them.

13. *The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.*

Commentary

It should be recalled that the scope of the present code is limited to police work in civil society. The judicial side of police work – that is the police being a component of the criminal justice system – and the public order side of the police, as well as the public service dimension of police work, and the integration of the police into civil society, are all elements that are different from military functions and objectives. Moreover, the legal basis and powers of the police in a rule of law society, where the focus is on the respect for civil and political rights of individuals, are also different from those of the military. Although there are some similarities

between police and military functions and performances, the aforementioned special characteristics of the police are so important in a democratic society governed by the rule of law that they should be supported by all means available. Organisational responsibility is one of the best means in this respect. A police organisation under civilian responsibility is likely to best cultivate police professionalism suitable for civil society.

The organisational police structures – civil or military – differ very much in Europe. In western and northern Europe the police are primarily civilian. In central and eastern Europe, several police organisations have a military structure; whereas in southern Europe, both models exist, sometimes side by side in the same country.

Moves towards community orientation of the police is under way in several member states. These processes often contain elements of organisational reform. In central and eastern Europe, this is part of an overall transition processes into systems of democracy and the rule of law. However, this trend is also going on in parts of Europe with long-standing democratic systems.

In the prevailing circumstances and, with full respect to the history and traditions in member states, paragraph 13 does not go any further than to state that police functions performed in civil society – whether carried out by civilian or militarily organised police – should ultimately be under the responsibility of civilian authorities.

14. *The police and its personnel in uniform shall normally be easily recognisable.*

Commentary

Paragraph 14 contains a principle of crucial importance for the traditional police in a democratic society governed by the rule of law; it should be easy for the general public to recognise police stations and the uniformed police. This also covers equipment used (cars etc.). The paragraph indicates that, unless there are special reasons, such as the proper exercise of police functions, the police should be distinctively recognisable from other bodies. This forms part of the general requirement of openness and transparency of police organisation, however, it also serves the purpose of easy access to the police in emergency situations. (See also paragraph 45.)

15. *The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.*

Commentary

The police belong to the executive power; they cannot be fully independent of the executive, from which they receive instructions. However, in carrying out their given tasks the police must follow the law and are, in addition, entrusted with discretion. In exercising their powers, the police should not receive any instructions of a political nature. Operational independence should apply throughout the organisation. Such independence is an important feature of the rule of law, as it is aimed at guaranteeing that police operations are being conducted in accordance with the law, and when interpretation of the law is needed, this is done in an impartial and professional way. Operational independence requires that the police are fully accountable for their actions/omissions (see also section VI).

16. *Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.*

Commentary

In a society governed by the rule of law, the law applies equally to all citizens. If this principle is to be meaningful it follows that police personnel, just as any citizen, must also be personally accountable for their own actions. Moreover, they should also be fully accountable for orders to subordinate police personnel, given with hierarchical powers.

17. *The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.*

Commentary

Paragraph 17, which is complementary to paragraph 16, concerns the responsibility for orders within the police. The fact that all police

personnel are responsible for their own actions, does not exclude the fact that superiors may also be held responsible for having given the order. The superior may be held responsible in parallel with the implementing official, or alone in cases where the latter followed orders in good faith. (See also paragraph 38.) Through an established chain of command, ultimate responsibility for police action can be traced in an effective way.

18. *The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.*

Commentary

Paragraph 18 recommends states to organise their police based on the idea of the police as being an integrated part of society. The police may increase its efficiency if well-functioning relationships are established between them and other public bodies on different levels and, in particular, between the police and the wider public, the latter often being represented by groups or organisations of a non-governmental character.

The recommendation leaves open how to implement this principle. Different models exist in Europe of how the police co-operate with other agencies and bring the police closer to the community. Decentralisation of the police organisation is generally considered as an important means. However, this is often closely related to the extent to which local democracy is developed in a country. "Community policing" was initially developed in the United Kingdom as a way to involve the whole community in crime prevention in particular, but also in detecting crime. Many European countries have followed this model.

Urban insecurity in the bigger cities in Europe is an example of a multi-faceted problem, often related to phenomena such as poverty, racism and juvenile delinquency, which cannot be effectively combated solely by police action, but which requires a wider society approach with many players involved.

19. *Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.*

Commentary

The police should be as transparent as possible towards the public. A readiness by the police to disclose information on its activities is crucial for securing public confidence. At the same time, the police must respect confidentiality for a number of reasons; integrity of persons, crime investigation reasons, the principle of the presumption of innocence, security reasons etc. Obviously, even if situations like those described are well regulated in most states, there will always be a margin of appreciation left to the police in striking the balance between the two interests. In addition, communication between the police and the media can be difficult, and may not always be well prepared from the police side. Therefore, it is recommended that the police establish guidelines for their media contacts. It is noted that in some member states media relations are being dealt with in departments especially tasked for such contacts. A key principle should always be that of objectivity.

20. *The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular, to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably in the European Convention on Human Rights.*

Commentary

The concern in paragraph 20 is to enhance a police culture which in recognising its responsibility for upholding individuals' fundamental rights and freedoms, works to safeguard its own professional integrity through internal accountability measures. This could be realised in different ways. The leadership and management of the police certainly play an important role in establishing an ethos, which upholds individual rights and the principle of non-discrimination, both within the organisation and in dealings with the public. Other means are an open communication between staff (horizontal as well as vertical), standard setting (professional codes of conduct) and monitoring. It is clear that recruitment and training play an important role in this respect. (External accountability is dealt with in section VI.)

21. *Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.*

Commentary

There is no common international definition of corruption. The qualification of what should be considered as corruption varies from country to country. The Criminal Law Convention on Corruption adopted by the Council of Europe in 1999, does not provide a uniform definition of corruption. However, it aims at developing common standards concerning certain corruption offences such as bribery (active and passive).

The term “police corruption” is often used to describe a great variety of activities, such as bribery, fabrication or destruction of evidence, favouritism, nepotism, etc. What seems to be a common understanding of police corruption is that it necessarily involves an abuse of position, an abuse of being a police official. Moreover, it is widely recognised that corruption should be regarded as a constant threat to the integrity of the police and its proper performance under the rule of law in all member states.

Paragraph 21 aims at encouraging member states to put in place effective internal measures to combat corruption within their police organisations. This could include measures to define corrupt behaviour, as far as possible ; that the causes for corruption in the police be studied, and that organisational structures and control mechanisms to combat corruption be established.

It should be mentioned that corruption has only in recent years become a focal point on the international agenda. Nowadays, member states consider corruption a real threat to democracy, the rule of law and the protection of human rights, and, as a result, the Council of Europe Committee of Ministers, being the pre-eminent European institution to defend these rights, has developed a series of instruments for the fight against corruption ; the Resolution on the twenty guiding principles for the fight against corruption ((97) 24) and Recommendations on the status of public officials in Europe (No. R (2000) 6) and on codes of conduct for public officials (No. R (2000) 10), which all apply to the police, and the Criminal Law Convention (ETS No. 173) as well as the Civil Law Convention on Corruption (ETS No. 174), adopted in 1999. Moreover, the Group of States against Corruption (GRECO) was

established in 1998 to monitor corruption in member states. The Council of Europe is also performing other programmes with the overall objective to the fight against corruption, *inter alia* in the police sector, which are open to member states.

B. Qualifications, recruitment and retention of police personnel

22. *Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.*

Commentary

In order to select appropriate candidates for the police, the selection process should be based only on objective criteria. This rule deals with personal qualifications, which may be divided into personal skills and experience. The personal abilities and aptitudes of the applicant, some of which are described in paragraph 23 belong to the former category. The latter category – personal experience – covers both educational background and life experience, often the previous working experience of candidates. Personal qualifications should meet the objectives of the police, see paragraph 1. The same basic principles should apply to all ranks although the qualifications may differ. Appointments to the police for political reasons should be avoided, in particular to posts of an operational character.

23. *Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.*

Commentary

The listed examples of personal skills are important for the operational staff of a police service in a democracy. The list is not exhaustive. The ultimate goal is to have police personnel with a broad understanding of the society they serve and whose behaviour is appropriate for fulfilling their tasks in accordance with the objectives of the police.

24. *Persons who have been convicted for serious crimes shall be disqualified from police work.*

Commentary

Paragraph 24 sets a minimum standard that should apply to candidates, trainees and fully integrated police personnel. However, it is open to individual member states to decide what degree of tolerance should be given to crimes that fall short of the category of "serious crimes". Furthermore, although the existence of a conviction should be interpreted as a minimum standard before candidates or personnel are disqualified from police work, this does not exclude the possibility of candidates and personnel being disqualified if there is a well-substantiated suspicion of criminal activity against them.

25. *Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.*

Commentary

In order to be as beneficial as possible to the police, recruitment procedures should be carried out in an objective and non-discriminatory way. Some means for achieving this are described in paragraph 22 and its commentary. Access to the police in a non-discriminatory way also has support in the European Convention on Human Rights (Protocol No. 12) as well as in the European Social Charter. The case-law of these instruments has in this respect tended to focus on the following grounds: gender, political opinion, religion, race, national and ethnic origin.

The term "necessary screening" of candidates indicates that the recruiting authority should have an *ex-officio* and active research approach when scrutinising the background of applicants. This requirement is more demanding in countries where the public administration, including the criminal justice system, is not so well developed or in countries which are suffering from catastrophes and war, than in countries where public records, such as criminal records, are accurate and easy to access.

It is a fact that women generally are grossly under-represented in the police in all member states, and that this is even more apparent in the higher ranks and managerial positions than in the basic grades. A similar situation can generally be described for minority groups, including ethnic minority groups, in all member states.

It is appreciated that the relations between the police and the public will benefit from the composition of the police reflecting that of society. This will reinforce the efficiency of the police and promote their public support. As a consequence, every effort shall be made to this effect.

The second sentence of the paragraph implies that recruitment policies shall encourage a representation in the police, which corresponds to that of the society. Such a policy should be made known to the public and implemented at a reasonable pace and take full account of the requirements stated in paragraph 22.

C. Training of police personnel

26. *Police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.*

Commentary

The police play a prominent role as a defender of the society which they serve and should preferably share the same fundamental values as the democratic state itself. The fostering of democratic values in the police is therefore crucial and training is one of the most important means in furthering such values among personnel. As a result, paragraph 26 brings in the fundamental values of all member states of the Council of Europe as an integrated part of the training of the police.

Ethical and human rights aspects of police work should be introduced preferably in a problem-oriented context, which focuses on practical police work and gives a solid understanding of the underlying principles. Although member states pay considerable attention to human rights training, there is still a great need to encourage this part of police training, in particular to develop training methods and material. The Council of Europe is active in this area and several handbooks containing

practical guidelines on human rights in police training have been developed on an expert level.

27. *General police training shall be as open as possible towards society.*

Commentary

The principle of openness and transparency of a police organisation, must also be reflected in the training of its staff. A police organisation which aims to carry out tasks with the support of the public, must have its personnel trained in an environment which is as close as possible to social realities. This would include the physical environment (place and equipment) as well as the intellectual input to the training.

Police training in closed and remote places, involving students living in barracks, etc., may be necessary for certain types of specialist training. However, general training of police should, wherever possible, be carried out in “normalised” conditions. Another strong implication of openness is that external training, involving institutions other than the police, should be offered, in addition to internal training.

Police openness towards society is also beneficial for the dynamics of training. In particular, with problem-oriented training, states of affairs in society must be faithfully reproduced for the training to be effective.

28. *General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.*

Commentary

Paragraph 28 contains the principle that police personnel, as a rule, initially, shall undergo general training and that initial training should be followed, if need be, by more specialised training. Such a system will help to create a staff familiar with the same basic values of policing and capable of carrying out a variety of tasks. The approach of training police personnel as generalists initially does not rule out the fact that police personnel in addition need special training relating to specific tasks and responsibilities (for example, according to their ranks). The paragraph also underlines the need to complement initial training with in-service training at regular intervals.

Police training is closely related to the system of recruitment to the police. There are states where all police personnel, as a rule, are recruited as basic grades (United Kingdom model) and systems where basic grade staff and managerial staff could be recruited through separate proceedings (continental Europe), as a requirement for being recruited to the latter category is often a university degree. The principles in this rule apply to both these systems.

29. *Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case-law, shall be included in police training at all levels.*

Commentary

The practical aspects on the use of force by the police, in particular *vis-à-vis* individuals or groups of individuals are of such crucial importance for the police in a rule of law society, that it has been highlighted by this separate paragraph. Practical training would imply that it should be as close to reality as possible.

30. *Police training shall take full account of the need to challenge and combat racism and xenophobia.*

Commentary

Paragraph 30 draws attention to the problem of racism and xenophobia which exists in many European countries, and is an important factor in urban insecurity. Police training should, whenever necessary, challenge any racist or xenophobic attitudes within the police organisation, and also emphasise the importance of effective police action against crimes which are based on race hatred and target ethnic minorities.

D. Rights of police personnel

31. *Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.*

Commentary

The paragraphs of this section are guided by the overall principle that police in an open democratic society should have the same rights as other citizens, to the fullest possible extent. This is an important element of the rule of law and of making the police organisation part of the society it serves.

The rights covered by the European Convention on Human Rights (civil and political rights) apply fully to all citizens in member states, including those employed by the police. Some of these rights are absolute in their character, whereas others may be derogated under special conditions. In this respect, reference is made to the extensive case-law developed by the European Court of Human Rights.

Paragraph 31 emphasises that member states shall not deprive their police staff of any civil and political rights, unless there are legitimate reasons directly connected to the proper performance of police duties in a democratic state governed by the rule of law.

32. *Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures; taking into account the particular character of police work.*

Commentary

Paragraph 32 refers to social and economic rights, which are covered by the European Social Charter, a complementary instrument to the European Convention on Human Rights for these particular rights.

Police personnel have the status of public servants (or civil servants) in several member states. As this is not the case in all member states, it is recommended that police personnel, as far as possible, should enjoy social and economic rights as public servants. Such rights may be limited because of the special character of police work. The social and economic rights listed in the paragraph highlight a few crucial rights but the list is not exhaustive.

The right to “organise” (that is, to join trade unions) has in the European Social Charter (Article 5) a special interpretation when it comes to the police, as the Charter in this respect leaves a margin of appreciation to individual states. However, the case-law under the Charter has established that, even if there is no unlimited right for the police to “organise”, it would be a violation of the Charter to forbid police officers to set up their own representative associations. National law may provide for police-only associations, which is the case in some member states. However, a complete ban on the police’s right to strike is not contradictory to the Charter and its case-law, and the present recommendation does not go any further.

The rights to appropriate remuneration and social security, as well as special health and security measures have been highlighted in the recommendation because of the special character of police work. This refers, for example, to the unpredictable tasks that police personnel are facing every day, to the risks and dangers inherent in police work and to the irregular working hours. Moreover, these rights of police personnel are also crucial conditions for making the police profession attractive. This aspect is extremely important, considering the need for highly qualified staff to be recruited to, and retained within, the police. Furthermore, a well-remunerated police personnel is more likely not to be involved in undesirable activities, such as corruption.

33. *Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.*

Commentary

Disciplinary sanctions against police personnel are normally an internal police matter and are often of a minor nature. However, disciplinary measures may also be severe and sometimes it is difficult to draw the line between the criminal and the disciplinary aspects of a case. Furthermore, criminal proceedings and sanctions may be followed by disciplinary measures.

The possibility of having disciplinary decisions challenged by an independent body, preferably a court of law has two main advantages. First, it would provide police personnel with a safeguard against arbitrary decisions. Second, it opens up the police to society (transparency), in

particular, given that court hearings and judgments/decisions of courts are normally made public.

Another, more legalistic aspect is that if disciplinary measures were subject to review by a court of law, the right to a fair trial, according to Article 6 of the European Convention on Human Rights, which in certain situations applies also to disciplinary matters, would always be safeguarded.

34. *Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.*

Commentary

Police personnel, as a result of their particular tasks and close contacts with the public, will sometimes be the subject of accusations by the public concerning their performance. If such accusations are ill-founded (following impartial investigations/proceedings) police personnel should be entitled to the necessary support from their authorities, in particular, concerning personal assistance. (Police complaints systems are dealt with in section VI.) Paragraph 34 does not exclude the fact that support to police personnel may be required in other situations, such as during internal proceedings against staff.

V. Guidelines for police action/intervention

Commentary

This part of the recommendation deals to a large extent with guidelines for operational police personnel in their daily activities. During the preparatory work for the recommendation, reference was sometimes made to “internal ethics” for this part of the text as opposed to the “broader ethics of the police” for the sections which concern the framework for police in a democratic society, their place in the criminal justice system, organisational structures, etc.

The guidelines are divided into two parts, one dealing with general principles of democratic policing which apply to almost any situation, and the other devoted to principles for specific situations which provide particular difficulties in terms of ethics and human rights in all member states.

A. *Guidelines for police action/intervention: general principles*

35. *The police and all police operations must respect everyone's right to life.*

Commentary

Paragraph 35, which is based on Article 2 of the European Convention on Human Rights, implies that the police and their operations shall not engage in intentional killings. Considering Article 2 of the European Convention on Human Rights in the light of Protocol No. 6 to the same Convention, concerning the abolition of the death penalty, it should also be excluded that the police be used for the execution of capital punishment.

Another factor is that police actions may lead to the loss of life as a result of the use of force by the police. That may not necessarily violate the respect for the right to life, provided that certain conditions are fulfilled.

Article 2 of the European Convention on Human Rights, which contains the prohibition of intentional deprivation of life, requires that everyone's life shall be protected by the law. The second paragraph of Article 2 reads:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection."

The European Court of Human Rights (see, for example *McCann and others v. the United Kingdom*, European Court of Human Rights, Series A, No.324-A) has held that these exceptions primarily describe situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. The use of force may be no more than absolutely necessary for the achievement of one of the purposes set out in a, b and c. "Absolutely necessary" implies, according to the European Court of Human Rights, in particular, that the force used

must be strictly proportionate to the achievements of the aims mentioned (a, b and c).

The training of police personnel in this respect is of utmost importance.

36. *The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.*

Commentary

The prohibition of torture or inhuman or degrading treatment or punishment contained in paragraph 36, derives from Article 3 of the European Convention on Human Rights. The European Court of Human Rights clearly and systematically affirms that Article 3 of the European Convention enshrines one of the fundamental values of democratic societies and that the prohibition is absolute. That means that under no circumstances can it be admissible for the police to inflict, instigate or tolerate any form of torture for any reason. The word “tolerate” implies that the police should even have an obligation to do their utmost to hinder such treatment, which also follows from the overall objectives of the police, see paragraphs 1 and 38 of the code.

In addition to the fact that torture, inhuman or degrading treatment or punishment is a serious offence against human dignity and a violation of human rights, such measures, when used for the purpose of obtaining a confession or similar information, may, and are even likely to, lead to incorrect information from the person who is subject to torture or similar methods. Thus, there is no rational justification for using such methods in a state governed by the rule of law.

It is clear that both physical and mental suffering are covered by the prohibition. For a more detailed analyses on what kinds of behaviour are covered by torture, inhuman or degrading treatment, reference is made to the case-law of the European Court of Human Rights as well as to the principles developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These bodies have provided a rich source of guidance which must govern police action and be used in the training of police personnel.

It goes without saying that a police service that uses torture or inhuman or degrading treatment or punishment against the public are unlikely to earn the respect or confidence of the public.

37. *The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.*

Commentary

Paragraph 37 recognises the case-law of the European Court of Human Rights with regard to Article 2 of the European Convention on Human Rights, see the commentary to paragraph 34. However, it should be noted that the present rule is applicable to all kinds of situations where the police are entitled to use force.

As a starting point, there must always be a legal basis for police operations (paragraph 3 of the code), including the use of force. Arbitrary use of force can never be accepted. Moreover, paragraph 37 indicates that the use of force by the police must always be considered as an exceptional measure and, when there is need for it, no more force than is absolutely necessary may be used. This implies that the force used should be proportionate to the legitimate aim to be achieved through the measure of force. There must, accordingly, be a proper balance between the using of force and the situation in which the force is used. In practical terms, this means, for example, that no physical force should be used at all, unless strictly necessary; that weapons should not be used, unless less strictly necessary; and, if lethal weapons are deemed necessary, they should not be used beyond what is considered strictly necessary – shoot to warn before shoot to wound and do not wound more than is strictly necessary, etc.

Normally, national legislation and regulations should contain provisions on the use of force based on the principles of necessity and proportionality. However, the practical approach to the problem in a given situation is more difficult as the use of force, according to the above principles, places a heavy burden on the police and emphasises the need for police personnel not only to be physically fit and equipped but also, to a large extent, to have well-developed psychological skills. The importance of recruitment of suitable personnel to the police, as well as their training cannot be under estimated in this respect, (see also paragraphs 23 and 29).

38. *Police must always verify the lawfulness of their intended actions.*

Commentary

It is a basic requirement that the police, in a society governed by the rule of law, conduct only lawful activities. It follows from paragraph 3, that the lawfulness test is not limited only to national law, but includes international human rights standards.

Paragraph 38 gives the police an *ex-officio* obligation to control the legality of their action before and during their interventions. This applies to the police as an organisation as well as to the individual police official. A system of checks and balances within the police, as well as training, are important means of ensuring that such verification becomes systematic.

39. *Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of any form of sanction.*

Commentary

Since police personnel, in accordance with paragraph 16, should be held personally liable for their own actions, there must be an opportunity for them to refuse to carry out orders which are illegal (contrary to the law). The wording "clearly illegal", has been chosen to avoid incurring police disobedience in situations where the legality of an order is unclear.

With full respect to the necessary hierarchical structures in the police, the overall idea of paragraph 39 is to avoid the individual's responsibility for flagrant illegal activities and human rights violations being "covered up" by hierarchical structures. The operational independence of the police from other state bodies (paragraph 15), works in the same direction. The duty with regard to illegal orders should also contain an obligation to report such orders. The reporting of illegal orders shall have no negative repercussion or sanctions on the reporting staff.

40. *The police shall carry out their tasks in a fair manner, guided in particular, by the principles of impartiality and non-discrimination.*

Commentary

The fairness requirement is an overall and open-ended quality, which comprises the principles of impartiality and non-discrimination as well as other qualities. The police act with fairness when they show full respect for the positions and rights of each individual that are subject to their police duties. Fairness should apply to all aspects of police work, but it is particularly emphasised with regard to the public.

The impartiality requirement implies, for example, that the police should act with integrity and with a view to avoiding taking sides in a conflict which is under scrutiny. In the case of an offence, the police must take no position on the question of guilt (see also paragraph 47). Furthermore, impartiality requires that police personnel abstain from any activity outside the police which is likely to interfere with the impartial discharge of their police duties or which may give rise to the impression amongst the public that this is the case.

The general principle of non-discrimination and equality is a fundamental element of international human rights law. With the adoption of Protocol No. 12 to the European Convention on Human Rights, there is a general prohibition on discrimination contained in that instrument. The scope of protection against discrimination concerns rights under the European Convention on Human Rights, individual rights directly under national law or via obligations to public authorities, and acts by public authorities in their exercise of discretionary powers or any other act of such a body, for example the police.

Paragraph 40 does not list particular grounds of discrimination. However, there is no intention to deviate from what is contained in the European Convention on Human Rights, which mentions a non-exhaustive list to which further grounds could be added. Examples of grounds of discrimination are gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, physical or mental disability, sexual orientation or age.

Finally, it should be mentioned that in certain cases, unequal treatment, which has an objective and reasonable justification, may not amount to discrimination, according to the European Convention on Human Rights and its case-law.

41. *The police shall only interfere with individual's right to privacy when strictly necessary and only to the extent required to obtain a legitimate objective.*

Commentary

An individual's "right to privacy" would include the rights covered by Article 8 of the European Convention on Human Rights: private life, family life, home and correspondence. As a starting point, there must always be a legal basis for police operations (paragraph 3 of the code), including that of interference with people's privacy. Arbitrary interference can never be acceptable. Moreover, the present rule indicates that the interference in people's privacy must always be considered as an exceptional measure and, even when justified, should involve no more interference than is absolutely necessary.

42. *The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.*

Commentary

The use of new information technologies largely facilitates police action against different forms of criminality. The registration and the analysis of personal data, in particular, allows the police to cross-check information and thus to expose networks whose existence would otherwise remain obscure without resort to these tools. However, the uncontrolled use of personal data may constitute violations of the right to privacy of the individual concerned. In order to avoid abuse at the stages of collection, storage and use of personal data, such police activities must be guided by principles of data protection. In this respect, the principles expressed in paragraph 42 should be considered in the light of Recommendation No. R (87) 15 of the Council of Europe Committee of Ministers regulating the use of personal data in the police sector.

43. *The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.*

Commentary

The rights referred to in paragraph 43 are a recapitulation of rights provided for in the European Convention on Human Rights (Articles 9, 10 and 11 of the Convention, Article 1 of its Protocol No. 1 and Article 2 of Protocol No.4 to the same Convention) , which are essential for the effective functioning of an open democratic society, but which have not been dealt with elsewhere in the recommendation.

The police play a major part in safeguarding these rights – without which democracy becomes an empty notion without any basis in reality – either directly, through safeguarding democratic arrangements, or indirectly, through their general responsibility for upholding the rule of law.

44. *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.*

Commentary

The police service is judged by the public, to a large extent, how police personnel act. Correct behaviour of individual police officials is, therefore, of ultimate importance for the credibility of the police. In order to earn the respect of the public, it is not sufficient only to act within the law, but to apply the law with integrity and respect towards the public; applying the law with a degree of common sense and never to forget the “public service” element which is a necessary dimension in police work.

Police personnel act with integrity and respect towards the public when they are professional, impartial, honest, conscientious, fair and just, politically neutral and courteous. In addition, the police should acknowledge that the public consists of individuals with individual needs and demands. Vulnerable groups in society call for extra consideration by the police.

45. *Police personnel shall during intervention normally be in a position to give evidence of their police status and professional identity.*

Commentary

Paragraph 45, which is closely linked to paragraph 14, has two main purposes. Firstly, the intervening police personnel shall as a rule always

be in a position to give evidence that they belong to the police. Secondly, they shall normally also be in a position to identify themselves as an individual member of the police (“professional identity”). The requirement that police personnel normally should give evidence of their professional identity before, during or after intervention is closely linked to personal police responsibility for action or omission (paragraph 16). Without the possibility of identifying the individual police man/woman, personal accountability, seen from the perspective of the public, becomes an empty notion. It is clear that the implementation of this regulation must be balanced between the public interest and the safety of police personnel on a case by case basis. It should be stressed that the identification of a member of the police does not necessarily imply that his/her name be revealed.

46. *Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.*

Commentary

Paragraph 46, which concerns the conduct of police personnel, is complementary to that of paragraph 21, which deals with organisational structures in the fight against corruption. The paragraph places a positive obligation upon the police official to avoid corrupt behaviour as an individual and discourage it among colleagues. Police officials shall, in particular, carry out their duties in accordance with the law, in an honest and impartial way and should not allow their private interests to conflict with their position in the police. To this end, police officials shall always be on the alert for any actual or potential conflicts of interest and take steps to avoid such conflicts. They shall report to their superiors or to other appropriate authorities if they become aware of corrupt behaviour within the police.

It should be noted that Council of Europe Committee of Ministers Recommendation No. R (2000) 10 on codes of conduct for public officials (drafted by the Multidisciplinary Group on Corruption, GMC) is applicable to police organisations and their personnel.

B. Guidelines for police action/intervention: specific situations

1. Police investigation

47. *Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.*

Commentary

In order to avoid arbitrary police investigations, a minimum requirement should be fulfilled before the police initiate any such investigation. There should at least be reasonable (and legitimate) suspicion of an offence or crime, that is the suspicion must be justified by some objective criteria.

48. *The police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular, the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.*

Commentary

The principle of the presumption of innocence, contained in Article 6 of the European Convention on Human Rights, is one of the most important rights of individuals in the criminal justice process. The police, often the first link of the chain in this process, have a particularly difficult task as they must, in an objective manner, investigate a case and no matter how overwhelming the evidence is against a suspect, must respect the presumption of innocence. With regard to relations between the police and the public, in particular the media, the problem becomes even more accentuated (see also paragraph 19).

The list of certain additional minimum rights of everyone charged with a criminal offence, also drawn from Article 6 of the European Convention on Human Rights, is also extremely important for the police to bear in mind, as these rights should be provided for from the start of the criminal justice process; that is to say, often during the police investigation.

49. *Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities, including ethnic minorities and vulnerable persons.*

Commentary

Police work should always be guided by objectivity and fairness. This is particularly important in police investigations. The objectivity required implies that the police must carry out an investigation impartially, that is, they should base an investigation on all relevant circumstances, facts and evidence, that work both for and against their suspicions. Objectivity is also a criteria for the fairness requirement, which, in addition, requires that the investigation procedure, including the means used, is such as to provide for an environment that lends itself to a “just” process, where the individual's fundamental rights are respected.

The fairness requirement for police investigations also means that consideration must be taken of an individual's right to participate fully. The investigation must, for example, be adapted to take account of the physical and mental capacities and cultural differences of those involved. Investigations concerning children, juveniles, women and individuals belonging to minority groups, including ethnic minorities are particularly important in this respect. The investigation should be thorough, with as limited a risk of disturbance to those subject to the investigation as possible. Upholding these measures sustains “fair police process”, which constitutes the preparatory basis for a “fair trial”.

50. *Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind paragraph 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.*

Commentary

This rule, which generally applies to police interviews, originates in statements with regard to the interrogation process in custody made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as contained in its 2nd General Report (1992):

“...the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address inter alia the following matters: the informing of the

detainee of the identity (name and/or number) of those present at the interview ; the permissible length of an interview ; rest periods between interviews and breaks during an interview ; places in which interviews may take place ; whether the detainee may be required to stand while being questioned ; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview.

The CPT would add that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police)."

Paragraph 50, is applicable to all police interviews, regardless of whether those subject to the interview are in custody or not.

51. *The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during an investigation, in particular, where intimidation of witnesses is at risk.*

Commentary

Police personnel must be competent in handling the early stages of an investigation, in particular, contacts with those implicated in a crime. The proper protection of witnesses is necessary for their safety, which is a crucial condition for them to give evidence and thus for the outcome of the investigation. When intimidated witnesses are afraid of the possible consequences of giving evidence, investigative techniques must be flexible, and take this into account. The problem of intimidated witnesses is particularly critical in situations, such as those related to terrorism, to organised crime, to drug-related crime and to violence within the family. Moreover, in cases where the witnesses are also victims of the crime, the handling of witnesses becomes even more complex.

Paragraph 51 underlines how important it is for the police to be aware of the special needs of witnesses in different situations, and their protection. Not only does this call for special training of police personnel, but guidelines are also necessary to determine the proper handling of witnesses by the police. In this respect reference is made to the extensive work already carried out by the Council of Europe concerning

witness and victim protection (Committee of Ministers' Recommendations No. R (85) 4 on the violence in the family, No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R ((87) 21 on assistance to victims and prevention of victimisation, No. (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in children and young adults, No. R (96) 8 on crime policy in Europe in a time of change, and No. R (97) 13 on intimidation of witnesses and the rights of the defence).

52. *Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.*

Commentary

Paragraph 52 summarises the police duties of providing assistance and information for victims of crime as stated in Recommendation No. R (85) 11 on the position of the victim in criminal law and procedure. In addition, the paragraph places an obligation on the police to provide the necessary support for victims, which implies that there is a readiness and capacity within the police to provide such support either directly or through other agencies and organisations.

53. *The police shall provide interpretation/translation where necessary throughout the police investigation.*

Commentary

Paragraph 53 of the code complements Article 5.2 of the European Convention on Human Rights, which gives everyone who is arrested the right to be informed of the reasons for the arrest, and the charge against them, in a language which they understand.

2. Arrest/deprivation of liberty by the police

54. *Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.*

Commentary

Deprivation of liberty must be regarded as an exceptional measure, which may never be used unless absolutely necessary and must be limited in time. As with all police operations, this measure must always be lawful. Paragraph 54 emphasises that with every arrest/deprivation of liberty, the individual needs of the person concerned must be fully considered.

In accordance with the statement of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its 2nd General Report (1992), a comprehensive custody record should be kept for each arrested person/detainee :

"The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record."

55. *The police shall, to the extent possible according to domestic law, promptly inform persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.*

Commentary

Paragraph 55 brings to the attention the right provided for in Article 5.2 of the European Convention on Human Rights ("[e]veryone who is arrested shall be informed promptly, in a language which he understands,

of the reasons for his arrest and of any charge against him.”) and a statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 2nd General Report (1992), that persons “taken into police custody should be expressly informed without delay of all their rights” (including those contained in paragraph 56). To this has been added that persons deprived of their liberty should also be informed of the procedure of their case. (The wording “to the extent possible according to domestic law” is used as this information is sometimes provided by authorities other than the police, such as the public prosecution service.)

56. *The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.*

Commentary

Paragraph 56 gives the police full responsibility for the standard of the physical environment of persons deprived of their liberty, who are kept in police facilities. The paragraph implies that the police have an obligation to care actively for the safety of persons kept in their custody. They should take full responsibility for safeguarding those in their custody from harm, originating either from outside or inside the custody, including self-inflicted harm by the detainee. This would, for example, involve the separation of dangerous persons. Furthermore, deterioration in the health of the person deprived of liberty – mental as well as physical – should, as far as possible, be prevented and medical care provided if necessary. This may also imply that instructions of doctors or other competent medical personnel must be followed. The police should also provide for appropriate hygiene, including toilet facilities, and food.

Police cells should be of a reasonable size, considering the number of persons accommodated. Furthermore, there should be “adequate lighting”, preferably natural day light as well as artificial light. “Adequate ventilation” implies that fresh air should be available at an appropriate temperature. Suitable means of rest, bed or chair, should be provided for all persons kept in police custody. (Reference is also made to further standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.)

57. *Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.*

Commentary

This rule is based on the three rights of persons who are deprived of their liberty by the police, which have been identified by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

“The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).” (CPT 2nd General Report, 1992)

58. *The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.*

Commentary

Out of respect for the dignity and integrity of individuals and their needs, the police should avoid, whenever possible, keeping criminal suspects together with other categories of persons deprived of their liberty (for example, immigration detainees). This rule is in accordance with principles established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other

grounds for separation are gender and age, however, separation on these grounds must also take into account personal needs and decency.

VI. Accountability and control of the police

59. *The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.*

Commentary

The police shall be accountable to the state (through central, regional or local bodies) from which it derives its policies and powers. Accordingly, there are state bodies to monitor and control the police in all member states. However, state control over the police must, in an open democratic society, be complemented by the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability *vis-à-vis* the public is a crucial condition for making co-operation between the police and the public a reality.

There are several means of rendering the police accountable to the public. Accountability can be direct or channelled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective. Complaints procedures, dialogue and co-operation as means of accountability are included in paragraphs 59 to 63.

60. *State control of the police shall be divided between the legislative, the executive and the judicial powers.*

Commentary

In order to make the control of the police as efficient as possible, the police should be made accountable to various independent powers of the democratic state, that is the legislative, the executive and the judicial powers.

In a simplified model, the legislative power (the parliament) exercises an *a priori* control by passing laws that regulate the police and their powers. Sometimes the legislative power also performs an *a posteriori*

control through “justice and interior commissions” or through “parliamentary ombudsmen”, who may initiate investigations, *ex officio* or following complaints by the public concerning maladministration.

The executive power (government: central, regional or local), to which the police are accountable in all states, have a direct control over the police as the police are part of the executive power. The police receive their means from the budget which is decided by the government (sometimes approved by the parliament). Furthermore, the police receive directives from the government as to the general priority of their activities and the government also establishes detailed regulations for police action. It is important to emphasise that the police should be entrusted with operational independence from the executive in the carrying out their specific tasks (see also paragraph 15).

The judicial powers (in this context comprising the prosecution service and the courts) should constantly monitor the police in their functions as a component of the criminal justice system.

The judicial powers (in this context the courts), also perform an *a posteriori* control of the police through civil and criminal proceedings initiated by other state bodies as well as by the public.

It is of the utmost importance that these powers of the state are all involved in the control of the police in a balanced way.

61. *Public authorities shall ensure effective and impartial procedures for complaints against the police.*

Commentary

Complaints against the police should be investigated in an impartial way. “Police investigating the police” is an issue which generally raises doubts as to impartiality. States must therefore provide systems which are not only impartial but also seen to be impartial, to obtain public confidence. Ultimately, it should be possible to refer such complaints to a court of law.

62. *Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.*

Commentary

Paragraph 62 encourages the development of public-police relations through accountability mechanisms. These should bring the public closer to the police and would contribute to a better mutual understanding and foster the settlement of disputes between the police and the public. Mechanisms for such accountability could include a mediation or complaints structure that provides contact and negotiation and an informal method of dispute resolution. Preferably, such mechanisms should be independent of the police.

In addition, member states should consider strengthening existing structures, or develop new ones for police accountability in certain situations where the police enjoy wide discretion *vis-à-vis* the individual, for example in the use of force, when persons are deprived of their liberty, when the police interview suspects, and when they use certain investigative measures. Transparency and public monitoring of situations, such as the provision of public access to police cells is an example of such a measure, which is beneficial for the public as well as for the police as it gives the public a measure of control as well as helping to counteract any ill-founded accusations against the police.

63. *Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.*

Commentary

Member states are encouraged to develop codes of ethics based on the values reflected in this recommendation. It may be difficult to distinguish between ethical codes and codes of conduct, however, these should clearly be distinguished from disciplinary instruments, as the latter are aimed rather at defining what constitutes a breach of professional conduct and its internal consequences.

Ethical codes should be overseen by appropriate bodies. It is up to member states to give this task to existing bodies or to create new ones. Such bodies should, for example, be independent from the police, be as transparent as possible towards the public and at the same time have an understanding of police matters. The ombudsman institution is an example of such a body.

VII. Research and international co-operation

64. *Member states shall promote and encourage research on the police, both by the police themselves and external institutions.*

Commentary

The police is an important institution of a democratic state governed by the rule of law. It is a vital component of the criminal justice system and the body responsible for public order. The police is provided with specific powers and should be, at the same time, an integrated part of the society it serves, etc.

Such a multifaceted body clearly warrants the best critical attention in the form of research and police studies. Internal police research should therefore be complemented with research on the police by institutions independent of the police. A close link between police training and universities is an example of a measure that would serve such a research purpose.

65. *International co-operation on police ethics and human rights aspects of the police shall be supported.*

Commentary

The values and principles expressed in the recommendation need to be implemented through legislation, regulations and training. In addition, acceptance of these values should grow from within the police. For these reasons there is a need to stimulate international co-operation between the police in Europe, including states and international organisations, such as ICPO-Interpol, Europol and Cepol. The Council of Europe, with its particular expertise in articulating democratic values, ethics, human rights and the rule of law, has an important role in facilitating this co-operation.

66. *The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe*

Commentary

The adoption of the European Code of Police Ethics is in itself an important step for the promotion of Council of Europe principles with regard to the police in member states. However, the principles contained in the code should also be actively promoted following its adoption.

First, the code is a basic text which should be complemented with other Council of Europe legal instruments targeting specific topics more in depth.

Second, an intergovernmental structure within the Council of Europe could be a useful basis for furthering police matters in member states. Considering that the police in all member states are bodies closely associated with the criminal justice systems and their activities are mainly related to law and order, crime prevention and crime control, follow-up action should preferably be considered in such a context. The know-how and expertise built up with regard to police ethics, criminal justice, the individual's fundamental rights, and the rule of law, could in such a way be maintained in the future within the Council of Europe.

Appendix to the explanatory memorandum

The following persons participated in the work of the Committee of Experts on Police Ethics and Problems of Policing (PC-PO), 1998 - 2001 :

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In a Europe, where national frontiers are becoming blurred, it is natural that police problems are treated from an international perspective. Apart from combating crime the debate concerns what level of police powers are acceptable in a democratic society from the perspective of safeguarding the individual's fundamental rights and freedoms. A proper balance between these interests must be struck and a means to maintain it must be found.

The European Code of Police Ethics enshrines the basic principles that should apply to police services in democratic societies governed by the rule of law. It is more than a traditional code of ethics; it provides a general organisational framework for the police, their place in the criminal justice system, their objectives, performance and accountability. Some parts of the text are intended to serve as model provisions for national legislation and codes of conduct as well as principles for ethical policing.

The code and the explanatory memorandum provide guidance to governments of Council of Europe member states and is a source of information and inspiration for police practitioners and the public.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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