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**TRAINING
MANUAL**

Fundamental rights-based police training

A manual for police trainers



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Cataloguing data can be found at the end of this publication

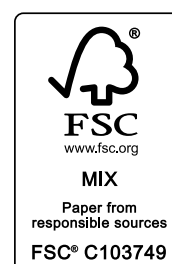
Luxembourg: Publications Office of the European Union, 2013

ISBN 978-92-9239-230-7
doi:10.2811/43682

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Printed in Luxembourg

PRINTED ON PROCESS CHLORINE-FREE RECYCLED PAPER (PCF)



Fundamental rights-based police training

A manual for police trainers

Foreword

Police training is the first and most significant step towards shaping more effective and professional policing in the future. Human rights-based training helps participants to proactively respect and protect fundamental rights. It ensures that the use of force is exercised in accordance with the principles of legality, necessity and proportionality – principles that are fundamental to the development of just societies. Such training will therefore enable police officers to fulfil the role envisaged for them in the European Union’s roadmap for work in the area of justice, freedom and security.

This training manual seeks to help foster a relationship of trust between police and society as a whole and in all its diversity, focusing therefore on the rights to non-discrimination, dignity and life. A series of surveys and projects by the European Union Agency for Fundamental Rights (FRA) has underscored the link between trust in the authorities and the enjoyment of fundamental rights. Where trust exists, crime reporting levels will rise; more crimes will therefore be addressed, delivering justice to victims. By safeguarding all citizens’ fundamental rights, police officers will engender trust throughout society, contributing to a virtuous circle that will encourage the reporting of crime, contribute to more effective crime fighting, enhance justice for victims and reduce societal tensions.

FRA developed the *Fundamental rights-based police training manual* in close cooperation with the Association of European Police Colleges, the European Police College and their networks of national police academies to help build such trust and further the establishment of common policing standards that respect the principles of fundamental rights. Our intention is to enhance police professionalism and effectiveness throughout the European Union by providing police trainers with a practical, hands-on tool that helps to integrate fundamental rights into police training.

Morten Kjaerum
Director of the FRA

Acronyms

AEPC	Association of European Police Colleges
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPOL	European Police College
CJEU	Court of Justice of the European Union
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organisations
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms or European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA Europe	International Lesbian, Gay, Bisexual, Trans and Intersex Association in Europe
LGBT	Lesbian, Gay, Bisexual and Transgender
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
ODIHR	Office of Democratic Institutions and Human Rights (OSCE)
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations



Glossary

Convention/treaty/covenant/charter	A legally binding international agreement between states. In order for a convention/treaty/covenant to be binding for a state, the state must ratify or accede to it.
Declaration	A political instrument of expression of general principles by an inter-governmental organisation; it is not as such legally binding, but may have considerable moral and/or political authority.
Fundamental rights	Term frequently used for referring to the rights guaranteed in constitutional law.
Human rights	Term referring to the rights guaranteed in international human rights law.
Hard law	Legally binding standards, such as conventions and treaties.
Ratification/ratify	The process whereby a state becomes legally bound by a treaty/convention/covenant. Usually, ratification requires approval by the respective legislature.
Signature/sign	The act of expressing the intent to be legally bound by a treaty upon subsequent ratification. A treaty is 'open for signature' after adoption by the negotiating parties.
Soft law	Not legally binding standards, but still influential as moral/political standards such as declarations.

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Introduction

United Nations Declaration on Human Rights Education and Training Article 11

The United Nations and international and regional organizations should provide human rights education and training for their civilian personnel, and military and police.

This manual is designed to assist police academies in integrating human rights into police training, rather than relegating such training to an optional add-on. It focuses in particular on those rights that help engender trust in the police working in diverse societies: non-discrimination, dignity and life. It provides a practical, hands-on training tool for EU Member State institutions, drawing on the knowledge and evidence of the European Union Agency for Fundamental Rights' (FRA) stakeholder engagement and research findings. The manual walks training participants step-by-step through the fundamental rights implications of real-life situations, providing them with the tools they need to analyse and deal with situations they may one day face themselves.

The manual seeks to instil a view of fundamental rights as a tool to enhance police effectiveness and professionalism. Professional human rights-based police work is a key source of legitimacy for the police and enhances the effectiveness of policing. When police ensure that citizens are able to exercise their fundamental rights and freedoms, they are not only earning the respect and trust of the public but they are also maximising the effectiveness of their work. Thus, the manual's overall aim is to aid in establishing a relationship of trust between police and societies in all their diversity.

A series of FRA surveys and projects has underscored the link between trust in the authorities and the enjoyment of fundamental rights. One EU-wide FRA survey (EU-MIDIS), which interviewed 23,500 members of immigrant and ethnic minority groups across all 27 EU Member States, revealed, for example, a striking amount of unreported crime. Of those who had suffered racist assaults or threats, 65 % did not report the incidents to the police and over half of these (55 %) said they did not do so because of a 'lack of trust' in the police. A lack of reporting can create an unrealistic picture of crime, making it more difficult for the police to protect the public and putting at risk the fundamental rights of victims. By safeguarding all citizens' fundamental rights, police officers will engender trust across society, leading in turn to an increase in the reporting of crime, more effective crime fighting, more justice for victims and fewer societal tensions.

French Declaration on the Rights of Man and of the Citizen Article 12

The guarantee of the rights of man and of the citizen necessitates a public force; this force is, therefore, instituted for the advantage of all and not for the particular use of those to whom it is entrusted.

This training manual rests on four crucial principles: a comprehensive and positive approach towards human rights; policing from a human rights perspective, observing the requirements both to protect and to respect; a practical approach to analysing concrete situations; and a focus on the internalisation of human rights.

The first principle helps make clear that police are primarily a force designed to help realise human rights, which form the bedrock of any democratic and just society. Human, and fundamental, rights are also applicable to police officers and thus have an empowering effect. These basic messages often surprise participants, who typically expect to face criticism for their work. They fear being 'hit' by the 'moral club of human rights' – a concern that tends to cause a defensive posture which is counterproductive to training. A crucial element and objective of a training course is, therefore, to overcome possible scepticism and create a positive approach towards human rights.

The second principle reflects the fact that in many European Union (EU) countries, police have increasingly come to be seen as service providers to the public – as an organisation which protects human rights. But police officers tread a narrow and difficult line each day between their dual obligations to protect and respect human rights, such as when they act to protect persons from torture or ill-treatment in cases of domestic violence. Police work to protect human rights must, for example, strictly apply proportionate means – especially when it comes to the use of force. This constitutes the biggest challenge in human rights-based policing: human rights protection with the least intrusive means.

The manual introduces a set of practical tools for analysis which should help illuminate how to deal with this challenge in daily policing work. The manual will take participants through a step-by-step examination of concrete police-related situations from a human rights perspective to equip them to analyse and handle situations that they may encounter in the future.

Finally, the manual makes clear that fundamental rights cannot be reduced to legal standards alone. Though these standards are crucial, a broad understanding of human rights goes beyond the law. It also requires appropriate skills and attitude. It is of critical importance to see how a police officer interacts with society and what considerations and attitudes he or she uses to take decisions. Internalising human rights through education is a complex process with numerous facets, but one of crucial importance to the split-second decisions police officers must often take.

This training manual was developed to support the EU's roadmap in the field of justice and home affairs, known as the Stockholm Programme,¹ which seeks both to guarantee security and enhance police cooperation, fostering a genuine EU-wide judicial and law enforcement culture, and to protect individuals' fundamental² rights. It highlights the need for training to achieve these goals.

The European Commission has issued a Communication on the establishment of a European law enforcement training scheme.³ Several specialised EU agencies in the field of justice and home affairs include training in their mandates. The European Police College (Cepol) is the EU's agency for police training, while the European law enforcement agency (Europol) delivers advanced police training. Frontex develops common core curricula and training standards for EU border guard training academies.

1. European Council (2010), Stockholm Programme: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>.

2. The terms 'fundamental' and 'human' rights are used interchangeably in this manual.

3. COM/ 2013/0172 *Communication on Establishing a European Law Enforcement Training Scheme* of 27 March 2013. "This knowledge should include principles of effective law enforcement cooperation, fundamental rights, [...]"; p. 6, available at: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20130172.do>.



This FRA manual complements these agencies' work. FRA applies a fundamental rights perspective when collecting and analysing data, which can provide useful evidence for formulating agencies' operational responses by, for example, highlighting the perspective of victims.

"Human rights are the birthright of everyone here. But it is not because of where we were born. It is the fact that we were born. We have human rights because we are human beings. And we remain human beings even if we do not have a passport, a visa or a residence permit."

Morten Kjaerum, Director of the FRA

How to use the manual

This manual contains the basic elements of a practical and learner-oriented training programme on police and human rights. Trainers will need to supplement this material with other sources if they wish to focus on particular issues in more detail.

The six modules and suggested training activities should be chosen according to the specific circumstances and setting of the training (timeframe available, target audience, country context), starting with an assessment of the target audience and objective-setting: what understanding, attitudes and experiences do participants have? what should be achieved?

The trainers' Briefing notes in each module explain the key points and constitute a 'must know' for successfully covering the module's content. Further sources of information are indicated.

The manual needs to be adapted to each specific country context. While the majority of the court cases referred to are from the European Court of Human Rights and are thus relevant to all European countries, country-specific materials, police regulations and national legislation should be added.

Optional agendas on how to combine the modules for a 2-1/2-day or a 3-day workshop can be found in Annex 1.

Structure of the manual

The manual consists of six modules which deal with key elements of a human rights approach to policing, plus a set of annexes with additional material.

- Module 1: Human rights basics
- Module 2: Policing from a human rights perspective
- Module 3: Human rights analysis – the obligations to respect and to protect
- Module 4: The prohibition of torture and inhuman or degrading treatment or punishment
- Module 5: Diversity, equality and non-discrimination
- Module 6: Human rights of police officers
- Annexes containing: workshop programmes; basic guidance for trainers; case study preparation – tips; compilation of practices

Structure of the modules

Each module consists of three parts:

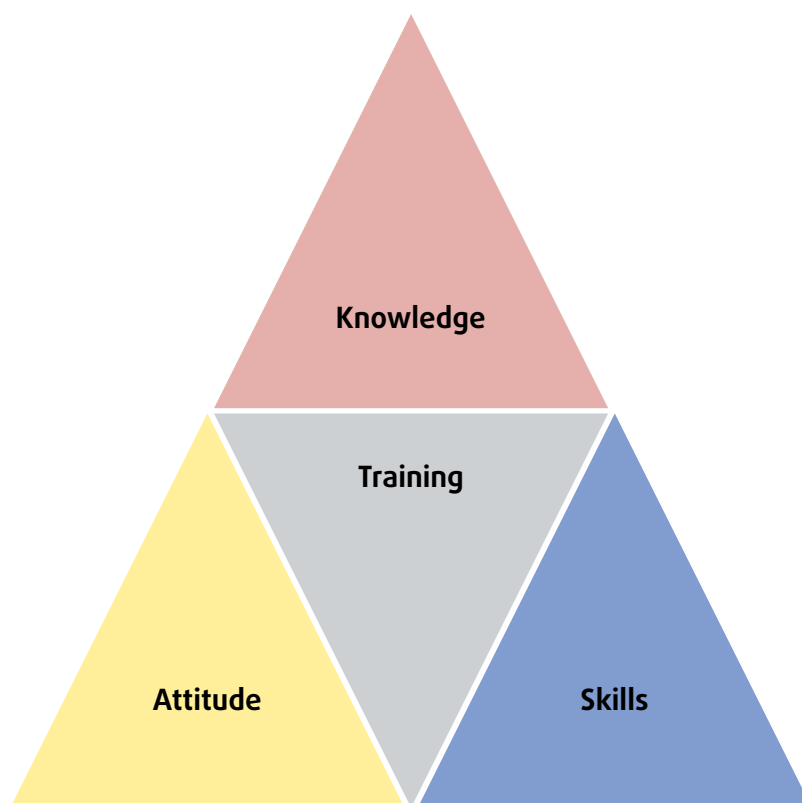
- **Introduction and description of training activity/ies:** objectives (knowledge, attitude, skills), requirements (time, material, setting) and activity description and handouts.
- **Briefing notes:** detailed information to guide training activity, including training tips.
- **Supplementary material:** additional information that can be used to complement the training activity and Briefing notes.

In some modules, this section also includes additional activities for use in extended training courses, specifically good practices from several police academies in Europe. They are generally broader in scope and can serve as an inspiration for the integration of human rights topics in the curricula of police academies.

Human rights education and policing – the triangle of human rights education⁴

There are no ready-made answers, no checklist to follow in the complex field of human rights. Police officers must shape their work and actions in line with human rights guidelines; they face the difficult task of using their discretion and balancing perceived conflicting interests in each concrete situation. The three dimensions of knowledge, skills and attitudes will help in this endeavour. The training activities in each module are designed with the triangle of human rights education in mind:

The following core competences can be seen as desired outcomes of human rights training for police:



4. The 'Human rights education triangle' is an established concept that combines knowledge (theory) with skills and attitudes (practice) and can be found in various human rights education publications such as: *Human rights, education and global responsibilities* (1992); *Understanding Human Rights, Manual on human rights education* (2006); *Menschenrechte und Polizei, Handbuch für TrainerInnen*, based on Suntinger, W. (2005), who is also this manual's co-author; updated in the light of OSCE/ODIHR, *Guidelines on Human Rights Education for Law Enforcement Officials*, September 2012.

Knowledge – participants should understand the function of human rights in society; (historical) development of human rights; understanding of human rights principles (especially the principles of necessity and proportionality; the principle of non-discrimination; state obligations to respect and protect human rights; universality and indivisibility); basic elements of the system of human rights protection; contents of human rights norms relevant to their work (including the absolute prohibition of torture); important international human rights documents; organisations and institutions that work for human rights; objectives and characteristics of human rights-based policing in democratic societies.

Skills – participants should be able to: apply human rights principles (especially the principles of necessity and proportionality) in practical work; communicate professionally with the community and external stakeholders, including with minority communities; construct and present a persuasive argument; analyse real life situations from a human rights perspective; including identifying violations of human rights; apply conflict management/resolution skills; deal with criticism; reflect on one’s own identity; discuss questions of human rights, diversity and policing; apply the analysis of human rights to their own environment as well as to organisational structures and practices.

Attitude – participants should reflect on: respect for oneself and for others based on the dignity of all persons; commitment to equality with respect to sex, ‘race’, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation etc.; confidence in considering human rights as a goal and basis of police work; awareness of one’s own responsibility; empathy towards others, in particular for minorities; open mindedness; valuing of and engaging with external stakeholders, including communities and monitoring institutions; openness to reflection; readiness to learn from mistakes; preparedness to deal with criticism; acceptance of diversity in society and its implication for policing.

Training tip: Making training count

Social science research has shown that human rights training courses – if carried out in isolation – are of limited effect. Training must be embedded in a broader structural and organisational perspective. Human rights must be visibly acknowledged as highly relevant by means of internal decision-making processes like the selection of personnel, advancement, communication and information strategies, management and leadership functions and disciplinary procedures. Prevailing organisational realities can undermine the objectives of human rights training. If training is used in tandem with other structural measures in the organisational culture, the impact will be much greater.

Source: United Nations (UN), Office of the High Commissioner for Human Rights (OHCHR) (2011)

Developing the manual

To best target its work in the human rights education and training field, FRA consulted more than 80 actors/institutions – including the European Commission, National Human Rights Institutions (NHRIs), international and national human rights education and training actors and non-governmental organisations (NGOs) – through a mixed methodology of online questionnaires, phone interviews and face-to-face meetings and workshops. Those consulted include: 19 police academies (Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom); international organisations with a background in policing and human rights such as the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR); and specialised bodies with a mandate in policing and police training such as the Association of European Police Colleges (AEPC), European Police College (Cepol), European Police Office (Europol), the International Criminal Police Organization (Interpol) and the UK-based National Police Improvement Agency, which participated in a preparatory workshop and highlighted the need for targeted fundamental rights training.

The interviewees pointed out that the role of human rights training in police training varies across the EU. To raise its profile, certain challenges must be overcome. Human rights police training may take place informally and can be voluntary. Those consulted highlighted a lack of exchange on human rights training practices among EU Member States' Police Academies and little engagement with external human rights training providers, such as NGOs or NHRIs. They also commented that human rights training for police does not necessarily reconcile the perceived conflict of interest between duty bearers (police) and rights holders (members of society).

FRA contracted two human rights consultants and experienced police trainers, Gudrun Rabussay-Schwald and Walter Suntinger, to draft this training manual, which FRA subsequently reviewed.

A number of human rights and police training experts peer reviewed the draft manuscript in May 2011. We wish to thank them for their valuable contributions: Anja Bienert, Head of the Police and Human Rights Programme at Amnesty International, Netherlands; Michiel Holthackers, AEPC, Police Academy, Netherlands; Karl-Heinz Grundböck, Spokesperson of the Ministry of Interior of Austria; Andre Konze, Colonel at the Police Academy North Rhine Westphalia in Germany; Reinhard Kreissl, criminal sociologist at the Institute for the Sociology of Law and Criminology in Austria; Marina Narvaez, Adviser on Anti-Terrorism Issues, OSCE/Office of Democratic Institutions and Human Rights (ODIHR); Cristina Sganga, independent human rights consultant and police trainer; and Murat Yıldız, Training Adviser at the OSCE's Strategic Police Matters Unit. In a second quality assurance step, police academy trainers from 12 EU Member States (Austria, Belgium, Bulgaria, France, Germany, Greece, Lithuania, Poland, Portugal, Slovakia, Sweden and the United Kingdom) and Croatia tested modules from the draft manual at a pilot training. We also appreciate the expert contributions from Mr Suntinger on the analytical schemes, notes and readings adapted in this manual from his work. The manual uses exercises adapted from the Anti-Defamation League A World of Difference's diversity training and exercises contributed by: Mr Suntinger; Ms Rabussay-Schwald; Rafael Behr; Günther Berghofer, Austrian Police Commander; Gamal



Turawa, Promoting Difference Consultant and Trainer within the Metropolitan Police Service, London, United Kingdom; and training tips from Thomas Greis, of the Austrian Police Academy; Andre Konze, Colonel at the Police Academy of North Rhine-Westphalia, Germany; Maria Knutsson, Senior Lecturer at the Swedish National Police College; Remo Pusca, of the Austrian Police Academy; and Oliver van Wrochem, Head of the study centre at Neuengamme Concentration Camp Memorial and Ulrike Pastoor.

We would like to sincerely thank AEPC ex-president Maurice Petit who placed human rights on the AEPC agenda and put national police academies in touch with FRA. Our further thanks go to the Police Academy in Lyon, the *École Nationale Supérieure de la Police* (ENSPI), at which Jean-Marie Fiquet hosted the pilot training.

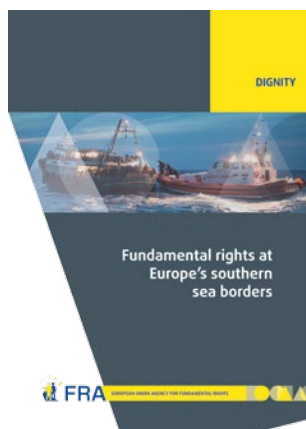
In a third step, trainers who had not been involved in the conceptualising or drafting of the manual used it at a joint Cepol-FRA training in Bramshill, United Kingdom in September 2011. We thank Cepol for hosting this training event, the first in a series of joint Cepol-FRA training events.

During this process, the FRA provided a platform to exchange information, share practices and voice training needs. To facilitate such knowledge sharing, the manual includes nine human rights training exercises that are currently in use in national police academies across the EU: Austria; three practices from Germany; Scotland; Sweden; and the United Kingdom; as well as ILGA-Europe; and the OSCE/ODIHR.

In addition to its stakeholder engagement, FRA legal and social science experts conducted significant related research, whose findings underline the need for targeted and tailored police training, which balances security concerns with non-discrimination principles. To meet the needs of diverse societies, contemporary police concepts in the EU need to be based on establishing a relationship of trust with all parts of society in equal measure. Enforcing human rights is an inevitable prerequisite to such trust and one that requires police to assume a more proactive and service-oriented role.

The following FRA publications are relevant for such police work:

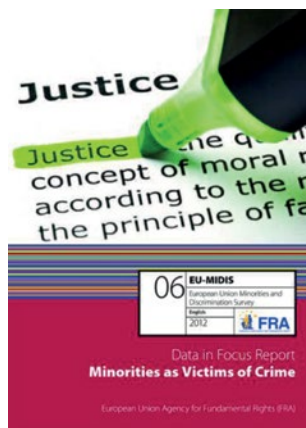
Fundamental rights at Europe's southern sea borders (2013)



This FRA report examines the conditions at Europe's southern sea borders with respect to the most fundamental rights of a person, the right to life and the right not to be sent back to torture, persecution or inhuman treatment. It looks at sea border surveillance and disembarkation procedures, as well as general issues such as EU policy, training and Frontex-coordinated operations, and examines practices across the EU Member States researched – Cyprus, Greece, Italy, Malta and Spain. By mapping the fundamental rights challenges at Europe's southern

sea borders and by identifying promising practices, this report is intended to offer advice to EU policy makers as well as practitioners at both the EU and Member State level.

EU-MIDIS Data in Focus 6: Minorities as Victims of Crime (2012)



The *EU-MIDIS Data in Focus 6* presents data on respondents' experiences of victimisation across five crime types: theft of or from a vehicle; burglary or attempted burglary; theft of personal property not involving force or threat (personal theft); assault or threat; and serious harassment. The average rate of criminal victimisation for all groups surveyed in EU-MIDIS was 24 %, in other words every fourth person from a minority group said that they had been a victim of crime at least once in the 12 months preceding the survey. More

'visible' minority groups – that is, those who look visibly different to the majority population – report, on average, higher levels of victimisation in EU-MIDIS than immigrant or minority groups who look similar to the majority population. These results, however, mask significant differences depending on the EU Member State in which generic respondent groups, such as 'Roma' or 'Sub-Saharan African', live.

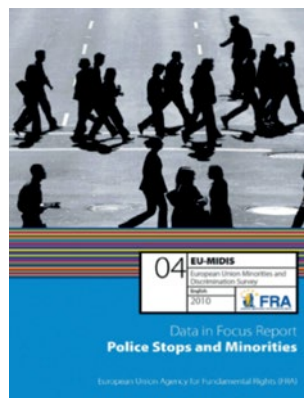
Making hate crime visible in the European Union: acknowledging victims' rights (2012)



Discrimination and intolerance persist in the European Union (EU) despite the best efforts of Member States to root them out, FRA research shows. Verbal abuse, physical attacks and murders motivated by prejudice target EU society in all its diversity, from visible minorities to those with disabilities. Those who commit such 'hate crimes' – a loose term for this troubling reality – are drawn from across society. Their crimes cause incalculable damage to victims, families and society as a whole, making it ever more urgent to consider how

best to respond. This FRA report is designed to help the EU and its Member States to tackle these fundamental rights violations both by making them more visible and bringing perpetrators to account. This means encouraging victims and witnesses to report these crimes and increasing their confidence in the criminal justice system's ability to deal with them decisively and effectively.

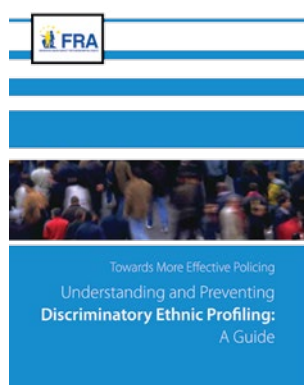
Data in Focus Report 4: Police Stops and Minorities (2010)



EU-MIDIS, the first EU-wide survey to ask immigrant and ethnic minority groups about their experiences of discrimination and criminal victimisation in everyday life, found that minorities are stopped by the police more often than majority groups living in the same neighbourhoods in Belgium, France, Hungary, Germany, Greece and Spain. Minority groups who perceive that police are stopping them because of their ethnic or immigrant background have a lower level of trust in the police

than minorities who consider that the stop was unrelated to their minority background.

Towards more Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide (2010)



When a decision to stop an individual is motivated solely or mainly by virtue of a person's race, ethnicity or religion, this constitutes discriminatory ethnic profiling. Such practices can serve to alienate certain communities in the EU, while making policing less efficient. The FRA guide aims to help the police address and avoid discriminatory ethnic profiling, and is designed to be used as a tool for more effective policing.

Experiences of discrimination, social marginalisation and violence: A comparative study of Muslim and non-Muslim youth (2010)

Final version - 27 Oct 2010 launch



Social marginalisation and discrimination have severe consequences for any society – both need to be addressed as a priority, as they are directly linked to violent behaviour in young people. This research shows a high degree of overlap between three EU Member States when considering explanatory factors to violent attitudes or acts of violence committed by young people. The main factors that can be associated with violent behaviour are being male, being part of a delinquent youth group/gang, being discriminated against, and

being socially marginalised – when these aspects are taken into consideration, religious background and/or affiliation plays no part in explaining violent behaviour. The findings are based on a survey, carried out by the FRA in 2008/2009, of 3,000 children aged 12–18 in France, Spain and the United Kingdom – three Member States that have all experienced terrorist attacks associated with radical Islam or urban unrest related to immigrant youth with a predominantly Muslim background.



MODULE 1: BASICS OF HUMAN RIGHTS

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Human rights basics

Introduction

This module introduces the general concepts and characteristics of human rights, exploring both their ethical and historical roots and their modern-day form and implementation. It looks at the legal instruments and terminology in use as well as the organisations and mechanisms that protect and promote human rights.

It highlights several core aspects of human rights, including the basic overarching concept of human dignity and the enumeration of specific rights under this umbrella. It explains states' dual responsibilities to respect and protect human rights: 'respect' represents a negative obligation to refrain from an action that would limit human rights; and 'protect' refers to a positive obligation to take action to ensure the enjoyment of human rights.

The activity is designed to stimulate a general discussion on the role and purpose of human rights in today's societies before, in later modules, homing in on specific police-related aspects of human rights. The discussion questions begin with a non-legalistic approach to human rights. This is followed by questions designed to spur discussions on human dignity and specific rights, the purpose of human rights and the obligations these rights create.

The questions raise fundamental issues on the principles, organisation and function of society and the state and can prompt spirited discussion.

Activity: Understanding the basics of human rights

Purpose:

This activity serves to broaden participants' understanding of the basics of human rights, including key concepts and how they work.

Objectives:

Knowledge

- understand the basic idea and functions of human rights
- understand the key concepts of human rights and corresponding obligations
- gain an introduction into how human rights developed over time
- gain familiarity with the most important international human rights documents and types of protection mechanisms

Attitude

- recognise the basic value of human rights, including their legal and political importance, and that they form the basis for a peaceful society and contribute to a just life for all

Skills

- identify those human rights related to police work

Requirements:

- time: 40–60 minutes
- materials:
 - handout with discussion questions
 - optional: power point presentations and projector
- space: plenary room plus two working group rooms
- group size: maximum 20–25 persons



Activity description: **Understanding the basics of human rights**

- ❶ Introduce the purpose and objectives of this activity.
- ❷ Distribute the Handout – Basic ideas and concepts of human rights.
- ❸ Divide participants into groups of 4-to-6 persons and ask them to discuss one or two statements per group. Groups have 30-to-45 minutes to work, depending on the number of statements to be discussed. Ensure the groups appoint a rapporteur to bring their results back to the plenary.
- ❹ Answer any questions that arise during group work.
- ❺ Have groups present their work in the plenary.
- ❻ Hold a general discussion of results, reflecting on what has been learned.
- ❼ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

Handout – Basic ideas and concepts of human rights

Discussion questions:

1. “Treat others the way you would like to be treated.”

- What is the relationship between the Golden Rule and human rights? Where do you see common ground or discrepancies?
- Do you think human rights are universally applicable?

2. “The idea of human rights is as simple as it is powerful: treating people with dignity.”

John Ruggie, UN Special Rapporteur on Business and Human Rights, UN Guiding Principles on Business and Human Rights

- Do you agree with this statement? Explain your reasons for agreeing or disagreeing.
- Do you know any other short formulas which express the basic idea of human rights?

3. “Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

United Nations, Universal Declaration of Human Rights, 1948

- Do you agree with this statement? Explain your reasons for agreeing or disagreeing.
- Can you think of any other ‘foundations’ of freedom, justice and peace?

4. “The aim of every political association is the preservation of the natural and inalienable rights of man. These rights are liberty, property, security and resistance to oppression.”

French Declaration of the Rights of Man and of the Citizen, Article 2, 1789

- Is this concept of the aims of the state still relevant today?
- What other state aims can you think of?

5. “There is too much talk about rights nowadays. People have forgotten about the duties they owe to each other and society.”

- Do you agree with this statement? Explain your reasons for agreeing or disagreeing.
- What is the relationship between rights and obligations?



Briefing notes

These Briefing notes provide useful information for completing the handout questions and guiding training discussions on the basics of human rights, structured as follows:

1. What are human rights?
2. What types of human rights are there?
3. What do human rights do?
4. What obligations exist under human rights?
5. Where are human rights embodied in law and how are they monitored?

1. What are human rights?

Universal Declaration of Human Rights Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

For centuries, the fundamental principles behind human rights have been explored by various philosophies and religions around the world. One of the central philosophical questions behind human rights is:

How should we treat one another?

The Golden Rule is an ancient ethical principle that answers this question and guides people's behaviour: "Treat others the way you would like to be treated". Different formulations of the Golden Rule are found in the world's major religions and ethical systems.

Human rights are, in many ways, the modern, more detailed formulation of the Golden Rule. Human rights principles are built on the idea that all human beings have inherent human dignity. Everyone must therefore refrain from infringing upon that dignity. Everyone must also act to protect the human dignity of others and of themselves. In addition to dignity, human rights also encompass the ideas of freedom, justice, equality and solidarity.

Training tip: Using the Golden Rule

Discussing the Golden Rule in the context of human rights can bring forth sensitive topics and challenging questions, particularly with respect to religious issues. Try to anticipate and prepare for such comments and questions so you can handle them calmly and professionally.

2. What types of human rights are there?

Universal Declaration of Human Rights

Preamble

[...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Human rights can be expressed through values, laws and policies. Human dignity, freedom, equality and solidarity are concepts that form the foundation of human rights (Article 1 of the Universal Declaration of Human Rights). These concepts find concrete expression in a number of specific human rights enshrined in state constitutions and in regional and international human rights instruments.

Human rights cover many areas of life and are often grouped in the following categories:

Civil and political rights

- right to life
- prohibition of torture
- prohibition of slavery
- right to personal liberty and security
- right to a fair trial
- right to private and family life
- freedom of conscience and religion
- freedom of expression
- freedom of association and assembly
- freedom of movement
- right to vote
- equal access to public service
- right to form a political party
- right to petition
- right to property (also seen in part as an economic and social right)

Economic, social and cultural rights

- right to work and free choice of employment
- right to just and favourable conditions of work
- right to form trade unions
- right to social security
- right to an adequate standard of living
- right to health
- right to education
- right to take part in cultural life and to enjoy the benefits of scientific progress

Solidarity/collective rights

- rights of peoples to self-determination
- rights of minorities and indigenous peoples
- right to development

Equality and non-discrimination

- right to equality and non-discrimination is both a substantive right and a principle according to which all human rights are to be guaranteed without any discrimination.



Training tip: Presenting the entire range of human rights

When discussing the different categories of human rights, it is useful to present the entire range of human rights. By looking at the whole spectrum, participants may be better able to see how certain rights, like economic and social rights, are relevant to them as rights holders. It will also highlight that human rights are a pillar of modern society but that some marginalised groups do not yet enjoy all human rights.

3. What do human rights do?

“The idea of human rights is as simple as it is powerful: treating people with dignity.”

John Ruggie, UN Special Rapporteur on Business and Human Rights, UN Doc A/HRC UN Guiding Principles on Business and Human Rights

“Human rights are those fundamental rights which empower human beings to shape their lives in accordance with liberty, equality and respect for human dignity.”

Manfred Nowak, former UN Special Rapporteur on Torture (2003), Introduction to the International Human Rights Regime, Leiden, Boston, Martinus Nijhoff Publishers, p. 1

Human rights, which entail both rights and obligations, create an environment in which all people can live in dignity. Human rights confer different rights and obligations on individuals and on states.

For individuals, human rights:

- help to create the conditions for the fulfilment of their fundamental needs;
- secure core human values such as life, physical and psychological integrity, freedom, security, dignity and equality against abuse by the state and against abuse by other people;
- protect against and help remedy exclusion and marginalisation through access to social services, such as education and healthcare;
- provide a balancing mechanism and conflict resolution device when legitimate interests clash (the rights and freedom of an individual end where the rights and freedom of another begin);
- help enable people to arrive at concrete legal and moral judgments with regard to difficult real-life situations.

For states, human rights:

- regulate how states and societies interact with people by providing ground rules for how states and societies should function;
- specify the state’s responsibilities to respect and protect individuals;
- help to guide states in creating laws to regulate individual and collective action and establish relevant, impartial judicial organs to decide on (legal) conflicts and execute laws;
- form a basis for freedom, justice and peace in society.

For police officers, human rights:

- help police officers to decide what is permissible or forbidden;
- help shape internal policing organisational structures;
- specify police officers’ duties as representatives of the state, to respect and protect individuals;
- secure core human values for police officers who are also rights holders.

In order for human rights to be fully realised, individuals must respect rights and states have the obligation to both respect and protect rights. The obligations to respect and protect are fundamental to the human rights system.

Training tip: Addressing questions and issues that may arise

- What is dignity?
- Examples of situations where it is easy/not easy to treat someone with dignity
- Factors that enhance or diminish dignity
- Do human rights answer the ancient question of how we should treat one another?
- “Human rights are only a Western idea. Other cultures have other values. We should not impose our concept on other peoples.”
- What are basic human needs?
- What is the function of a state?
- “If a person has not fulfilled his/her duties towards society, why shouldn’t – in return – his/her rights be taken away?”

4. What obligations exist under human rights?

**Charter of Fundamental Rights of the European Union
Article 1**

Human dignity is inviolable. It must be respected and protected.

Individual obligations

Individuals must respect one another’s rights. The freedom and rights of one person end where the freedom and rights of another person begin. All human rights, regardless of category, are indivisible and interdependent, which means that realising one right is an essential condition for, or is instrumental to, realising other rights. This concept is also applicable to state obligations.

State obligations

States are obligated both to refrain from limiting human rights unduly (obligation to respect) and to act to secure human rights (obligation to protect). Human beings are rights holders and the state, including the judiciary, executive and legislative branches, are the corresponding duty bearers. Without the obligations to respect and protect, the rights categorised in this module’s Briefing notes would be meaningless.

All state powers are bound by these two basic obligations:*

- **Obligation to respect:** The state must refrain from illegal and disproportionate actions. Unjustified interferences with human rights constitute human rights violations.
- **Obligation to protect:** The state is obliged to take administrative, legislative and/or judicial action to protect human rights in order to ensure that people can fully enjoy their rights. Failure to take appropriate steps constitutes human rights violations.

*Note: The UN human rights system has elaborated the so-called triad of obligations to respect, protect and fulfil. For simplicity, this system is not used here in the policing context.

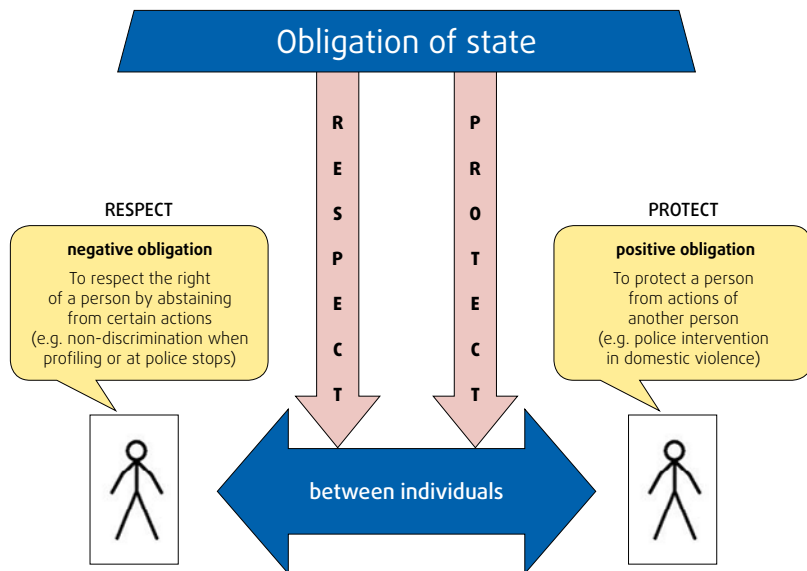
Police obligations

The obligations to respect and to protect human rights also extend to police officers as they are authorities appointed by the state.



Police officers’ obligation to respect

The police have the obligation to respect human rights. This means police officers must not arbitrarily, or without justification, interfere with the human rights of individuals.



Respecting human rights: necessity and proportionality

When a police officer arrests a suspect, he or she interferes with that suspect’s human right to personal liberty and security enshrined in Article 5 of the European Convention on Human Rights (ECHR). The interference with this human right may be justified in order to protect the rights of others or to enforce the law. If the police officer acts, however, without a justifiable legal basis, a legitimate aim or fails to respect the principles of necessity and proportionality, then the police officer is violating the suspect’s human right to liberty under that article.

Table 1.1: Obligation to respect: examples in policing

Human rights and the corresponding obligation to respect	
For the right to...	Police should refrain from...
Life	• using excessive lethal force
Freedom from torture and other ill-treatment	• using force during interviews • using excessive force when countering physical resistance
Personal liberty and security	• arresting or detaining a person without legal grounds
Private life	• entering a private home without proper justification, such as a search warrant
Peaceful assembly	• prohibiting an assembly without proper justification • using excessive force in managing and/or dispersing a demonstration

Source: FRA, 2013

Police officers’ obligation to protect

Police officers also have the obligation to protect human rights, requiring them to take concrete measures at the organisational and operational level to guarantee enjoyment of human rights. This means

an obligation to protect human rights against any threats, including in relations between individuals, the so-called ‘horizontal’ level. In cases of domestic violence, for example, police have the obligation to take concrete measures to protect the right to life and the right to physical integrity and security of the victim. If the police fail to protect an endangered person without proper justification, this failure amounts to a human rights violation. This obligation also requires police to properly investigate any claims that the right to life or the right to physical integrity has been violated, no matter who the perpetrator might be.

Table 1.2: Obligation to protect: examples in policing

Human rights and the corresponding obligation to protect	
For the right to...	Police should...
Life	• take appropriate action in the case of a credible threat to life and physical integrity
Prohibition of torture and other ill-treatment	• take appropriate action in the case of domestic violence
Personal liberty Fair trial	• inform the detainee of the reasons for arrest and charges against her or him
Peaceful assembly	• shape organisational arrangements and take adequate operative measures in order to protect peaceful protestors from attacks by others
Effective remedy	• promptly and impartially investigate allegations of human rights violations

Source: FRA, 2013

Similar to the traditionally stronger focus on civil and political rights, the public is much more aware of the state’s negative obligation to respect human rights – limitation of state action, the control of state powers, non-interference – than the positive obligation to protect.

5. Where are human rights embodied in law and how are they monitored?

“National Human Rights Institutions (NHRIs) play an important role in the human rights architecture at the national level, through, for example, monitoring compliance, conducting research, initiating preventive measures and awareness-raising.”

FRA (2010), National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I, Luxembourg, Publications Office of the European Union (Publications Office), p. 7

“NHRIs also operate as hubs within countries, by linking actors, such as government agencies with civil society. By making these connections, NHRIs contribute to narrowing the ‘implementation gap’ between international standards and concrete measures. NHRIs also help to ensure that the indivisibility and interdependence of the full spectrum of human rights is given effect.”

FRA (2010), National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I, Publications Office, p. 8

Law plays a fundamental role in human rights. Human rights were first laid down at the national level, and since World War II, human rights have systematically been included in international law. International human rights treaties typically contain an article that stipulates the obligations of states with regard to human rights. The case law of international human rights bodies, including the European



Court of Human Rights (ECtHR), has helped define these rights more concretely. Through development at the United Nations (UN) and at regional levels, there is now a comprehensive set of international human rights standards applicable to many areas of life.

Human rights standards at the regional European level are particularly relevant for this training module. These standards include both UN and European treaties, which coexist and are equally applicable to those European states that have ratified them. According to a well-established principle of international law, where several norms are applicable to the same situation, the norms most favourable to the individual are applied.

Here are two lists of some international treaties and other human rights instruments that contain human rights standards. The first is of general relevance and the second of more specific relevance to policing:

Relevant international human rights instruments – general

- Universal Declaration of Human Rights (1948)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979)
- UN Convention on the Rights of the Child (1989)
- UN Convention on the Rights of Persons with Disabilities (2006)
- European Convention on Human Rights (1950)
- European Social Charter (1961)
- Charter of Fundamental Rights of the European Union (2000)

Relevant international human rights instruments – police-specific

- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- UN Code of Conduct for Law Enforcement Officials (1979)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Council of Europe Declaration on the Police (1979)
- Council of Europe European Code of Police Ethics (2001)

Human rights mechanisms

There are mechanisms in place at the national, European and international levels that help to monitor and regulate human rights.

Human rights protection begins at the national level. It is only when national systems fail to work properly or to remedy human rights violations that international mechanisms for human rights protection kick in.

There are also several international mechanisms for the promotion and protection of human rights. These mechanisms have an increasing influence on laws and practices within states. Their jurisprudence and recommendations have led, in many European countries, to legal and institutional reforms, including reforms within the police.

There are also global level mechanisms like the Universal Periodic Review, under which the UN Human Rights Council assesses the human rights adherence of each UN member state every four years.

The following lists human rights mechanisms at national, European and international levels, including police-related bodies:

National-level human rights mechanisms

- Police, for their specific role, see Module 2
- Courts, including constitutional courts
- Ombudspersons or National Human Rights Commissions
- Parliament, including parliamentary bodies specifically tasked with monitoring human rights
- Monitoring mechanisms of detention places, including National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- National equality and non-discrimination bodies
- Non-governmental organisations
- Media
- Trade unions
- Professional groups

European-level human rights mechanisms

- Court of Justice of the European Union (CJEU)
- European Court of Human Rights (ECtHR)
- Council of Europe European Committee for the Prevention of Torture
- European Commission against Racism and Intolerance (ECRI)
- Non-governmental organisations

International-level human rights mechanisms

- UN Human Rights Committee
- UN Human Rights Council
- Committee against Torture
- Sub-Committee on Prevention of Torture
- National Preventive Mechanisms
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination against Women
- Non-governmental organisations

Police-related bodies in Europe

- European Judicial Cooperation Unit (Eurojust)
- European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)
- European Police College (Cepol)
- European Police Office (Europol)



Supplementary material

This section explores the philosophical roots and development of human rights, before providing more information on current human rights mechanisms. It begins by expanding on the discussion of the Golden Rule in this Module's Briefing notes, adding a description of the evolution of human rights from their origins in the European Enlightenment through to more modern developments. It follows up with a discussion of one of the more controversial of human rights topics, their universality, and provides the trainer with evidence and arguments that support the concept of universality.

The second part is devoted to practical information. It provides details on current human rights mechanisms, both at European and international levels. It also describes key non-governmental organisation actors and police-related bodies in Europe.

The Golden rule and the evolution of human rights

The Golden Rule is present across many different cultural contexts:

- "Refrain from doing what we blame in others." (Thales of Miletus)
- "Do nothing to others which, if done to you, would cause you pain: this is the sum of duty." (Hinduism)
- "What is hateful to you, do not to your fellow man. That is the entire law; all the rest is commentary." (Judaism)
- "Do unto others as you would have them do unto you." (Christianity)
- "No one of you is a believer until he desires for his brother that which he desires for himself." (Islam)
- "Hurt not others in ways that you yourself would find hurtful." (Buddhism).
- "What you do not want done to yourself, do not do to others." (Confucius)
- "Act only according to that maxim whereby you can, at the same time, will that it should become a universal law." (Immanuel Kant)

The European Enlightenment and human rights

Drawing on ancient Greek philosophy, European Enlightenment philosophers examined the absolute freedom of human beings in a 'state of nature'. How then should any state institution legitimately require them to behave in a certain way? This tension between (state) coercion and (human) freedom concerned many thinkers during the European Enlightenment. In the words of scholar John Locke (1632–1749): "Without the constraining power of government we would find the exercise of our sovereignty 'uncertain,' because of the absence of guarantees that others will always respect the moral boundaries required by our status as rational, independent, and therefore sovereign creatures." But Locke believed that there was an obvious way in which we can secure our fundamental interests, and that is to cede some of our powers to people whom we

specifically charge with protecting these interests and vesting them with the authority to ensure we are protected. “The authority that we vest in such representatives will be legitimate only so long as they continue to act in good faith and on our behalf.”² This social contract theory provides the moral basis of the modern liberal state, including a state institution with powers vested in police. Locke also outlined what is needed for achieving the “preservation of life, liberty and property”: a legislature, a judiciary and an executive branch. Later, Charles de Montesquieu (1689–1755) elaborated the basic concept of the separation of state powers and Jean-Jacques Rousseau (1712–1778) stressed the democratic element of states. This helped lay the theoretical foundations of the modern state and inspired a revolutionary process, first in the United States (1776) and in France (1779), followed by most European countries.

This process has continued in modern times. Human rights developed as part of political ethics, with discussions centring on the legitimacy of the state and its use of power, including physical force, to restrict individual freedom.

Social movements took up related ethical and political claims, inspiring revolutionaries to overthrow absolutist and repressive regimes. After successful revolutions, human rights were integrated into national law, mainly in state constitutions. This process of codification gave strength and legitimacy to the ethical claims and to the state’s use of physical force.

The women’s rights movement is an obvious example of this development. Starting with Mary Wollstonecraft’s *A vindication of the rights of women* (1792) and French revolutionary Olympe de Gouge’s *Declaration on the rights of women and of the female citizen* (1793), it has a long and on-going history of translating ethical/political claims into law and its practice.

Another example is anti-discrimination and lesbian, gay, bisexual and transgender people (LGBT) movements, which have pushed for the state to adopt measures to protect the rights of vulnerable or marginalised persons within society, taking up issues such as same-sex marriage or discrimination in access to employment and/or housing.

Particularly in light of this evolution, it is important to remember that knowledge of the law alone is not sufficient to implement human rights. Sustainable achievement of human rights requires an appropriate moral attitude that relies not only on external sanctions but also on inner conviction.

Factors other than social or revolutionary movements have also played a role in shaping human rights as they exist today. International human rights courts’ judgments since the 1980s, for example, provide guidance on how human rights laws should be applied. Court decisions have addressed many human rights, for example, in relation to: the right to life (death threats by unknown persons); freedom from torture and other ill-treatment (parents’ violence against children); or the right to freedom of assembly (protection of demonstrations against counter-demonstrations).

The human rights challenges stemming from civil wars, particularly those in former Yugoslavia, have also thrown into sharp relief the dangers of excessive state action and the civilian abuses of one group against another, in which police often stood by without taking action.

2. Kleinig, J. (2008), *Ethics and criminal justice: an introduction*, New York, Cambridge University Press, p. 10.



The Council of Europe was at the forefront of promoting an understanding of human rights in the policing context through a series of initiatives in the 1990s. These included a seminar in 1995 on 'Human rights and the Police' and the subsequent establishment of a programme called 'Police and human rights 1997–2000'.

Human rights 'generations'

Human rights have evolved over time to become a comprehensive set of rights covering a range of areas. Reflecting this historical evolution, human rights are often categorised in 'three generations':

- first generation: civil and political rights;
- second generation: economic, social and cultural rights;
- third generation: solidarity and collective rights.

Looking at certain human rights instruments established and developed at both the European and international levels helps illustrate the three generations of human rights:

- The European Convention on Human Rights of 1950, the oldest and most widely known human rights treaty in Europe, contains only civil and political rights (first generation), whereas its younger sister, the European Social Charter of 1961, contains economic and social rights (second generation).
- The two main UN human rights treaties make this division explicit: the International Covenant on Civil and Political Rights (first generation) and the International Covenant on Economic, Social and Cultural Rights (second generation).
- The Charter of Fundamental Rights of the European Union is the first legally binding instrument to explicitly contain all dimensions of human rights, which reflects its relative youth as a legal instrument.

Certain principles and protections have over time been woven into the fabric of these three generations of human rights. They include the principle of indivisibility and the interdependence of democracy, economic development, protection of women's, children's and minority rights. Together, the three generations of rights embody a holistic approach to human rights.³

Universalism v. cultural relativism

"Some foreigners do not share our values, not even the values of human rights. Look how they treat women", or "Let's be honest. Human rights originate in the West, other cultures do not have them".

Statements such as these come up regularly in police training. They are related to the issue of human rights' universality, which has been one of the most hotly debated questions in the field of human rights.

The following points have proven useful in these discussions:

- "The universal nature of these rights is beyond doubt," said the UN member states present at the Second UN World Conference on Human Rights in 1993. This affirmation of universality came after long debates, in particular between western and Asian governments. But the same document added: *"While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."*

Vienna Declaration and Programme of Action, 1993, paragraph 5

3. United Nations (UN), General Assembly (1993), *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 12 July 1993.

China's Sui dynasty abolished torture in the 6th century for almost the same reasons as in Europe during the era of enlightenment – more than a thousand years later.

Hersch, J. (ed.) (1969), *Birthright of man: a selection of texts*, Paris, UNESCO

Akbar, the Muslim Mogul of India from 1556–1605, introduced secular ideas and freedom of religion during his rule. He supported religious tolerance and made it a duty to make sure that “no man should be interfered with on account of religion and anyone could go over to any religion that pleases him”.

Sen, A. (2006), *Identity and Violence: The Illusion of Destiny*, New York, London, Norton & Company, p. 64

- What does this mean? It means that universal rights must be interpreted and applied in a specific historical and cultural context. A similar approach can be found at the European level. The ECtHR, in applying the ECHR to concrete cases, leaves states what it calls a certain “margin of appreciation” to apply human rights according to their specific circumstances.
- The **Golden Rule**, which exists in some form or another across different cultural settings, provides a strong basis for the assumption of universality of some basic values and ethical claims.
- **Human rights values are found in different cultural settings.** Increasingly, historical and anthropological research testifies to this. In 1969, UNESCO published a collection of documents from across the world on human rights thinking, edited by the philosopher Jeanne Hersch, entitled: *Birthright of man*.⁴

Human rights actors and mechanisms

Non-governmental organisations

Non-governmental organisations, such as Amnesty International, play a fundamental role in protecting and promoting human rights. Their activism has contributed immensely to increased awareness and better reporting of human rights violations and to reform processes.

European human rights mechanisms

Court of Justice of the European Union (CJEU)

The status of the CJEU has changed considerably since the 2009 entry into force of the Treaty of Lisbon, which made the Charter of Fundamental Rights of the European Union legally binding for the EU and for EU Member States when implementing EU law. The CJEU, which is responsible for judgments on compliance with EU law, can now also look at adherence with the Charter of Fundamental Rights once Member States’ domestic legal remedies have been exhausted. The Council of the EU has established a working group on Fundamental Rights and Free Movement of Persons, which is working, among other tasks, on the EU’s accession to the ECHR.

European Court of Human Rights (ECtHR)

The European Court of Human Rights, the oldest and most influential international human rights mechanism in Europe, is tasked with supervising the implementation of the ECHR. Those who believe a state party to the ECHR has violated their human rights can lodge a complaint with the court, which was set up in Strasbourg in 1959 and started operating full-time in 1998. Although many applications are found inadmissible, the court deals with a large volume of cases. In 2010, 61,300 such applications were allocated to be heard. Also that year, the ECtHR delivered 2,607 judgments, finding a violation in about half. Some 200,000 applications are currently pending.⁵

States can also bring cases against other states. The ECtHR’s decisions are binding on the state, and its case law has strongly influenced European law and practice. The courts’ rulings have had the most effect on police law and practice, and more generally, on the administration of justice. The court has made a significant contribution to a contemporary understanding of human rights; the court’s rulings are the first port of call if one wishes to learn how a particular human rights provision is interpreted in the European context. The case studies in this manual are therefore drawn from the ECtHR’s practice.

4. Hersch, J. (ed.) (1969), *Birthright of man: a selection of texts*, Paris, UNESCO.

5. For more information on statistical data, see the ECtHR webpage: www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data/.



For more information, see: www.echr.coe.int/echr/homepage_EN.

Court cases can be found at: www.echr.coe.int/ECHR/EN/hudoc.

Council of Europe, European Committee for the Prevention of Torture (CPT)

The task of the CPT, which was set up under the European Convention for the Prevention of Torture, is to visit European places of detention and assess how persons deprived of their liberty are treated. These places include prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals and social care homes. CPT delegations have unlimited access to places of detention, and the right to move around them freely, without restriction. They hold private interviews with persons deprived of their liberty and are authorised to communicate freely with anyone who can provide information. After the visit, the CPT draws up a report on its findings and issues recommendations to the authorities with a view to strengthening the protection of detainees against torture and other forms of ill-treatment. Its reports are, with the consent of the state concerned, published. The CPT has greatly contributed to increasing awareness of human rights problems in places of detention and has led to reforms in many countries.

For more information, including its reports, see: <http://www.cpt.coe.int/en/>.

Council of Europe, European Commission against Racism and Intolerance (ECRI)

ECRI monitors, from a perspective of human rights protection, problems of: racism, discrimination on grounds of ethnic origin, citizenship, colour, religion and language, as well as xenophobia, antisemitism and intolerance. Established by a decision in 1993 and composed of independent experts, its mandate covers: country-by-country monitoring; general policy recommendations; and information and communication activities with civil society. ECRI prepares reports and issues recommendations to Council of Europe member states. ECRI has dealt with the field of policing in the context of country monitoring and in General Policy Recommendation No. 11.

For more information, see: www.coe.int/t/dghl/monitoring/ecri/default_en.asp.

International human rights mechanisms

UN Human Rights Committee

The Human Rights Committee is a UN body of independent experts which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR). Its main task is to examine state parties' reports that they are obliged to submit on a regular basis on the implementation of rights. In its concluding observations, the committee addresses its concerns and recommendations to the state party. It also considers individual complaints of alleged state violations of the ICCPR and issues (non-binding) decisions. As is the case with the ECtHR in Europe, the Human Rights Committee is a main source for learning what UN human rights provisions mean in concrete terms. In addition to concrete cases, the committee also issues its interpretation of the content of human rights provisions, in the form of General Comments.

For more information, see: www2.ohchr.org/english/bodies/hrc/.

UN Human Rights Council

The UN Human Rights Council is a UN Charter-based body responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of gross and systematic human rights violations. The Council is made up of 47 UN member states which are elected by the UN General Assembly every three years. The Human Rights Council carries out the Universal Periodic Review, which serves to assess the human rights situation in all UN member states in four-year cycles. The UN Special Procedures (special rapporteurs, special representatives, independent experts and working groups) also operate under the Human Rights Council, and are tasked with monitoring, examining and publicly reporting on thematic issues or human rights situations in specific countries.

For more information, see: www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx.

Committee against Torture

The Committee against Torture is a UN body of independent experts which monitors the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its functions are similar to those of the Human Rights Council. In addition, it has a mandate to examine country situations in-depth, through its inquiry procedure. Its practice, including case law, is important for understanding what exactly torture and other ill-treatment mean.

For more information, see: www2.ohchr.org/english/bodies/cat/index.htm.

Sub-Committee on the Prevention of Torture

The Sub-Committee on the Prevention of Torture (SPT) was set up by the Optional Protocol to the UN Convention against Torture (OPCAT). Its tasks are similar to those of the CPT: to visit European places of detention to assess how persons deprived of their liberty are treated and to draw up reports and make recommendations to states on how to improve protection against torture.

National Preventive Mechanisms

OPCAT obliges states to establish National Preventive Mechanisms, a major added value compared to the CPT. As the name suggests, they are set up at the national level and have basically the same task as the SPT. In the concrete field of policing, the National Preventive Mechanisms are the most relevant monitoring institution.

For more information regarding the OPCAT, see: www2.ohchr.org/english/bodies/cat/opcat/index.htm.

Association for the prevention of torture, available at: www.ap.t.ch/en/.
FRA (2010), *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I*, Publications Office, available at: http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf.

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination is the UN body of independent experts which monitors implementation of the Convention on the Elimination of all Forms of Racial Discrimination. Its functions are similar to those of the Human Rights Council.

For more information, see: www2.ohchr.org/english/bodies/cerd/index.htm.



Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women is the UN body of independent experts which monitors implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. Its functions are similar to those of the Human Rights Council. Within its inquiry procedure, it also has a mandate to provide in-depth country examinations.

For more information, see: www2.ohchr.org/english/bodies/cedaw/.

Further reading

UN, Office of the United Nations High Commissioner for Human Rights (OHCHR) (2002), *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*, New York and Geneva, United Nations, pp. 25–35, available at: www.ohchr.org/Documents/Publications/training5Add2en.pdf.

Police-related bodies in Europe

European Police Office (Europol)

Europol⁶ assists national law enforcement authorities in the EU-27 in combating serious forms of organised crime while seeking to ensure respect for human rights. Europol holds expert training courses for police officers, for example on trafficking, cybercrime, combating the sexual exploitation of children on the internet, all of which have significant human rights dimensions. Europol's main mandate is to introduce standards in investigations and to foster the operational cooperation of national law enforcement agencies.

European Police College (Cepol)

Cepol⁷ aims to encourage cross-border cooperation in the fight against crime, public security and law and order by bringing together senior police officers from across European police forces to network, organising training activities and through research findings. Cepol is the EU agency mandated to work specifically on police training. The annual work programme 2011⁸ refers to training on ethics, the Stockholm Programme⁹ and the five-year EU guidelines for Member States on justice and home affairs, as focus areas for training activities. Cepol develops common core curricula of an advisory nature to EU Member States. It is currently developing further curricula on trafficking in human beings, domestic violence and ethics.

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Frontex¹⁰ is the EU's specialist independent agency tasked with coordinating Member States' operational cooperation in the field of border security. Frontex complements the national border management systems of the EU Member States and coordinates joint operations between EU Member States and other partners with the aim of strengthening external border security. Frontex designs these joint operations based on risk analysis drawn from the intelligence it collects. Like Cepol, Frontex's mandate also requires it to establish common core curricula and common training standards for border guards. Frontex conducts research on technical and non-technical (such as ethics) border-related issues. Frontex also has an expanding role in the coordination of joint return operations, both of a voluntary and forced nature.

6. For more information on Europol, see: www.europol.europa.eu/.

7. Council of the European Union (2005), Council Decision of 20 September 2005 (2005/681/JHA) on establishing the European Police College (Cepol) and repealing Decision 2000/820/JHA, OJ 2005 L 256.

8. For more information on Cepol, see: www.cepol.europa.eu/.

9. European Council (2010), The Stockholm Programme – an open and secure Europe serving and protecting citizens, OJ 2010 C115.

10. Regulation (EU) No. 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2004 L 349. For more information on Frontex, see: www.frontex.europa.eu/.

European Union's Judicial Cooperation Unit (Eurojust)

The EU's judicial cooperation body, Eurojust,¹¹ aims to help provide safety within the area of freedom, justice and security, especially in relation to cross-border and organised crime. Eurojust provides training for judges.

Further reading

The Danish Institute for Human Rights, 'Are human rights universal?', online article, available at: www.humanrights.dk/human+rights/history+and+documents/are+human+rights+universal-c7-.

European Training and Research Centre for Human Rights and Democracy Graz (2013), 'Introduction to the system of human rights' in: Bendek, W. (ed.), *Understanding Human Rights – Manual on Human Rights Education*, 3rd edition, pp. 29–36, available at: www.etc-graz.at/typo3/index.php?id=818.

United Nations (UN), OHCHR (1997), *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*, in *Professional training series no. 5*, United Nations High Commissioner for Human Rights, New York and Geneva, United Nations, pp. 13–28, including model slides, available at: <http://www.unrol.org/doc.aspx?d=2571>.

Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) (2012), *Guidelines on Human Rights Education for Law Enforcement Officials*, Warsaw, OSCE/ODIHR, available at: www.osce.org/odihr/93968.

11. For more information on Eurojust, see: www.eurojust.europa.eu/.



MODULE 2: POLICING FROM A HUMAN RIGHTS PERSPECTIVE

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Policing from a human rights perspective

Introduction

Police officers all too often consider human rights an obstacle to, rather than the foundation of, their work. This negative attitude may surface at the beginning of a training course. A discussion that emphasises the importance of the dual role of policing to respect and protect human rights – the ‘twin duties’ to refrain from actions that unduly interfere with human rights and to take all necessary and appropriate steps to protect those rights – has the potential to change this attitude.

Police have increasingly come to be seen in recent decades as a service provider rather than a force. This view is embedded in the broader concept of a democratic state based on the rule of law and informed by a human rights perspective. This perspective advances the traditional objectives of policing, such as the maintenance of public order and the fight against crime.

The central elements of human rights-based policing in democratic societies are: the police’s special role given its monopoly on the use of force; professionalism; the requirement of strict legality; internal and external accountability; transparency; and a relationship of trust with the public.

Activity: Policing from a human rights perspective

Purpose:

Police officers often perceive human rights as an obstacle to, rather than as the foundation of, their work. To overcome any such resentment, it is advisable at an early stage in the training module to clarify the role and objectives of police work and the role of police as an institution that respects and protects human rights.

Objectives:

Knowledge

- understand the role of police vis a vis fundamental rights in a democratic society
- understand the state obligations corresponding to human rights

Attitude

- accept human rights as the basis for, and the main purpose of, police work and not see it as a limitation
- acknowledge human rights as an elementary part of day-to-day policing

Skills

- learn how to identify the appropriate steps for protecting and respecting human rights in police work

Requirements:

- time: 30–45 minutes
- materials:
 - Handout 1 for activity version 1 and/or Handout 2 for activity version 2 with discussion questions
 - flipchart to write out questions
 - optional: power point presentation and projector
- space: plenary room plus two working groups
- group size: maximum 20–25 persons



Activity description version 1: Discussing police and human rights¹

- ❶ Distribute Handout 1 with discussion questions/write one or some of the questions on a flip chart.
- ❷ Ask participants to spend about 5 minutes answering the question(s) individually.
- ❸ Ask participants to form 3-to-4 person discussion groups to compare and discuss their answers for about 10 minutes. Make sure that groups:
 - have understood their task well;
 - appoint a rapporteur to bring results back to the plenary.
- ❹ Answer any questions that arise during group work.
- ❺ Have groups present their work in the plenary. (about 5 minutes per group)
- ❻ Hold a general discussion, reflecting on the results and what has been learned. (about 20–30 minutes)
- ❼ Summarise major points on the flipchart and provide tailor-made input, drawing on information from the Briefing notes as necessary.

1. This activity has been adapted from Suntinger, W. (2005), *Menschenrechte und Polizei, Handbuch für TrainerInnen*, Vienna, Bundesministerium für Inneres, p. 110.

Activity description version 2: Practical examples

- ❶ Introduce the purpose and objectives of the activity.
- ❷ Distribute Handout 2 question 1 to one half of the class and Handout 2 question 2 to the other half.
- ❸ Ask the participants to work individually on their questions for about 5–10 minutes.
- ❹ Divide participants into small discussion groups of 4-to-5 persons and ask them to work together to find three relevant examples to Questions 1 and 2 (about 15 minutes). Make sure that groups:
 - have understood their task well;
 - appoint a rapporteur to bring results back to the plenary.
- ❺ Give advice if questions on how to go about the task arise during the group work.
- ❻ Have groups present their examples to the plenary.
- ❼ Hold a general discussion of results, reflecting on what has been learned.
- ❽ Summarise major points and, if necessary, provide information on why human rights can be perceived as either an obstacle to, or a foundation of, policing, drawing on information from the Briefing notes as necessary. Point out potential consequences to seeing human rights in one or the other way. It may be useful to work with the tension between impediment and foundation.



Handout 1 – Discussing police and human rights

Discussion questions:

1. Does murder constitute a human rights violation?
2. Which organisations/institutions are tasked with protecting human rights?
3. What is the role of the police with regard to human rights?
4. “There is no conflict between human rights and policing. Policing means protecting human rights”. Do you agree with this statement? Why? Why not?

Briefing notes

These Briefing notes provide information that can be used to guide the activities and training discussions for this module, structured as follows:

1. Key concepts
2. Handouts – Questions and answers:
 - a. Handout 1 – Questions and answers
 - b. Handout 2 – Questions and answers

1. Key concepts

Module 2 draws on the core themes of Modules 1 and 3, namely the states' obligation to respect and to protect human rights. Module 2 provides complementary information on these obligations by homing in on human rights and policing.

As a refresher, police obligations are restated here:

Obligation to respect: The state must refrain from illegal and disproportionate actions. Unjustified interferences with human rights constitute human rights violations.

Obligation to protect: The state is obliged to take administrative, legislative and/or judicial action to protect human rights in order to ensure that people can fully enjoy their rights. Failures to take appropriate steps constitute human rights violations.

For more information on the obligations to respect and to protect, see: Modules 1 and 3

2. Handouts – Questions and answers

There is no single correct answer to these handout questions; there are many perspectives and schools of thought on human rights and policing. These Briefing notes are designed to prompt discussion and to provide guidance on how to approach these questions. The notes do not offer an exhaustive list of answers.

Training tip: Reminding participants that human rights apply differently to individuals and states

Human rights oblige states to respect and to protect people's human rights. For private persons, human rights both enshrine the state's duties to protect and to respect each individual's rights and offer guidance on how people should treat one another.

Therefore, from a strictly legal standpoint, human rights violations can only occur because of state actions or omissions towards individuals. One person's actions against another, for example an act of murder, violate the law but not human rights. As such, a state act or omission that results in murder has different human rights consequences than that same murder committed by a private person.

Handout 1 – Questions and answers

Question 1: Does murder constitute a human rights violation?

This question helps to clarify the basic issue of state obligations, and thus the role of the police, regarding human rights. Various points might arise when discussing this question.

- A public official who commits murder also violates human rights as he or she has not honoured the state's obligation to respect the right to life. When a public official, such as a police officer, uses force and this leads to death, the state has the obligation to conduct an impartial and independent investigation into the circumstances.
 - . In several cases, the European Court of Human Rights (ECtHR) has found a public official's use of force excessive and in violation of human rights.
 - . If, however, force is used in self-defence, is appropriate and in line with the principles of necessity and proportionality, then death resulting from the use of force does not constitute a human rights violation. (see Module 3 for more information on the principles of necessity and proportionality)
- If the state fails to take appropriate steps to prevent the murder of a person facing a threat to his or her life from another person, then the state's failure to act/omission constitutes a violation of the state's obligation to protect the right to life.
- A private person who murders commits a crime. He or she does not violate a human right.

Question 2: Which organisations/institutions are tasked with protecting human rights?

There are many organisations and institutions at national, European and international levels tasked with protecting human rights, including some that are police related.

National level

- Police
- Courts, including constitutional courts
- Ombudspersons or National Human Rights Commissions or Institutes
- Parliament, including parliamentary bodies specifically tasked with monitoring human rights
- National equality and non-discrimination bodies
- Non-governmental organisations

European level

- Court of Justice of the European Union (CJEU)
- European Court of Human Rights (ECtHR)
- Council of Europe's European Committee for the Prevention of Torture (CPT)

- European Commission against Racism and Intolerance (ECRI)
- Non-governmental organisations

European police-related bodies

- European Judicial Cooperation Unit (Eurojust)
- European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)
- European Police College (Cepol)
- European Police Office (Europol)

International level

- United Nations (UN) Human Rights Council
- UN Human Rights Committee
- UN Committee against Torture
- UN Committee on the Elimination of Racial Discrimination
- UN Committee on the Elimination of Discrimination against Women
- Non-governmental organisations

Question 3: What is the role of the police with regard to human rights?

European Code of Police Ethics, Committee of Ministers Rec(2001)10 Preamble

[...] 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 [...]

Police officers as state officials

Police officers have a special position in a democratic society as the state gives them the power to use force when necessary. Human rights place important restrictions on police actions and the use of force, strictly binding them to the principles of legality, proportionality and necessity. Such restrictions help to ensure that when police act, they respect human rights and seek to use the least intrusive means to reach their goal.

Police officers must not only respect human rights but must also actively protect human rights by, for example, arresting a suspect in order to protect the rights of other people. This police duty to protect is what makes human rights the foundation of police work.

Universal Declaration of Human Rights Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The police play a central role in maintaining conditions necessary for implementing human rights, which include maintenance of public order, law enforcement, prevention and detection of crime, assistance and service to the public.

Police officers as law enforcers

As government officials, police are given the power to use force, when necessary, to enforce laws and to prevent, detect and fight crime. For police as law enforcers, no law stands higher in authority than that of human rights. It is a well-established legal principle that all laws should be interpreted and implemented in a way that is in strict accordance with human rights norms. When police prevent or detect a crime, they protect human rights, such as the right to property, life, physical and psychological integrity, personal liberty and security.

Police officers as service providers

Police in the past were primarily seen as a force and an instrument of state control. This perspective has evolved and police are now often seen as government officials who provide a service to the community. As service providers, police officers not only respect people's human rights by detecting and fighting crime, they also focus on preventing crimes and violations of human rights. Government institutions like the police work with non-state actors, such as communities, to both identify and solve crime and disorder problems. Therefore state officials, like police, engage with communities to better serve the public. This understanding of policing leads to a stronger focus on crime prevention than on crime detection and fighting as well as on efforts to tackle the underlying causes of crime.

The perspective of police as service providers is also clearly present in international human rights documents, such as the Council of Europe's *Declaration on the Police* (1979) and *The European Code of Police Ethics* (2001) as well as the UN *Code of Conduct for Law Enforcement Officials* (1979). The Organization for Security and Co-operation in Europe's (OSCE) *Guidebook on Democratic Policing* (2006), the OSCE *Guidebook on Good Practices in Building Police-Public Partnerships* (2008) and the OSCE *Guidebook on Police and Roma and Sinti: Good Practices in Building Trust and Understanding* (2010)² provide detailed guidance on how to implement pertinent reforms.

Question 4: There is no conflict between human rights and policing. Policing means protecting human rights. Do you agree with this statement? Why? Why not?

The public has divided views on the relationship between policing and human rights. Some perceive police as protectors of human rights while others may see them as a potential threat to those rights.

The public is well aware that police can violate human rights, by, for example, using excessive force. The positive effect of police work on human rights is less clearly embedded in public consciousness. Therefore, the discussion topics that arise when answering this question can be diverse.

Policing and human rights – are not in conflict:

“Human rights are the objective of policing.”

- Police make a fundamental contribution to the protection of human rights – human rights are the foundation and the objective of policing.
- Enduring social peace can only be achieved if human rights are respected and protected – this is in everyone's interest. Police are a key element in maintaining social peace. By detecting and

2. OSCE (2010), *Guidebook Police and Roma and Sinti: Good Practices in Building Trust and Understanding*, available at: <http://www.osce.org/odhr/67843?download=true>.



preventing crimes, they help to protect and maintain respect for human rights.

- Human rights enhance effective policing by providing strict principles on legality, necessity and proportionality. These principles create confidence in the state and strengthen the rule of law.
- Policing based on human rights helps to enhance the successful administration of justice by ensuring a greater respect for human rights when police gather evidence which is then used in court proceedings. Respecting human rights helps to ensure that evidence is not declared inadmissible because of misconduct (see Module 4).

Policing and human rights – are in conflict:

“Human rights are merely an obstacle to police work.”

- Human rights are based on human dignity and everyone is entitled to them. The human rights of a criminal can be limited to a certain extent, with detention typically restricting the right not only to personal freedom but also to family and privacy through limitations on visiting hours, telephone use or the general rules in detention. A total denial of a criminal’s rights, would, however, undermine the very idea of human rights, which protects a minimum of humanity and dignity in all situations.
- Viewing human rights as merely an obstacle to police work shows a lack of understanding of the beneficial effects of human rights for a just, peaceful and inclusive society, for individuals as well as for the police. When a negative perception of human rights surfaces make sure to have a thorough discussion of the functions of human rights as well as the role of police in human rights protection.
- In severe cases, such as child abuse, some participants may find it difficult to understand why a purported abuser should be treated with respect and dignity, and this view may well surface in the training course. Such emotionally charged arguments pose particular challenges for the trainer. Before reacting at an intellectual level by presenting arguments, the trainer should first deal explicitly with the emotional aspect, in this case by acknowledging the difficulty of treating with dignity those persons who have perpetrated terrible acts. Then he or she can introduce and discuss the basic arguments outlined above. The trainer should make sure to reinforce the message that human rights are not to be granted selectively; they are indivisible and inalienable. The rights of offenders can then be discussed based on: “why they have rights at all and how they are limited”.

It is advisable to move the discussion in the direction of general deterrence (state obligation for crime prevention *vis a vis* the whole of society) and specific deterrence (state obligation focusing on the individual offender – how to prevent repeat offences). Most evidence shows that extensive punishment serves neither to deter more crime nor to reduce the recidivism of the offender.³

Other related issues of importance include the police’s margin of discretion and the police’s ability to build trust and work in partnership with the public.

The police’s margin of discretion

Balancing conflicting interests and using the appropriate measures in meeting the obligations both to respect and protect is what makes the job of the police so difficult. Police interference with a suspect’s human rights must be as limited as possible, in line with the principles of necessity and proportionality. At the same time, however, police

3. Compare, for example, theses by Heinz, W., University of Constance, Germany, with respect to juveniles; Dünkel, F., University of Greifswald, Germany; Jehle/Heinz/Sutterer (2003), *Legalbewährung nach strafrechtlichen Sanktionen*, Bundesministerium der Justiz, Berlin.

must also render effective protection to an endangered person. This balancing act creates an emotionally stressful and tense situation for police officers when performing their work.

Human rights-based policing shares a number of essential characteristics with other approaches, such as democratic policing, as described in the OSCE *Guidebook on Democratic Policing*.⁴

For many, police are the most visible state representatives and those with whom citizens are most likely to come into contact. They therefore represent the 'government in action'.⁵ The police may thus influence citizens' overall opinions on and perspectives of government as a whole, with their actions strengthening or weakening the public support necessary to sustain a viable democracy.⁶

Although laws establish a framework and provide guidelines for the performance of police duties, a certain amount of operational independence and discretion remains. Laws can never regulate every single situation with which a police officer may be confronted, for example: which car to stop or how to respond to rude or provocative behaviour. A margin of discretion enables a police officer to tailor his or her response to each particular situation, taking into account all the relevant factors of each case. But this discretion also requires the police officer to display an appropriate attitude and exercise a strong sense of responsibility.

The appropriate use of discretion is particularly complicated because police must often act in complex, unclear and emotionally stressful situations, such as disputes or acts of violence. Police are called upon when something has gone wrong or there is a problem. They must take their decisions on the spot, in the heat of the moment, often within seconds and without preparation. In contrast, police managers and judges analyse and review police acts after the fact, knowing the result and with adequate time to analyse the situation. The two perspectives will necessarily differ, and those who later analyse the events will never be able to fully grasp the situation in its real-time dynamics.⁷

It is exactly when specifying the margin of police discretion, in particular in stressful situations, that ethical and human rights principles become particularly relevant, not as knowledge, but as internalised attitude. From a human rights perspective, the principles of equal treatment and of proportionality – including thinking of less intrusive measures or stopping if the damage from police action would clearly outweigh its benefits – are of most relevance.

Trust and partnership with the public: central to policing

Police are an institution that should contribute to perceived feelings of personal and public security. The police must take the public's feelings of insecurity seriously and with a view to tackling their underlying causes, responding to different needs and interests, and managing fears. The police must build trust with communities, an important task which affects how they communicate and interact with the population. Consider, as an example, a police presence in a public space. This presence can engender a feeling of security, of protection, among the public; however, it can also trigger an atmosphere of fear and insecurity – "something must be wrong, we are in danger" – especially if the police appear fully armed. Because the police represent the state in the most visible manner, trust in the police is tantamount to trust in the state. Without this trust, the public will not be willing to report crimes nor provide police with the information they need to perform effectively. Marginalised people in society often experience a lack of trust.

4. OSCE (2008), *Guidebook on Democratic Policing*.

5. *Ibid*, p. 43.

6. Denmark, Danish Institute for Human Rights (1999), *Police and human rights, manual for police training*, p. 12, available at: <http://www.humanrights.dk/files/pdf/Engelsk/International/macedonia.pdf>.

7. Bourdieu, P. (1990), *The Logic of Practice*, Stanford, Stanford University Press, pp. 81-82.



Handout 2 – Questions and answers

The answers to Handout 2 are based on participants' experiences, and therefore no concrete answers can be supplied. Some topics have instead been provided that may prompt participants to come up with examples and/or help the trainer to guide the plenary discussions.

Training tip: Encouraging participants to give concrete and true-to-life examples

Using real-life experiences as a basis for examples rather than general statements can lead to more fruitful discussions and may help participants relate to and more deeply understand training activity objectives.

Question 1: Find practical examples (based on experiences from your daily work) where you have seen human rights as an impediment to your work.

- Example answer: "I was at protests that became violent. We were required to maintain our line and were not allowed to go after those who threw bottles, insulted or spit on us."

The following situation prompts might help elicit examples:

- . before, during or after an arrest
- . handling a demonstration
- . interrogating a suspect
- . stopping or preventing a crime

"According to their (police officers) reasoning, the imbalance of power has shifted from the State to sections of society such as members of organized crime networks as well as terrorist groups who are aware of their rights and seek to 'abuse' the system to their benefit (such as delaying trials, filing complaints, appealing to higher courts etc). From this viewpoint, human rights are seen as an impediment to effective policing. Moreover, police feel that such sections of society are given more freedom to act than police themselves are. The perception is that a 'Catch 22' situation has evolved in which the human rights system, developed to protect the 'weak' individual, is actually weakening the State, resulting in a perceived dichotomy with security on the one side and human rights on the other."

Osse, A. (2006), Understanding policing, a resource for human rights activists, available at: www.amnesty.org.uk/uploads/documents/doc_22360.pdf

Question 2: Find practical examples (based on experiences from your daily work) where human rights have been useful to your work and/or served as a foundation for it.

- Example answer: "Once I had to interfere with a violent fight between a husband and his wife. I used the technique of de-escalating interventions which helped me calm the situation down."

The following situation prompts might help elicit examples:

- . justifying or explaining the reasons for arrest or detention
- . appearing in court
- . stopping or preventing a crime
- . deciding if or how to intervene in a situation

“It is a central proposition of this report that the fundamental purpose of policing should be [...] the protection and vindication of the human rights of all. Our consultations showed clear agreement across the communities in Northern Ireland that people want the police to protect their human rights from infringement by others, and to respect their human rights in the exercise of that duty.”

*Independent Commission on Policing for Northern Ireland (1999),
A new beginning: policing in Northern Ireland, p. 18*

“It is the goal of our actions to protect and respect human rights and thus to create the greatest possible trust of all people in their liberty and security.”

Austrian Police (2009), Guiding Principles of a human rights based understanding of police, Principle 1



Supplementary material

Role of police in democratic societies – from force to service provider

“Progress towards democratic policing is made when there is a shift ‘from a control-based approach to a more service-oriented approach’, where the primary concern of law enforcement remains focused on proactive crime prevention.”

OSCE (2008), Guidebook on Democratic Policing, Vienna, paragraph 2, available at: <http://www.osce.org/spmu/23804>

European Code of Police Ethics, Council of Europe Article 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.

There has been a growing tendency to conceive of the police as a service provider to the community. This is apparent in police reform processes in recent decades in several countries, including in police organisations based on the traditional force concept. This view takes into account key elements of service providing, such as community policing, a generally more intensive exchange with the public, and accountability structures.

Some factors that propelled the shift towards a service-oriented approach to policing:

- The transition from authoritarian to democratic states in central and Eastern Europe led to a rethinking of basic state functions, including policing, from a democratic and human rights perspective.
- In western European democracies, public concern with police abuses has grown in recent decades. This led to reforms which tended to stress policing’s public service role, such as an opening up to the public and accountability structures. The latter included police monitoring institutions, such as national mechanisms and the European Committee for the Prevention of Torture.
- More generally, the human rights perspective is gaining strength internationally. It is based on the idea of a responsible state whose main role is to deliver services to its people. This idea has strong roots in European philosophy, in particular in the form of social contract theory. Its basic idea is that to escape the so-called ‘state of nature’, people voluntarily give up their natural freedom into the hands of the state as trustee. The state in turn protects their natural rights and is responsible towards its citizens.
- Police organisations have adopted a consumer-oriented approach that focuses on the needs of ‘customers’ and ‘clients’ and is interlinked with human rights principles: regardless of the status of the client of policing, he or she is entitled to professional and respectful treatment.
- Trust and confidence building are increasingly considered fundamental prerequisites for effective and successful police

work. Without this trust the public would not be willing to report crimes nor provide the police with the information they need.⁸ Developing trust between communities and the police requires a long-term institutionalised form of dialogue. A service-oriented approach to policing helps to build such trust.

Essential characteristics of human rights-based policing in democratic societies

The power to use force is one of the defining characteristics of policing. Police are entitled to use force as an instrument to carry out their tasks. This monopoly on the use of force puts the police in a particularly sensitive and powerful position within the state, with the possibility of abuse ever present.

The dual role of police – state obligations to respect and protect human rights

Often these obligations are interlinked and need to be weighed up against one another. In the case of domestic violence, for example, the police must interfere with the rights of the perpetrator to protect the rights of the victim, by arresting the perpetrator or by preventing him or her from entering the apartment or from approaching the victim.

Legality, necessity and proportionality

The work of the police is bound by clear, precise and accessible laws. Particularly strict regulations and scrutiny apply to the use of force. The use of force is allowed only as a last resort, when all other options are either exhausted or considered ineffective. The use of force and all other acts of policing are strictly bound by the principles of necessity and proportionality.

Training tip: Facing 'reality'

When discussing the question of what is an appropriate action from a human rights perspective, you are often confronted with the following statement: "They (high-ranking police officers and non-governmental organisations) have no idea about the realities we face in the streets. It is easy to judge when you're sitting at your desk. Human rights are nice in theory; the realities out there are different."

The following points help to take up this objection constructively:

- Acknowledge the difference between the logic of practice and the logic of analysis of (past) practice, as mentioned above. This sends the signal that one really understands what participants are saying. Recognising this difference, however, does not mean that reviewing past actions is illegitimate or cannot be done adequately.
- Stress that police officers should be aware of their special position of power, given their monopoly on the use of force, and the possibility of abusing it and related political sensitivities.
- Emphasise their responsibility towards the public. Focus on the idea of the police as service providers and frame their power as a public trust, based on the social contract.

Accountability

"While citizens voluntarily provide the police with their consent for applying the monopoly of force [...] democratic police services have the obligation to have their powers checked and controlled by the public through accountability processes."

OSCE (2008), Guidebook on Democratic Policing, Vienna, paragraph 80, available at: <http://www.osce.org/spmu/23804>

8. Denmark, Danish Institute for Human Rights (1999), *Police and human rights, manual for police training*, p. 14, available at: <http://www.humanrights.dk/files/pdf/Engelsk/International/macedonia.pdf>.



The policing role has multiple facets: as service provider and most visible manifestation of government, with a monopoly on the use of force, and a margin of discretion in a role that demands on-the-spot decision making in potentially complex situations. These various facets require that police officers demonstrate a high degree of professionalism and are held accountable for their actions.

Police accountability structures consist of external and internal control and oversight mechanisms:

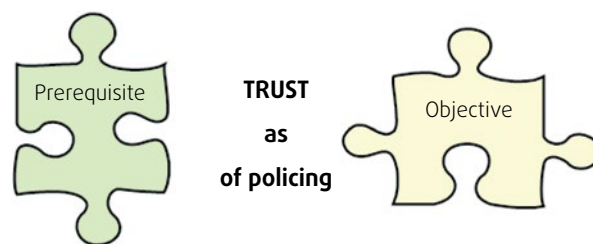
- External mechanisms within a democratic system are: the judiciary; legislative bodies, such as parliamentary human rights committees; ombuds institutions or human rights commissions; civilian complaint boards; national prevention mechanisms established under the UN Optional Protocol to the Convention against Torture; national equality and non-discrimination bodies; and NGOs and the media.
- There are also international human rights bodies at the UN and European level. The ECtHR and the European Committee for the Prevention of Torture are probably those with the strongest influence on police in Europe.
- Internal control and review mechanisms complement external ones. They include: internal complaint and investigation mechanisms; internal reflection and review of operations, with a view to feeding back pertinent results into the organisation; and leadership responsibility.

Transparency

Accountability contributes to the transparency of police work, another key element of democratic policing. The main findings of external mechanisms should be published, helping open up the police system. Transparency also means that police must work with the media in a responsible manner, taking into account data protection and the presumption of innocence. Transparency includes the public dissemination of reports, including crime statistics, and results of internal investigations as well as establishing communication structures with communities.

Professionalism and effectiveness

Ensuring that human rights are the benchmark of policing both requires professionalism and tends to enhance it. The professional gathering of intelligence and evidence reduces the temptation to extract confessions under duress and thus contributes to upholding the prohibition of torture and inhuman treatment. Effective interrogation of a suspect, where the officer tailors tactics to each individual while strictly respecting human rights principles, requires legal and sociological knowledge as well as various skills: rhetorical, psychological and analytical. Upholding human rights standards, professional standards and technical policing ability are interdependent skills. A police officer who lacks technical policing skills is more likely to behave badly in order to get results. Equally, a police official who relies on bad behaviour to get results will not develop the necessary technical policing skills to become a competent professional. Human rights challenge police by pushing for the application of best practice technical skills to achieve good results. The 'art of policing' could be seen as the pursuit of objectives in the least intrusive way.



Trust and confidence

The trust and confidence of the public are a necessary prerequisite for effective police work. Effective policing is not possible if certain sectors of the population do not feel that the police protect and respect them.

It is imperative that police engage in trust building and establish appropriate communication structures with the public. Measures to establish transparency and accountability of police contribute to trust building. Programmes to actively reach out to the population include establishing institutionalised dialogue with communities, such as forums of open discussion, community advisory boards and open days. The community policing approach can inspire the establishment of appropriate communication structures. Obviously, clear acceptance of and acting in accordance with human rights is highly relevant for building and maintaining trust. The principle of non-discrimination is of particular relevance in relations with marginalised groups.⁹

Further reading

Crawshaw, R. (2009), *Police and human rights. A manual for teachers and resource persons and for participants in human rights programmes*, 2nd revised edition, Boston, Leiden, Martinus Nijhoff Publishers, pp. 19–24.

United Nations (2002), *Human Rights and Law Enforcement: A manual on human rights training of the police*, look at the arguments on p. 16, available at: www.ohchr.org/Documents/Publications/training5Add2en.pdf.

Osse, A. (2006), *Understanding policing, a resource for human rights activists*, Amsterdam, Amnesty International, pp. 41–49, available at: <http://www.amnesty.nl/documenten/rapporten/Understanding%20Policing%202007%20Full%20text.pdf>.

9. FRA (European Union Agency for Fundamental Rights) (2010), *EU MIDIS Data in Focus 4: Police Stops and Minorities*, available at: <http://fra.europa.eu/en/publication/2010/eu-midis-data-focus-report-4-police-stops-and-minorities>.



Extended activities

Extended activity 1: *One-on-one interviews in Sweden's police academy*

Purpose:

Sweden's police academy uses one-on-one interviews as a more intensive approach to awareness-raising on the role of police. The interviews are conducted with people who have had experience with the police, highlighting how others perceive police interaction with individuals. It also helps police to reflect on the perceived role of the police and to see its impact on the public.

Objectives:

Knowledge

- make concrete the concept of human rights and human dignity in encounters with persons often perceived as 'opponents' of the police, like marginalised and/or socially excluded persons or members of youth gangs.
- learn about the role of police from a human rights perspective on the basis of personal experiences.

Attitude

- learn to avoid hostility, contempt and cynicism
- experience the value of diversity
- create an emotionally based insight that those who are socially excluded, critical of the police or break the law, have the right to be respected as human beings even in situations of conflict and stress
- create a habit of looking at the role of police from the outside, taking the perspective of vulnerable or hard-to-reach groups
- recognise that people who are often perceived as 'opponents' have valuable (and extensive) knowledge and perspectives that can be useful to the police

Skills

- facilitate communication skills

Requirements:

- time: approximately 4 days: introduction – approximately half a day; interview and written documentation – approximately 2 days; and follow-up reflection – approximately 1 day
- sample interview
- guiding questions for the interview
- flipcharts
- group size: 12–24 persons

Extended activity 1
description:
One-on-one interviews
in Sweden's police
academy

Students are assigned a person who has dealt with the police and is from a group often perceived as police 'opponents' – marginalised or socially excluded persons, suspected criminal offenders, youth delinquents or those with different ethnic backgrounds. The two are asked to have a conversation.

With some preparation, the students conduct these conversations. The encounters, supplemented by a process of individual and group reflection, provide a practical basis to elaborate the theoretical concept of the role of police from a human rights perspective. In addition, students – through careful and empathetic communication – gain a fresh perspective on police work.

Training tip: Enhancing mutual understanding

"The interviews have had a clear effect of increased mutual understanding between the students and their 'counterparts'. In addition, they appear to have a healing effect in cases where the 'counterparts' have experienced humiliation, powerlessness and lack of trust in relation to the police."

FRA ACTIVITY

Engendering violence

FRA analysed experiences of discrimination and social marginalisation and their effects on attitudes towards violence in three EU Member States: France, Spain and the United Kingdom. FRA conducted interviews with 3,000 Muslim and non-Muslim young persons and children, finding that young people between the ages of 12 and 18 who had experienced social marginalisation and discrimination were more likely to be disposed to physical or emotional violence than those who had not experienced such marginalisation. There were no indications that Muslim youth were either more or less likely to resort to violence than non-Muslims. These findings strongly suggest that social marginalisation and discrimination need to be addressed, as a priority, with respect to their impact on young people's predisposition for violence. In the same report, young people expressed a general lack of trust in authority figures and formal local, national and international institutions, including criminal justice authorities, such as the police and the courts. The lowest level of trust was for politicians, both at local and national level.

FRA (2010), Experience of discrimination, social marginalisation and violence: A comparative study of Muslim and non-Muslim youth in three EU Member States, Belgium, p. 62, available at: <http://fra.europa.eu/en/publication/2012/experience-discrimination-social-marginalisation-and-violence-comparative-study>

Extended activity 2:
*Human rights education for
police officers at historical
sites of Nazi crimes. Police
work today and in the past*

Purpose:

German police run human rights education at the former Nazi concentration camp Neuengamme to work on the role of police. A historical perspective on the role of police during the Nazi regime contributes to a greater awareness about today's police work and the necessity of human rights-based policing.

Objectives:

Knowledge

- gain insight into the causes of the changes in the police force during the transition from a democratic to a totalitarian system
- identify structures in the Nazi police forces as compared with police structures in a democratic society

Attitude

- develop an awareness of how unlimited power in state institutions can threaten human rights by examining the extensive powers of the Nazi police forces
- gain awareness of the mechanisms of discrimination, deprivation of rights and exclusion
- reflect on current areas of tension of the police with human rights

Requirements:

- time: 2 1/2 days minimum, required to make a meaningful connection between these complex issues
- flip chart and video projector
- video and audio presentations
- written and photographic documents for group work
- provocative stimuli to trigger controversial discussions
- group size: 12–24 persons

Extended activity 2
description:
Human rights education for police officers at historical sites of Nazi crimes. Police work today and in the past

Trainers hold a three-hour introduction at the police training institute that introduces the current relevance of gaining a historical perspective on the Nazi regime. During the two-day visit to the Neuengamme Memorial the training course focuses on the police during National Socialism and current issues will be discussed in light of this historical perspective. These connections enable critical reflection on the police and its mechanisms as well as on the behaviour of the individual within the institution. The seminar also aims to promote an understanding of how police forces and their role in society change in different societies. A further focus is also on those within a system who can serve as positive role models.

Understanding human rights-based values, which arose in reaction to Nazi crimes and other historical human rights violations, of today's democratic societies will allow participants to analyse and differentiate between totalitarian and democratic structures.

Training tip: Boosting awareness

The basic necessity of weighing up security interests against civil liberties in police work occurs irrespective of the national context. Examining the history of Nazi Germany can increase people's awareness of the significance of basic human rights today and of how institutions change under different political systems.



MODULE 3: HUMAN RIGHTS ANALYSIS – THE OBLIGATIONS TO RESPECT AND TO PROTECT

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Human rights analysis – the obligations to respect and to protect

Introduction

This module provides frameworks to analyse – from a human rights perspective – concrete situations related to police work. This structured step-by-step approach simplifies the analysis of potential violations of human rights, identifying failures of the obligations to respect and protect.

The practice of such human rights analysis is a cornerstone of human rights-based policing. Essentially, it is a simplified version of the analysis courts undertake. To help clarify the relevance of human rights in practice, the module walks participants through case studies drawn from the work of international human rights bodies, in particular the European Court of Human Rights (ECtHR).

These analytical tools are powerful. They familiarise police officers with the relevant legal analysis, helping them to meet their obligations as duty bearers and to claim their rights as rights holders. They translate ‘high’ principles into practice, functioning as a ‘transmission belt’ to break down the general objectives of policing – to respect and to protect human rights – into specific guidelines that facilitate such work. Analysing human rights in practical situations also helps align attitudes with human rights and hones human rights-based policing skills, which, in turn, enable police officers to help internalise human rights.

The module first explores the concept of a human right violation before presenting the two analytical schemes based, respectively, on the obligation to respect and the obligation to protect. Each is analysed in turn. Then the four case studies are introduced and analysed separately. The overall goal is the systematic integration of a human rights perspective into police work and police thinking. The Supplementary material section provides more information on the module’s key concepts. To help deepen understanding, the police manual also includes additional court findings on the four case studies examined.

Activity: Human rights analysis – obligations to respect and to protect

Purpose:

In this activity trainers are often confronted with the question: “Is it a human rights violation if [...]?” The participant then recounts a personal experience and wants it assessed in human rights terms. Often, the answer is far from straight-forward. It depends!

The analytical schemes presented here do not offer ready-made answers but instead help guide police officers to ask the right questions. They provide a checklist of ‘right questions’ in order to identify the most important aspects of these situations, then weigh and balance the interests before taking a decision. They enable police officers to untangle the often thorny issues surrounding possible human rights violations and determine on a case-by-case basis whether or not a specific act or omission constitutes a violation.

Objectives:

Knowledge

- develop a more detailed understanding of the role of police with regard to human rights

Attitude

- accept the overall importance of the principles of necessity and proportionality
- realise the importance of the internalisation of human rights principles

Skills

- be able to apply human rights norms by using analytical tools in concrete policing situations
- be able to identify aspects that distinguish a justified interference with a human right from a violation of a human right
- be able to identify actions that police must take to protect human rights

Requirements:

- time: 90–120 minutes
- materials:
 - Handouts 1 and 2 with case studies and human rights analysis tool on the obligations to respect and protect (as required)
 - flip chart
 - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size: maximum 20–25 persons



Activity description: **Human rights analysis – obligations to respect and to protect**

- ❶ Introduce the purpose and objectives of the activity.
- ❷ Distribute and briefly introduce the analytical schemes (Handouts 1 and 2), drawing on real-life situations that participants bring in or that the facilitator has prepared. (about 15–20 minutes)
- ❸ Divide participants into groups of 4–to–6 persons and distribute handouts with case studies, assigning each group one case. (about 25–35 minutes)
- ❹ Make sure that groups:
 - have understood their task well;
 - appoint a rapporteur to bring results back to plenary.
- ❺ Answer any questions that arise during group work.
- ❻ Have groups present their work in the plenary. (about 30 minutes per case)
- ❼ Hold a general discussion of results, reflecting on what has been learned.
- ❽ Summarise major points and, if necessary, provide tailor-made input.

Handout 1 – Human rights analysis – obligation to respect

Case study A: Arrest and detention

Mr L is a disabled man who is blind in one eye and has severely impaired sight in the other. With the aid of his guide dog, he went to the post office one day to check his post boxes. He found that his boxes had been opened and were empty. Mr L complained to the post office clerks, which led to a dispute. One of the postal clerks called the police claiming that Mr L was drunk and behaving offensively. The police arrived at the post office and arrested Mr L.

Believing Mr L to be under the influence of alcohol, the policemen took him to a “sobering-up centre”, an establishment in which, according to national law, an intoxicated person can be placed for a period not exceeding 24 hours. A doctor at the centre assessed Mr L as being “moderately intoxicated” and decided that this justified Mr L’s confinement in the centre for six hours. No blood or breath tests were carried out before, during or after that examination. After 6-1/2 hours, Mr L was permitted to leave the centre, subject to payment of fees for his transport to and lodging at the centre. Mr L considered this treatment an unlawful act by state officials.

Discussion questions:

1. Which human right(s) is/are applicable to this situation?
2. Has the state interfered with these human rights? How?
3. Has a human rights violation occurred?
 - Is there any domestic legal basis for state action?
 - Does the action pursue a legitimate aim?
 - Is state interference necessary and proportionate to the aim?
4. Think of alternative ways of handling this situation. What other options might the police have considered?



Handout 1 – Human rights analysis – obligation to respect *(continued)*

Case study B: Using force against suspected terrorists

Government authorities of State A had a strong suspicion that three men were planning a terrorist attack against the military in Territory X. The government decided to let the suspected terrorists enter Territory X under police observation. Special forces from State A were sent to assist the local Territory X police. The police had an idea of when and where the suspected attack would take place. It was assumed that the suspected terrorists would use a car bomb that could be remotely controlled and detonated at short notice.

The day after the suspects arrived in Territory X, they left a car in a parking lot. Four undercover, special forces officers followed them and examined the car from the outside. They strongly suspected that the car had a bomb inside. The officers decided to apprehend the three suspects when they returned to the car. When the suspects returned, the police called out to them, but none of them showed any signs of surrendering. On the contrary, their abrupt movements indicated that they might indeed detonate a bomb. The three suspects were shot and killed.

It turned out, however, that the suspects were not armed, and that there were no explosives in the car. However, materials for a time bomb were found in another car that one of the suspects had rented in another place.

Discussion questions:

1. Which human rights are applicable to this situation?
2. Has the state interfered with these rights? How?
3. How would you assess the actions by the special forces officers?
4. How would you assess the overall operation against the suspected terrorists?
5. Has a human rights violation occurred?
6. Think of alternative ways of handling this situation. What other options might the police have considered to avoid the use of lethal force?

Handout 1 – Human rights analysis – obligation to respect *(continued)*

Human rights analysis – obligation to respect

PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE

1.1. Which human right(s) is/are applicable to the concrete situation?

1.2. Has the state interfered with these human rights? How?

PART 2: JUSTIFICATION OR VIOLATION?

2.1. Is there any domestic legal basis for state action?

2.2. Does the action pursue a legitimate aim?

2.3. Is state interference necessary and proportionate to the aim?

- Is the action suitable to achieve a legitimate aim?
- Is it necessary (a 'pressing social need')?
- Is it the least intrusive measure? Are there any other alternatives?



Handout 2 – Human rights analysis – obligation to protect

Case study C: Handling a demonstration and a counter demonstration

In a small village, an association of doctors were campaigning against abortion. The doctors' association planned a demonstration and, as stipulated by national legislation, had given prior notice to police of the planned demonstration. The police, without objection, gave the participants permission to use the public highway for their demonstration. The police did, however, later ban two other planned demonstrations by abortion supporters, as these were planned for the same time and place as the doctors' anti-abortion demonstration.

Fearing that incidents might occur nonetheless, the anti-abortion organisers consulted with local authorities in an effort to change the demonstration's marching route. The police representatives pointed out that police officers had already been deployed along the original route, and that the proposed new route was unsuited for crowd control. The police did not refuse to provide protection, but said that, irrespective of the route, it would be impossible to prevent counter demonstrators from throwing eggs and disrupting both the march and the planned religious service.

A large number of pro-abortion demonstrators – who had not given prior notice to the police – assembled outside the church and used loudspeakers, threw eggs and clumps of grass to disrupt the doctors' march. The police did not disperse the counter demonstrators.

When physical violence threatened, special riot-control units – which had been standing by without intervening – formed a cordon between the opposing groups, enabling the procession to return to the church.

Discussion questions:

1. Which human rights are applicable in this situation?
2. What are the corresponding state obligations?
3. How would you assess the police operation?
4. Has the state interfered with the human rights applicable in this situation? How?
5. Has a human rights violation occurred?
6. Think of alternative ways of handling this situation. What other options might the police have considered?

Handout 2 – Human rights analysis – obligation to protect *(continued)*

Case study D: Violence against women

Mr O repeatedly subjected his wife and her mother to violent attacks. After a couple of years, Mr O's violent and threatening behaviour came to the attention of authorities through several beatings, a fight during which Mr O stabbed Mrs O seven times and an incident in which Mr O ran down the two women with his car. Following each assault, doctors examined the women and reported various injuries, including bleeding, bruising, bumps, grazes and scratches. Both women were medically certified as having sustained life-threatening injuries: Mrs O as a result of a particularly violent beating and the knife assault; and her mother, from the assault with the car.

Criminal charges were brought against Mr O on three occasions for death threats, actual, aggravated and grievous bodily harm and attempted murder. Mr O was twice remanded into custody and released pending trial.

In response to Mr O's persistent pressure and death threats, Mrs O and her mother withdrew their complaints during each of these proceedings. The domestic courts subsequently discontinued some cases, but they continued the proceedings concerning the car incident. Mr O was convicted and sentenced to three months in jail, which was later commuted to a fine. He was given a moderate fine for the knife assault.

On two occasions Mrs O and her mother filed complaints with the prosecution authorities about Mr O's threats and harassment. They claimed that their lives were in immediate danger and asked the authorities to take urgent action, such as by detaining Mr O. In response to these requests for protection, Mr O was questioned and his statements taken, but he was then released.

Finally, Mrs O and her mother decided to move to another city, but while travelling in the moving van, Mr O arrived and forced the van to pull over. Mr O opened the passenger door and shot Mrs O's mother. She died instantly.

Discussion questions:

1. Which human rights are applicable in this situation?
2. What are the corresponding state obligations?
3. How would you assess the reaction of the authorities to these violent incidents?
4. Has the state interfered with the human rights applicable in this situation? How?
5. Has a human rights violation occurred?
6. Think of alternative ways of handling this situation. What other options might the police have considered?

Handout 2 – Human rights analysis – obligation to protect *(continued)*

Human rights analysis – obligation to protect

PART 1: APPLICABLE HUMAN RIGHTS/WHAT STATE ACTION REQUIRED?

- 1.1. Which human right(s) is/are applicable to the concrete situation?
- 1.2. Is the state obliged to take concrete action to protect the applicable human right?

PART 2: DOES STATE INACTION/OMISSION CONSTITUTE A VIOLATION?

- 2.1. Does domestic legislation adequately cover applicable human rights(s)?
- 2.2. Has the state taken reasonable and appropriate measures to protect the applicable human right(s)?
- 2.3. Does state action comply with procedural standards?

Briefing notes¹

These Briefing notes provide an analytical framework for the two handouts that are included in this module, structured as follows:

1. Key concepts

- a. What is a human rights violation?
- b. What do we mean by necessity and proportionality in human rights?

2. Activity guide: human rights analysis

- a. Handout 1 – obligation to respect
- b. Handout 2 – obligation to protect

1. Key concepts

a. What is a human rights violation?

A human rights violation occurs if state obligations regarding specific human rights are not met.

States obligation to respect human rights (Handout 1):

A human rights violation occurs if a state action limits or interferes with a human right and this interference is not justified. The violation occurs through state action.

States obligation to protect human rights (Handout 2):

A human rights violation occurs if the state fails without justification to take appropriate steps to protect human rights. The violation occurs through state omission.

There is a distinction between **interference** with human rights and **violations** of human rights. Not every interference with a human right is also a violation of that right.

***Exception:** Torture and inhuman or degrading treatment or punishment (Article 3 of the ECHR) are absolutely prohibited and cannot be limited under any circumstances (see Module 4).

Police may interfere with the human rights of perpetrators of crime in order to protect victims. The interference becomes a violation when the action/omission is not based on a legal ground or if the action/omission is arbitrary and/or disproportionate.*

Most human rights can (or must be) interfered with, or limited, in certain circumstances because the freedom and rights of one person end where the freedom and rights of another person begin. Some legal documents structure human rights in such a way as to allow for interference or limitations in certain circumstances.

Whether or not an act/omission is a human rights violation depends on various factors related to the concrete situation and must be considered on a case-by-case basis. The two handouts presented here can be used to help determine this.

b. What do we mean by necessity and proportionality in human rights?

The principles of necessity and proportionality are used to determine whether an action that interferes with human rights is necessary in order to achieve an aim and if the measures used are proportional to the aim pursued.

1. Module 3 'Briefing notes' and 'Supplementary material', including the analytical schemes, are an adapted version of Suntinger, W. (2005), *Menschenrechte und Polizei, Handbuch für TrainerInnen*, Bundesministerium für Inneres, Vienna, pp. 49-76.

To determine necessity and proportionality, one must consider:

- **Necessity of the action:** An action must not go beyond what is strictly required by the circumstances and the need to achieve the aim. The least intrusive and damaging, but still effective, action should be taken. Unnecessary or excessive measures are disproportionate, and should be avoided.
- **Suitability of the action:** The actions selected need to be suitable to achieve the intended objective. Actions that fail to do so can be considered ineffective and disproportionate.
- **Results of the action:** The anticipated result of the action and its interference with human rights must be weighed against the relevance of the aim. This also includes considering the interference or damage non-action could cause. If the harm caused by the action clearly outweighs its benefit, the action must be avoided.

The idea of a ‘pressing social need’ is often used to identify whether an action is necessary. In a democratic society certain rights may be limited only if such a pressing social need exists.

The basic idea of proportionality is encapsulated in common phrases such as “not using a sledgehammer to crack a nut” or performing “a surgical operation with a scalpel and not with a butcher’s knife”. It is about establishing the proper **relationship between the means employed and the aims pursued**. The end does **not** justify the means. It is important to achieve objectives in the least intrusive way.

The principles of necessity and proportionality are complex, but can be reduced to a simple maxim – the Golden Rule – that relates to all human rights: “treat others the way you would like to be treated”. By tying the principles of necessity and proportionality to the Golden Rule, it might help create empathy and sensitivity towards persons who are the object of police intervention.

To do what is required by the principles of necessity and proportionality is a major challenge in policing, particularly in stressful or even dangerous situations. It is key for police officers to internalise the principles of necessity and proportionality. This internalisation can best be achieved by applying human rights concepts in daily work and by continually reviewing one’s knowledge, skills and attitude toward human rights.

Training tip: Handling the case study activities

- **Case study descriptions:** Sometimes participants may feel that there is too little information in the case study descriptions to draw appropriate conclusions. The case studies are only a brief description of a scenario, as the crucial learning results depend on the **process of asking the relevant analytical questions**. The path that leads to the conclusion is at least as relevant as the result itself.
- **Discussion of case studies:** The discussion should be structured, while also giving room for ‘creative answers’ by the participants. Encouraging different perspectives offers a good basis for a discussion on the issues and interests involved in the case.

As a trainer at the national level, it is important that you choose cases that are appropriate to your particular training context. Other ECtHR or national cases may be better suited to your training needs. Guidance on how to find ECtHR cases is provided in an annex to this manual.

Duty bearer – must meet obligations to respect and protect others' human rights

Rights holder – must be aware of their own human rights in order to claim them

2. Activity guide: human rights analysis

The two handouts offer police officers a step-by-step 'navigation tool' that is similar to the analytical approach that courts use. They help to develop police officer capacities to meet their obligations (as duty bearers) and to claim their rights (as rights holders).

The goal of each handout is to:

- provide a framework for translating fundamental rights principles into practice by breaking down general principles into practical guidelines;
- present a tool to use human rights constructively and answer practical human rights questions;
- teach how to balance conflicting interests in an impartial way by providing a set of 'right questions' that can be asked to identify the most important fundamental rights aspects of a situation and weigh up the interests of the individuals involved;
- outline a method for supporting the internalisation of human rights through developing a positive attitude and skill set that helps in applying human rights;
- empower police officers with a tool to identify and analyse situations with a similar approach taken by courts and/or non-governmental organisations, while also giving police officers a way to determine if their rights are being abided by.

Training tip: Using police practice when introducing the human rights perspective

Many police officers analyse concrete situations from a perspective of domestic statutory law, such as penal and police law and police regulations. When observing or intervening in concrete situations, they commonly consider questions such as:

- Which law is applicable in this situation?
- What options do I have on the basis of the applicable legal provisions?
- Is the behaviour of, say, a protester violent or aggressive enough to justify an arrest under a specific law?

Many police officers are already equipped with the analytical skills necessary for adopting a human rights perspective. An analysis from this perspective means applying human rights norms as found in constitutional and/or international human rights instruments and translating situations into human rights language. The goal is to understand whether a certain act or omission constitutes a human rights violation. This perspective takes one step back from statutory law and considers a situation from the broader realm of human rights law.

a. Handout 1: obligation to respect

This analysis applies to the case studies in Handout 1.

Handout 1 provides a framework for analysing the obligation to respect and is comprised of two parts:

Part 1 – Interference: Evaluating whether a situation falls within the scope of a human right and if a state action interferes with this right.

Part 2 – Violation: Evaluating whether this interference is justified or instead constitutes a human rights violation.

Each part contains questions that are useful for navigating human rights-related situations and breaking down their complexities into digestible portions.



PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE

1.1. Which human right(s) is/are applicable to the concrete situation?

For determining which human right(s) is/are involved and applicable to a situation, certain knowledge is required, which can be found by answering the following questions:

- Which human rights are guaranteed in national and international documents?
- What is the scope of application of a human rights norm? As human rights are formulated broadly, case law determines the scope of application of human rights norms.

1.2. Does any state action interfere with applicable human rights?

This requires a look at the intensity and/or quality of a state action. As a general rule, the following state actions constitute interferences:

- penalties based on prohibitions of specific behaviour through penal or administrative law, such as fines and detention/imprisonment;
- police actions based on criminal law or police legislation, such as arrest, body search, search of homes, identity checks;
- any act or use of necessary and physical force by police.

Police actions, because of their potentially intrusive nature, are generally close to being an interference with a human right.

PART 2: JUSTIFICATION OR VIOLATION?

Part 2 is only applicable to certain human rights. There is no justification for interferences with absolute human rights such as the prohibition of torture (Article 3 of the ECHR). Every interference with an absolute human right is also a violation of that right.

In Part 2, the key question is: are there any justifiable reasons for interference with a human right? The analytical questions in Part 2 try to draw out the reasoning behind an action, particularly with regard to the principles of necessity and proportionality. From the answers, one is able to determine whether interference with a human right is justified. The interference:

- **is justified** if the answers to all questions are 'YES'
- **is not justified**, and is considered a human rights violation, if the answer to one or more questions is 'NO'

2.1. Is there any domestic legal basis for state action?

To answer this question, one must consider the relevant laws related to the state action and its interference with the human right(s) at stake.

This is because any interference with a human right must be based on a legal provision. This stems from the basic principles of the rule of law and legality.

2.2. Does the action pursue a legitimate aim/interest?

Every interference with a human right must serve a legitimate aim or interest. These can include, but are not limited to:

- national security;
- territorial integrity or public safety;
- prevention of disorder or crime;
- protection of health or morals;
- protection of the reputation of others.

To help identify whether there is a legitimate aim or interest involved, consider the law(s) and human right(s) relevant to a situation. Answering the questions in Part 1 and the first section of Part 2 will help you to identify this information.

2.3. Is state interference necessary and proportionate to the aim pursued?

For state interference to be justified, the action constituting interference must be necessary and proportionate to its cause and to the legitimate aim pursued. An interference must not go beyond what is strictly required to achieve the desired result.

To determine necessity and proportionality, ask the following questions:

- Is the action suitable to achieve the legitimate aim?

In answering this question, examine whether the measure is suitable and effective. Ineffective measures are not proportionate.

- Is it necessary (a “pressing social need”)? Is it the least intrusive measure? Are there any alternatives?

Excessive measures are not proportionate.



Handout 1 – obligation to respect

Case study A: Arrest and detention – the right to liberty and security

This analysis is based on the ECtHR judgment in *Witold Litwa v. Poland* case, No. 26629/95, from 4 April 2000.

PART 1: Applicable human rights/state interference

1.1. Which human right(s) is/are applicable to the concrete situation?

European Convention on Human Rights

Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...]

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; [...]

1.2. Does any state action interfere with applicable human rights?

Any arrest by police is considered an interference with the right to liberty and security.

Therefore, confining Mr L against his will in a sobering-up centre clearly amounted to a “deprivation of liberty” within the meaning of Article 5 (1) of the ECHR, the ECtHR said in its ruling on *Witold Litwa v. Poland* (paragraph 46).

PART 2: JUSTIFICATION OR VIOLATION?

2.1. Is there a legal basis for state action?

The relevant question is whether there is an appropriate legal basis for arresting a person whose conduct and behaviour under the influence of alcohol pose a threat to the public or him/herself.

According to the Polish national regulation: “intoxicated persons who behave offensively in a public place or a place of employment, are in a condition endangering their life or health, or are themselves endangering other persons’ life or health, may be taken to a sobering-up centre or a public health-care establishment, or to their place of residence.”² In this case, the police followed the procedure provided for by domestic law when arresting the applicant and taking him to the sobering-up centre.

2. Polish Law of 26 October 1982 on Education in Sobriety and Counteracting Alcoholism, Art. 40.

Domestic law must also comply with the requirements of Article 5 paragraph 1 (a-f) of the ECHR. The applicable domestic law falls under paragraph 1 (e):

Polish Law of 26 October 1982 on Education in Sobriety and Counter-acting Alcoholism

Paragraph 1 (e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, **alcoholics** or drug addicts or vagrants

On this basis, the ECtHR concluded that the applicant's detention fell within the ambit of Article 5 (1) (e) of the ECHR. (*Witold Litwa v. Poland*, supra note 3, paragraph 64). The applicant's detention also had a legal basis in national law. (*paragraph 74*)

2.2. Does the action pursue a legitimate aim/interest?

When making an arrest, legitimate aims are protecting the public or the health and personal safety of the person concerned.

2.3. Is state interference necessary and proportionate to the aim?

Though the aim may be legitimate, it is still important to check whether the means employed in order to reach that aim are necessary and proportionate.

- Is the action suitable to achieve a legitimate aim?
- Is it necessary (a "pressing social need")? Is it the least intrusive measure? Are there any alternatives?

The two questions used to help determine necessity and proportionality can be answered together in this case.

"The Court reiterates that a necessary element of the 'lawfulness' of the detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is executed in conformity with national law but it must also be necessary in the circumstances."(*paragraph 78*)

The arrest of Mr L was considered arbitrary and in violation of Article 5 (1) (e) of the ECHR because:

- there were severe doubts as to whether Mr L actually posed such a threat to his personal security or to that of the public to justify a restriction of liberty; and
- the police had not considered less intrusive measures to secure public order, although domestic law outlines alternative, less intrusive, approaches.

Summary

The analysis shows that the arrest and detention of Mr L was an interference with his human rights under Article 5 of the ECHR given that any arrest is considered an interference with human rights. When evaluating the necessity and proportionality of the arrest, the analysis reveals that it was considered arbitrary and therefore a violation of Mr L's rights under Article 5 (1) (e) of the ECHR.



Case study B: Use of lethal force against suspected terrorists – the right to life

This analysis is based on the ECtHR judgment in *Mc Cann and others v. UK* case, No. 18984/91, from 27 September 1995.

PART 1: Applicable human rights/state interference

1.1. Which human right(s) is/are applicable to the concrete situation?

It is important to highlight that Article 2 of the ECHR, like many human rights, includes provisions that allow for an interference with a right, depending on the circumstances.

European Convention on Human Rights

Article 2: Right to life

2. 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.

1.2. Has the state interfered with these human rights? How?

The loss of life is an irreversible damage to the person concerned and to his/her relatives. Therefore, the objectives of the interference with the right to life must be of great importance and absolutely necessary. Any interference with the right to life must be carefully evaluated to determine whether it is absolutely necessary. The questions in Part 2 can help to determine this necessity.

PART 2: JUSTIFICATION OR VIOLATION?

2.1. Is there a legal basis for state action?

It can be assumed that police actions are based on legal provisions found in the national constitution and national legislation related to police powers and the use of force. It can also be assumed that these national legal instruments, and therefore police actions, are in accordance with the aims and objectives of the ECHR.

*“It must subject deprivations of life to the **most careful scrutiny**, if deliberate lethal force is used, taking into consideration not only the actions of the agents of the State, but also the surrounding circumstances including the planning and control of the actions under examination. [bold added]”*

ECtHR, Mc Cann and others v. UK, No. 18984/91, 27 September 1995

2.2. Does the action pursue a legitimate aim?

The decision to use lethal force was based on the assumption that it was necessary in order to protect civilians and police officers from a suspected bomb. When analysing the facts of the case the authorities took several factors into account, such as past terrorist attacks on Territory X, the criminal records of the terrorist suspects and the information gathered by surveillance units. They came to the conclusion that there was a high risk that a suspected bomb could kill or severely injure a significant number of civilians in Territory X.

Under Article 2 paragraph 2 (a) of the ECHR, the interference with the right to life in “defence of any person from unlawful violence” is acceptable when absolutely necessary.

Therefore, police protection in this case is a legitimate aim.

2.3. Is state interference necessary and proportionate to the aim?

Unlike in Case study A, the questions on necessity and proportionality in this case must each be answered separately.

- Is the action suitable to achieve the legitimate aim?

The use of lethal force was timely and ended the expected imminent risk of an exploding bomb.

- Is it necessary (a “pressing social need”)? Is it the least intrusive measure? Are there any alternatives?

The terrorist suspects were shot at close range after making what appeared to Soldiers A and B to be threatening hand movements that suggested they were going to detonate a bomb (*Mc Cann*, paragraph 196) It was subsequently discovered, however, that the suspects were unarmed. They did not have a detonating device nor was there a bomb in the car.

In *Mc Cann and others v. UK*, the ECtHR accepted that “the soldiers honestly believed, in the light of the information that they had been given, [...] that it was necessary to shoot the suspects in order to prevent them from detonating a bomb and causing serious loss of life. [...] Having regard to the dilemma confronting the authorities in the circumstances of the case, the reactions of the soldiers did not, in themselves, give rise to a violation of Article 2.”(paragraph 200)

As mentioned in Part 1 of this sample analysis, the ECtHR “must subject deprivations of life to the most careful scrutiny, if deliberate lethal force is used”, which means that not only the acts of the soldiers involved must be considered, but also those made by the relevant organisation before and during an operation. Therefore, it has been questioned “whether the anti-terrorist operation as a whole was controlled and organised in a manner which respected the requirements of Article 2 and whether the information and instructions given to the soldiers which, in effect, rendered inevitable the use of lethal force, took adequately into consideration the right to life of the three suspects.”(paragraph 201)

“In sum, having regard to the decision not to prevent the suspects from travelling into [Territory X], to the failure of the authorities to make sufficient allowances for the possibility that their intelligence assessments might, in some respects at least, be erroneous and to the automatic recourse to lethal force when the soldiers opened fire, the ECtHR was not persuaded that the killing of the three terrorists constituted a use of force which was no more than absolutely



necessary in defence of persons from unlawful violence within the meaning of Article 2-2-a ECHR [altered].”(paragraph 213)

It was found that there had been a breach of Article 2 of the ECHR. It was not the actual shooting by the soldiers that constituted the violation but rather the overall planning and execution of the operation, as less intrusive measures could have been taken.

Summary

The analysis shows that the lethal use of force against the suspects was an interference with their human right to life as found in Article 2 of the ECHR. The soldiers were considered to have interfered, but not violated, the right to life, because of their assumption that there was an imminent danger and potential for loss of life. The overall planning and execution of the operation was found, however, to have violated Article 2 because less intrusive, alternative measures could have been taken first.

b. Handout 2: obligation to protect

This analysis applies to the case studies in Handout 2.

Handout 2 provides a framework for analysing the obligation to protect and is comprised of two parts:

Part 1 – State action required: Evaluating whether a situation falls within the scope of a human right and whether the state is obliged to take action to protect that right.

Part 2 – Violation: Evaluating whether a state omission/failure to protect is justified or if it is a human rights violation.

As with Handout 1, Handout 2 is divided into two parts. Each contains questions that are useful for navigating human rights-related situations and breaking down their complexities into digestible portions.

PART 1: APPLICABLE HUMAN RIGHTS/WHAT STATE ACTION REQUIRED?

The key question of Part 1 is: should the state take action to protect an applicable human right?

If all questions in Part 1 are answered with ‘YES’, then:

- one or more human right is applicable to the situation;
- there is an omission/failure by the state to protect the applicable human right(s), although a state obligation exists [**Note:** this does not necessarily mean a violation has occurred; Part 2 helps to determine violations].

1.1. Which human right(s) is/are applicable to the concrete situation?

As with Handout 1, the obligation to respect, the human right(s) involved and applicable to a situation must be determined. They can be found by answering the following questions:

- Which human rights are guaranteed in international documents?
- What is the precise scope of application of a human rights norm? As human rights are formulated broadly, case law determines the scope of application of human rights norms.

Determining the scope of a human right is of central importance since it helps to clarify the obligation of the state.

1.2. Is the state obliged to take concrete action to protect the applicable human right?

This question directly concerns the concrete obligations a state has in protecting human rights in a specific situation. Examples of obligations related to human rights:

- enacting laws to try cases of domestic violence (prohibition of inhuman or degrading treatment or punishment);
- protecting demonstrators from attacks by counter demonstrators (right to freedom of assembly);
- rendering police protection for cases of serious threats (right to life).

Individuals have a right to be protected from abuses by the state and to be protected from infringements by other private individuals. The state has an obligation to take an active role in rendering protection and can do so through legislative, administrative, judicial and practical measures. With respect to policing, one of the most relevant elements of this obligation is to protect human rights from attacks by other private individuals.

PART 2: DOES STATE INACTION/OMISSION CONSTITUTE A VIOLATION?

The analysis found in Part 2 helps to determine whether or not the omission/failure by the state is a violation of human rights. The basic question is: are there any reasons that sufficiently justify state inaction/omission with regard to a fundamental right?

The omission/inaction by the state is considered a human rights violation, if the answer to one or more questions in Part 2 is 'NO'.

2.1. Does domestic legislation adequately cover applicable human right(s)?

As with Handout 1, to answer this question, one must consider relevant laws and national legal provisions, and whether or not the law provides adequate protection of human rights.

2.2. Has the state taken reasonable and appropriate measures to protect the applicable human right(s)?

At this stage, interests are to be balanced according to the principle of proportionality.

On the one hand, the interest of the individual concerned must be considered:

- What is at stake for the person concerned?
- To what extent is the person endangered?
- Which right(s) is/are at stake?

On the other hand, the capacities of the state to provide protection must be taken into account:

- What information does/should the state have regarding the concrete risk/threats to the individual concerned?
- What capacity of protection does/should the state have in order to respond to these threats?
- What are appropriate means for providing protection?
- Has the state taken all reasonable and appropriate measures?

The state is obliged to take all reasonable measures that might have prevented the event from occurring.



Handout 2 – obligation to protect

Case study C: Handling a demonstration and a counter demonstration – the right to freedom of assembly

This analysis is based on the ECtHR judgment in *Plattform Ärzte für das Leben v. Austria*, No. 10126/82, from 21 June 1988.

PART 1: APPLICABLE HUMAN RIGHTS/WHAT STATE ACTION REQUIRED?

1.1. Which human right(s) is/are applicable to the concrete situation?

European Convention on Human Rights

Article 11 (1): Right to freedom of assembly

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

1.2. Is the state obliged to take concrete action to protect the applicable human right?

With respect to the right to freedom of assembly, the ECtHR requires the state to protect demonstrators from those wishing to interfere with or disrupt them.

In this case, there is an obligation of the state under Article 11 of the ECHR to protect the demonstrators from attacks by others.

The question is whether the police did enough to protect the right to freedom of assembly. Failure to disperse the large number of counter demonstrators who gathered without prior notice in front of the church and disrupted the march is considered such an omission.

Part 2 will help to evaluate whether this omission also constitutes a human rights violation.

PART 2: DOES INACTION/OMISSION CONSTITUTE A VIOLATION?

2.1. Does domestic legislation adequately cover applicable human right(s)?

Yes; in the *Plattform Ärzte für das Leben v. Austria* case, the ECtHR said that “Articles 284 and 285 of the Criminal Code make it an offence for any person to disperse, prevent or disrupt a meeting that has not been prohibited, and sections 6, 13 and 14 (2) of the Assembly Act, which empower the authorities in certain cases to prohibit, bring to an end or disperse by force an assembly, also apply to counter demonstrations.” (paragraph 32)

2.2. Has the state taken reasonable and appropriate measures to protect the applicable human right(s)?

The state is obliged to apply reasonable and appropriate measures to protect the right to freedom of assembly, but the obligation cannot be interpreted as a guarantee that no disturbances will happen. It is left to the state to determine which tactics are to be used.

“The Court does not have to assess the expediency or effectiveness of the tactics adopted by the police on these occasions but only to determine whether there is an arguable claim that the appropriate authorities failed to take the necessary measures.”(paragraph 36)

The court determined that reasonable and appropriate measures had been taken to protect demonstrators. Therefore, the police took reasonable and appropriate measures with respect to their obligation to protect under Article 11.

Summary

The analysis of this case shows that the state has an obligation under Article 11 of the ECHR to protect demonstrators from attacks by others. By failing to disperse the large, unexpected crowd of counter demonstrators, the police committed an omission; however, this omission was not a violation of Article 11 of the ECHR since the police had taken reasonable and appropriate measures to fulfil their obligations under the article.

Case study D: Violence against women – right to life and prohibitions of torture and discrimination

This analysis is based on the ECtHR judgment in *Opuz v. Turkey*, No. 33401/02, from 9 June 2009. Explanations on the reasoning of the court are taken primarily from the summary of the judgment issued in a press release.

PART 1: APPLICABLE HUMAN RIGHTS/WHAT STATE ACTION REQUIRED?

1.1. Which human right(s) is/are applicable to the concrete situation?

On the lack of protection of Mrs O's mother that led to her death:

European Convention on Human Rights

Article 2: Right to life

1. Everyone's right to life shall be protected by law.

On the lack of protection of Mrs O and her mother against the assaults and threats of Mr O:

European Convention on Human Rights

Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

On the general lack of protection by the authorities primarily affecting women and therefore being considered under the principle of non-discrimination:

European Convention on Human Rights

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1.2. Is the state obliged to take concrete action to protect the applicable human right?

With regard to Article 2 on the right to life, the state has the obligation to consider any real and imminent threats to a person's right to life regardless of sex, race, colour, language, religion, political or other opinion, national or social origin. The state is then obligated to do anything that could have reasonably been expected to prevent a death.

With respect to Article 3, a state must render protection, in the form of effective deterrence, from such forms of ill-treatment as took place in *Opuz v. Turkey*. (paragraph 161) The obligation to protect from ill-treatment also refers to the most vulnerable members of society who are entitled to the same protection by the law, the police and the judicial system.



PART 2: DOES INACTION CONSTITUTE A VIOLATION?

2.1. Does domestic legislation adequately cover applicable human rights(s)?

Up until 1998, the national law relevant to this case had not yet provided specific administrative and policing measures to protect vulnerable persons against domestic violence. In January 1998, a domestic law came into force which established a basis to protect persons endangered by domestic violence.

In *Opuz v. Turkey*, the attacks occurred between 1995 and 2002. Prior to the 1998 law on domestic violence, the state had not fulfilled its obligation regarding adequate legislation on domestic violence. Because national legislation to protect against domestic violence was lacking between 1995 and 1998, the attacks on Mrs O and her mother during this period were eligible for consideration under the ECHR and were therefore a violation of Article 3 of the ECHR.

After January 1998, although the relevant law had come into force, the authorities had not yet effectively applied measures and sanctions in order to protect Mrs O from domestic violence. The remainder of this analysis will help to evaluate the attacks that occurred between 1998 and 2002.

2.2. Has the state taken reasonable and appropriate measures to protect the applicable human right(s)?

European Convention on Human Rights, Articles 2 and 3:

Mr O had a history of violent behaviour and a criminal record for his actions against his wife and her mother. He persistently threatened their health and safety. Given this background, it was not only possible but even foreseeable that Mr O's violent behaviour would likely continue and escalate.

The court therefore concluded that the national authorities had not shown due diligence in preventing violence against Mrs O and her mother, in particular by failing to pursue criminal action or other appropriate preventive measures against Mr O. (paragraph 199)

The national authorities violated Article 2 on the right to life by not preventing Mr O from killing Mrs O's mother. In light of the threats against Mrs O's mother, the authorities could have taken appropriate and reasonable protection measures to avoid this outcome.

The ECtHR further concluded that Article 3 was violated because the authorities had failed to take effective deterrence measures to protect Mrs O from Mr O's physical attacks.

European Convention on Human Rights, Article 14:

The case of Mrs O and her mother suggests a more general concern. Tolerating such domestic violence and failing to deal with it effectively, breach women's right to equal protection under the law.

The ECtHR found that a violation of Article 14 of the ECHR had also occurred: *"Bearing in mind its finding above that the general and discriminatory judicial passivity in [case study country], albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women."*(paragraph 200)

Summary

This case analysis shows that the state has an obligation to protect a person from domestic violence in order both to: protect the right to life (Article 2 of the ECHR) and to effectively deter ill-treatment (Article 3 of the ECHR). The state is also obligated to establish and apply a system which safeguards victims sufficiently and punishes domestic violence, even in situations where victims withdraw their complaints. The analysis also revealed that what was seen as authorities' passivity in the case study country mainly affected women, which was interpreted as contributing to gender-based violence, a form of discrimination against women (Article 14 of the ECHR).

2.3. Does state action comply with procedural standards?

Despite the withdrawal of the victims' complaints, the legislative framework should have enabled the prosecuting authorities to pursue criminal action against Mr O because his violent behaviour had constantly threatened the women's physical integrity and had been sufficiently serious to warrant prosecution. The more serious the offence or the greater the risk of further offences, the more likely it should be that the prosecution continues its investigations in the interest of the public, even if victims withdraw their complaints.

In this case, the state failed to establish and effectively apply a system to punish all forms of domestic violence and to safeguard victims sufficiently. (paragraph 169)



Supplementary material

This section provides in-depth information on the key analytical concepts presented in this module. Following this more detailed discussion, additional court findings for the four case studies analysed are examined to enrich training course discussions.

Interfering with relative fundamental rights

Some human rights are **absolute** and cannot be abridged or infringed for any reason, such as the prohibition against torture. Others are structured to allow for interference or limitations under certain conditions. These are **relative human rights**, which can (must) be limited in certain circumstances, following the maxim that the freedom/rights of one person end where the freedom/rights of another person begin.

The rationale for interference in relative rights must be grounded in law and based on the principles of necessity and proportionality. The Charter of Fundamental Rights of the European Union phrases this rationale so:

EU Charter of Fundamental Rights

Article 52 (1): Scope of guaranteed rights

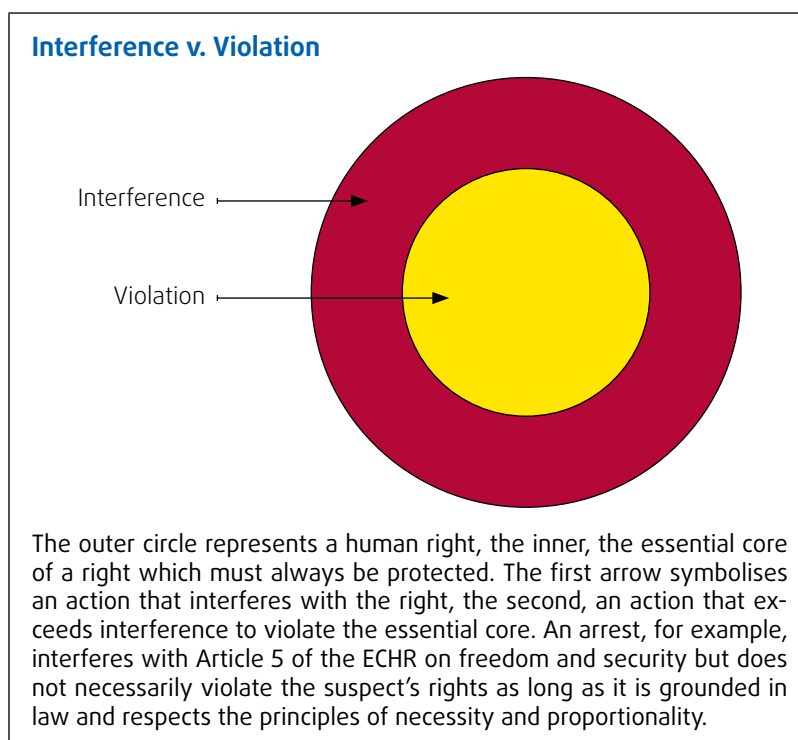
Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Article 8 of the ECHR on the right to private and family life offers a specific example:

European Convention on Human Rights

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



Police interference and human rights

When exploring the idea of police intrusion and interference with human rights, the Briefing notes mention that “police actions, because of their potentially intrusive nature, are generally ‘close’ to an interference with a human right”. Here is a list of some examples of police-related interferences with different human rights. This can be a useful reference for identifying which rights are at stake in different scenarios.

Table 3.1: Police-related examples of interferences with particular human rights

Fundamental rights	Police interference
Right to life (Article 2 ECHR; Article 2 EU Charter)	<ul style="list-style-type: none"> Any use of lethal force by police (see Case study B)
Prohibition of torture (Article 3 ECHR; Article 4 EU Charter)	<ul style="list-style-type: none"> Torture (see Module 4)
Right to liberty and security of person (Article 5 ECHR; Article 6 EU Charter)	<ul style="list-style-type: none"> Any formal arrest Restrictions of physical movement of a certain duration (see Case study A)
Right to a fair trial (Article 6 ECHR; Articles 47 and 48 EU Charter)	<ul style="list-style-type: none"> Any penalty based on criminal or administrative law Police investigations
Right to private and family life, home and correspondence including data protection (Article 8 ECHR; Articles 7 and 8 EU Charter)	<ul style="list-style-type: none"> Identity check Taking away of identity card Stop and search Search of private premises Prohibiting the perpetrator of domestic violence to approach the victim or enter the common apartment Video or communication surveillance Processing of personal data, data mining
Right to freedom of association and assembly (Article 11 ECHR; Article 12 EU Charter)	<ul style="list-style-type: none"> Ban on demonstrations by police authorities Dissolving a demonstration Ban on political parties or associations



Rule of law and legality

Interferences with human rights must be grounded in law. This stems from the basic principle of the rule of law and legality. The rule of law means that the state/police must act in accordance with the law and that there are mechanisms in place for challenging the legality of state action or omission. The principle of legality is a fundamental safeguard against arbitrary state action. The rule of law and legality is a central pillar of the human rights system and of the legal system in general.

Interferences with human rights must meet certain requirements. The extent and detail in which interferences are legally determined depends on the particular right at stake. Some rights can be legally restricted in certain circumstances (Article 8 of the ECHR on the right to private and family life or Article 11 of the ECHR on freedom of assembly, for example), while others may be legally restricted on a very limited basis (Article 5 of the ECHR on the right to liberty and security of person) or, in some cases, not at all (Article 3 of the ECHR on the prohibition of torture).

To illustrate the point: restrictions of the right to personal liberty are only accepted under the limited conditions enumerated in Article 5 of the ECHR:

European Convention on Human Rights

Article 5: Right to liberty and security

- [...] (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

Necessity and proportionality

The principles of necessity and proportionality are often the central elements of human rights analysis. They are also fundamental principles of professional policing and are contained – in differing terminologies – in national police laws, (in part) pre-dating human rights law.

Understanding the principles of necessity and proportionality is particularly important for police as they must effectively and adequately use the right measures to cope with dangers and threats to others and to themselves. In cases of use of force by the police, especially lethal use of force, it is particularly relevant to thoroughly

review the main points of consideration for necessity and proportionality. Adhering to the principle of proportionality is one of policing's major challenges: thinking of different options, balancing the various interests involved, identifying the least intrusive measures and determining the right measure to take. This is particularly difficult in stressful or dangerous situations where events happen quickly.

The principle of proportionality must be internalised; it needs to become 'second nature'. Such internalisation requires the practical application of human rights theories and learning in all three dimensions: knowledge, skills and attitude.

Perspectives on necessity and proportionality

Ex-ante: This element of human rights analysis considers the moment when police action is taken. This means that when performing a human rights analysis of a situation, one must ask whether an action was reasonable and proportionate at the moment it was taken, even if it later becomes apparent that police assumptions or information regarding, for example, certain dangers, were wrong.

Organisational negligence: Evaluating proportionality involves more than the last stage of a police operation when police officers must act/react to an actual or perceived threat. The appropriateness of the whole operation – its planning and execution – is also taken into consideration.



Handout 1: Obligation to respect

Case study A: Arrest and detention - the right to personal liberty

Article 5 of the ECHR on the right to liberty and security was the primary human right at stake in Case study A, based on *Witold Litwa v. Poland*.

In determining the legal basis for state action ...

“The Court recalls that Article 5 § 1 of the Convention contains a list of permissible grounds of deprivation of liberty, a list which is exhaustive. Consequently, no deprivation of liberty will be lawful unless it falls within one of the grounds set out in subparagraphs (a) to (f) of Article 5.” (Witold Litwa v. Poland, supra note 3, paragraph 49)

“The Court observes that the word “alcoholics”, in its common usage, denotes persons who are addicted to alcohol. On the other hand, in Article 5 § 1 of the Convention this term is found in a context that includes a reference to several other categories of individuals, that is, persons spreading infectious diseases, persons of unsound mind, drug addicts and vagrants. There is a link between all those persons in that they may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both medical and social grounds. It is therefore legitimate to conclude from this context that a predominant reason why the Convention allows the persons mentioned in paragraph 1 (e) of Article 5 to be deprived of their liberty is not only that they are dangerous for public safety but also that their own interests may necessitate their detention. (Ibid., paragraph 60)

“[...] The Court considers that, under Article 5 § 1 (e) of the Convention, persons who are not medically diagnosed as “alcoholics”, but whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, can be taken into custody for the protection of the public or their own interests, such as their health or personal safety. (Ibid., paragraph 61)

“That does not mean that Article 5 § 1 (e) of the Convention can be interpreted as permitting the detention of an individual merely because of his alcohol intake. However, the Court considers that in the text of Article 5 there is nothing to suggest that this provision prevents that measure from being applied by the State to an individual abusing alcohol, in order to limit the harm caused by alcohol to himself and the public, or to prevent dangerous behaviour after drinking. On this point, the Court observes that there can be no doubt that the harmful use of alcohol poses a danger to society and that a person who is in a state of intoxication may pose a danger to himself and others, regardless of whether or not he is addicted to alcohol.” (Ibid., paragraph 62)

“The Court reiterates that under Article 5 of the Convention any deprivation of liberty must be “lawful”, which includes a requirement that it must be effected “in accordance with a procedure prescribed by law”. On this point, the Convention essentially refers to national law and lays down an obligation to comply with its substantive and procedural provisions.” (Ibid., paragraph 72)

In this case, it had been made clear that the police, when arresting Mr L and taking him to the sobering-up centre, followed the procedure provided by domestic law, which stipulates:

"Intoxicated persons who behave offensively in a public place or a place of employment, are in a condition endangering their life or health, or are themselves endangering other persons' life or health, may be taken to a sobering-up centre or a public health-care establishment, or to their place of residence."

Polish Law of 26 October 1982 on Education in Sobriety and Counteracting Alcoholism, Article 40

In determining whether state interference is necessary and proportionate to the aim...

"[...] the Court entertains serious doubts as to whether it can be said that the applicant behaved in such a way, influenced by alcohol, that he posed a threat to the public or himself, or that his own health, well-being or personal safety were endangered. The Court's doubts are reinforced by the rather trivial factual basis for the detention and the fact that the applicant is almost blind."

Witold Litwa v. Poland, supra note 3, paragraph 77

The domestic law applicable in this case, *"provides for several different measures which may be applied to an intoxicated person, among which detention in a sobering-up centre is the most extreme one. Indeed, under that section, an intoxicated person does not necessarily have to be deprived of his liberty since he may well be taken by the police to a public-care establishment or to his place of residence."* (Ibid., paragraph 79)

As the Briefing notes say, since no such measures were taken into consideration, there was a breach of Article 5 (1) (e) of the ECHR.



Case study B: Use of lethal force against suspected terrorists – the right to life

The analysis of Case study B found that Article 2 of the ECHR on the right to life was the primary human right at stake.

In determining whether the action pursued had a legitimate aim...

“According to the information the authorities received presented them with a fundamental dilemma: On the one hand, they were required to have regard to their duty to protect the lives of the people of Gibraltar, including their own military personnel and, on the other, to have minimum resort to the use of lethal force against the suspects in the light of the obligations flowing from both domestic and international law.”

Mc Cann and others v. UK, *supra* note 8, paragraph 192

In determining whether state interference was necessary and proportionate to the aim...

“The authorities were confronted by an active service unit of the IRA [Irish Republican Army, added] composed of persons who had been convicted of bombing offences, and a known explosives expert. The IRA, judged by its actions in the past, had demonstrated a disregard for human life, including that of its own members.” (Mc Cann, paragraph 193)

“The soldiers who carried out the shooting (A, B, C and D) were informed by their superiors that there was a car bomb in place which could be detonated by any of the three suspects by means of a radio-controlled device which might have been concealed on their persons; that the device could be activated by pressing a button; that they would be likely to detonate the bomb if challenged, thereby causing heavy loss of life and serious injuries, and were also likely to be armed and to resist arrest.” (Ibid., paragraph 195)

“The actions which they took, in obedience to superior orders, were thus perceived as absolutely necessary in order to safeguard innocent lives. It considered that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time, but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.”

“The authorities were bound by their obligation to respect the right to life of the suspects to exercise the greatest of care in evaluating the information at their disposal before transmitting it to soldiers whose use of firearms automatically involved shooting to kill.” (Ibid., paragraph 211)

“The reflex action of the soldiers in this vital respect lacked the degree of caution in the use of firearms to be expected from law-enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects. This failure by the authorities suggested a lack of appropriate care in the control and organisation of the arrest operation.” (Ibid., paragraph 212)

Handout 2: The obligation to protect²

Case study C: Handling a demonstration and a counter demonstration – the right to freedom of assembly

The analysis of Case study C found that Article 11 of the ECHR on the right to freedom of assembly was the primary human right at stake.

“A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.

Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11.”

Plattform Ärzte für das Leben v. Austria, *supra* note 14, paragraph 32

In determining if the state has taken reasonable and appropriate measures to protect the applicable human right(s)...

“While it is the duty of contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used.” (Ibid., paragraph 34)

Take a look at a couple of reasons why the ECtHR considered that the police took reasonable and appropriate measures to protect the demonstrators:

“It must first be noted that the demonstration planned by supporters of abortion, which were due to be held at the same time and place as Platform’s demonstration had been prohibited. Furthermore, a large number of uniformed and plain-clothes policemen had been deployed along the route originally planned, and the police representatives did not refuse the applicant association their protection even after it decided to change the route despite their objections. Lastly, no damage was done nor were there any serious clashes; the counter-demonstrators chanted slogans, waved banners and threw eggs or clumps of grass, which did not prevent the procession and the open-air religious service from proceeding to their conclusion; special riot-control units placed themselves between the opposing groups when tempers had risen to the point where violence threatened to break out.” (Ibid., paragraph 37)

2. de Schutter, O. (2010), *International Human Rights Law*, Cambridge et al., Cambridge University Press, p. 365.



Case study D: Violence against women – the right to life

The analysis of Case study D, *Opuz v. Turkey*, found that Article 2 of the ECHR on the right to life was the primary human right at stake.

“The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”

Opuz v. Turkey, supra note 19, paragraph 128

“When repeatedly deciding to discontinue the criminal proceedings against Mr. O, the authorities referred exclusively to the need to refrain from interfering in what they perceived to be a “family matter”. The authorities had not apparently considered the motives behind the withdrawal of the complaints, despite the statements of Mrs. O and her mother to the prosecution authorities that they had felt obliged to do so because of Mr. O’s death threats and pressure. It was also striking that the victims had withdrawn their complaints when Mr. O had been at liberty or following his release from custody.” (Ibid., paragraph 143)

In determining if the state has taken reasonable and appropriate measures to protect the applicable human right(s)...

“Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.” (Ibid., paragraph 129)

Indeed, the local authorities could have ordered protective measures or issued an injunction banning Mr O from contacting, communicating with or approaching Mrs O’s mother or entering defined areas. On the contrary, in response to Mrs O’s mother’s repeated requests for protection, the authorities, apart from taking down Mr O’s statements and then releasing him, had remained passive. Moreover, the criminal law system had had no deterrent effect in the present case.

Extended activities

Extended activity 1: *Scenario training at Austria's police academies*

Purpose:

Austria's police academies use scenario training to help participants internalise the principle of proportionality. In short role play sequences (stopping a car, domestic violence, stop and search, etc.) participants act out a situation and then reflect on their ability to apply human rights standards in practice, especially the principle of proportionality, according to police officers' role as human rights protectors and service providers.

Objectives:

Knowledge

- understand the principle of proportionality within human rights analysis and know the relevant questions related to it
- understand what is meant by taking on a human rights perspective and match it with the role of police in a democratic society

Attitude

- reflect on one's own perceptions and behaviour in reaction to challenging situations resulting in a more conscious and aware mindset about one's own motivations for action and reaction
- experience a situation from a different perspective (as perpetrator, as victim)
- analyse empathically the counterpart in order to be able to handle the situation
- appreciate the use of feedback and personal reflection as a permanent learning tool in the professional environment

Skills

- shape communication skills in difficult situations
- apply human rights analysis while acting in a concrete situation
- train the use of force in a proportionate way regardless of the challenges given by counterparts

Requirements:

Time: the entire course takes a couple of months

- about 2 days for the introduction
- about 1 day discussion of the reading material used as Briefing notes
- 1 day per scenario (including reflection) – depending on the group size

Materials:

- technical equipment for video role playing and replaying in the plenary
- a set of guiding principles describing the role of police
- Briefing notes/reading material
- group size: 20–25 persons



Extended activity 1
description:
*Scenario training at
Austria's police academies*

- ① **Introduction:** Reflect on the role of police, objectives of policing and the principles of police work with respect to scenario training.
- ② **Scenarios:** Set up the scenarios. Mission-drill practitioners play the main roles of the counterparts and drive the action in the intended direction, participants support them by also taking on the roles of persons involved. Participants who are acting as police officers must cope with the situation and arrive at suitable solutions. After each scenario an on-site de-briefing session takes place under the supervision of the mission-drill practitioners.
- ③ **Video feedback and reflection:** After all the participants have played a scenario, participants gather in the plenary. Each scenario has been video-taped and is shown in plenary. Again the participants are asked for their feedback and have the opportunity to learn from detailed analysis of their actions. The scenarios are 'translated' into human rights-relevant aspects.

Training tip: Using scenario training

Scenario training aims at combining (human rights) theory and practice. Only by doing so will students take note of their responsibilities in avoiding potential future abuses of authority and violations of human rights. It is when students are confronted with scenarios in which they have to deal with uncooperative and aggressive opponents that they begin to truly understand the situation and links with human rights.

Extended activity 2:
*Scenario training
at Germany's State Police
of North Rhine-Westphalia*

Purpose:

Police training practice in Germany is similar to that in Austria. Human rights training based on scenarios and role plays aims at reflecting the actual policing context. In contrast to Austria, however, in Germany professional, external actors take on the roles of the victims and/or perpetrators whereas participants play only the police officers' roles – a reaction to concerns that the former roles might lead to a stigmatisation of those participants playing them beyond the training course. Prepared scripts for the actors determine the flow of action, which the participants then analyse retrospectively.

Requirements:

- time: about 2 hours for each two-person role play (including instructions and feedback)
- theoretical preparation is offered over a period of weeks before role plays start.

Materials:

- role play set-up (as realistically as possible), premises, props, etc.
- group size: 12 persons (targeted at police recruits)



Extended activity 2
description:
*Scenario training at
Germany's State Police
of North Rhine-Westphalia*

- ① **Theoretical background:** Over a period of several weeks participants gain a theoretical foundation on the relevant issues that the role plays train.
- ② **Role plays:** The scenarios are set up like real life situations at purpose-appropriate venues. Professional, external actors play the roles of counterparts following prepared scripts which include different steps of escalation. Two participants act as police officers who must handle the situation.
- ③ **Feedback:** Immediately following the role play, the two police officers provide feedback on the results achieved and how they felt in the situation. Then, the actors give feedback from their perspective. Next, all other participants who watched the role play add their comments. At the end, trainers provide their conclusions. Then a new role play starts.

Training tip: Reflect possible real life situations

It is extremely important that the scripts and role plays reflect possible real life situations as realistically as possible. The cooperation with professional, external actors, who are unknown to the participants, effectively simulates the interaction of police with society. The preparations for and the reflections after the role plays are equally important.

MODULE 4: THE PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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The prohibition of torture and inhuman or degrading treatment or punishment

Introduction

This module looks at the topic of prohibition of torture and inhuman or degrading treatment or punishment and its relationship to human rights and policing. The right to be free from torture and ill-treatment is absolute, meaning it can neither be infringed upon nor violated. This is particularly relevant to police work, as, unlike other persons, police are permitted to use force or limit certain rights when necessary, such as during arrests or when interrogating suspects. Such situations can give rise to questions related to the prohibition of torture and ill-treatment.

The module seeks to untangle the topic's complex legal, ethical and systemic layers to help police officers understand how and why torture and ill-treatment occur in different situations. This knowledge can make it easier for them to more effectively prevent and protect against violations of the prohibition that their own and/or others' conduct might potentially cause.

To defuse what can be an emotionally charged issue, and transcend a focus on personal guilt and moralising, the module first examines the systemic or situational factors that encourage or discourage police misconduct. The analysis of such external forces contributes to a differentiated view of police misconduct.

This module also aims to instil knowledge about the definition of torture, the absolute prohibition of torture and the distinction between legitimate treatment and inhuman or degrading treatment. It further looks into the link between the prohibition of torture, inhuman and degrading treatment, and the necessity and proportionality principles, police misconduct and its consequences.

Activities – Version 1: **Conditions that facilitate or prevent ill-treatment;** and Version 2: **Ill-treatment role play and case studies**

Purpose:

The right to freedom from torture and other ill-treatment is one of the most fundamental human rights, and much of the police-related discussion about human rights violations is somehow related to it. This issue is a 'classical' topic in police training and needs to be dealt with thoroughly. It raises important and interwoven legal, ethical and social scientific aspects.

Objectives:

Knowledge

- understand the legal concept of torture and other cruel, inhuman or degrading treatment or punishment
- know the concrete obligations of police to respect, protect and fulfil this human right
- know the systemic conditions/situational forces that tend
 - to facilitate misconduct
 - to prevent misconduct

Attitude

- have a reasoned position rejecting torture and other ill-treatment as legitimate tools of policing

Skills

- be able to discuss the ethical dilemmas involved in this sensitive area with other police officers

Requirements:

- time: 70–100 minutes
- materials:
 - Handouts 1 and 2 with discussion questions, role play and case studies
 - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size:
 - Version 1 – maximum 20–25 persons: mid-management to upper-management level
 - Version 2 – maximum 15–30 persons: vary perspectives according to group size



Activity version 1 description – **Conditions that facilitate or prevent ill-treatment**

- ❶ Introduce the purpose and objectives of the activity.
- ❷ Explain and discuss briefly the definition of torture and other ill-treatment and its legal, ethical and social science aspects. (about 15-20 minutes)
- ❸ Distribute Module 4 – Activity version 1 - handout.
- ❹ Divide participants into groups of 4-to-5 persons and discuss the statements. (about 30 minutes)
- ❺ Answer any questions that arise during group work.
- ❻ Ask the groups to present their work in the plenary.
- ❼ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

Activity version 2¹ description – Ill-treatment role play and case studies

- ❶ Present the role play and distribute the handout. (5 minutes)
- ❷ Form six working groups (each group takes on one perspective: parents of the victim; parents of the suspect; lawyer of the suspect; chief police constable; representative of the police union, representing the officer who refused to follow the order of the chief constable; human rights NGO) and appoint one representative from each group. The representative plays the respective character in the television discussion. The working group supports the representative in preparing arguments according to his/her role in the discussion: What is his/her point of view? Does he/she support the police's reaction or not? (about 20 minutes)
- ❸ Roundtable discussion. The participants in the discussion are:
 - parents of the victim, parents of the suspect, lawyer of the suspect, chief police constable, representative of the police union (representing the officer who refused to follow the order of the chief constable), human rights NGO.
 - If necessary, further/other perspectives can be added. The trainer moderates the television discussion. (about 20 minutes)
- ❹ Debrief the role play, addressing the questions posed in the handout. (about 20 minutes)
- ❺ Ask participants to individually review Case studies A and B. (about 5–10 minutes)
- ❻ Discuss the role play and both case studies asking the participants to compare and contrast them, with a focus on understanding how torture/ill-treatment can occur in various circumstances.
- ❼ Discuss the role play and the two case studies and the reasoning underlying the absolute character of the prohibition of torture.
- ❽ Summarise major points and, if necessary, provide tailor-made input, drawing on information from the Briefing notes as necessary. (about 25 minutes)

1. Günther Berghofer, Austrian Police Commander, and Gudrun Rabussay-Schwald, who co-drafted this manual, developed this exercise.



Handout – Activity version 1:² Conditions that facilitate or prevent ill-treatment

Social science research in the area of police violence has identified a number of structural conditions which are relevant to the occurrence of police misconduct. The following list provides some of the major ones:

Conditions that tend to facilitate misconduct:

- Relative isolation of an organisation from other organisations and society
- Existence of closed organisational units
- Dominance of male participants, often from lower socio-economic sectors
- Working environment characterised by an inflexible attitude which focuses on the problematic aspects of social life
- Discrepancy between what is legal and what appears legitimate and just ('they will escape punishment anyway')
- Relatively fixed images of who the 'other' in police work is (stereotyping of groups and beliefs in fixed patterns of action)
- Reaction of 'others' tends to corroborate these images (self-fulfilling prophecy)
- The power of 'the other', and the danger of effective complaints from such 'others', is seen to be low
- Strong (sub)-cultural knowledge which is different from the 'official' view
- Badly developed communication skills on the part of the police and/or on the part of the 'other'

Conditions that tend to prevent misconduct:

- Mixed functional and organisational groups (from different police units)
- Well-developed communication structures between management and police officers
- Diverse working environment
- Management recognises and expresses praise for good police work
- Clear awareness of human dignity as a principle of human rights and police action
- Transparency and diversity of social relations with police
- Multiple and varied contact with different public groups, including minority groups
- High identification with local environment
- Little focus on own group (friends, activities etc.)
- Heterogeneity/Diversity of composition (age, sex, ethnic origin, sexual orientation)
- Availability of easily accessible counselling structures
- Psycho-social support/reflection after difficult work-related events, long-term operations

2. Elements of the handout are based on Behr, R. (2006), *Polizeikultur. Routinen – Rituale – Reflexionen. Bausteine zu einer Theorie der Praxis der Polizei*, Wiesbaden, pp. 88 and following.

Handout – Activity version 1: **Conditions that facilitate or prevent ill-treatment** *(continued)*

Discussion questions:

1. On the basis of your concrete work experience, which of these factors seem relevant to you?
2. On the basis of your experience, which of these factors do not seem relevant?
3. If you were asked to start working on one of these factors, where would you start?



Handout – Activity version 2: Ill-treatment role play and Case studies A and B

Role play: Kidnapping case

Unknown perpetrator(s) kidnap(s) a six-year-old boy and demand(s) a large ransom. Police launch an immediate investigation which is carried out under the public spotlight because the boy is asthmatic and needs his medicine soon and might otherwise suffocate. The city's Deputy Police Chief and his team arrest a man who was seen with the child immediately before he disappeared. Other evidence also strongly suggests the suspect is involved. When questioned, however, he denies any connection with the kidnapping. The Deputy Police Chief, fearing for the boy's safety and in view of the strong evidence and time constraints, gives the order to threaten the suspect with torture if he continues to refuse to disclose where he has hidden the child. He argues that this method was justified under the circumstances. A police officer refuses to carry out his orders for legal and ethical reasons.

Questions to prepare for the television discussion:

How do you feel about this situation in your role as character XYZ?

What is your point of view regarding the actions taken by the police officers involved (deputy police chief; refusing officer) in this situation?

Is it justified to threaten the suspect with torture in this situation? Why or why not?

How would you have acted in this situation (as the police officer/as the victim's relative)?

How do you expect the police to act in this situation?

Handout – Activity version 2: Ill-treatment Case studies A and B - Medical attention and drug trafficking cases *(continued)*

Case study A: Detention

Six police officers arrested Mr H on 5 October 1989.³ They threw a stun grenade, entered Mr H's flat and forced him to the ground. They handcuffed and hooded him and then took him to police headquarters for questioning. It was not until his arrival in prison the next day that he was able to change his clothes. On the third day, he asked to see a doctor. He was not examined until eight days after his arrest when x-rays revealed he had sustained a fractured rib.

Case study B: Interrogation

The police arrested Mr R for drug trafficking.⁴ Mr R said that the officers questioning him grossly insulted him and then assaulted him repeatedly in order to wring a confession from him. They punched him in the head, kidneys and right arm and kicked him in the upper leg and kidneys. They pulled him to the ground by the hair and banged his head against the floor.

The police officers reported, however, that as Mr R was getting out of the car hand-cuffed, he slipped and his right arm hit the rear door. The injuries occurred before the interrogation took place.

After his release, Mr R went to the hospital for an examination, where the doctors noted bruises both inside and outside his right arm.

It is not disputed that Mr R's injuries were sustained during his detention in police custody. During his detention, he was entirely under the control of police officers. Due to the lack of evidence no individual police officers were found guilty. However, that does not absolve Country X of its obligations under the ECHR to provide a plausible explanation of the cause of the applicant's injuries.

3. European Court of Human Rights (ECtHR),
Hurtado v. Switzerland, No. 17549/90,
28 January 1994.

4. ECtHR, *Ribitsch v. Austria*, No. 18896/91,
4 December 1995.



Briefing notes

These Briefing notes provide guidance on the module activities and handouts covering the topic of torture or inhuman or degrading treatment or punishment. The Briefing notes are structured as follows:

1. **Key concepts**
2. **What is inhuman or degrading treatment?**
3. **Activity version 1 – Conditions that facilitate or prevent ill-treatment**
 - a. Milgram experiment
 - b. Stanford prison experiment
4. **Activity version 2 – Ill-treatment Role play and Case studies A and B**

1. Key concepts

European Convention on Human Rights, Article 3; EU Charter of Fundamental Rights, Article 4

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The prohibition of torture or inhuman or degrading treatment or punishment is encapsulated in Article 3 of the European Convention on Human Rights (ECHR) and in Article 4 of the Charter of Fundamental Rights of the European Union. In contrast to most other rights, the prohibition of torture and inhuman and degrading treatment or punishment is absolute. This means that there is no justification for treating persons in a way that constitutes torture or inhuman or degrading treatment or punishment.

A more detailed definition of torture can also be found in Article 1 of the CAT. This definition has been used by the European Court of Human Rights (ECtHR) with regard to case law relating to Article 3 of the ECHR.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. What is inhuman or degrading treatment or punishment?

Using ECtHR case law as a point of reference, for treatment to be considered 'inhuman or degrading':

- an individual's suffering and humiliation must go beyond that inevitable element of suffering or humiliation which is connected with a given form of legitimate treatment or punishment.⁵
- ill treatment of an individual must reach a minimum level of severity,⁶ which depends on the concrete circumstances of a case as related to, among other things, the:
 - . duration of the treatment;
 - . physical and/or mental effects on the individual;
 - . sex, age and state of health of the individual.⁷

For those persons deprived of their liberty, any recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of Article 3 of the ECHR.⁸

The ECtHR, in assessing whether, under Article 3 of the ECHR, a punishment or treatment is 'degrading', considers:

- whether the object of the treatment is to humiliate and debase the person⁹ and, alternatively,
- whether, as far as the consequences are concerned, it adversely affects his or her personality in a manner incompatible with Article 3.¹⁰
- Degrading treatment has also been seen as involving treatment such as to arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking his or her physical or moral resistance.¹¹ The handcuffing of a doctor in front of his family and neighbours without any evidence that he posed a danger, for example, was considered to arouse such feelings and thus constituted degrading treatment.¹²

As interpreted by courts according to the UN CAT definition, 'torture':

- causes severe pain or suffering, physical or mental
- is intentionally inflicted
- for a certain purpose: to get information, a confession, punishment, intimidation, or for discriminatory reasons
- by a public official or at least with his/her acquiescence (there must be some sort of involvement of public officials, either by direct action or by failing to take appropriate action to prevent torture by others)

How do you distinguish between torture and inhuman or degrading treatment?

There are three main conditions to consider when determining whether an act constitutes torture or inhuman/degrading treatment.

- 1. Intentionality:** One must consider the intentions behind a person's actions. Torture cannot occur 'accidentally.' In contrast, inhuman or degrading treatment can be caused by negligence or by the unintended consequences of actions, such as inadvertently causing a detainee pain or suffering.
- 2. Severity of the pain:** Ill-treatment must reach a minimum level of severity if it is to fall within the scope of Article 3 of the ECHR.¹³ The assessment of this minimum is relative: it depends on the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim.¹⁴ Therefore,

5. ECtHR, *Kudla v. Poland*, No. 30210/96, 26 October 2000, para. 92.

6. ECtHR, *Tyrer v. United Kingdom*, No. 5856/72, 25 April 1978, para. 30.

7. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 108; *Campbell and Cosans v. United Kingdom*, No. 7511/76; 7743/76, 25 February 1982, para. 30.

8. ECtHR, *Ribitsch v. Austria*, No. 18896/91, 4 December 1995, para. 38.

9. ECtHR, *Campbell and Cosans v. United Kingdom*, No. 7511/76; 7743/76, 25 February 1982, para. 30.

10. *Ibid.*

11. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 109.

12. ECtHR, *Erdogan Yagiz v. Turkey*, No. 27473/02, 6 March 2007.

13. ECtHR, *Tyrer v. United Kingdom*, No. 5856/72, 25 April 1978, para. 30.



to determine whether a certain treatment reaches the minimum level of Article 3 of the ECHR requires a look at all the circumstances of a given case. The line between the severity levels applicable to torture or to inhuman treatment is particularly difficult to draw. Furthermore, because human rights are 'living instruments', changing public awareness and attitudes have an influence on where the line is drawn. Not surprisingly, therefore, there is robust debate on the relevance and degree of severity needed. In the European context, the case law of the ECtHR is the most relevant.

- In the 1970s, the ECtHR set a high level of severity in the well-known and much criticised *Ireland v. United Kingdom* case, by classifying techniques of sensory deprivation used in the interrogation of suspected terrorists (hooding, submission to continuous and monotonous noise, deprivation of sleep, deprivation of food and water, standing against the wall) as inhuman treatment but not as torture.¹⁵
- This high threshold is not currently applicable; the current standard was set in *Selmouni*. Police beat, threatened and humiliated Mr Selmouni in an assault that lasted a number of days in an attempt to make him confess to an offence. This physical and mental violence was sufficiently severe to be classified as torture.¹⁶
- In light of the *Selmouni* ruling, it is clear that the techniques of sensory deprivation just described, which have been practiced by several states in the fight against terrorism particularly since the September 2001 attacks in the United States, constitute torture.¹⁷
- No differentiation is made between physical or mental torture. Therefore, causing severe psychological suffering while 'just' threatening torture is also considered torture.¹⁸

3. Purpose: Unlike inhuman treatment, torture is an act undertaken for a certain purpose: to get information, such as a confession; to punish; to intimidate; and to discriminate against. As mentioned previously, excessive use of force can, however, result in ill-treatment even without such a purpose.

3. Activity version 1: Conditions that facilitate or prevent ill-treatment

Activity 1 highlights that structural conditions as well as an individual's actions are contributing factors to the occurrence of misconduct, including prohibited conduct such as torture and/or ill-treatment of others.

Social psychologists have sought to shed some light on this topic by studying misconduct in relation to human behaviour and organisational structures, such as hierarchies with authority figures. They consider three main attributes for analysis: "what individuals bring into any setting, what situational forces bring out of those actors, and how system forces create and maintain situations".¹⁹ This means that an individual's action(s) are not necessarily the sole reason for misconduct, such as torture and/or ill-treatment. Situational forces might be so powerful that they transform ordinary people into perpetrators. The results of two famous social experiments illustrate how structure can influence behaviour.

a. Milgram experiment

The Milgram experiment was actually a series of social psychology experiments conducted in the 1960s to measure the willingness of participants to obey authority figures' orders, even though the orders likely conflicted with the participants' personal values.

14. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 108; *Campbell and Cosans v. United Kingdom*, Nos. 7511/76 and 7743/76, 25 February 1982, para. 30.

15. ECtHR, *Ireland v. United Kingdom*, 18 January 1978, para. 96.

16. ECtHR, *Selmouni v. France*, No. 25803/94, 28 July 1999, see further, Reid (2007), pp. 574 and 575.

17. See, UN CAT (1997), para. 257; McArthur and Nowak (2008), *The United Nations Convention against Torture. A Commentary*, Oxford University Press, New York.

18. ECtHR, *Akkoc v. Turkey*, Nos. 22947 and 22948/93, 10 October 2000, para. 116 and *Gäfgen v. Germany*, No. 22978/05, 1 June 2010.

19. Zimbardo, P. (2007), *The Lucifer effect: Understanding how good people turn evil*, New York, p. 9.

Experiment: Participants were instructed to administer painful electric shocks of up to 450 volts to another person if he or she answered a question incorrectly.²⁰ With minimal pressure from authority figures, many participants followed orders and administered shocks although they understood that these shocks harmed the other person. Of the participants, 65% administered the experiment's highest level 450-volt shock. Although they felt uncomfortable, participants typically denied personal responsibility and justified their actions by saying that they were just doing their jobs or they were just following orders.

Results: The authority figures in the experiment concluded that despite clear evidence that the participants' "actions [are] incompatible with fundamental standards of morality, relatively few people have the resources needed to resist authority".²¹

b. Stanford prison experiment

The Stanford prison experiment was conducted in 1971 by a team of researchers who sought to understand how personality traits influence behaviour in prison environments. They also investigated the psychological effects associated with placing people in prisoner and prison guard roles.

Experiment: A group of participants were divided and randomly assigned roles as prisoners or guards in a simulated prison environment. The participants adapted to their roles well beyond researchers' expectations. The 'guards' embraced their roles as authoritarian figures, controlling the 'prisoners' by readily punishing disobedience with various psychological and physical tactics. The 'prisoners' became similarly engaged, first attempting to rebel against the guards' tactics, then internalising their roles as passive prisoners and tolerating the abuse. Five prisoners became so upset that they quit the experiment early. Ultimately, the morality of the entire experiment was brought into question and it was abruptly stopped just six days into the planned two weeks.²²

Results: Researchers found that the participants were impressionable and obedient when thrust into a social and institutional environment that legitimised the application of a specific ideology. The scientists concluded that the situation, rather than individuals' personalities, caused the participants' behaviour. The experiment shows the power of authority.

Training tip: Using the social psychology experiments in training courses

Torture and/or ill-treatment are not commonplace in most people's lives. Therefore, describing one or both experiments to participants can help them better understand how ordinary people can be influenced by the structures and authority figures around them. Evaluating misconduct from this perspective can help participants to:

- recognise that torture and/or ill-treatment is not necessarily a simple matter of a person or persons being 'evil' or 'bad', but that the context also has an influence;
- feel that there are ways to prevent misconduct because responsibility does not necessarily lie with the individual; several tangible factors can potentially influence their behaviour.

20. Milgram, S. (1974), *Obedience to authority: An experimental view*, New York, Harper & Row.

21. *Ibid.*

22. For a presentation on the Stanford prison experiment, see: www.prisonexp.org/.



4. Activity version 2: Ill-treatment role play and Case studies A and B

The scenario and two case studies in the Activity version 2 Handout are examples of police in situations related to torture and/or inhuman or degrading treatment. Police must walk a fine line between respecting and protecting human rights and using force. They therefore must understand and apply the principles of necessity and proportionality to ensure that a legitimate use of force does not become an excessive use of force, such as torture or inhuman/degrading treatment. Both the objectives and means when using force must also conform to national laws, police regulations and international human rights law.²³

Therefore, it is useful for police to remember that it is important to:

- ensure that conditions for persons who are in detention correspond to human rights standards;
- conduct prompt, impartial and effective investigations of allegations of torture and ill-treatment;
- protect against torture and ill-treatment by other individuals.

Similarly, the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also outlines guidance on how authorities, such as the police, should handle situations related to torture or inhuman/degrading treatment.

UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

In the role play, threats of torture were used to extract information from the suspect. In an effort to prohibit torture and/or inhuman or degrading treatment while also protecting the right to a fair trial, evidence obtained through torture or ill-treatment is considered tainted and inadmissible in courts.

Hence, avoiding police misconduct in investigations is not only important because it reflects the most fundamental values of democratic societies based on the rule of law, but also because it is required for effective policing since evidence obtained through torture or ill-treatment cannot be used in criminal proceedings.

Articles 3 and 6 prohibiting torture and on the right to a fair trial of the ECHR and Article 15 of the CAT stipulate such evidence conditions.

23. UN Code of Conduct for Law Enforcement Officials, Art. 3, available at: <http://www.un.org/disarmament/ATT/CodeofConductforLawEnfOfficials-E.pdf>; and UN Basic Principles on the Use of Force and Firearms (1990), Principles 9–11, available at: <http://www.unrol.org/files/BASICP-3.PDF>.

“The repression of, and the effective protection of individuals from, the use of investigation methods that breach Article 3 may therefore also require, as a rule, the exclusion from use at trial of real evidence which has been obtained as the result of any violation of Article 3, even though that evidence is more remote from the breach of Article 3 than evidence extracted immediately as a consequence of a violation of that Article. Otherwise, the trial as a whole is rendered unfair. However, the Court considers that both a criminal trial’s fairness and the effective protection of the absolute prohibition under Article 3 in that context are only at stake if it has been shown that the breach of Article 3 had a bearing on the outcome of the proceedings against the defendant, that is, had an impact on his or her conviction or sentence.”

*ECtHR, Gäfgen v. Germany,
No. 22978/05, 1 June 2010,
paragraph 178*

ECtHR case law outlines how the court approaches this issue and can be summed up as:

- any statement obtained as a result of torture or ill-treatment is inadmissible;
- any real evidence obtained as a result of torture is inadmissible;
- any real evidence obtained as a result of ill-treatment is inadmissible if it has an impact on the conviction or sentence.



Supplementary material

Activity version 1: Conditions that facilitate or prevent ill-treatment

The structural factors listed in Activity 1, elaborated by a sociologist, and the Milgram and Stanford prison social psychology experiments, identify dehumanisation and the lack of personal responsibility as factors that raise the risk of torture and ill-treatment:

- Victims of genocide and severe torture are viewed as objects, dehumanised through specific language in propaganda and ideology that treats them as less than human.
- Persons who commit torture often don't feel personally responsible for their acts. They may try to shunt their moral responsibility off to a higher authority. This mentality of 'just doing my duty' or 'just following orders' disables a person's moral compass and drives him or her to complicity in acts he or she would normally not commit.

Further reading

For more information, see Zimbardo, P. (2008), *The Lucifer effect – Understanding how good people turn evil*, New York, available at: www.lucifereffect.com/.

For more information on the Milgram experiment, see Milgram, S. (1974), *Obedience to authority: An experimental view*, New York, Harper & Row; and, also useful, <http://en.wikipedia.org/wiki/Milgram>, which shows the physical setting of the experiment. This might be useful to illustrate the experiment.

For more information on the Stanford prison experiment, see: www.prisonexp.org/.

Activity version 2: Ill-treatment role play and Case studies A and B

The prohibition on torture and other ill-treatment is absolute and without exception. In all situations, torture is never justified or acceptable, even in the most difficult of circumstances, such as when facing terrorist acts or organised crime.²⁵

However, the absolute nature of this prohibition has been called into question, including in EU Member States. The debate surfaced strongly in the case of Magnus Gäfgen's 2002 kidnapping in Germany of 11-year-old Jakob von Metzler, the case upon which this module's role play is based. Some eminent legal scholars argued for the application of torture under very limited conditions.

Participants might also raise issues related to the absolute ban, arguing that threatening torture is far less harmful than actual torture.

Participants might, for example, consider it acceptable to put a suspect under severe pressure, with no bodily harm inflicted on the person, especially when a kidnapped child's rights also hang in the balance. But the CAT text is clear, defining torture as: "[...] any acts by which severe pain or suffering, whether physical or mental [...] is intentionally inflicted [...]."

And physical torture is not the only, or even the most severe source of harm, as this example helps illustrate. Imagine that during an interrogation, a police officer puts a suspect under pressure: "We know where your wife works and where your children go to school. If you don't talk I'll send somebody after them. We have a dirty squad that is used to handling such situations effectively. I'm sure your wife is a pretty women who would like to have some fun with them. And maybe your children as well?" While no physical harm is inflicted, it is easy to imagine the severe mental stress that these threats produce and how they could break a person's will.

Torture victims also often report that the most traumatic part of their experience is the psychological effect of being surrendered to the torturer and his or her arbitrariness, the feeling of powerlessness and intimidation. Reducing torture solely to physical harm would fall short of understanding the nature of torture and the victim's perspective.

Another issue that might arise among participants is the aspect of balancing rights. In other words:

"Isn't it right to apply torture in order to save lives of innocent people?" Even the fundamental right to life can be limited under specific circumstances. Why shouldn't the same also apply with respect to torture?"

Here is a list of arguments that have proven helpful in arguing for the absolute prohibition of torture.

Pandora's box

History has shown that the use of torture can quickly get out of hand. While torture might start as a method used only in exceptional cases, it runs the risk of being expanded and developed into general practice. Once you open 'Pandora's box', things can quickly get out of control. Institutionalising torture – by whatever name, such as 'moderate physical pressure' – has proven to be a slippery slope that undermines the most fundamental legal principles upon which a rule of law based democratic state is founded.

25. ECtHR, *Chahal v. United Kingdom*, No. 70/1995/576/662, 15 November 1996.



Traumatic consequences for victims

The consequences of torture are often traumatic and reach far beyond immediate pain. Many victims suffer from post-traumatic stress disorder, with symptoms such as flashbacks, severe anxiety, insomnia, nightmares, depression and memory lapses. Torture victims often feel guilt and shame, triggered by the humiliation they have endured. Many feel that they have betrayed themselves or their friends and family. All such symptoms are normal human responses to abnormal and inhuman treatment.²⁶

Ineffective tool

Looking at both older and more recent cases, the information gathered through torture generally does not contribute to effective investigations. First, under torture, a person tends to confess whatever the interrogator wants him or her to say, regardless of whether or not it is the truth, just to stop the suffering. Making the wrong person confess things he or she has not committed means that the real perpetrator is not brought to justice. Second, statements or real evidence obtained through torture cannot be used in criminal proceedings. Third, by relying on torture, police officers fail to enhance their professional policing skills with which they might obtain more reliable evidence.

Where do you draw the line?

Even if you consider torture a necessary last resort to save lives, as per the role play on the kidnapping of young Jakob von Metzler, one must still define the circumstances under which torture may be applied. What if threatening torture does not achieve the intended result? What if the suspect – after you make him or her suffer severely – still does not supply the information needed? At what point would you stop? What about the principle of proportionality in practice? What do we consider ‘appropriate’ torture?

Torture as job description?

Implementing torture as an appropriate method of interrogation and investigation – even if it might be the exception rather than the rule – means it would need to be part of a police officer’s job, at least of some special units. His or her duties would then include the application of torture under specific circumstances. As research has shown, people who actually apply torture risk psychological damage. While it might be understandable that Jakob von Metzler’s parents would call upon police to resort to any means to obtain the information needed to find him, the criminal justice system does not function on the basis of such emotional appeals. Instead, professionals handle cases in line with objective standards, employing professional distance and not the emotions of those directly concerned.

Why torture is an absolute right whereas the right to life is not

The police are entitled to interfere with the right to life of a perpetrator in order to protect the lives of others (compare Article 2 of the ECHR). Say, for example, a bank robber takes hostages and threatens to kill them. In trying to rescue the hostages, police are – as a last resort – allowed to shoot the robber. Why then can torture not be applied in the role play based on the Metzler case? Because, in the Metzler case, there is no direct perceptual/sensory connection between the perpetrator and the victim. You can never be sure that the suspect is actually the perpetrator, whereas the bank robber clearly directly threatens the lives of others.

26. See International Rehabilitation Council for Torture Victims, available at: <http://www.ircct.org/what-is-torture/effects-of-torture.aspx>.

European Convention on Human Rights

Article 2 - Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. 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.

Human dignity

Torture is a direct infringement of human dignity. It objectifies a person, surrendering his or her well-being into the absolute power of another. Apart from physical injuries, torture leaves a person degraded, helpless and corrupted by an ultimate misuse of power. Taking into consideration the golden rule as a simplified principle of human rights, it becomes very clear that torture can never be in accordance with human rights standards. Or to take the classic formulation of Immanuel Kant's second categorical imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."

Police use of force under strict consideration of necessity and proportionality

If exercised excessively, the use of force by police officers might result in a violation of Article 3 of the ECHR. Situations where ill-treatment might occur include: handcuffing suspects during or after arrest, use of physical force to overcome resistance or use of weapons. Although most police work does not entail the use of force, it is a crucial element of policing with potentially severe consequences for the public as well as for the police officers themselves.

The use of force is justified only when strictly necessary and to the extent required to perform police duties. Police should first seek a peaceful settlement to a conflict using communication skills such as negotiation, mediation or persuasion. Only when these peaceful means are ineffective or do not show promise of achieving the intended result may more intrusive means be applied, including the use of physical force. Lethal weapons should be used only as a last resort if lives are in jeopardy.

In addition to Article 3 of the ECHR, other international instruments focusing on police conduct also deal with the use of force. One of these instruments is the European Code of Police Ethics, adopted in 2001 by the Council of Europe. Although not legally binding, Article 37 stipulates: "Police may use force only when strictly necessary and to the extent required to obtain a legitimate objective."



“As a starting point, there must always be a legal basis for police operations, including the use of force. Arbitrary use of force can never be accepted. Moreover, the present Article 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 use of force and the situation in which the force is used. In practical terms, this means, that no physical force should be used at all, unless strictly necessary, weapons should not be used, unless strictly necessary, and, if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary. Normally, national legislation and regulations should contain provisions on the use of force based on the principles of necessity and proportionality.”

European Code of Police Ethics, Council of Europe, Committee of Ministers Rec(2001) 10, p. 55

Training tip: Using appropriate force

The appropriate use of force in challenging situations, where police officers’ personal safety may be endangered, is one of the most relevant and sensitive issues of practical human rights application. Preparing suitable examples and case studies on the use of force is helpful. It is important to raise participants’ awareness of the strict limitation on the use of force and of police accountability when they overstep this narrow line.

When discussing the principles of necessity and proportionality for the use of force, participants might become concerned that things can easily go wrong with severe consequences for the individual officer. While it is important to raise awareness of a police officer’s responsibilities, it is equally important to convey the message that human rights do not set unrealistically high standards – they are the equivalent of meeting professional policing standards. To make this clear, match national legislation on the use of force and firearms with international human rights standards and/or give practical examples on the use of force and consider them from a human rights perspective, such as the arrest of a person or public order management.

The obligation to protect against torture and ill-treatment

Apart from the police’s obligation to respect the prohibition of torture and to use force only if necessary and with respect to the principle of proportionality, there are also positive obligations regarding the prohibition of torture and ill-treatment. Both Case study A on detention and Case study B on interrogation deal with different aspects of protection.

Case study A addresses the lack of attention an injured man receives in detention. The ECtHR concluded, in this case, that Article 3 of the ECHR had been violated, because Mr H had not been examined by a doctor until eight days after his arrest. Inadequate medical treatment of persons who are detained can constitute a violation of Article 3 of the ECHR. The state must protect the personal integrity of persons whose right to personal liberty is restricted.

Obligation to protect

Protecting children from domestic violence

Authorities learned that a boy’s stepfather had been hitting him with a stick. The applicant was examined by a doctor, who found a number of bruises, indicating that he had been beaten with a garden cane, applied with considerable force, on more than one occasion. The stepfather was charged with assault causing bodily harm and tried before a jury. The defence did not dispute that the stepfather had beaten the boy but contended that this amounted to reasonable punishment, a possible defence under English law to a charge of assault by a parent of a child. The applicant complained that English law had failed to adequately protect him from his stepfather’s ill-treatment.

The ECtHR found that the stepfather’s treatment of the applicant had been sufficiently severe to reach the level prohibited by Article 3. Moreover, it found that the state should be held responsible under the ECHR, since children and other vulnerable individuals in particular were entitled to protection, in the form of effective deterrence, from such forms of ill-treatment. English law, which provided that the prosecution had to prove that an assault on a child went beyond the limits of reasonable punishment, had not provided the applicant with adequate protection. There had, therefore, been a breach of Article 3.

Source: ECtHR, A v. United Kingdom, No. 25599/94, 23 September 1998

“The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3 [...], requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible [...] If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance [...] would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”

ECtHR, Assenov and others v. Bulgaria, No. 24760/94, 28 October 1998, paragraph 102

With respect to Case study B, dealing with injuries of disputed cause inflicted during detention, the ECtHR has consistently held that positive obligations under Articles 2 on the right to life and 3 prohibiting torture of the ECHR mean that the state must properly investigate any allegations of ill-treatment.

Further reading

For more information on the Jakob von Metzler case, see: Jessberger, F. (2005), ‘Bad Torture – Good Torture?’, *Journal of International Criminal Justice*, Volume 3, Issue 5, pp. 1059–1073, available at: <http://jicj.oxfordjournals.org/content/3/5/1059.full.pdf+html>.

ECtHR, *Gäfgen v. Germany*, No. 22978/05, 1 June 2010.

Association for the Prevention of Torture (2007), ‘Defusing the ticking bomb scenario - Why we must say no to torture, always’, Geneva.



MODULE 5: DIVERSITY, EQUALITY AND NON-DISCRIMINATION

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Diversity, equality and non-discrimination

Introduction

This module opens with a focus on diversity in contemporary European Union (EU) societies, providing a springboard to critical issues of equality and non-discrimination – concepts that are at the heart of modern human rights-based societies and human rights-based policing.

This module introduces a non-discrimination analytical scheme, which provides an aid for analysing police practice, including the use of police powers, from a non-discrimination perspective. Like the analytical schemes of Module 3 on respecting and protecting human rights, the non-discrimination analytical scheme helps participants ask the right questions, rather than trying to provide them with ready-made answers. The scheme will help participants determine whether discrimination has occurred.

The module presents two case studies and a step-by-step analysis of the relevant aspects of each case in order to help develop the relevant policing skills.

To complement the case studies, the module outlines a role play which not only helps participants to better understand the subtleties of discrimination issues, in the form of sex and age discrimination, but also has the advantage of showing the issue of discrimination in police structures. Police officers can themselves be victims of discrimination, and approaching the topic from this perspective offers a powerful way of understanding what being discriminated against feels like.

In order to be able to treat this topic in a professional way, it is crucial to have a sound understanding of what discrimination is and how the analytical process works. Such an understanding is provided in the Briefing notes for trainers. The module also pays special attention to 'discriminatory ethnic profiling', given its sensitive nature and relevance to the policing context.

Activity 1 version 1: Left hand/right hand¹

Training tip: Bringing diversity front and centre

This exercise is particularly recommended if you are not an experienced diversity trainer. It introduces diversity and its consequences in an interactive way. If skilfully moderated, the main questions relevant to diverse societies can be dealt with effectively, including their human rights dimensions.

Purpose:

Diverse societies are a reality in today's EU. As a consequence of increased global contacts and interactions in all areas, and in particular migration, increasingly diverse lifestyles and cultural practices coexist within each EU Member State. In this exercise, participants will explore issues around conscious and unconscious biases and their impact in a safe learning environment.

Objectives:

Knowledge

- increase knowledge of the reality of diverse societies
- enhance understanding of the reasons for change in societies and how this change occurs (e.g. migration histories, labour needs such as in the healthcare sector)
- understand how emerging societal changes such as migration (e.g. rights of irregular migrants employed illegally in the labour sector) or demographic changes (e.g. rights of the elderly) and human rights are linked
- gain an understanding of cultural impact, such as language and access to information in the respective languages in the context of procedures and fair trials
- have a basic understanding of the relevance of human rights for meeting the challenge of policing in diverse/multicultural societies

Attitude

- enhance empathy towards others, in particular towards minority groups
- understand diversity as a reality in today's societies and accept the need to deal with it constructively

Skills

- reflect on their own conscious and unconscious biases
- discuss questions of diversity, identity and policing in a police environment

Requirements:

- time: 35–40 minutes
- materials:
 - flip chart
 - optional: power point presentations and projector
- space: plenary room plus two working group rooms
- group size: maximum 20–25 persons

1. Gamal Turawa, Promoting Difference Consultant and Trainer at the Metropolitan Police Service, London, developed this exercise.



Activity 1 version 1 description: Left hand/right hand

- 1 Write an approximately 10-word statement on the flipchart/board. Then ask participants to copy out the statement.
- 2 Then ask them to write it again, directing them just before they begin to use the other hand (always say 'other hand' to value both left- and right-handed persons). Take silent note of participants' reaction to the task, which may include laughter, sarcastic comments and in some cases complete dismissal.
- 3 When this is complete, explore the task from the following four perspectives and record the answers on a flipchart. (about 5 minutes)
 - How did you feel when you first copied out the statement?
 - What were your thoughts when you were asked to switch hands?
 - How did it feel when you wrote the statement the second time?
 - What would it take to make you use your other hand?
- 4 Exercise debriefing: suggested question/areas for discussion:
 - Ask the group to imagine a society dominated by right handers where all laws, norms, policies and culture reflect their needs alone. Would that be healthy?
 - If there was a small group of left handers in that society, how would they feel?
 - And if they pay taxes and contribute to a society and don't feel they belong or are valued, how would that feel?
 - What could be done to make the left handers feel included in the right handers' society?
 - Who is in the left-hander group/s in your society/country and why?
 - What about the human rights of the left-handed group? What rights are particularly relevant? Are these rights always respected or appreciated?
 - What would have to happen to ensure that the right-handed group took the needs and rights of the left-handed group into consideration?
 - How could the balance between both groups be addressed?
 - Have you ever been a left-handed person in a group or society?
 - Where do your images of left-handed people come from?
 - Does the right-handed group benefit from the left-handed group in anyway? (such as culture, music, food or fashion)

- ⑤ Some key messages to convey:
 - Illuminate attitudes and barriers to change; using, in particular, the answers from the first part of the exercise.
 - Highlight that the need for change can be difficult to understand, in particular if people fear negative consequences of change.
 - Biases are not always conscious or malicious. Sometimes conditioned behaviour and thoughts can be difficult to alter.
 - To bring about change, we have laws, including human rights law, court cases, lobby groups, committed citizens and, in the extreme, uprisings, riots and deaths.
- ⑥ Bring into the discussion some of the more general topics mentioned in the Briefing notes:
 - Consequences of diversity for policing and police organisations
 - Human rights as applicable standards in this context



Activity 1 version 2: Multiple identities²

Training tip: Focusing on identity

This activity is recommended for experienced diversity trainers. It focuses on identity and its construction, inviting participants to disclose quite personal issues and speak about their emotions. It thus requires a sense of security and comfort within the group. If it works well, it can serve as a very powerful tool of self-reflection and promote self-awareness.

Purpose:

This exercise raises important questions regarding the (self-) images and identities of individuals and groups in society and as well as the basic rules of coexistence in diverse societies. Discrimination may stem from a single-minded focus on just one aspect of a person's identity; this exercise illustrates clearly that we all have multiple facets to our identities.

Objectives:

Knowledge

- enhance knowledge of the reality of diverse societies and the relevance of identities
- learn how identities are linked to human needs and human rights
- gain a basic understanding of the relevance of human rights for meeting the challenge of policing in diverse/multicultural societies

Attitude

- increase self-awareness regarding one's own identity and how it impacts the way we see the world
- increase empathy towards others, in particular towards people from minority groups
- understand diversity as a reality in today's societies and accept the need to deal with it constructively

Skills

- reflect on their own affiliations/identities and the emotional relevance of these
- discuss questions of diversity, identity and policing in a police environment

Requirements:

- time: 40–60 minutes
- materials:
 - Handout 1 with diagramme
 - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size: maximum 15–20 persons

2. Adapted from the Anti-Defamation League, A World of Difference, Diversity Training.

Activity 1 version 2 description: Multiple identities

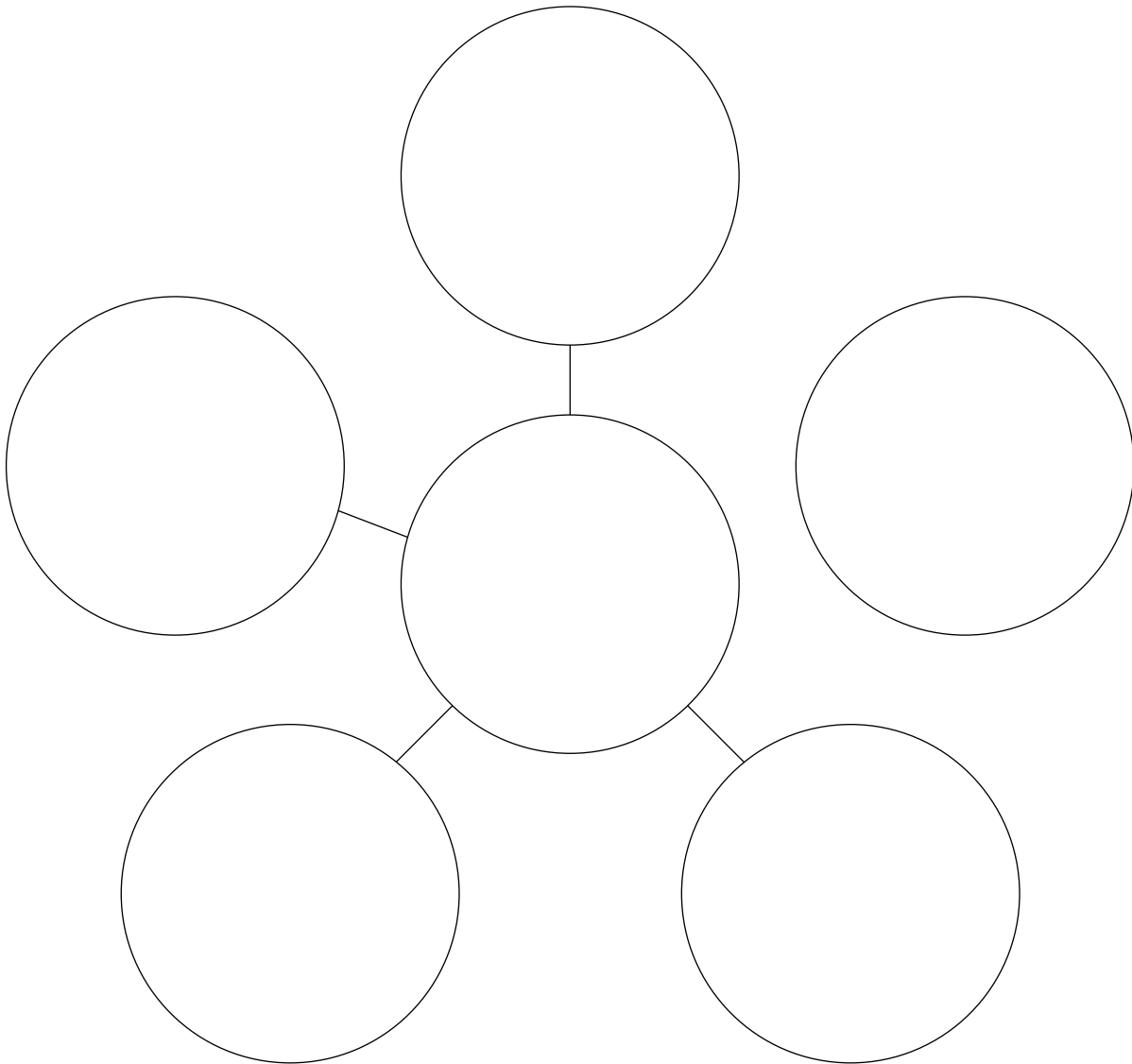
- 1 Distribute the handout. Mention that the responses should be quick and spontaneous. (about 5 minutes)
- 2 Ask them to underline the central group they currently identify with.
- 3 3-4 participants should form a group and discuss the results:
 - Was it difficult or easy to identify the five groups?
 - What does it feel like being a member of a group? Comforting? Challenging?
- 4 Read out different categories of identities and ask participants to stand up if they have noted down the category read out:

family	physical characteristics/ability
profession	political opinion/affiliation
sex	work as volunteer (NGOs)
sexual orientation	language
nationality/national origin	groups of friends
ethnic background	hobby/leisure time activity/sports
religion	social status/property
age	Any other group that was not mentioned? Which one?

- 5 Ask those standing which group mentioned was their central category. Those persons should continue standing, while the others sit back down.
- 6 Debrief the stand-up activity. Some relevant questions:
 - What was it like to stand up? Easy? Challenging?
 - What about standing up in a big group versus standing up alone?
 - Did you notice anything you want to share with the group?
- 7 Hold a general debriefing. Some relevant questions:
 - What was it like doing this exercise?
 - Was it difficult or challenging to identify the five groups?
 - Were there any new insights when doing this activity? Which ones?
 - What role do identities play in policing?
 - What is the relevance of identities in internal police structures?
 - Any other issue you would like to mention?
- 8 Bring into the discussion some of the more general topics mentioned in the Briefing notes:
 - Consequences of diversity for policing and police organisations
 - Human rights as applicable standards in this context



Handout – Activity 1 version 2: Multiple identities



Instructions:

1. Write your name in the central circle.
2. In the outer circles, write down five relevant social categories/ groups (in the broadest sense, e.g. group of chess players) you consider yourself to be part of or others see you as part of.
3. Underline the group you currently consider your central identification category.

Activity 2: Role play – job applications³

Purpose:

Given increased global contacts, interactions and, in particular, migration, increasingly diverse lifestyles and cultural practices coexist within each and every EU Member State. In this exercise participants will explore issues around discrimination in hiring.

Objectives:

Knowledge

- understand the fundamental importance and characteristics of the principle of equality and non-discrimination, as applicable to everyday situations
- understand the applicability of discrimination issues to internal structures
- understand the benefit of human rights and the principle of non-discrimination

Attitude

- feel what it is like when rights are denied or disrespected
- gain greater acceptance of others' human rights by acknowledging one's own rights;
- increase commitment to equality
- develop more understanding towards minority groups

Skills

- be able to apply discrimination analysis to organisational structures and practices

Requirements:

- time: 50–60 minutes
- materials:
 - Handout – role description
 - optional: power point presentations and projector
- space: plenary room plus two working group rooms
- group size: maximum 15–25 persons

3. Günther Berghofer, Austrian Police Commander, developed this activity.



Activity 2 description: Role play – job applications

- 1 Before the session starts choose two participants to assume the roles of applicants in a job interview. Assign them each a role, or give them those provided on the role play handout, and allow them some time to prepare their roles.

Training tip: Adapting role plays

Role play descriptions can be altered according to the challenges within the police organisation concerned (such as discrimination due to sexual orientation, ethnic/religious background or political commitment)

- 2 The two ‘applicants’ remain outside the classroom. The rest of the participants gather in class. Ask the participants to observe the scene and provide the following explanation: There is a vacancy in a police department and a number of police officers have applied for this post. An interview takes place in order to find the most suitable candidate.
- 3 Call in the first ‘applicant’ and role play the job application scenario. Start the interview in a fair manner, then gradually become discriminatory (depending on the casting of the roles, discriminate on such grounds as sex, age or sexual orientation). At the end of the interview ask the applicant to take a seat in the plenary.
- 4 Conduct the second interview in the same fashion.
 - a. Role play debriefing: Ask the ‘applicants’ about their impression of the interview. How did they feel when being discriminated against? What emotions did the discrimination bring forth? How could you respond in such situations?
 - b. Start a plenary discussion: How did the audience feel about these interviews? Would something like this be conceivable in reality? Why or why not? In which regard is this situation of relevance to human rights?
 - c. Take this experience as the starting point for further considerations of discrimination issues, on the basis of the Briefing notes.

Training tip: Conducting role plays with sensitivity

The interview must be conducted very carefully: You must be sensitive enough not to treat the ‘applicant’ too strongly in a discriminatory way so that he/she feels personally offended. On the other hand, you must be sufficiently explicit to make the inadequate behaviour visible.

Suggestions for the interviews:

Sex discrimination:

- Are you planning to have a family?
- When you are on maternity leave who do you think will take over your duties?

- After returning from maternity leave will you work part time only?
- Why should I pick a female police officer who will very soon be on leave?
- If you were in my shoes, wouldn't you do the same?
- I don't have anything against you personally, I think your record so far is good, but I honestly don't see that your private situation is in line with the job requirements.

Age discrimination:

- Older people are said not to be flexible enough to meet daily challenges. Why should I choose you over younger and perhaps more dynamic police officers?
- Why are you interested in this vacancy if you are already halfway towards retirement?
- Our police force is a modern and dynamic organisation. How would someone of your age fit into this picture?
- Why should I pick an older police officer who is less likely to quickly grasp the relevant requirements of this post?
- I don't have anything against you personally, I think your record so far is very good, but I honestly don't see your current age as suitable for the requirements of the post.



Handout – Activity 2: Role play – job applications

JOB APPLICATION 1

You are a young female police officer, aged 28. You have an excellent professional record and are applying for a vacant mid-management police post. You are married and plan to have children in the near future.

You may add additional details about your personal and professional background as long as you stick to the facts given above.

JOB APPLICATION 2

You are a police officer, aged 53. You have a good professional record and are applying for a vacant post in mid-management with the police. You have many years of experience as a police patrol officer. You are motivated to meet new challenges.

You may add additional details about your personal and professional background as long as you stick to the facts given above.

Activity 3: Human rights analysis – non-discrimination

Purpose:

The principle of equality and non-discrimination has a central place within the field of human rights. It is very relevant in the context of today's diverse European societies. A sound understanding of how to analyse situations from a non-discrimination perspective needs to be part of the core skills of police officers. Such an understanding will lead to more effective and efficient policing and help avoid bad practice and complaints.

Objectives:

Knowledge

- understand the fundamental importance and characteristics of the principle of equality and non-discrimination
- understand discriminatory ethnic profiling and its negative effects on minority groups and on effective policing

Attitude

- accept the need to deal with diversity and anti-discrimination issues constructively
- gain enhanced commitment to equality-sensitive policing
- deepen understanding of minorities

Skills

- be able to assess analytically when differential treatment is prohibited and when it is justified (referring to overall treatment)
- be able to distinguish discriminatory ethnic profiling from lawful police methods (referring specifically to profiling)

Requirements:

- time: 60–90 minutes
- materials:
 - . handouts
 - . optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group setting: maximum 20–25 persons



Activity 3 description: Human rights analysis – non-discrimination

- ① Introduce the purpose and objectives of the activity.
- ② Distribute and briefly introduce the analytical scheme (Handout: Human rights analysis – non-discrimination), drawing on real-life situations of the participants or contributions relating to real-life situations from the facilitator. (about 15 minutes)
- ③ Divide participants into groups and distribute handouts with case studies. (about 25–to–35 minutes) Make sure that groups:
 - . have understood their task well;
 - . appoint a rapporteur to bring results back to the plenary.
- ④ Answer any questions that arise during group work.
- ⑤ Have the groups present their work in the plenary.
- ⑥ Hold a general discussion, reflecting on what has been learned.
- ⑦ Summarise major points and, if necessary, provide tailor-made input based on the Briefing notes, in particular regarding discriminatory ethnic profiling.

Handout – Activity 3: Human rights analysis – non-discrimination

Case study A: Turned back at checkpoint

Mr T, a State B citizen of minority ethnic origin, travelled with his driver by car from one province of State B to another. At a police checkpoint at the provincial borders, police stopped his car and turned Mr T back, while other cars passed the checkpoint without any problems. There are two different versions of the subsequent events.

Mr T's account: The officers of the Inspectorate for Road Safety refused him entry, referring to an oral instruction from the provincial authorities not to admit anyone of his ethnic origin.

The authorities' account: Mr T attempted to jump the queue of cars waiting to pass through the checkpoint and, after being refused priority treatment, turned back.

Discussion questions:

1. Is there any difference in how the police treat Mr T and the other drivers? If so, what does it consist of?
2. If there is a difference in treatment, is there also a link to any protected ground? Which one?
 - a. In Mr T's version
 - b. In the state's version
3. If there is differential treatment linked to a protected ground, can it be justified or is it discriminatory?



Handout – Activity 3: Human rights analysis – non-discrimination *(continued)*

Case study B: Identity check at train station

Ms W arrived at a railway station in Country E with her husband and son. After she got off the train, a police officer approached her and asked to see her National Identity Card. The police officer did not check the identity cards of anyone else who was on the platform at the time, including her husband and son. Ms W asked the police officer to explain the reasons for the identity check; the officer replied that he was obliged to check the identity of 'coloured people' like her, since many of them were illegal immigrants. Ms W's husband observed that that was racial discrimination, which the police officer denied, asserting that he had to carry out identity checks owing to the high number of illegal immigrants living in Country E. They asked the police officer to produce his own National Identity Card and police badge, whereupon he replied that if they did not change their attitude he would arrest them. He escorted them to an office in the railway station where he recorded their personal details, and at the same time showed them his identity badge. Ms W, who is originally from Country X, had acquired the nationality of Country E two decades earlier.

Discussion questions:

1. Is there any difference in treatment? If so, what does it consist of?
2. If there is a difference in treatment, is there also a link to any protected ground? Which one?
3. If there is differential treatment linked to a protected ground, can it be justified or is it discriminatory?

Handout – Activity 3: Human rights analysis – non-discrimination *(continued)*

Human rights analysis – non-discrimination

PART 1: EQUAL TREATMENT OR DIFFERENTIAL TREATMENT?

**1.1. Are there any indicators for differential treatment?
Are like situations treated in an unlike manner?
Are unlike situations treated alike?**

1.2. Is the differential treatment made on the basis of a protected ground?

Protected grounds: sex, 'race', colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership in a national minority, property, birth, disability, age or sexual orientation

PART 2: JUSTIFICATION OR DISCRIMINATION

2.1. Is the distinction based on reasonable and objective grounds?

- Does the differential treatment pursue a legitimate aim?
- Is it suitable? Is it necessary? Is it the least intrusive measure? Are there any alternatives?



Briefing notes

These Briefing notes provide useful information for the four activities included in this module, structured as follows:

1. Key concepts

- a. Diversity and identity
- b. Equality and non-discrimination: basic concepts
- c. Discrimination and profiling

2. Analytical scheme – Non-discrimination

- Activity 3: Case studies A and B

1. Key concepts

a. Diversity and identity

Diversity is currently a very important aspect of the EU. Demographic data suggest a clear trend towards even greater diversity. This reality confronts the EU with specific challenges as old parameters of social life that helped create social peace are seen to be vanishing, giving way to increased feelings of lack of control and insecurity. EU Member States must construct an integrative and inclusive society for all people living within their countries, adapting governmental structures as well as society at large to this reality.

Of particular relevance in this context is the question of (social) identity and how human beings see themselves and others. Identity is such a relevant concept because discrimination on various grounds, ethnic and racial violence, and many other human rights violations, are inextricably linked to identity issues.

From a psychological perspective, identity constitutes a basic human need. This 'sense of self' engenders a sense of belonging and functions as a source of self-esteem. "The need for a positive identity is the need to have a well-developed self and a positive conception of who we are and who we want to be".⁴

Identity needs are an important concept in peace and conflict research, and they form one of the four fundamental needs, along with survival, well-being and freedom.⁵ If one's identity is not valued, not recognised as legitimate or is considered inferior, then communication problems and societal conflicts arise, both in personal interactions and international relations. Identity-related societal conflict has, for example, been widespread in recent decades:

- The civil wars in former Yugoslavia in the 1990s had, in addition to broader power-related factors, a strong religious/ethnic dimension.
- Identity also played a major role in civil unrest in several EU Member States, for example in the Brixton riots in the United Kingdom.

"One of the central issues [regarding 'multiculturalism and freedom'] concerns how human beings are seen. Should they be categorized in terms of inherited traditions, particularly the inherited religion, of the community in which they happen to have been born, taking that unchosen identity to have automatic priority over other affiliations involving politics, profession, class, sex, language, literature, social involvements, and many other connections? Or should they be understood as persons with many affiliations and associations, whose relative priorities they must themselves choose (taking the responsibility that comes with reasoned choice)?"

Amartya Sen (2006), Identity and Violence, New York, London, Norton, p. 150

4. Staub, E. (2004), 'Basic Human Needs, Altruism, and Aggression', in Miller, A. (ed.), *The Social Psychology of Good and Evil*, New York, Guilford Press, p. 56.

5. Galtung, J. (2004), *Transcend and Transform, An Introduction to Conflict Work*, Boulder, Paradigm Publisher, p. 2.

Multiple identities

It is problematic to reduce a person's identity to only one or two elements, such as ethnic origin or religion, and to draw broad conclusions based on this characterisation – putting people, in other words, into an ethnic or religious 'box'. This reduction of people's identity to one main category is also visible in the broad categorisation of people by civilisation.⁶

A closer look reveals that we all have multiple affiliations or identities which together make up different parts of our identity. A person may be, for example, a French national, of Algerian ethnic background, a police officer, a triathlon athlete, single, religious and a good cook.

Both individual choice as well as social context is decisive in determining which affiliations/identities one regards as relevant, and how one ranks their importance. External factors and contexts can be particularly important for identity construction, in particular when these external elements form the basis of discriminatory treatment that frustrates recognition of an important part of one's identity.

Diversity and policing

The consequences of increasing diversity are far-reaching for state institutions as well as for society at large. The Rotterdam Charter is the first systematic effort to deal with diversity's impact on policing in the EU environment. The 1996 *Rotterdam Charter: Policing for a Multi-Ethnic Society*, an initiative of the Rotterdam Police, the Rotterdam City Council and Radar, an anti-discrimination organisation, contains specific guidelines on how to deal with this question.

"In this world of ethnic and cultural diversity, the role of the police is crucial. With their special responsibility for the maintenance of law and order in society, the police are essential guardians of our social framework. They are also the most visible of the agencies which perform a civic role. This has two major implications.

"First of all, the police must always act – and be seen to act – with unquestionable fairness towards all groups, and with clear respect for ethnic and cultural difference. Because of their high visibility, police must accept that they need to act as a 'role-model' for all public agencies in promoting fundamental rights.

"Secondly, if minorities are to overcome these threats [of being an object of oppressive and discriminatory treatment] and play their full part, the police must strive to use their special and unique powers in support of multi-ethnic ideals. They need to use the law to its fullest extent to combat acts motivated by racism and xenophobia. The police also need to work in a proactive manner to prevent such actions and to assist ethnic and social integration".

Robin Oakley (1997), an independent consultant on racial equality issues who helped develop the Rotterdam charter, in his Introduction for the Rotterdam Charter – policing in a multi-ethnic society, available at: [www.rotterdamcharter.nl/sites/charter/files/site49_20050603092740_Rotterdam_Charter_\(english\).pdf](http://www.rotterdamcharter.nl/sites/charter/files/site49_20050603092740_Rotterdam_Charter_(english).pdf)

An increasingly diverse society puts special demands on police organisations. To provide services that are equally applicable to, and accessible by, all citizens, a police organisation must adapt its:

- operational work, the quality of service and wider responsibilities to the needs of a continually changing population;
- organisational structures, including recruitment and retention, career paths and performance indicators, internal spaces for diversity (such as gay police associations);
- initial and in-service training and specific awareness activities

6. Sen, A. (2006), *Identity and Violence*, New York, London, Norton, pp. 40 and following.



as complementary measures (which cannot compensate for inaction at the operational and organisational level).

Training tip: Using Activities 1 and 2 to introduce key concepts

Activities 1 and 2 are useful tools for introducing participants to the module's key concepts if they are unfamiliar with them or need a refresher. The activities use easy-to-relate-to approaches to help participants understand the concepts. It is useful to have a good understanding of these basic ideas before tackling the more abstract issues found in Activities 3 and 4.

FRA ACTIVITY

Improving police-minority relations

Module 2 discussed the importance of a trusting relationship between the police and all parts of society, the key to which is treating everyone equally and in a non-discriminatory fashion. FRA research, the European Union Minorities and Discrimination Survey (EU-MIDIS, 2010), asked 23,500 members of immigrant and ethnic minority groups about their experiences of discrimination and criminal victimisation and uncovered an urgent need and ample room for improvement in police-minority relations. The research provided evidence about a number of issues including police stops, showing:

- the need to “improve minorities’ perceptions of the police as a public service that is able to address the needs of victims of crime and in particular the needs of victims of racist victimisation”.
- that “work needs to be done to address and improve minority relations” as a result of high rates of perceived discriminatory ethnic profiling.
- that persons from minority groups who perceive that police stopped them because of their ethnicity have a lower level of trust in the police. This has a damaging social effect, as it may undermine minorities’ trust in the police and in their assumptions of fair treatment. At the same time, it leads to underreporting of crimes by members of immigrant and ethnic minority groups.

For more information, see FRA (2010), EU MIDIS Data in Focus Report 4: Police Stops and Minorities, October 2010, pp. 14, 17, available at: <http://fra.europa.eu/en/publication/2010/eu-midis-data-focus-report-4-police-stops-and-minorities>

b. Equality and non-discrimination: basic concepts

Legal sources

The principle of equality and non-discrimination is of special importance in the field of human rights. The first two articles of the Universal Declaration of Human Rights (UDHR) stress the relevance of equality.

Universal Declaration of Human Rights

Article 1

All human beings are born free and equal in dignity and rights.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

The basic idea of equality is easily understood: The simple fact that a person has specific characteristics, such as colour, sex or religion, must not lead to differential/less favourable treatment compared to others in a comparable situation. Applying this simple idea in concrete cases, however, is more difficult. As is the case with human rights in general, all relevant circumstances must be taken into account and weighed up against one another.

All human rights are to be guaranteed on a non-discriminatory basis. In legal language this so-called 'accessory' prohibition of discrimination is contained in all general human rights treaties, such as Article 14 of the ECHR. This means that the right to personal liberty and the right to privacy, for example, must not be interfered with in a discriminatory way, such as by systematically stopping and searching black people.

In addition, the right to equality and non-discrimination is guaranteed as a separate and independent right, guaranteeing more comprehensive protection against discrimination, such as in Articles 20 and 21 of the EU Charter of Fundamental Rights, Additional Protocol 12 of the ECHR and Article 26 of the UN International Covenant on Civil and Political Rights.

Specific legislation at the international and EU levels provides a detailed framework for fighting discrimination through a broad range of measures.

UN level:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Convention on the Elimination of All Forms of Discrimination against Women (1979)
- International Convention on the Rights of Persons with Disabilities (2006)

EU level:

- *Gender Equality Directive on Social Security*: Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (19 December 1978)
- *Racial Equality Directive*: Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (29 June 2000)
- *Employment Equality Directive*: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (27 November 2000)
- *Gender Equality Directive on Goods and Services*: Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (13 December 2004)
- *Gender Equality Directive (Recast)*: Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (5 July 2006)
- *Framework Decision on Racism*: Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law

Protected grounds

The most comprehensive current list of protected grounds is found in Article 21 of the Charter of Fundamental Rights of the European Union. It contains the following grounds: "sex, race, colour, ethnic or



social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”.

Obligations flowing from the principle of non-discrimination

States have the following obligations under non-discrimination law to:

- respect equality (equality before the law): this means that the executive and judicial powers must apply the law in a non-discriminatory manner.
- protect against discrimination at the legislative level (equal protection of the law).
- take administrative and policy measures for effective protection against discrimination, including:
 - . protecting against discrimination between private persons, such as access to employment and at the workplace, and access to and supply of goods and services, including housing. The EU Racial Equality Directive, for example, provides such protections.
 - . prohibiting by law any public incitement to violence or hatred directed against (groups of) persons on the basis of their ‘race’, colour, religion, descent or national or ethnic origin. The EU Framework Decision on Racism, for example, provides for such prohibitions.
 - . introducing special or specific measures to overcome past disadvantages, or to compensate for or prevent current disadvantages, and to accelerate progress towards equality of particular groups. Adopting and maintaining such ‘specific measures’ – which might come under the rubric of ‘positive discrimination’, ‘affirmative action’ or ‘preferential treatment’ – are explicitly permitted in human rights law and do not *per se* constitute discrimination. Adopting special measures to address long-standing discriminatory patterns affecting women is an example. However, they should be temporary in nature and must not go beyond what is necessary to address the inequality in question. The proportionality principle is again vital here.

In the policing context, the principle of equality before the law is of particular importance. Equally, the human rights obligation to take effective action to protect against discrimination, such as taking action against hate crime, is increasingly seen as crucial in the fight against discrimination. The Framework Decision on Racism of 2008 reflects the heightened awareness of the need to take positive action.

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

European Code of Police Ethics, Council of Europe, Committee of Ministers Rec(2001)10

“The Court has established in its case-law that in order for an issue to arise under Article 14 [prohibition of discrimination on certain grounds] there must be a difference in the treatment of persons in relevantly similar situations [...] Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”

ECtHR, Burden v. United Kingdom, No. 13378/05, 29 April 2008, paragraph 60

Discrimination definitions⁷

Discrimination can be seen as:

- a difference in treatment of persons who are in a similar situation;
- differential treatment is linked to a ‘protected’ ground;
- there is no objective and reasonable justification for this differential treatment.

EU law makes a distinction between direct and indirect discrimination:

Direct discrimination: “shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”.

Indirect discrimination: “shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

Source: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive), Article 2 (2), available at: <http://eur-lex.europa.eu/en/index.htm>

The European Court of Human Rights (ECtHR) defines direct discrimination as a difference in treatment of persons in similar situations, where the principles of legitimate aim and proportionality are not duly respected. Indirect discrimination focuses on: neutral rules, criteria or practices and then asks whether these have a negative effect on groups defined by a ‘protected ground’. This concept of indirect discrimination is now also found in the jurisprudence of the ECtHR.⁸

FRA ACTIVITY

Charting multiple discrimination

Multiple discrimination is discrimination based on more than one protected ground, such as being discriminated against for being a woman and for being Roma. Most EU courts deal with only one ground of discrimination per case of direct or indirect discrimination. Introducing the concept of ‘multiple discrimination’ into legislation could help better match the law to peoples’ experiences of discrimination, FRA research shows.

For more information on multiple discrimination, see the ‘Supplementary material’ section of this module and FRA (2013), Inequalities and multiple discrimination in access to and quality of healthcare, Luxembourg, Publications Office, available at: <http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare>

Justification/defence of less favourable treatment – different, yet similar approaches in ECHR and EU law

The following ECtHR quote contains a general defence or justification phrase for all types of discrimination: “if [the differential treatment] has no objective and reasonable justification”. In other words, differential treatment is discriminatory if there is no objective and reasonable justification for it. EU law, in contrast, applies this general defence approach only to indirect discrimination. For direct discrimination, specific and limited defences alone are to be taken into account.

Although formulated in different ways, the approaches are quite similar in substance: the specific defences under EU law can be placed

7. Based on FRA and Council of Europe (2011), *Handbook on European non-discrimination law*, Luxembourg, Publications Office of the European Union (Publications Office), pp. 21–55, available at: <http://fra.europa.eu/en/publication/2011/handbook-european-non-discrimination-law>.

8. ECtHR, *D.H. and Others v. Czech Republic*, No. 57325/05, 13 November 2007.

within the broader context of the general defences, as developed by the case law of the ECtHR. In other words, the specific defences under the non-discrimination directives are particular aspects of the general defence.⁹

Therefore, the following analytical scheme with regard to non-discrimination builds on the ‘general defence’ approach.

Training tip: Using Activities 3 and 4 to explore non-discrimination

Activity 3 and 4 are good tools for helping participants become familiar with the ideas of non-discrimination and fair treatment. It gives them a chance to see interactively examples of how discrimination can occur and how to address the issues related to this topic.

c. Discrimination and profiling

State institutions, including police, must respect equality when exercising their functions. A highly relevant issue in this regard is the question of police profiling along ethnic lines and other criteria.

What is profiling?

- At a general level, profiling involves categorising individuals according to their characteristics, whether these are ‘unchangeable’ (such as sex, age, ethnicity, height) or ‘changeable’ (such as habits, preferences and other elements of behaviour).
- Although in and of itself a valuable tool, profiling may lead to mistakes when connecting certain characteristics to certain preferences or behaviours.
- Social psychology research has shown people tend to apply stereotypes to ‘others’ and – on this basis – to jump to rapid and inaccurate conclusions.¹⁰

Profiling in police work

Profiling can be a legitimate tool for the apprehension of suspected offenders once a crime has been committed. Similarly, profiling can be based on educated assumptions derived from experience and training, with a focus on behaviour rather than racial, ethnic or religious characteristics. For instance, officers may work with profiles that instruct them to look for individuals who repeatedly visit particular locations, who meet and swap bags before separating, who behave erratically or nervously or who repeatedly make large purchases using only cash.

Profiling may become problematic when a protected ground, such as ethnicity, ‘race’ or religious affiliation, for example, is the sole or main reason to put an officer on alert. The officer may be instructed to target specific groups or may consider one of these attributes when taking action, but these types of protected grounds should not be the primary motivation for police action. Police action must be based on other factors, which are determined by national law. A starting point is usually based on determining ‘reasonable grounds’ to form a ‘suspicion’, such as those based on suspicious or unusual behaviour in a given context. Otherwise, actions taken through profiling based on specific protected grounds, like ethnicity, can be discriminatory.

What is discriminatory ethnic profiling?

Ethnic profiling has become a prominent topic since the terrorist attacks in New York, Pennsylvania, and Washington D.C. (2001), Madrid (2004) and London (2005). International organisations, such

9. For more on this, see FRA and Council of Europe (2011), *Handbook on European non-discrimination law*, Luxembourg, Publications Office, pp. 43 and following, available at: <http://fra.europa.eu/en/publication/2011/handbook-european-non-discrimination-law>.

10. Hogg, M. and Vaughan, G. (2011), *Social Psychology*, 6th ed., Essex, Pearson Education Limited, pp. 356 and following.

as the UN, the Council of Europe and the EU, as well as NGOs have raised concerns about it and, as a result, participants may be particularly curious about it. It is therefore useful to be familiar with this particular type of profiling.

The FRA publication on *Understanding and preventing discriminatory ethnic profiling: A guide* addresses this topic and contains the following terminology:

“Discriminatory ethnic profiling involves:

treating an individual less favourably than others who are in a similar situation (in other words ‘discriminating’), for example, by exercising police powers such as stop and search; where a decision to exercise police powers is based only or mainly on that person’s race, ethnicity or religion.”

Source: FRA (2010), *Understanding and preventing discriminatory ethnic profiling: A guide*, Publications Office, October 2010, p. 15, available at: <http://fra.europa.eu/en/publication/2012/understanding-and-preventing-discriminatory-ethnic-profiling-guide>

2. Analytical scheme – Non-discrimination¹¹

Let us now turn to the question of how to analyse whether a specific situation represents discrimination.

As is the case with the human rights analysis in Module 3, a two-step approach is helpful. The steps of the analysis differ from those encountered in Module 3 regarding the obligations to respect and protect. However, there are also similarities with regard to the principle of proportionality.

Part 1: Is there unequal treatment linked to a specific characteristic of a person?

Part 2: Are there any objective or reasonable grounds for this unequal treatment?

This analysis is geared toward completing Activity 4 and Handout 3. However, the information can be useful for all of the activities found in this module.

Analytical process

PART 1: EQUAL TREATMENT OR DIFFERENTIAL TREATMENT?

1.1. Are there any indicators for differential treatment?
Are like situations treated in an unlike manner?
Are unlike situations treated alike?

Answering these questions helps to uncover similarities and differences in treatment. Seeing how these attributes overlap and diverge makes it easier to focus the analysis on those elements that may be involved in discriminatory treatment.

1.2. Is the differential treatment made on the basis of a protected ground?

The protected grounds are: sex, ‘race’, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other

11. Based on Suntinger, W. (2005), *Menschenrechte und Polizei, Handbuch für TrainerInnen*, Vienna, Bundesministerium für Inneres, pp. 84-88.



opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

PART 2: JUSTIFIED DIFFERENTIAL TREATMENT OR DISCRIMINATION

If differential treatment linked to a protected ground is identified in Part 1 of the analysis, then Part 2 can be used to identify the reasoning behind differential treatment and whether that treatment is justified. According to international human rights law, a difference in treatment can only be justified if there are reasonable and objective reasons for it. Answering the following questions can help to determine this:

- All questions answered '**YES**': the differential treatment is justified.
- One or more questions answered '**NO**': the differential treatment is not justified and is considered discrimination.

2.1. Is the distinction based on reasonable and objective grounds?

- Does the differential treatment pursue a legitimate aim?
- Is it suitable? Is it necessary? Is it the least intrusive measure? Are there any alternatives?

Handout – Activity 3: Human rights analysis – non-discrimination

Case study A: Turned back at checkpoint

This analysis is based on the ECtHR judgment in *Timishev v. Russia* case, Nos. 55762/00 and 55974/00, from 13 December 2005.

This case is a good illustration of...

...the factors that turn differential treatment into discrimination

...that it is legitimate to treat people differently based on reasonable and objective grounds, such as behaviour, but that it is discriminatory to treat people differently based on protected grounds, such as ethnic origin

Analysis

PART 1: EQUAL TREATMENT OR DIFFERENTIAL TREATMENT?

- 1.1. Are there any indicators for differential treatment?
Are like situations treated in an unlike manner?
Are unlike situations treated alike?**

Mr T was refused entry into Ka-Ba, a province of State B, whereas other drivers – persons in the same situation – were allowed to cross the administrative border into Ka-Ba.

- 1.2. Is the differential treatment made on the basis of a protected ground?**

The question of whether the differential treatment was due to a protected ground is disputed in this case. Mr T linked the refusal of entry to his ethnic background, a protected ground with ethnic origin overlapping with 'race'. The authorities maintained that the difference in treatment was not linked to such a ground, but rather that Mr T's conduct provoked it.

The ECtHR gave credence to the applicant's version of events, which was corroborated by independent inquiries carried out by the prosecution and police authorities. (*Ibid.*, paragraph 44)

"Turning to the circumstances of the present case, the Court notes that the [Ka-Ba] senior police officer ordered traffic police officers not to admit ['Ethnicity X']. As, in the Government's submission, a person's ethnic origin is not listed anywhere in [State B] identity documents, the order barred the passage not only of any person who actually was of [X] ethnicity, but also of those who were merely perceived as belonging to that ethnic group. It has not been claimed that representatives of other ethnic groups were subject to similar restrictions [...] In the Court's view, this represented a clear inequality of treatment in the enjoyment of the right to liberty of movement on account of one's ethnic origin." (*Ibid.*, paragraph 54)



PART 2: JUSTIFIED DIFFERENTIAL TREATMENT OR DISCRIMINATION**2.1. Is the distinction based on reasonable and objective grounds?**

If it is established that there was differential treatment linked to a protected ground, it is up to the state to show that this difference can be justified. In other words, the state must show good reasons that can be considered reasonable and objective.

In this case, the *“Government did not offer any justification for the difference in treatment between persons of [X] and non-[X] ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”* (Ibid., paragraph 58)

Accordingly, the difference in treatment was found to constitute discrimination.

Case study B: Identity check at train station

The analysis is based on the proceedings of the United Nations' Human Rights Committee in *Williams v. Spain*, No. 1493/2006, from 17 August 2009.

This case is a good illustration of...

...the main characteristics of prohibited ethnic profiling by police: acting only or mainly on a person's 'race', ethnicity or religion.[...]

...ethnic profiling as a violation of the human dignity of the persons concerned.

Additional case details

Ms W brought proceedings against her treatment by the police to the Country E courts, which found the selective identity check by the police to be legal, as it could be justified by the legitimate objective of controlling illegal immigration. Ms W filed a complaint with the UN Human Rights Committee which monitors implementation of the International Covenant on Civil and Political Rights. She argued that Country E had violated Article 26 of the ICCPR which prohibits discrimination.

Analysis

PART 1: EQUAL TREATMENT OR DIFFERENTIAL TREATMENT?

1.1. Are there any indicators for differential treatment? Are like situations treated in an unlike manner? Are unlike situations treated alike?

It was not disputed that Ms W was the only passenger the police officer stopped and whose identity he checked. She was thus treated differently from the other passengers who were not checked.

1.2. Is the differential treatment made on the basis of a protected ground?

What were the reasons for this differential treatment of Ms W?

In the domestic proceedings it became clear that the police officer stopped and checked her because of her skin colour. The police officer openly acknowledged this. This fact was not disputed before the domestic courts. What remained unclear was whether the police officer had acted on a written order. Even had this been the case, it would not have altered the key issue: the clear link between skin colour and the police officer's treatment of Ms W.

The Human Rights Committee said:

"In the present case, it can be inferred from the file that the identity check in question was of a general nature. The author alleges that no one else in her immediate vicinity had their identity checked and that the police officer who stopped and questioned her referred to her physical features in order to explain why she, and no one else in the vicinity, was being asked to show her identity papers. These claims were not refuted by the administrative and judicial bodies before which the author submitted her case, or in the proceedings before the Committee."

United Nations, Human Rights Committee, No. 1493/2006, Williams v. Spain, 17 August 2009, paragraph 7.4



“A State’s international responsibility for violating the International Covenant on Civil and Political Rights is to be judged objectively and may arise from actions or omissions by any of its organs of authority. In the present case, although there does not appear to have been any written order in [Country E] expressly requiring identity checks to be carried out by police officers based on the criterion of skin colour, it appears that the police officer considered himself to be acting in accordance with that criterion, a criterion considered justified by the courts which heard the case.” (Ibid., paragraph 7.3)

“In the circumstances, the Committee can only conclude that the author was singled out for the identity check in question solely on the ground of her racial characteristics and that these characteristics were the decisive factor in her being suspected of unlawful conduct.” (Ibid., paragraph 7.4)

PART 2: JUSTIFIED DIFFERENTIAL TREATMENT OR DISCRIMINATION

If differential treatment is indeed linked to a protected ground, there still remains the question of a possible justification for this differential treatment. According to international human rights law, a difference in treatment can only be justified if there are reasonable and objective reasons for it.

The Human Rights Committee: *“[...] recalls its jurisprudence that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”*

2.1. Is the distinction based on reasonable and objective grounds?

The Country E authorities argued that carrying out the identity check in this case was perfectly lawful and that it pursued the legitimate aim of controlling illegal immigration. If one accepts that this aim is legitimate, one must also accept, in their view, that *“police checks carried out for that purpose, with due respect and a necessary sense of proportion, may take into consideration certain physical or ethnic characteristics as being a reasonable indication of a person’s non-[Country E] origin.”* (Ibid., paragraph 4.3)

While the committee agreed with the government on the legitimacy of the purpose of controlling illegal immigration, it disagreed on the point of police action triggered solely by physical and ethnic characteristics.

“In the case under consideration, the Committee is of the view that the criteria of reasonableness and objectivity were not met. Moreover, the author has been offered no satisfaction, for example, by way of apology as a remedy.” (Ibid.)

This finding of a lack of reasonableness and objectivity was taken against the backdrop of the known effects of such treatment: *“To act otherwise [targeting only persons with specific characteristics] would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.”* (Ibid., paragraph 7.2)

Training tip: Taking participants concerns seriously

Some participants might object, saying police need to use external characteristics to do their job. They might wonder whether this ruling means that they cannot ever use skin colour or other physical features as relevant policing criteria. Others might ask where to draw the line between using external characteristics appropriately and prohibited profiling.

These comments clearly express why it is so difficult to address ethnic profiling in a police training setting as it is seen as challenging some of the most basic assumptions about what good policing is. And this might cause a feeling of insecurity to which participants react, often very emotionally.

It is therefore of crucial importance in a training situation to be able to step into the shoes of participants and to take their fears seriously.



Supplementary material

Protected grounds – ‘Classical’ and ‘new’ ones

In a historical European perspective, the principle of equality was primarily directed at privileges associated with certain groups within society, such as men, persons of higher birth status or persons with property. Constitutional law provisions in many EU Member States reflect this history.

These grounds can be seen as the ‘classical’ ones. The 20th century has witnessed an important expansion of the list of prohibited grounds of distinctions. The most comprehensive current list is found in Article 21 of the Charter of Fundamental Rights of the European Union which contains the following grounds: “sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”. Disability, age, sexual orientation or genetic features, are not included explicitly in Article 14 of the ECHR, a text that was drafted in 1950. But one needs to remember that the lists of prohibited grounds in most human rights instruments are not exhaustive, a fact which enables their expansion through case law.

Why is this expansion of the list of grounds worth highlighting? It is an interesting reflection of two interrelated issues:

- social perceptions and values are in a constant flux and this is reflected in the dynamic nature of human rights development,
- social forces or movements have driven this expansion. They take up the human rights language to strengthen their demands: as the women’s rights movement did, and, more recently, the Lesbian, Gay, Bisexual and Transgender persons movement.

Training tip: Expanding the list

Police culture tends to be characterised by a certain conservative outlook when it comes to changing social perceptions. ‘Gut resistance’ is frequently encountered when discussing these issues. Experience shows that discussing this expanding list of grounds can be a useful way of showing the broader picture. It helps to deal with this difficult topic in a constructive way.

Multiple discrimination

People belonging to ‘visible’ minorities, such as Roma or people of African origin, are more likely than other minorities to suffer multiple discrimination – that is, discrimination on more than one ground. Socio-economic factors, such as low income, may also make people more vulnerable to multiple discrimination.

As mentioned in the Briefing notes, most EU courts deal with only one ground of discrimination per case. This means that victims of multiple discrimination find it harder to present their case in court and be compensated for all the different types of discrimination suffered. Introducing the concept of ‘multiple discrimination’ into legislation could help to better align the law with the complex experiences of discrimination people actually face.

FRA ACTIVITY

Finding evidence of discrimination

The FRA European Union Minorities and Discrimination Survey (EU-MIDIS, 2010), which asked 23,500 members of immigrant and ethnic minority groups about their experiences of discrimination and criminal victimisation, found that one in four ethnic minority or immigrant respondents in the EU felt discriminated against on two or more grounds during the 12 months preceding the survey. Their responses classified ethnic or immigrant origin as the most significant ground for experiencing discrimination. The grounds of discrimination surveyed were: ethnic or immigrant origin, sex, sexual orientation, age, religion or belief, disability and other reasons relevant to the respondent.

For more information, see FRA (2011), EU-MIDIS Data in Focus 5: Multiple Discrimination, Luxembourg, Publications Office, available at: <http://fra.europa.eu/en/publication/2011/eu-midis-data-focus-report-5-multiple-discrimination>

Profiling: definitions and potential effects

Ethnic profiling

FRA ACTIVITY

Avoiding discriminatory ethnic profiling

Discriminatory ethnic profiling is a practice that is generally underreported and little understood. The FRA publication *Understanding and preventing discriminatory ethnic profiling: a guide* looks at profiling as a practice in the context of law enforcement and explains how profiling that uses race, ethnicity or religion is considered discriminatory and therefore unlawful.

For more information, see FRA (2010), *Understanding and preventing discriminatory ethnic profiling: a guide*, Luxembourg, Publications Office, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1133-Guide-ethnic-profiling_EN.pdf

As mentioned in the Briefing notes, the FRA guide provides terminology for ‘ethnic profiling’. This is based on definitions and explanations provided by various bodies such as the:

- European Commission against Racism and Intolerance (ECRI) adopted a General Policy Recommendation No. 11 on *Combating racism and racial discrimination in policing* that defines ‘racial profiling’ as:¹⁴
“The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”.
- ECtHR made the following statement on this issue in a leading judgment:
“[...] no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”¹⁵
- UN Human Rights Committee has provided the following passage on this topic:
“[...] When the authorities carry out such [identity] checks, the physical or ethnic characteristics of the persons subjected thereto should not by

14. Council of Europe, European Commission against Racism and Intolerance (2007), *Combating racism and racial discrimination in policing*, CRI(2007)39, Strasbourg, Council of Europe, 29 June 2007.

15. ECtHR, *Timishev v. Russia*, Nos. 55762/00 and 55974/00, 13 December 2005, para. 58.

themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.”¹⁶

Three types of police profiling:

- **Profiles based on specific intelligence regarding a suspected offender:** Profiling is most obviously a legitimate tool for the apprehension of suspected offenders once a crime has been committed. Using a profile that lists the characteristics belonging to specific suspects as a tool to assist in their apprehension is typically seen as a ‘common sense’ approach to policing. It is based on evidence gathered in relation to a particular event or chain of events.
- **Profiles not based on specific intelligence:** Profiling can also be a legitimate and useful tool in identifying individuals who may be committing an offence in a ‘hidden’ manner, such as concealing prohibited items, or are likely to commit an offence in future, such as being en route to a robbery. Profiles that are heavily based on types of behaviour are less likely to be found to discriminate on the basis of ‘race’, ethnicity and religion.
- **Profiling based on generalisations:** This may occur as a consequence of organisational policy, for example, where explicit written or oral instructions are issued to target particular groups. It may also occur at an operational level, where individual officers may apply stereotypes or generalisations based on ‘race’, ethnicity or religion. This may be consciously motivated by personal prejudices, or it may be that officers are not conscious of the degree to which they are applying generalisations and stereotypes.

The distinction between permissible profiling and discriminatory ethnic profiling

Where officers stop individuals and this choice is based solely or mainly on the individual’s ‘race’, ethnicity or religion, this amounts to direct discrimination and is unlawful. What is meant by ‘main reason’ is that the officer would not have stopped the individual were it not for their ‘race’, ethnicity or religion. Although it is acceptable for ‘race’, ethnicity or religion to be one of the factors that the officer takes into account, it cannot be the sole or main reason for the stop.¹⁷

An example from the FRA publication *Understanding and preventing discriminatory ethnic profiling: a guide*: “Following a series of brutal robberies in Austria’s capital city Vienna, allegedly committed by two dark-skinned male perpetrators, law enforcement officials were ordered to stop all black men seen in groups for identity checks. After a public outcry, the order was refocused on ‘black Africans, about 25 years old and 170 cm tall, slim figure, wearing [...] light down jackets’. In one day, the police stopped and searched 136 black men but none of them were found to have any connection with the robberies. Stopping individuals on the basis of the original suspect description is likely to be considered an example of direct discrimination, whereas using the second profile would probably not be. Obviously, the ethnicity of the suspect is important to

16. United Nations, Human Rights Committee, No. 1493/2006, *Williams v. Spain*, 17 August 2009, para. 7.2.
17. http://fra.europa.eu/sites/default/files/fra_uploads/1133-Guide-ethnic-profiling_EN.pdf.

identify them. However, it cannot be the only basis for law enforcement measures against a person. What emerges from the above cases is that police 'suspicion' should be raised by an individual's behaviour or similar factor that singles him or her out rather than by characteristics such as 'race', ethnicity or religion. (Ibid., p. 22)

Intentional discrimination – Discriminatory effect

In discussions about ethnic profiling you might encounter objections, contending that ethnic profiling cannot be discriminatory because there was no intent to discriminate. Two points should be made in response:

- International human rights law makes clear that discrimination covers not only cases in which a person is treated less favourably on purpose but also those situations where the less favourable treatment is simply the effect of certain actions, without any 'bad intention'.
- Equality-sensitive police must therefore consider how their counterpart perceives and experiences their actions.

Why discriminatory ethnic profiling is harmful and counter-productive¹⁸

- **Negative effects at individual level:** It is harmful to human dignity and may humiliate or even traumatise individuals. Broad profiling ignores that unique individuality of each of us. The law requires that each person be treated as an individual. While it may be true that Islamic extremist terrorists associated with the threat in question tend to be of Muslim and Asian appearance, this cannot give rise to an assumption that all those who are Muslim or are of Asian appearance are terrorists.
- **Negative effects at community level:** For similar reasons, discriminatory ethnic profiling can also be considered counter-productive. If action is taken on the basis of unlawful profiling, it can increase racial tensions, fuelling minority groups' resentment of the police and the majority population. The sum of these 'individual experiences may translate into negative group effects'. Where a racial, ethnic or religious profile is applied, the minority group may develop a negative perception of itself internally and, externally, the wider community may develop a negative perception of that community. The minority group may become a 'suspect community', which the public associates with criminality. This may result in additional negative consequences, such as increasing racial prejudice. Police may spend a disproportionate amount of resources supervising the minority group, which, in turn, is likely to lead to higher numbers of arrests, creating a self-fulfilling relationship between intensive policing and higher arrest rates.

Negative effects on effective policing: Two issues point to the negative effects of discriminatory ethnic profiling on police effectiveness:

- Ethnic profiling may lower the rate of detections and arrests of policing. Some evidence from research undertaken on drug couriers shows that removing 'race' or ethnicity from a general criminal profile, rather than a specific suspect profile, and requiring officers to look at specified non-ethnic criteria can help improve the efficiency or the rate of detections and arrests of policing while avoiding discriminatory treatment. Profiles are both predictable and evadable. Over-reliance on a stereotyping profile may actually increase the overall offending rate for that crime over time for two reasons:

18. Based on *Ibid.* pp. 37 and following.



- . First, groups that are not associated with certain crimes may be able to commit these crimes while police attention remains focused on another group. Thus, even as law enforcement may achieve a certain rate of detections and arrests among minorities, the offending rate in the majority population may increase precisely because its members are not targeted and thus are less likely to be caught.
- . Secondly, groups of people who are criminally targeted may live up to that stereotype – a process that has been explained by sociologists and criminologists via theories such as ‘labelling’.
- Ethnic profiling may lead to a lack of cooperation which may lower police efficacy: policing is profoundly dependent on the general public’s cooperation; if confidence and trust in the police is damaged, then cooperation becomes less likely. Law enforcement authorities rely on the public not only as witnesses for the investigation of crimes but also for the prevention and detection of incidents. Without public cooperation, law enforcement officers rarely identify or apprehend suspects, or obtain convictions. Research in the United Kingdom and the United States shows that when members of the public feel unhappy about encounters with the police this undermines public confidence in and cooperation with enforcement authorities. This is because individuals concerned may share their experience with family members, friends and associates.

MODULE 6: HUMAN RIGHTS OF POLICE OFFICERS

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Human rights of police officers

Introduction

The subject of the human rights of police officers is an important element in training and one that comes up in almost every human rights training course: “What about my human rights? Who cares about them?” Taking these concerns seriously can contribute to police officers’ acceptance of the human rights system as a whole. Police officers need to understand the benefit of human rights not only for others but also for themselves. Police officers are confronted with many human rights-relevant questions when performing their jobs; they are also directly affected when it comes to their own rights.

One might consider starting the training course with this module in an effort to show participants that their concerns are taken seriously. This would help reduce the moral ‘charge’ of human rights and encourage a positive approach towards human rights during the training course.

Participants’ concerns sometimes stem from the sense that neither the public nor police authorities respect or value their work. In the discussion it might be useful to ask participants to come up with concrete examples and take a look at them from a human rights perspective. To maximise your discussion input, familiarise yourself with national rules and regulations that are established for the specific protection of police officers, such as in the penal code, inner-organisational regulations regarding working conditions, operational measures for the protection of police officers and police union activities.

Activity 1: Human rights experiences

Purpose:

Police officers often bring up the issue of their human rights during human rights training because they don't feel that they are protected by them. It is, therefore, a good idea to take a pro-active approach to this question and incorporate it into an early stage of training.

Objectives:

Knowledge

- understand the notion of human rights of police officers

Attitude

- gain an increased acceptance of others' human rights through the acknowledgement of their own
- raise awareness of their own rights and the empowering function of human rights
- feel part of the human rights system rather than its opponent

Skills

- be able to conduct a human rights analysis of organisational structures and practices

Requirements:

- time: 60–70 minutes
- materials:
 - flip charts with discussion questions
 - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size: 15–20 persons



Activity 1 description: **Human rights experiences**

- ❶ Introduce the purpose and objective of the activity.
- ❷ Ask participants to think individually about 2–3 examples that they either experienced personally or heard about, where their human rights as police officers were respected or protected and another 2–3 examples where they were not. Write both categories on the flipchart. (about 10 minutes)
- ❸ The examples given should be as concrete as possible, describing an organisational practice, order, an actual situation or a short scenario/case. In other words, prefer a specific example, such as: “last week my superior called me and addressed [...]” to the more general “superiors don’t care about the needs of employees”.
- ❹ Have participants form 3–4 person discussion groups, discuss their experiences and select 2–3 positive and negative examples to present to the plenary. (about 25 minutes)
- ❺ Answer any questions that arise during group work.
- ❻ The groups present their examples to the plenary. Discuss them (what is the impression of the other participants? Is this example also applicable to other participants’ working environments?) Look at the examples from a human rights perspective: how are the examples of relevance to human rights? What rights are concerned? What organisational structures tend to favour or obstruct police officers’ full enjoyment of their human rights? (about 30 minutes)
- ❼ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

Activity 2: Case study – discrimination in the workplace

Purpose:

Police officers often bring up the issue of their human rights in human rights training because they don't feel that they are protected by them. It is, therefore, a good idea to take a pro-active approach to this question and incorporate it into an early stage of training.

Objectives:

Knowledge

- understand the notion of human rights of police officers
- know the relevant questions of a human rights analysis with respect to their own rights

Attitude

- have an increased acceptance of others' human rights through the acknowledgement of their own
- raise awareness of their own rights and the empowering function of human rights
- feel part of the human rights system rather than its opponent

Skills

- be able to take a human rights perspective on their own rights
- be able to raise the relevant questions that apply to human rights analysis and use them within participants' own organisational contexts

Requirements:

- time: 60–90 minutes
- materials:
 - Handout 1 with case study and guiding questions
 - optional: power point presentation and projector
 - flipchart
- space: plenary room plus two working group rooms
- group size: 15–20 persons



Activity 2 description: **Case study – discrimination in the workplace**

- ① Introduce the purpose and objectives of the activity.
- ② Present the case in the plenary.
- ③ Distribute the handout. (Case study plus guiding questions)
- ④ Ask participants to think individually about their approach to solving the case study.
- ⑤ Have participants form 5–6 person groups to discuss the case.
- ⑥ Answer any questions that arise during group work.
- ⑦ Have groups present their results in the plenary. Discuss the solutions proposed – take down some key points on the flipchart.
- ⑧ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

Handout – Activity 2: Case study – discrimination in the workplace

Case study: Discrimination in the workplace

Despite numerous applications over seven years, Assistant Chief Constable Alison Halford was not promoted. She believes her superior, the Chief Constable, did not promote her because he objected to her commitment to the equal treatment of men and women. She therefore started discrimination proceedings on the ground of sex.

During the following months, she felt that certain members of her department launched a 'campaign' against her because of her complaint. She alleged that the landline phone in her private office was tapped in order to obtain information to use against her in the discrimination proceedings. She presented evidence to support her allegations and claimed a violation of her human rights.

Discussion questions:

1. What human rights are applicable?
2. Does the tapping of an office phone constitute an interference with human rights?
3. Does the tapping of an office phone constitute a violation of human rights?
4. What (conflicting) interests are involved?
5. What other areas of tension might arise with respect to human rights at the workplace?



Handout – Activity 2: **Case study – discrimination in the workplace** *(continued)*

PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE?

1.1. Which human right(s) is/are applicable to the concrete situation?

1.2. Does any state action interfere with the applicable human rights?

PART 2: JUSTIFICATION OR VIOLATION?

2.1. Is there a domestic legal basis for state action?

Briefing notes

These Briefing notes discuss the human rights of police officers. They then turn to an analysis of the case study on respecting human rights, using the analytical scheme presented in Module 3.

1. Key concepts

- a. Do police officers have human rights?
- b. Challenges to the human rights of police officers.
- c. Which human rights are particularly relevant to police officers?

2. Activity guide: human rights analysis

- Application of human rights analysis, especially the principle of proportionality, with respect to police officers' human rights.

1. Key concepts

a. Do police officers have human rights?

When talking about human rights, the most prominent consideration is the relationship between private persons and the state. When talking about human rights and police, the first consideration is that the police are acting as state agents and are therefore obliged to respect and protect the rights of the people. Police officers themselves, however, often raise the question of whether, as they carry out their duties, they are also rights' bearers. The answer is a simple 'yes'.

- Police officers are entitled to the same rights and freedoms as other persons and are protected by human rights when performing their jobs. They can refer to their rights laid down in various international human rights documents, such as: the European Convention on Human Rights (ECHR) or the International Covenant on Civil and Political Rights (ICCPR). The same principles apply to the human rights of police officers as to human rights in general. Police rights may be restricted, but only if they are relative rights and their restriction is necessary in a democratic society for the police to function in accordance with the law and with respect to the principle of proportionality.¹
- Human rights are indivisible and refer to all human beings due to their inherent dignity. Joining a police organisation or putting on a uniform does not mean that one must sacrifice human rights for the sake of that organisation's internal rules. A former interpretation held that human rights were not applicable to police officers,² but this restrictive conception is now out-dated.
- One exception to this general notion of human rights of police officers can be found in Article 11 of the ECHR,³ which refers to the right to freedom of assembly and association. Article 11 (2) does not prevent states from imposing lawful restrictions on the exercise of the right to freedom of assembly and association for members of the armed forces, the police or the state administration. Because of their specific positions, the right to freedom of assembly and association of states' agents may be subject to tighter restrictions than that of the average citizen. This reflects the state's interest in prioritising vital security

1. Council of Europe, Committee of Ministers (2001), Explanatory Memorandum, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, 19 September 2001.

2. This also referred, for example, to state agents, members of the armed forces as well as convicts.

3. See also: United Nations (UN), International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, Art. 22 (2).



functions over individual interests. A complete denial of the right to freedom of assembly and association, however, might not adhere to Article 11 (2) of the ECHR. Restrictions must be in accordance with domestic law and they must not be arbitrary.⁴ A Hungarian constitutional ban on police officers' political activities and membership in political parties was not found to violate Article 10 and 11 of the ECHR because it served the legitimate aim of depoliticising the police after the communist era and was not disproportionate during the transformation from a totalitarian regime to a pluralistic democracy.⁵

Exposure to challenging situations is part of the job of a police officer. It is understandable that such exposure may call forth emotions such as anger or aggression. During a training course, participants may use arguments such as: "As a police officer I have to accept that people shout at me, spit at me, disrespect me, throw stones at me and I still have to stay respectful, polite and calm. That's too much."

Therefore a police organisation must ensure that its police officers receive sufficient operational guidance before they get into such situations. There also needs to be room for reflection following difficult police operations. Training offers an opportunity to raise awareness among police officers as to why it is important – for themselves, the police and society as a whole – that human rights are protected and respected even in difficult situations.

Police officers often consider aggressive acts towards the police as human rights violations, but we can't speak of human rights violations concerning acts of individuals against police officers. The relevant human rights axis is actually drawn between the police officer and the police organisation. How are police officers prepared for an operation? What measures protect them in dangerous situations? What equipment do they require? What strategic operational measures have been put in place?

**European Code of Police Ethics, Committee of Ministers Rec(2001)10
Articles**

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.

4. Grabenwarter, C. (2005), *Europäische Menschenrechtskonvention*, Vienna, Verlag C. H. Beck, pp. 263 and 271.

5. ECtHR, *Rekvényi v. Hungary*, No. 25390/94, 20 May 1999.

b. Challenges to the human rights of police officers

- If working conditions and organisational structures or measures fail to ensure or even undermine/violate the human rights of police officer. “My boss just gives orders. He always says – if you don’t like it, you can leave. As long as you are here, you belong to my command.” Or “We have been asked to submit DNA samples, this is against our human rights.”

Police leaders are responsible for dealing with their employees’ human rights. Structural factors and the culture of a police service also impact on the civil, economic and social rights of police officers, such as working conditions/hours, social security, transparency and participation in communication and management processes, human resource management, managerial responsibility or training and education. A closer look at the organisation from a human rights perspective provides important information about whether or not the setting favours the human rights of police officers.

- If police officers are confronted with aggressive, highly provocative or violent behaviour and are restricted – from their point of view – to moderate interventions. “During protests I have to stand in a row. Protestors provoke us, spit at us, throw objects at us and act violently, while all we are allowed to do is hunker down behind our shields.”

When carrying out police functions, especially when applying police powers, a police officer is not acting as a private individual but as an organ of the state. The state’s obligation to respect and protect human rights therefore has a direct effect on the options a police officer has to respond to aggression. The rights of police officers, who might risk injury or death to fulfil their duties, must also be respected and protected, such as by providing protective equipment, carefully planning police operations or putting in preventive measures. Restrictions to his/her rights might be necessary for the exercise of police functions but any such limitations must reflect the principle of proportionality. Given their particular role as a state organ, police might face a greater limitation of their rights than a ‘normal citizen’. Returning to the example of a demonstration turning violent, a ‘normal citizen’ might run away or seek help, whereas a police officer is obligated to protect the human rights of others and restore public order.

- If a police officer is confronted with allegations of ill-treatment or held responsible for acts/omissions in performance of his/her duties.

Generally, a police officer’s superiors will hold him or her liable through disciplinary proceedings within the organisation. If serious consequences result from police action, a police officer must bear individual responsibility for his/her acts or omissions before the criminal justice system and face penalties including imprisonment. In such cases, vital interests conflict: everyone has the right to scrutinise police acts and to compensation in case of misconduct while police officers have the right to a fair trial including the presumption of innocence. These conflicting interests must be balanced by considering the police’s function and the principle of proportionality. Standards developed by jurisprudence of international human rights courts contribute to a fair procedure in such cases.



Training tip: Dealing with the feeling of “we don’t have any rights, nobody cares about us.”

- Emphasise that police officers have a legitimate claim to human rights based on human rights law;
- Clarify a police officer’s individual responsibility and accountability for his/her actions and discuss the consequences;
- Use cases studies, such as the *Halford* case, on the human rights of police officers;
- Launch the day with a situation in which police officers must deal with this issue, such as a hearing;
- In scenario training, explain and make explicit that the human rights of police officers are also protected;
- Mention that monitoring bodies like the European Committee for the Prevention of Torture take into consideration the working conditions and organisational structures relevant to the human rights of police officers;
- Explain domestic procedures to protect the rights of police officers from a human rights perspective (labour rights, police unions, safety regulations, social security issues, anti-discrimination and anti-harassment procedures).

Human rights and democracy determine the role and the objectives of policing, including the duties of police and how these should be carried out. Acknowledging the human rights of police officers is an important element of the rule of law, and helps embed police within the society they serve.⁶

Human rights of police officers are of value *per se*, and upholding police officers’ rights is linked to their human rights performance. The European Committee for the Prevention of Torture, for example, monitors detention facilities throughout Europe, focusing on the conditions of detainees. To do so, it also looks at the working conditions of the officers in detention facilities. Factors such as understaffing, working hours and material conditions are all relevant for human rights performance.

c. Which human rights are particularly relevant to police officers?

National legislation and internal organisational directives determine the human rights of police officers. In addition, there is a human rights perspective from a higher level. In many police organisations, the rights of police officers are talked about when it comes to concrete rules and regulations related to issues such as pay, overtime, leave or working conditions. But this debate is only rarely couched in human rights language. The *Halford* case is a good example of a different approach. It shows that human rights are relevant to internal organisational standards.

Restriction of the rights of police officers must be grounded in law and allowed only when there is a legitimate aim and the principle of proportionality is respected.

6. Council of Europe, Committee of Ministers (2001), Explanatory Memorandum, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, 19 September 2001, p. 30.

Table 6.1: Examples of the human rights of police officers

<p>Right to life Article 2 of the ECHR Article 2 of the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights) Article 6 of the ICCPR</p>	<p>Right to be protected in dangerous situations Equipment, training, professional police operations, allocation of adequate resources, effective investigation when a police officer has died on duty</p>
<p>Right to a fair trial Article 6 of the ECHR Articles 47 and 48 of the EU Charter of Fundamental Rights Articles 14 and 15 of the ICCPR</p>	<p>If a police officer must stand trial in criminal proceedings due to acts performed as an official, all fair trial elements apply (right to be informed of the accusation, right to defence including the right to remain silent, legal assistance, presumption of innocence, review by an independent body)</p>
<p>Right to privacy, including data protection Article 8 of the ECHR Articles 7 and 8 of the EU Charter of Fundamental Rights Article 17 of the ICCPR</p>	<p>To have a reasonable expectation of privacy in the workplace (<i>Halford v. UK</i>). Sensitive issues: workplace surveillance, email and telephone monitoring, drug testing, requirements to submit DNA samples, fingerprints, regulations on appearance</p>
<p>Freedom of expression Article 10 of the ECHR Article 11 of the EU Charter of Fundamental Rights Article 19 of the ICCPR</p>	<p>Political activities of police officers with respect to ensuring political neutrality with the police services, confidentiality of official information</p>
<p>Freedom of assembly and association Article 11 of the ECHR Article 12 of the EU Charter of Fundamental Rights Articles 5 and 6 of the European Social Charter (ESC) Articles 21 and 22 of the ICCPR Article 8 of the ICESCR</p>	<p>Forming police labour organisations. Are police officers allowed to strike?</p>
<p>Freedom from discrimination Article 14 of the ECHR, Articles 20 and 21 of the EU Charter of Fundamental Rights Article 26 of the ESC Articles 2 and 24 of the ICCPR Article 2 (2) of the ICESCR</p>	<p>Discriminatory recruitment procedures, working conditions, promotion practices, equal pay for men and women, dismissal practices, harassment</p>
<p>Right to fair and just working conditions Articles 2, 3 and 4 of the ESC Article 31 of the EU Charter of Fundamental Rights Article 7 of the ICESCR</p>	<p>Reasonable working hours, rest periods, paid holidays, adequate remuneration, health and safety regulations</p>
<p>Social security Articles 8, 12, 27 and 32 of the ESC Article 34 of the EU Charter of Fundamental Rights Articles 9 and 10 of the ICESCR</p>	<p>Pension system, sick leave (especially with respect to on-duty accidents), invalidity insurance, maternity leave, childcare responsibilities</p>

Source: Information in this table is primarily drawn from Council of Europe, *European Platform for Policing and Human Rights*, Police officers have rights too!, Strasbourg, Council of Europe



2. Activity guide: human rights analysis

Case study: Discrimination in the workplace

This case study is a good illustration...

... that human rights are applicable to police officers as well. There are cases before the ECtHR on whether the human rights of police officers have been respected and/or protected.

... that there is a reasonable expectation of privacy on business premises/at police stations. An interference with Article 8 of the ECHR must adhere to the law, reflect a legitimate aim and give due consideration to the principle of proportionality.

Analysis

The case of Assistant Chief Constable Halford refers to the obligation of the state to respect her human rights. We apply the human rights analysis tool introduced in Module 3 to find out whether an interference is justified or there has been a human rights violation.

PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE?

1.1. Which human right(s) is/are applicable to the concrete situation?

Additional Protocol 12, European Convention on Human Rights Articles

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, 'race', colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Additional Protocol 12 to the ECHR contains a general prohibition on discrimination relevant to the lack of promotion. However, at the time this case occurred, Protocol 12 had not yet entered into force. A national tribunal awarded Assistant Chief Constable Halford compensation for discrimination with respect to the lack of promotion. She focused her ECtHR case on the tapping of her office phone. At present, Additional Protocol 12 of the ECHR is binding for seven EU Member States. The equivalent provision in Article 26 of the ICCPR is applicable to all EU Member States.

European Convention on Human Rights Articles 8: Right to privacy

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

With respect to Article 8 the ECtHR observed that “telephone calls made from business premises as well as from the home may be covered by notions of ‘private life’ and ‘correspondence’”.

ECtHR, Halford v. United Kingdom, No. 20605/92, 25 June 1997, paragraph 44

Article 8 comprises various aspects of privacy such as individual autonomy and identity, home, family, marriage and the secrecy of correspondence. Although correspondence was initially applied to written letters, it now covers all modern forms of communication and data transfers including telephone calls and emails.

1.2. Does any state action interfere with the applicable human rights?

Any withholding, censorship, inspection or interception of publication of private correspondence constitutes interference.⁷

Assistant Chief Constable Halford said her office telephones were tapped. Therefore the question arises whether the notion of privacy also applies to business premises, or in this specific case, to police stations.

There was no evidence of any warning given Ms Halford, as a user of the internal telecommunications system operated at her department, that calls made on that system would be liable to interception. (*Ibid.*, paragraph 45) “*She would have had a reasonable expectation of privacy*” (*Ibid.*) for such calls, the ECtHR said.

The ECtHR did not agree with the defendant’s view that “*the employer should in principle, without the prior knowledge of the employee, be able to monitor calls made by the latter on telephones provided by the employer.*” (*Ibid.*, paragraph 43)

The ECtHR concluded that “*the telephone conversations made by Ms Halford on her office telephone fell within the scope of the notions of ‘private life’ and ‘correspondence’ and that Article 8 was therefore applicable to this part of the complaint.*” The ECtHR said that “*there was a reasonable likelihood that calls had been intercepted by her Department with the primary aim of gathering material to assist in the defence of the discrimination proceedings.*”

There was no doubt that this concerned an “*interference by a public authority*”. (*Ibid.*, paragraph 48)

PART 2: JUSTIFICATION OR VIOLATION?

2.1. Is there a domestic legal basis for state action?

The next step is to determine whether the interference was ‘in accordance with the law’. To protect against arbitrary interference, “*domestic law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and conditions on which public authorities are empowered to resort to any such secret measures.*” (*Ibid.*, paragraph 49) According to the ECtHR’s well-established case law, this expression does not only “*necessitate compliance with domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law.*” (*Ibid.*)

“*In the context of secret measures of surveillance or interception of communications by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law must provide some protection to the individual against arbitrary interference with Article 8.*” (*Ibid.*)

In this case domestic law did not regulate phone tapping on internal communications systems operated by public authorities. Therefore, the rules established for public telecommunication systems did not

7. Inter-Parliamentary Union (IPU)/UN Office of the High Commissioner For Human Rights (OHCHR) (2005), *Human Rights: Handbook for Parliamentarians*, IPU/OHCHR, pp. 104 and following.



apply to internal communication systems used by the police.

Thus an interference with Ms Halford's right was not *"in accordance with the law since domestic law did not provide any regulation of interceptions of calls made on telecommunications systems outside the public network."*(*Ibid.*, paragraph 50)

The ECtHR concluded that the lack of legal regulations specifying the public authority's options to interfere with the right to privacy in this specific context meant that there had been a violation of Article 8. Further steps, examining whether the measure applied fulfilled a legitimate aim and adhered to the principle of proportionality, were therefore not necessary to determine if there had been a violation.

This case is a leading case for the concept of police officers' rights and for the issue on which it focuses: the right to privacy is applicable also within the context of a police organisation. It makes clear that there are no distinctions between the rights of police officers and the rights of citizens. The same principles apply.

Other issues related to the right to privacy of police officers:

- workplace surveillance (video cameras, email and telephone monitoring)
- use of private cell phones
- obligatory drug testing
- obligatory blood testing with respect to HIV
- submitting DNA samples or fingerprints
- restrictions on individual appearance/habits (such as haircuts, tattoos, make-up, religious symbols, earrings, smoking in public)

ANNEXES

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Annex 1: Workshop programmes

Target group:

Police officers below command level

Group size: 18–20 persons

Objectives:

Knowledge

- understand the key concepts of human rights and the corresponding obligations
- understand the responsibility of police to respect and protect human rights in a democratic society
- understand the importance and characteristics of the principle of non-discrimination

Attitude

- accept human rights as the basis and objective of policing
- adopt a more positive attitude towards human rights and the principle of non-discrimination
- develop an increased commitment to equality-sensitive policing

Skills

- apply human rights norms and the principle of non-discrimination in practice by using the human rights analytical tool to look at concrete policing situations

Workshop A (2-1/2 days)

Workshop A is designed as a standard approach to human rights-based policing. Human rights issues are addressed in a powerful, yet safe way. If you are a trainer with little or no experience in human rights training, this course curriculum is recommended.

DAY 1

Morning session (about 3-1/2 hours)

1 unit (50 minutes)	Introduction to the seminar	Introduction of trainers and participants Expectations and objective of training (Flip chart human rights educational triangle) Organisational matters	
10 minutes	Break		
1 unit (50 minutes)	Introduction to the topic Discussing police and human rights <i>Does murder constitute a human rights violation?</i>	Policing from a human rights perspective Group work, followed by discussion in the plenary	Module 2 Activity 1
10 minutes	Break		
1 unit (50 minutes)	Basic ideas and concepts of human rights <i>"The idea of human rights is as simple as it is powerful, treating people with dignity"</i>	Understanding the basics of human rights Group work, followed by discussion in the plenary, trainer provides tailor-made input	Module 1 Handout
10 minutes	Break		
1/2 unit (25 minutes)	Human rights analysis Human rights analysis – obligation to respect Human rights analysis – obligation to protect <i>What is a human rights violation?</i>	Introduction of the human rights analytical schemes (respect and protect) using case studies Absolute and relative human rights	Module 3 Handout 1 Handout 2
90 minutes	Lunch break		

Afternoon session (about 3 hours)

1/2 unit (25 minutes)	Case studies: A and b on the obligation to respect C and d on the obligation to protect	Group work Four case studies (respect and protect), four groups	Module 3 Handout 1 Handout 2
1 unit (50 minutes)	Case studies (continued) Briefing notes 2. Activity guide: human rights analysis Supplementary material	Presentation and discussion in plenary, trainer provides tailor-made input	Module 3
20 minutes	Break		
1 unit (50 minutes)	Case studies (continued)	Presentation and discussion in plenary, trainer provides tailor-made input	Module 3
15 minutes	Wrap-up, open questions, brief feedback		



DAY 2**Morning session (about 3-1/2 hours)**

1 unit (50 minutes)	Human rights of police officers <i>Human rights experiences: where the human rights of police officers are respected or denied</i>	Group work, reflection, discussion in the plenary	Module 6 Activity 1
1 unit (50 minutes)	Case study – discrimination in the workplace	Group work, followed by discussion in the plenary	Module 6 Activity 2
20 minutes	Break		
1 unit (50 minutes)	Diversity, equality and non-discrimination <i>Left hand/right hand</i>	Reflection and discussion in plenary	Module 5 Activity 1 version 1
10 minutes	Break		
1/2 unit (25 minutes)	Human rights analysis <i>Analytical scheme: Non-discrimination</i>	Introduction of the analytical scheme on discrimination using real life examples and case studies	Module 5 Activity 3
90 minutes	Lunch break		

Afternoon session (about 3 hours)

1/2 unit (25 minutes)	Case studies: A - Turned back at checkpoint B - Identity check at train station	Group work, two case studies/ four groups	Module 5 Activity 3
1 unit (50 minutes)	Case studies (continued) Briefing notes 2. Analytical scheme - Non-discrimination Activity 3: Human rights analysis – non-discrimination Supplementary material	Presentation and discussion in plenary, trainer provides tailor-made input	Module 5
20 minutes	Break		
1 unit (50 minutes)	Case studies (continued)	Presentation and discussion in plenary, trainer provides tailor-made input	Module 5
(15 minutes)	Wrap up, open questions, brief feedback		

DAY 3**Morning session (about 3-1/2 hours)**

1-1/2 units (75 minutes)	Conditions that facilitate or prevent ill-treatment Roundtable discussion, prohibition of torture	Group work and discussion in the plenary	Module 4 Activity version 1
20 minutes	Break		
1 unit (50 minutes)	Policing from a human rights perspective <i>Reflection on practical examples to understand the role of the police in the protection of human rights</i>	Group work, followed by reflection and discussion in the plenary	Module 2 Handout 2
10 minutes	Break		
1/2 unit (25 minutes)	Final questions, feedback, closing		

Workshop B (2-1/2 days)

In Workshop B, elements of the human rights-based approach are more interlinked with diversity and non-discrimination issues. Therefore, you as a trainer will need to cope with a more complex design, drawing the connection between the different issues.

Some of the exercises suggested require advanced facilitation skills and a sense of security and comfort with the group. If you are an experienced human rights and diversity trainer, this workshop should suit your skills.

DAY 1

Morning session (about 3-1/2 hours)

1 unit (50 minutes)	Diversity, equality and non-discrimination <i>Left hand/right hand</i>	Reflection and discussion in the plenary	Module 5 Activity 1 version 1
1 unit (50 minutes)	Introduction to the seminar	Introduction of trainers and participants Expectations and objectives of the training Organisational matters	
20 minutes	<i>Break</i>		
1 unit (50 minutes)	Human rights basics <i>Basic ideas and concepts of human rights</i>	Group work, four groups, discussion in the plenary	Module 1 Handout
1/2 unit (25 minutes)	Discussing police and human rights <i>Is murder a human rights violation?</i>	Discussion in the plenary	Module 2 Handout 1
90 minutes	<i>Lunch break</i>		

Afternoon session (about 3 hours)

1 unit (50 minutes)	(continued) Briefing notes 1. Key concepts Supplementary material Human rights analysis Human rights analysis – obligation to respect Human rights analysis – obligation to protect <i>What is a human rights violation?</i>	The dual role of police (the obligation to respect and protect) Absolute and relative human rights Introduction of the human rights analysis schemes (respect and protect) using short examples or case studies	Module 2 Module 3 Module 3 Handout 1 Handout 2
1/2 unit (25 minutes)	Case studies: A and b on the obligation to respect C and d on the obligation to protect	Group work Two case studies (respect, protect), four groups	Module 3
20 minutes	<i>Break</i>		
1 unit (50 minutes)	Case studies (continued) Briefing notes 2. Analytical scheme – Non-discrimination Activity 3: Case studies A and B Supplementary material	Presentation and discussion in plenary, provide tailor-made input	Module 3
(15 minutes)	Wrap up, open questions, brief feedback		



DAY 2**Morning session (about 3-1/2 hours)**

1 unit (50 minutes)	Case studies (continued)	Presentation and discussion in plenary, trainer provides tailor-made input	Module 3
10 minutes	Break		
1 unit (50 minutes)	Diversity, equality and non-discrimination <i>Multiple identities</i>	Group work and discussion in the plenary	Module 5 Handout – Activity 1 version 2
10 minutes	Break		
1/2 unit (25 minutes)	Human rights analysis <i>Human rights analysis – Non-discrimination</i>	Introduction of the analytical scheme on discrimination using real-life examples and case studies	Module 5 Handout – Activity 3
1/2 unit (25 minutes)	Case studies: A – Turned back at checkpoint B – Identity check at train station	Group work, two case studies/ four groups	Module 5 Handout – Activity 3
1/2 unit (25 minutes)	Case studies (continued) Briefing notes 2. Analytical scheme – Non-discrimination Activity 3: Human rights analysis – non-discrimination Supplementary material	Discussion of case studies in the plenary	Module 5
90 minutes	Lunch break		

Afternoon session (about 3-1/2 hours)

1-1/2 units (75 minutes)	Case studies (continued)	Discussion of case studies in the plenary (continued)	Module 5
20 minutes	Break		
1-1/2 units (75 minutes)	Conditions that facilitate or prevent ill-treatment	Group work and discussion in the plenary	Module 4 Activity version 1
(15 minutes)	Wrap up, open questions, brief feedback		

DAY 3**Morning session (about 3-1/2 hours)**

1 unit (50 minutes)	Role play: job applications	Principle of non-discrimination, also relevant to the human rights of police officers	Modules 5 Activity 2 Module 6
10 minutes	Break		
1 unit (50 minutes)	Human rights of police officers (continued) Human rights experiences: where the human rights of police officers are respected or denied	Group work and discussion in the plenary	Module 6 Activity 1
10 minutes	Break		
1 unit (50 minutes)	Policing from a human rights perspective <i>Practical human rights examples to understand the role of the police in the protection of human rights</i>	Group work, reflection and discussion in the plenary on human rights and their effectiveness	Module 2 Handout 2
10 minutes	Break		
1/2 unit (25 minutes)	Wrap up, final questions, feedback, closing		

Annex 2: Basic guidance for trainers

This annex may be useful for you if...

...you do not have much experience in human rights training or
...you have done a lot of training that was not related to human rights or
...you would like to brush up on your training knowledge and approaches.

General remarks on how to conduct a police training course on human rights

Who is my target audience?

Try to get as much information as possible about the participants before your training session begins. The more you know about them, the better you can analyse their needs and expectations and adjust the design of your training course accordingly. Advance knowledge of the following aspects can help you to analyse and prepare for your training group:

- Rank: recruits, officers below command level, mid-management, senior management
- Functions: specialist, generalist
- Personal characteristics: age, sex
- Prior training: human rights training, level of experience with human rights training
- Motivation/expectations: what motivates the participants to do this training? What are their expectations for this training?
- Homogeneity and diversity: How and in what ways is your group homogenous? How and in what ways is it diverse? How can the homogeneity and/or diversity of the group shape your training?

Consider your own expectations of the participants and the training. Reflect on any assumptions you may have about the training and the participants and adjust your perspectives accordingly.

What are the training objectives for this particular group of participants?

When you think about the training objectives, consider all three learning dimensions: knowledge, attitude and skills. Adjust them to your target group and the length of your training. Stay realistic! Focus on 2-3 key learning objectives that you can break down into smaller chunks.

What national and/or cultural context may be relevant to this training group?

The training sessions in this manual should be adapted to the national context of the countries where they are used. This means:

- sensitivity to the cultural nuances of a country when addressing all human rights and non-discrimination issues. The question of homophobia, for example, needs to be discussed with a specific approach if the general awareness about this topic in the national setting is limited;



- awareness of current events and topics related to human rights that may arise during training;
- knowledge of national rules, law and regulations related to police work;
- use of national case law as a supplement to European case law or further ECtHR case law referring to the training country (See Annex 3 for more information on finding case law and designing case studies).

General tips for leading a training session

Respect

During training, it is your responsibility to ensure that all participants are treated respectfully, even if discussions become emotional, which can occur with human rights issues. The participants should agree at the beginning of each seminar to make respect a ground rule, which then makes it easy for you to remind them of this rule later in the training course. Respect does not mean that participants must agree with one another; respect means treating other participants with respect and tolerance. Talk with the participants as well about the personal experiences and stories they bring into the discussion, agreeing with them that they should keep them within the group and not discuss them elsewhere. This is particularly relevant for groups that consist of police officers who work closely together. As a trainer, you should try to create an environment of trust. If a participant makes an inappropriate or discriminating statement, respond respectfully to help ensure a respectful learning environment.

Internalisation

Build your training around this assumption: human rights have a practical value for police officers on the job. Knowledge, attitude and skills are key learning dimensions for your training. A mere knowledge of human rights norms and instruments is insufficient; a person must have an accepting attitude toward human rights as well as the skills to apply human rights standards in practice. Working on all three learning dimensions helps participants internalise human rights – an overall objective of human rights education.

Moderating the session

The interactive training methodologies presented in the module often require the trainer to take on the role of a facilitator. You will kick off the discussion, raise the ‘right’ questions, work with the different perspectives and experiences of the participants, supplement the discussion with input, draw conclusions and make these clear to participants. To be effective, you must first create an atmosphere of trust in which the participants feel safe enough to give their opinions and stay open minded about those of others. When necessary, remind participants to be respectful and open minded.

Flexibility

You should carefully plan your training sessions and try to anticipate all relevant factors beforehand. However, once you arrive at the session, things may work out differently than expected. Stay flexible. Working with a group of people on human rights questions is a dynamic process which requires the trainer to adjust methodology and contents according to the pace of the group. Stick to your objectives, but be prepared to be flexible in how you follow your agenda. Prepare alternative activities and topics so that you have options for handling different training situations.

Opening the training session

First impressions are important. A good first impression can help to build a solid training foundation and set the tone for the rest of the course. To ensure a training session opens well, try to:

- **Create a positive, learning friendly and trustful atmosphere.** Participants must feel 'safe' in order to be able to learn and to engage with new ideas. Seminar rules should be established and agreed upon. Orient participants and discuss the course's objectives and programme to help create a solid framework in which everyone feels comfortable.
- **Grab their attention.** Capture the participants' interest, especially if you are confronted with a group that shows a negative or dismissive attitude towards your training. Use an ice breaker or start a discussion to help bring about a more positive attitude.
- **Understand their needs and expectations.** During the opening, try to get an idea of who your participants are in order to understand their needs and expectations. With this information you are able will be able to adjust or re-adjust your training accordingly.
- **Chart a clear path for the training session.** As a trainer, you guide participants through the course. It is therefore important that you have a clear idea of what you would like to do during the training session and make sure participants can easily follow along and understand where the session is leading. If you are unclear about your training session and how to guide the participants, it can cause confusion and make it harder for them to learn and understand the topics at hand.

The compilation of training practices in Annex 4 (available online only) provides some ideas on how to open a training session.

Closing

Plan some extra time at the end of your seminar to answer any outstanding questions. If time runs out and there are still topics pending, try to help participants process their questions by, for example, communicating individually with participants, sending information to the group or addressing the topic in the next training session.

Talk with the participants and ask them for feedback on the session. Evaluate the learning objectives you established at the beginning of the training session: to what extent were they met? Note down the participants' responses and take on their comments as valuable information to help you improve and adapt for your next training experience.

Further reading

UN High Commissioner for Human Rights (2002), *Human Rights and Law enforcement, A Trainer's guide on human rights for the police*, Geneva, available at: www.unrol.org/doc.aspx?d=2571.

OSCE, *Trainer Skills Course for Anti-Trafficking Trainers* (A 12-lesson course developed by the Police Development Unit of the OSCE Spillover Monitor Mission to Skopje), available at: www.polis.osce.org/library/details?doc_id=2543&lang_tag=EN&q=%2Flibrary%2Fresults%3Ftext%3Ddebriefing (*registration required*).

UNHCR (2011), *Protection Training Manual for European Border Guards and Entry Officials*, available at: www.unhcr.org/4d948c736.html.



Annex 3: Case study preparation – tips

This manual provides some case studies taken from the European Court of Human Rights's (ECtHR) jurisprudence, related to the obligation to respect and to protect human rights, to non-discrimination and to the human rights of police officers. Depending on the objectives of your training course and your target group, you may wish to use other case studies than those presented in the manual. Here are some useful hints on how to design your own case study. ECtHR case law can serve as a basis for your case studies. It may also be useful to look at national case law.


Putting together a case study

An ECtHR judgment includes a thorough analysis of the case and is packed with legal language and information. Original judgments are, however, unsuitable for a training course because of their length and use of legal language. They need to be broken down into digestible bits that are comprehensible to the participants.

1. How to find case law of the European Court of Human Rights (ECtHR)

HUDOC case law database

The HUDOC database provides free access to ECtHR case law: <http://HUDOC.echr.coe.int>. It is available in English and French and provides a user-friendly search engine.

Video tutorials and user manuals are available on the HUDOC Help page. For help with the search functions and options, the user can place the mouse pointer on the  for more details and examples.

The case law references in this manual provide the reader with comprehensive information that will enable him or her to easily find the full text of the judgment or decision.

Before starting a search, please note that the default settings show the Grand Chamber and Chamber judgments in reverse chronological order. To search in other collections such as decisions, the user should tick the appropriate box in the 'Document Collections' field appearing on the upper left side of the screen.

The simplest way to find cases is by entering the application number into the 'Application Number' field under the Advanced Search on the upper right side of the screen and then clicking the blue 'Search' button.

To access further case law pertaining to other issues, such as asylum-related issues, the user can use the search field indicated with a magnifying glass on the top right part of the screen. In the search field, the user can search using a:

- single word (e.g. asylum, refugees)
- phrase (e.g. "asylum seekers")
- case title
- state
- Boolean phrase (AND, OR, NOT and NEAR)

Alternatively, the user can open the Simple Boolean search by clicking on the arrow appearing inside of the search field. The Simple Boolean search offers five search possibilities: this exact word or phrase, all of these words, any of these words, none of these words or Boolean search. When performing a Boolean search, it is important to remember that phrases must be surrounded by double quotation marks and Boolean operators must always be in capital letters.

Once the search results appear, the user can narrow the results using the filters appearing in the 'Filters' field on the left side of the screen, for example, 'Language' or 'State'. Filters can be used individually or in combination to further narrow the results. The 'Keywords' filter can be a useful tool, as it often comprises terms extracted from the text of the ECHR and is directly linked to the ECtHR's reasoning and conclusions.

Example: How to find the ECtHR's case law on the expulsion of asylum seekers that puts them at risk of torture or inhuman or degrading treatment or punishment under Article 3 of the ECHR

- 1) First enter the phrase "asylum seekers" into the Search field and click the blue 'Search' button.
- 2) After the search results appear, select '3' under the 'Violation' filter, in the 'Filters' field, to narrow the results to those related to Article 3.
- 3) Then select keywords under the 'Keywords' filter to narrow the results to those relevant to Article 3, such as the keywords '(Article 3) Prohibition of torture'.

For more significant cases, a legal summary is available in HUDOC. The summary comprises a descriptive head note, a concise presentation of the facts and the law, with emphasis on points of legal interest. If a summary exists, a link will appear in the results together with the link to the judgment text or decision. Alternatively, the user can search exclusively for legal summaries by ticking the 'Legal Summaries' box in the 'Document Collections' field.

If non-official translations of a given case have been published, a link will appear in the results together with the link to the judgment text or decision. HUDOC also provides links to third-party internet sites that host other translations of ECtHR case law. For more information, see 'Language versions' under the HUDOC 'Help' section.

Additional sources for case law information

ECtHR HUDOC 'Press release page': is a good starting point for summaries and the essence of ECtHR judgments. The page is available at: <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>.

Court of Justice of the European Union (CJEU) case law: the CJEU provides the CURIA case law database, which provides free access to ECJ/CJEU case law: http://curia.europa.eu/jcms/jcms/j_6/. The search engine can be used to search all documents, for information related to concluded and pending cases by the Court of Justice, the General Court and the Civil Service Tribunal.

Netherlands Institute for Human Rights: this source summarises judgments by different human rights courts and committees. It is available at: <http://sim.law.uu.nl/SIM/Dochome.nsf?Open>.

National service institutions and NGOs: these bodies often summarise relevant human rights judgments and could be good resources for designing case studies for training.



2. Designing the case study

Now that you have chosen which case(s) to use for your training, you need to determine which facts of the case(s) are relevant for your training objectives. Pull together the case study facts on a worksheet for the participants, but remember: less is more! Do not get lost in the details of the case. The goal is to put together enough information to help participants understand different dimensions of human rights as they work through the case study, to analyse the details of the case and to reflect on the reasoning of the court. Too many details could make the case study difficult to understand or follow.

Use the analytical scheme found in the modules as a guide for going through the case(s) and selecting the relevant details. Think about the conclusion(s) of the case(s): what is/are the major conclusion(s)? What human rights elements can participants learn from this?

Consider, too, the various facts of the case and anticipate participant questions. Some common questions are: when was this case judgment? Who rendered the judgment? Any dissenting opinions? What were the consequences of the judgment (compensation, sentencing, etc.)? What was the public's reaction?

Useful criteria to consider for selecting cases and constructing case studies:

- **Relevance to practical policing:** judgment provides guidance on important questions related to police work, such as the use of force during crowd management or the principle of proportionality when dealing with domestic violence;
- **Usefulness in the training environment:** participants can easily follow the reasoning of the court. It might also convey a positive message, such as the human rights of police officers or police fulfilling their duty to protect;
- **Current/recent cases:** participants might have heard about the case in the news if it received widespread public attention;
- **Major legal cases:** cases that are of major legal importance and serve as a basis for subsequent case law, for example *Ribitsch v. Austria*, *Mc Cann v. United Kingdom*;
- **Cases that clarify the content of a right or an obligation:** participants understand the theoretical basis of the obligation to respect and protect human rights and the practical application of the principle the case study provides. The case sheds light on the substantive content of a human rights norm, making clear what is meant, for example, by the right to life and the state obligations related to this right.

Selected list of important ECtHR cases in the context of policing:

European Convention on Human Rights

Article 2: Right to life

Kontrova v. Slovakia

Mc Cann and Others v. United Kingdom

Nachova and Others v. Bulgaria

Opuz v. Turkey

Osman v. United Kingdom

Scavuzzo-Hager and Others v. Switzerland

Stewart v. United Kingdom

Article 3: Prohibition of torture and ill-treatment

A v. United Kingdom

Aksoy v. Turkey

Ilhan v. Turkey

Hurtado v. Switzerland

Kaya v. Turkey

Keenan v. United Kingdom

Ribitsch v. Austria

Selmouni v. France

Article 5: Liberty and security of person

McVeigh, O'Neill and Evans v. United Kingdom

Fox, Campbell and Hartley v. United Kingdom

K-F v. Germany

Litwa v. Poland

Article 6: Fair trial

Vilho Eskelinen v. Finland

Article 8: Right to privacy

Halford v. United Kingdom

Article 11: Freedom of assembly and association

Bączkowski v. Polen

Giuliani and Gaggio v. Italy

Molnár v. Hungary

Öllinger v. Austria

Plattform Ärzte für das Leben v. Austria

Article 14: Non-discrimination

Timishev v. Russia



Annex 4: **Compilation of practices**

The purpose of Annex 4 is to give you an idea of how other police training institutions implement human rights training. These practices provide information on some additional knowledge and experiences of human rights trainers from across Europe.

These practices are available online at: <http://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training>

European Union Agency for Fundamental Rights

Fundamental rights-based police training

A manual for police trainers

2013 – 201 p. – 21 x 29.7 cm

ISBN 978-92-9239-230-7

doi:10.2811/43682

A great deal of information on the European Union Agency for Fundamental rights is available on the Internet. It can be accessed through the FRA website at fra.europa.eu

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Police officers who ensure that people are able to exercise their fundamental rights and freedoms earn the respect and trust of the public. With this in mind, this manual by the European Union Agency for Fundamental Rights (FRA) sets out to foster such human rights-based police work by integrating human rights training into the heart of police training, in line with the European Union's goals in the field of justice and home affairs. In so doing, the manual translates 'high' principles into specific practical exercises that facilitate police work, and supports police officers in internalising the concepts that drive human rights-based policing – helping to ensure that they are equipped to make the right choices in their daily work. The manual focuses on crucial police-related issues, such as diversity and non-discrimination, the absolute prohibition of torture, and also the human rights of police officers. Tried and tested with different police academies in the EU, the manual is intended as a practical tool for implementing fundamental rights-based policing in the EU.



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ISBN 978-92-9239-230-7

