THE EUROPEAN CODE OF
POLICE ETHICS
AND
THE VOCATIONAL SOCIALIZATION
OF SECURITY PERSONNEL
IN TURKEY

İbrahim Cerrah

TESEV

DCAF

CONSULATE GENERAL
OF SWEDEN
Istanbul

COUNCIL   CONSEIL
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Council of Europe
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DCAF - TESEV
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CONTENTS

SECURITY SECTOR REFORM PROJECT

The longitudinal political and social "weight" of the Turkish Armed Forces, and the imbalances ensued, are considered among the most important and complex issues in Turkish history. Recently, the need for further harmonization of the Turkish Civilian-Military Relations (CMR) with the democratic standards was underlined at the European Commission's (EC) successive Annual Progress Reports on Turkey. The issue will no doubt be among the most important issues in Turkey's EU accession process. One could claim this can best be achieved by a healthy cooperation between the government, parliament and security sector institutions (the armed forces, the police department, the gendarmerie, and others) with the assistance of expert opinion, and by taking into consideration the demands stemming from civil society. Moreover, apart from the issue of harmonization of the Turkish CMR with the EU standards and universal democratic norms, the vitally important problem of implementing a substantive Security Sector and Bureaucracy Reform (SSBR) would certainly be on the top of Turkey's agenda for years (even decades) to come.

SSBR shall cover not only CMR-related issues but also involve the establishment of democratic control and oversight mechanisms on all domestic security institutions by taking a citizen-centered approach. Placed in a context going far beyond the narrow and somewhat misleading confines of a mere CMR issue, the problem needs to be addressed in its diversity and complexity. Since the very concepts of "reform" and "control of the armed forces" still remain controversial in Turkey, TESEV aims to contribute to this (potentially divisive and politicized) process by helping

"normalize" the debates on the issue, in a cool-headed, objective and scientific manner. In this context, the fruitful past collaboration between the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF – the Republic of Turkey is a founding member since November 20th, 2003) and TESEV is becoming even more crucial in helping shape the ongoing process (indeed, the EC's 2005 Turkey Progress Report lauded TESEV & DCAF's work). TESEV strives to further the agenda of democratic and civilian oversight of the security sector by taking as its target audience, legislators, media professionals and civil society at large. National and international symposia, presentations at the Special Commissions of the Turkish Grand National Assembly, as well as documentary and critical studies on the Security Sector are among the interlocking project activities and outputs.

REVIEWS

Civil – police relations in Turkey have long been strained by issues related to the democratic oversight and accountability of internal security structures in a strongly centralized and secular state. Written by an insider, building on the wave of recent and positive reforms within the security sector as a precursor to possible accession to the European Union, this book comprehensively describes and analyses the need for internal security structures in Turkey that are effective, well-managed and situated within a framework of democratic governance. With the dual purpose of advocating for a Turkish police code of conduct and offering the European Police Code of ethics as a good practice example, Ibrahim Cerrah vividly addresses the challenging issue of reconciling conceptualization and pragmatism. This book is important for both policy and practitioner audiences.

Major-General (ret.) Guy de Haynin de Bry, *DCAF, Geneva.*

This book on Police Ethics by İbrahim Cerrah will have a significant impact on the members of the security sector since it is prepared by an expert and a respondent (not quite sure what this means) of the subject. In other words, the principles that are presented in this work will not be inconsequential; they will rather be considered by the law-enforcement forces as principles that are as binding as the laws. As Cerrah writes, complying with the Police Code of Ethics will improve the quality of internal security service. Providing security and reducing violations of human rights requires upgrading existing laws and improving the ethical principles of policing. This work instructs the law-enforcement forces to follow

a code of ethics while striving to enforce the law.

Mehmet Arıcan
Turkish Police Academy, Turkey

This report, based on extensive and detailed knowledge of policing in Turkey, will go a long way to help the Turkish police adopt and adapt the European Code of Conduct values and principles into their police culture. The report focuses, rightly so, on implementing Code of Conduct norms into the daily activities of police officers through socialization processes and accountability mechanisms, for only then will such abstract terms as human rights and rule of law come alive and assure that the services and protection provide the Turkish public will properly balance rights and security. Ibrahim Cerrah did a masterful job of situating the importance of ethical norms within the working world of the police.

Otwin Marenin
Washington State University

We are not used to considering security a "service," or the police force a 'service sector.' Yet, policing is a public service; its quality should be open to question and it should be open to public control. The book that you are holding is important first and foremost because it makes us aware of this.

The main message of the book is: for the control of security forces, we cannot rely solely on legal mechanisms; these must be integrated with vocational ethics, or in other words professional ethics. The ethical framework developed from the European experience, in addition to its normative didactics, helps us to "screen" the existing problems. In my opinion, the value of

Ibrahim Cerrah's work is in his call for an essential change in the socialisation processes and the sub-culture of the police in order t to create a new ethical framework..

Tanıl Bora
İletişim Publishing House

This is an important and timely book that will be of great use to members of the police, other security agencies, governments, researchers and civil society. In the search for policing that acts on behalf of society and not just as an instrument of power, it examines practical policing within the broader context of security sector reform and civilian control. Based on research among Turkish police trainees, it establishes the great importance of understanding the ethics of policing by analysing the dangers of police officers seeing themselves as essentially separate from and threatened by civilians. The book shows how external political and judicial controls of police are required but that they will have only limited effect without complementary internal training and other processes aimed at minimising the abuse of police power.

Peter Gill
University of Salford, U.K.

How should the police and society interact in a democratic order? How could a police sub-culture that internalises democratic values be created? To transform a state-centered mentality into one that feels responsible to the community, what duties should the societal actors and the police perform? Ibrahim Cerrah wrestles with many hot questions like those above with an "insider" and critical perspective. Published together with an analysis of Turkey's security sector, the translation of the European Code of Police Ethics, presented in the work's second part, provides fertile ground for deliberation and debate. This work provides a thought-provoking analysis for those aware of the importance of police oversight in a democratic society, and also shows how this oversight is impossible without the

institutional participation of the police forces themselves...

Ferdan Ergut
METU Department of History
Author of Modern State and Police

PREFACE

Tevfik Ziyaeddin Akbulut
MP, Chair of the Interior Affairs Committee,
Grand National Assembly of Turkey

Although the structure of and services provided by security sector institutions have transformed and developed through the course of history, the centrality of security in private and public spheres has remained intact. Domestic security services need to be constantly improved and amended according to dominant and current value systems so as to ensure that individuals' rights and liberties are protected and that societies' have a higher quality of life.

As the level of welfare in a society rises, people expect the public services provided by their state to rise accordingly. Men and women of today's world want to be more informed about, partake in and oversee the services that are designed for and paid by them. Domestic security services, like all other forms of public service, are also evaluated in the above context.

Naturally, domestic security services in Turkey ought to comply with current international standards. Security sector institutions in Turkey and the services they provide are subject to parliamentary and administrative oversight both at national and local level. However, the difficulty in externally overseeing the conduct of security sector personnel is obvious. Therefore, there is an impending need for a code of ethics that security sector personnel may adopt and internalize.

We live in an age where maximizing quality of life is the ultimate goal. 'Effectiveness and efficiency' are the basic precondition for the production of public goods and services.

Although provision of security is critical for private and public life, security services should not be provided "at all costs". Provision of security has economic and social costs, both of which have to be acceptable and affordable.

"Social costs of security" refer to the impact that security services have on a society. Security measures and practices that have a negative impact on social life may be considered "effective" in deterring security threats but may not be accepted as "productive" since these measures hamper social harmony and quality of life. Security sector institutions, while performing their duties in accordance with international norms, have to act as conscientious vanguards of social harmony. Security measures that trouble the majority of Turkish society are not productive according to modern standards. Efficiency in this sense is measured according not only to state-of-the-art equipment and gear that security personnel uses but also to the personnel's attitude, conduct, and methodology. Security personnel involved in fighting crime ought to act as guardians of social harmony also and consequently, they should receive legal as well as professional ethics training.

Another aspect of the costs associated with security provision is financial. "Security at all costs" is increasingly becoming unacceptable. Both social and economic costs of security services must be affordable. Defense and security spending that is too expensive and has a negative impact on the well-being of

citizens is not productive. A good comparative variable for Turkey is the ratio of defense spending to education or health budgets in developed countries.

When the size of a defense budget reaches a level that threatens the well-being of a society, it will trigger an increase in crime. Crimes committed in Turkey today are predominantly the result of abject poverty and unemployment. The inextricable link between terrorism and unemployment and illiteracy proves the hypothesis that the diversion of resources from education and employment to defense contributes to a rise in crime.

Consequently, during the 59th government, a law was enacted to grant the Court of Auditors the authority to monitor Turkey's defense budget. When the corresponding by-laws are drafted and enacted, Turkey's defense spending will be politically overseen in its entirety.

Adjusting the size of the defense budget in Turkey to the standards employed by developed countries lowers the economic cost of security but the social cost of security should be treated separately. Containing the social cost of security, coined with the conduct and practices of security sector personnel, depends on education. Security sector personnel should be trained using a curriculum drafted according to modern universal values including 'rule of law' and 'respect for human rights'.

This can only be accomplished through continuous education. Security sector personnel ought to learn first and foremost the regulations that pertain to their individual tasks and duties. Furthermore, legal training will not suffice. Security sector personnel ought to comprehend, through the course of their legal training, the gist of the legislation governing their occupation and

internalize the universal system of values that they live in.

Security services is an area where its providers can enjoy greater autonomy than other public service providers. The education that security services personnel receive will determine how they will use their autonomy. However, education in this sense is not restricted to formal training given to security services personnel. Formal training should be fortified by pervasive and informal education. The process of socialization that security sector personnel experience during their training, on duty and in their private time determines to a great extent their occupational ethics and their conduct. The author of this report analyzes these matters in detail and reflects on the effects of vocational socialization on police code of ethics and on the behavior of security sector personnel.

Turkish Grand National Assembly (TGNA) has passed important laws that aim to increase the quality of domestic security services. Within these laws, a delicate balance was sought between increasing the powers of security sector personnel and decreasing the human rights violations conducted by the security sector personnel. Increasing the effectiveness and efficiency of security sector is as important as preserving sensitivity on human rights. TGNA strove to maintain this delicate balance throughout the previous legislative term.

This report on European Police code of ethics, prepared with the joint effort of experts from European Union member states and Turkey, is a valuable resource for Turkish security services personnel. Moreover, the study conducted by the author on Turkish security sector personnel's socioeconomic structure, level of education, vocational and personal socialization will help security sector personnel to better understand and define

their presence and to increase the quality of the services they provide.

Security personnel need to interpret their duties within a more contemporary context in order to obtain a qualified relationship with the citizenry. This report will make an important contribution to the training of security personnel in this respect.

AUTHOR'S PREFACE

Prof. İbrahim Cerrah
Police Academy, Turkey

This book has been prepared for all internal security personnel, official and private, especially the police and the gendarmerie.

The first part of the book consists of four sections. These sections discuss the socialization processes of security personnel and their effects on the professional subculture. They examine the ways in which professional principles and values are formed through these processes, as well as the areas in which problems are or can be experienced. For this first part, previous fieldwork and some secondary data have been used. It is true that the fieldwork presents some weaknesses because of the obvious difficulties of studying the socialization processes of security force personnel and because of the novelty of this study area in Turkey. For these reasons, published sources in the area of police ethics and professional socialization in Western countries (Europe and USA) were used in the study. After all, it is a generally accepted position in studies of police subculture, professional socialization, and police ethics that policing is a universal phenomenon and the sources of and the solutions to its problems show more similarities compared to other professions.

The second part of the book consists of the *European Code of Police Ethics*. The author of this book participated as the representative of Turkey in the study carried out in Strasbourg under the Council of Europe. All of the ethical rules of the above-mentioned document and their interpretations constitute the second part of the book.

The primary audience of the book is the personnel of the police and gendarmerie,

defined as 'law enforcement agencies.' In order to have this idea settled in the mind of the reader, the terms 'police and gendarmerie' will be used together from time to time, instead of 'law enforcement agencies.' However, to avoid repetition resulting from the frequent usage of the two terms, the words 'police' or 'security personnel' will also be used often. Every use of the word 'police' in the book will refer to both the police and the gendarmerie, which in effect constitute the law enforcement agencies. At the same time, other official and private security agencies, together with their personnel, play an auxiliary role in the law enforcement sector and can, therefore, benefit from this study.

The same method was adopted in preparing the *European Code of Police Ethics* (ECPE). Since representatives of the police, and representatives of gendarmerie from countries which have gendarmerie organizations such as France and Spain, participated in the preparation of the document, it has been titled the *European Code of Police Ethics*, followed by a note including the gendarmerie.

I believe that the ECPE, produced from 1998 to 2001 under the Council of Europe and through the contributions of a number of country representatives from various, internal security-related groups, is clear enough for the reader. For this reason, not all of the articles are explained in the first part of the book. However, in order to ensure that the study includes practical insights directed to the practices of the personnel of law enforcement agencies, the ECPE is referred to

from time to time in the first part, which consists mainly of theoretical information. In doing so, articles that are of particular importance and relevance to Turkish law enforcement agencies are taken as the basis for evaluation.

This book was produced with the purpose and hope of increasing the quality of the Turkish internal security services. Achieving this depends on how high-level administrators, who are in a position to determine the service policies of the police and gendarmerie, use this study. The book's first sections, in particular, highlight the presence and causes of problems, rather than suggesting solutions to these problems. The information and interpretations of this part are presented in a constructive-critical approach in line with scientific criteria, to the extent possible. Accepting the sincere motives of such a critical approach and opting to benefit from it, in order to increase the quality of the services provided, depends on the professionalism and determination of high-level administrators inside the two institutions. It is hoped that the information and interpretations contained in this book will be perceived as constructive criticisms and be evaluated with a sprit of common sense.

It will be noted that the problems relating to the internal security services discussed in this book can be overcome only through transformations at the level of reforms. It is natural that there will be individual, or even institutional, resistance to this process. This kind of resistance has also been observed in security reforms that took place in countries that are members of the European Union. However, the reorganization of the security services in line with the principles and practices in modern democratic countries is necessary for national interests. The contribution of law enforcement agencies, which are indispensable elements of democracy and national security, to this necessary transformation is a continuation of

their roles throughout history. There is no doubt that the Turkish Armed Forces in particular will provide the greatest support in this matter, given their significant contributions to the modernization of Turkish society in the past.

PART I

SECTION I
WHAT ARE POLICE ETHICS?

1. INTRODUCTION

The personnel of official law enforcement agencies such as the police and the gendarmerie have authorities and responsibilities that other public personnel do not. These are important powers that limit civil liberties, such as stopping, searching, asking for identification, confiscation, apprehending, using force, and interrogation. The performance of these duties has significant effects on people's quality of life, and especially on civil liberties and social life. Taking into account the degree of discretion allowed to security personnel to enforce the law, it becomes clear that there is a need for a code of professional ethics, in addition to existing legislation, in order to increase the quality of the service they provide.

In this light, in this section questions such as 'what are police ethics,' 'to which security personnel do police ethics apply,' and 'why is a code of ethics necessary' will be considered. The section will also address the sources of ethical rules and their relation to police ethics, social morality and religious beliefs.

Finally, the relationship between police ethics and professionalism will be addressed. Emphasis will be made on the necessity of compliance with the code of ethics by all full-time official and private security personnel currently active in the field of internal security services.

2. WHAT ARE POLICE ETHICS AND TO WHOM DO THEY APPLY?

The term 'police ethics' is a shorter phrase whose full meaning is actually 'professional policing ethics.' The term does not only cover the members of the police organization, but also the members of all other organizations providing internal security services, such as the gendarmerie, coast guard, and even private security organizations. In Turkey, these services are being provided by three separate public organizations, the police, the gendarmerie, and the coast guard. Therefore, police ethics can also be referred to as 'law enforcement ethics;' a term that is not commonly used in everyday speech, but which is relevant for all internal security personnel. The term 'law enforcement ethics' includes, without exception, all security personnel. In this book, the term 'police ethics' is mostly used and is meant to include all organizations providing internal security services.

Although the *European Code of Police Ethics* (ECPE) produced within the Council of Europe (CoE) involved the participation of gendarmerie officials from countries such as France and Spain, it was titled *European Code of Police Ethics*. As a result, the document addresses not only the police, but also gendarmerie organizations providing internal security services in European countries. Moreover, the ECPE was translated into Turkish and published by the Turkish Gendarmerie. The fact that these principles have been included in the book *Jandarma Etiği* (Gendarmerie Ethics) (2002) published by the gendarmerie demonstrates most clearly that police ethics includes gendarmerie ethics.

In short, in order to determine which organizations are covered by the ECPE, the service provided rather than the *organizational structure* of the internal

security unit has to be taken into account. While the police, one of the official law enforcement agencies, is under the control of the political authority and is organized as a semi-military institution, the other two, the gendarmerie and the coast guard, are organized in a completely military manner. However, regardless of the organizational structure of the units, all internal security services in democratic governments are defined as 'policing.' Therefore, the term 'police ethics' used in this book addresses all organizations that provide *internal* security services and, therefore, practice policing, not just those that have the organizational aspects and titles of the law enforcement agencies.

2.1. Why police ethics?

One of the reasons why a code of ethics addressing security personnel is needed is the insufficiency of internal legal arrangements in controlling their actions. For this reason, ethical rules prepared and accepted by the members of this profession are needed in addition to existing legal arrangements. The healthier operation of security services and the minimization of human rights abuses depend on the establishment and acceptance of professional ethical principles and rules.

It is obvious that it is not possible to control the behaviors and actions of the members of any given profession through laws that entail penal sanctions. While legislation has primarily penal sanctions, ethical rules have more professional, conscientious sanctions. In places and cases where the enforcement of the law is under the enforcement personnel's own initiative, the most effective element is professional consciousness, conscience, and ethics (Kleinig, 1996). It is a reality that the security personnel whose main duty is to enforce the law have more freedom in choosing whether to obey the law or not. Therefore, professional ethical rules prepared by security members and addressing their conscience will be more effective in controlling the actions and behaviors of the police than just legislation.

In short, laws by themselves are not sufficient to control the behaviors of law enforcement personnel and institutions. The healthier performance of security services and the minimization of human rights abuses require the establishment of professional ethics in addition to legislation. For this reason, professional ethical rules prepared by parties representing many sectors of the society, and led by the members of the profession, are needed.

Police personnel's values and perceptions of events are largely a product of the structure of the society to which they belong, the pre-professional training they receive, their work environments, and social lives. It is impossible to deny the impact of the society in which security personnel are born into and brought up on their moral and religious values. Although the ECPE prepared under the Council of Europe was prepared as a secular document, it is natural that certain social values pre-exist in the subconscious of the persons preparing it. However, the committee members made a special effort to ensure that the prepared document covers universal principles transcending Europe, instead of just reflecting Europe's social and cultural values.

2.2. By whom and how was the ECPE prepared?

High-level police officers, social scientists, jurists, and representatives of non-governmental organizations participated in this study, which began towards the end of the 1990s and was finalized in the 2001 under the Council of Europe. The preparation of the ECPE took place in an overall democratic and scientific environment. Each member of the committee was given the chance to express her/his opinions and ideas on behalf of her/his country and society.

The committee's studies represented the problems and reflected the opinions of security personnel at every level, not only high-level officials and bureaucrats. In

particular, the problems of police officers – lower - and middle-level personnel providing services defined as 'street policing' - found a place. By ensuring the participation of personnel from every level in preparation of the document, the resulting ethical code was made more acceptable to non-ranked police officers. In short, the study was not only prepared by high-level security personnel but incorporated the contributions of all parties concerned. The committee facilitated the contributions of certain non-governmental organizations such as human rights organizations, as well as of law and social science academics. The sixth and last meeting took place in Strasbourg between 28 – 30 March 2001, where the document was finalized and presented to the police organizations of all member countries as a recommendation document.

2.3. What is the source of ethical values?

The source of ethical values and rules is an issue discussed by social scientists, especially philosophers. The crux of the matter is whether the source of ethics is *human nature* or *socialization*. In other words, is it *nature* or *nurture* that defines them?

Morality, related to the word 'creation,' implies that the good values of humans result from their nature. According to the opposite opinion, while ethical values are produced by humans, they are a product of their nurture, and not of their nature. This approach, which perceives of ethical principles as the product of the individual's socialization processes, argues that these principles are more universal compared to moral principles, regardless of their source. According to this opinion, moral rules are local and relative, whereas ethical rules are universal. On the other hand, human properties are more universal than the properties a person achieves through socialization. Apart from some physical details, such as skin-color, hair-color, and height, people the world over share similarities. People's socialization is more variable and relative compared to their

physical properties. People can produce different, even conflicting ethical rules, as a result of their socialization in different societies and historical periods.

The socialization of individuals is more diverse and contingent compared to their physical aspects. People growing up in different environments and under different conditions accordingly present different lifestyles and values. In this case, morality, which includes the notions of 'nature' and 'good things' – and, which as used in Turkish comes from the Arabic word meaning creation - will be more universal compared to the ethical principles that humans will produce as a result of social relations. In short, socialization processes that lead to differences and the resulting social morality or professional ethical principles will be more local compared to the universal values that are allegedly inherent in human beings.

There may be a direct or indirect relationship between professional ethics and religious beliefs. Religion is one of the oldest existing social institutions, and all people are influenced by religion to a lesser or greater degree. For this reason, ethical rules of a profession cannot be thought of as completely independent of the moral principles of the belief system to which the members of that profession belong or in which they live.

Whether the source of ethical values is a person's nature and beliefs or her/his socialization, it is natural, even inevitable, that there will be a hidden or distinct relationship between the general moral rules of a society and the ethical rules of any given profession. Instead of completely rejecting or excluding the social moral principles of a society, those principles can be accepted as a foundation on which professional ethical rules can be built when establishing the ethical code of a profession. Ethical rules taking the sensibilities of different belief systems into account will have secular characteristics. In addition, they will be more

comprehensive than ethical rules established according to the sensibilities of a single belief system.

This sensitive balance was maintained very well in the preparation of the ECPE. Although the resulting study was prepared as a secular document, it has taken into account different belief systems and lifestyles. The emphasis on the secular character of the document aims to avoid giving the impression that the document was prepared in accordance with moral values of any one particular religion; and it does not mean that the document is devoid of any traces of moral principles of any society or religion. For instance, it will not be convincing to claim that the ideas of a person who accepts as ethical principles not to profit unfairly or to abuse one's power are not based on her/his moral and religious beliefs. The influences of religious beliefs or social moral principles on ethical principles can be direct, or they can be in the form of values embedded in the subconscious of the individual.

When the relationship between morality and ethics is considered in this way, a professional code of ethics can be conceptualized as the adaptation of social and religious principles in accordance with the needs and priorities of different professions. For this reason, the fact that the ECPE is a secular document does not mean that none of the ethical principles in this document has any relation to religious or moral principles. The secular nature of the document is emphasized in order to express that it was not shaped solely by beliefs and values of Christianity, which is the dominant religion in Europe.

The ECPE's introduction emphasizes that the concept of ethics is different than the concept of morality. However, the introduction also mentions the relationship between the terms 'ethics' and 'morality.' It has been pointed out that ethics is a kind of reflection of the concept of morality, as it is used in everyday speech, on professional policing actions. In other words, professional ethics is the

reflection of morality as a concept that is related to an individual's values at a professional level.

It is known that beliefs and cultural systems of different societies have important effects on shaping the understanding of morality in those societies. The understanding of morality in European societies is also naturally formed according to Christian beliefs. So as not to give the impression to non-Christian Europeans that a morality based on Christian beliefs is being imposed on them, the more secular term 'ethics' is used instead of 'morality,' which is affiliated with religion. Thus, care was taken so that the ECPE prepared under the CoE would be a secular document rather than a religious or a moral one.

However, the particular and insistent stress on the difference between ethics and morality throughout the committee's studies compels one to think that there can be a larger or smaller relation between the two concepts. Otherwise, a non-existent issue would not have been discussed so insistently. In this case, we can ponder the persistent denial of this link. If the issue is considered in depth, two reasons are revealed.

The first of these reasons is that the committee members wished to keep the concept of ethics distinct from religion, and especially from the concept of morality as related to Christianity. Although this study was prepared by the Council of Europe, the resulting code did not only concern the police forces of European countries. Some countries whose inhabitants identify themselves predominately as Muslims, such as Turkey and Azerbaijan, were also represented in the committee. Furthermore, minorities with various religious affiliations live in every European country, in numbers that cannot be underestimated. European countries no longer consist of a single race, religion, or culture as in the Middle Ages. Therefore, the ethical code produced by the committee intended to address both religious minorities

living in Europe as well as people living in predominately Muslim countries. In conclusion, the sensibilities of non-Christian communities such as the Turks living in Europe, and of Turkey – a member of the Council of Europe and a country with a predominately Muslim population – were taken into consideration.

Secondly, other religious minorities living in Europe and some non-European countries might not have accepted a code that explicitly and predominantly contains moral values shaped according to Christian beliefs. It can be said that this idea is behind the elaboration of the concept of ethics as particularly distinct from morality. It was out of a desire not to impose moral values reflecting primarily Christian beliefs on all people under the guise of professional ethics, or to leave such an impression. Only this kind of an approach would have been appropriate to the spirit of the prepared ethical code. According to the committee, the ethical code prepared in this way will be a document accepted by the various religious, ethnic, social, and cultural minorities living in Europe. The committee is of the opinion that such acceptance will be possible only when the concept of ethics is based on humanity, and not on any particular religious belief.

3. POLICE ETHICS AND PROFESSIONALISM

The issue of *how* and *who* will control the personnel providing security services has existed since the time when these services first appeared. The need for a professional ethics code in guiding the actions of security personnel is a result of such efforts. There have been other police ethics studies in Western countries prior to the *European Code of Police Ethics* (Kleinig, 1996). The book *The Principles of Policing and Guidance for Professional Behavior*,[1] published in 1985 by the British police, is one of the

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[1]   The Metropolitan Police (1985) **The Principles of Policing and Guidance for Professional Behaviour**, London: Metrolplitan Police.

first publications that established a relationship between ethics and professionalism.

Professional ethics education is also known to have existed in the history of Turkish security services (Bal and Beren, 2003: 64). There are documents showing that Police Ethics classes existed in Turkish police education in the last periods of the Ottoman State (1910) and in the first years of the Republic of Turkey (1939). Among them is a book titled *Polis Efendilere Mahsus Terbiye ve Malumat-ı Meslekiye* (Professional Training and Information for Policemen) published by the educator and police chief İbrahim Feridun in 1910 in Istanbul. This book was used as a textbook in police schools at that time. Upon examining the book, it becomes obvious that modern principles such as transparency, accountability, community policing, and service found inside the contemporary *European Code of Police Ethics* also appeared in that book. However, for some reason police ethics courses were not offered in pre-professional or professional institutional training of the Turkish police in later years. Towards the end of the 1990s, police ethics courses started to be offered again in formal police education in Turkey, in parallel with police ethics studies carried out under the Council of Europe.

In reality, the acceptance of a profession as a professionally practiced field must be accompanied by the development of some professional ethics principles. Such a connection also exists between police ethics and professional policing. If policing is a service branch that must be practiced professionally, there must be ethical rules covering the rights and wrongs of this profession. These ethical rules are defined by the members of that profession, who are its representatives and the providers of its services. Their own colleagues punish those who do not comply with those rules according to ethical rules. This is one of the musts for a field to be considered

professional. In other words, professionalism requires compliance with ethical rules. A police officer who works in accordance with ethical rules is a professional police officer. The idea of professionalism does not merely bring some additional responsibilities upon the members of a profession. In this light, the code of police ethics should not be viewed as a document that restrains security service personnel and makes their task more difficult. The existence of code of ethics and compliance with it will ensure that the people who are providing this service and those who receive it will be in a healthier relationship.

Security personnel performing their duties with professionalism will internalize the ethical code of their profession and will transform it into normal and routine behavioral patterns over time. Moreover, a professional individual does not perceive acting ethically as something extraordinary that should be rewarded. Ethical behavior will not only benefit those to whom it is directed, but will also give happiness to the person who acts ethically. In fact, security personnel who practice proper behaviors in line with professional principles will live a more peaceful life. They will at the same time extend this happiness to their environments. Those who violate the law and ethical codes will make their colleagues, their close environments, family members, and even themselves unhappy.

In short, individuals who provide services professionally and in accordance with ethical codes will not benefit only the society they are serving; individuals who act ethically in their professional lives also will be happier in their private and family lives. For this reason, security personnel should not view ethical rules and principles as an additional arrangement that limits and controls them. They should accept compliance with the ethical code as benefiting both themselves and others, and as a requirement of their professionalism.

4. CONCLUSION AND EVALUATION

There is a close relationship between professionalism and professional ethics. Being a professional member of a service sector requires willingness to comply with that profession's ethical code. This requirement covers all personnel that have chosen internal security as a full-time service area.

For this reason, although the ECPE is a document prepared for official security personnel, personnel of private security organizations that, according to recent legislation, assist official security organizations in providing security services are also bound by these ethical principles. In short, since their duty is to provide security services, it is necessary and useful for these organizations and their personnel to become aware of and adopt basic ethical rules of security service established for official security personnel.

SECTION II
SOCIALIZATION AND
POLICE ETHICS

1. INTRODUCTION

As briefly explained in the first section, the values of the society in which police officers were born and raised are important defining factors in the formation of police subculture and professional values. Security personnel carry within them the moral understanding and social values of their society when they enter this profession. They also receive training that parallels or reinforces the social values they had already learned through their basic education. Lastly, they participate in a socialization process in their professional lives following their pre-professional training, and in their private lives. This in turn naturally results in a predominant professional (police) subculture.

The effects of police subculture on the perception of the society served by the internal security personnel, and on the quality of services provided, are issues often addressed in the literature (Kleinig, 1996). Security personnel have a perception of themselves as different from, and sometimes better than, the society in which they live: Their 'us versus them' distinction, their belief that they should be authoritarian and tough (Sokullu-Akıncı, 1990) and the resulting stiffness in their dealings with the public, and various levels of material corruption (Crank and Caldero, 2000) are some of the deviant behaviors that can be observed among security personnel in almost every country. In addition, the belief that 'you can't always play by the book' is one of the common approaches among security personnel (Cerrah and Semiz, 2000). These kind of professional values and approaches

cause some problems both in legal and ethical contexts.

This section will examine the pre-professional and professional socialization processes of security personnel, in particular the police, as well as some legal and ethical problems that are caused by the resulting police subculture. Although police socialization and its resulting problems will be covered here, it would not be unscientific to assume that gendarmerie members who go through a dense professional socialization experience similar problems.

2. POLICE SOCIALIZATION AND SUBCULTURE

The majority if not all of the individuals making up a society share the values belonging to the dominant culture in that society. In addition to that, there may be one or more subcultures constructed by certain subgroups in one society, with their own associated values. Racial, regional, religious, sectarian, political, ethnic, and professional groups can be among the sources of such subcultures. These groups are members of subcultures that are not well-known and/or shared by the other sections of the society. As a result, the members of these groups may interpret events in the larger society from perspectives produced by their subcultures.

Although subculture construction occurs within any profession, it can be observed much more clearly in uniformed and armed professions such as the police and the military. Among members of uniformed professions, who spend the majority of their time during training, on-duty, and even off-duty apart from civilian society, subculture construction is even more pronounced. Just as it is not possible to ignore the subculture that is constructed through this socialization process within the profession of security personnel, it is not possible to destroy it either. What needs to be done is to acknowledge the existence of this subculture and minimize or attempt to control its

possible negative effects on members of the profession. In addition, socialization processes of security members must be fused with civilian society, and a healthy professional subculture and a code of professional ethics must be developed. In this way, security personnel will not develop a professional subculture that is too distant from the lifestyle and values of the society they serve. They will be able to look at the events not only from their professional perspective, but with more universal values and approaches.

The staff of a security organization providing security services in a modern society must be able to see their places and duties in the society not just through their own profession's perspective, but also within the wider picture. They must be able to view events not only according to the values of their own professional subculture, but also according to the laws of their country, and even according to global values. This is only possible with personnel that are carefully selected and trained, aware of the events in their country and the world, and aware of where the world is going. Modern security services cannot be provided by a security organization composed of individuals confined to the narrow molds of their professional subcultures and values.

The section below briefly discusses the socialization processes of the personnel of the Turkish police organization and their possible effects on police ethics. Some limited research on the subculture of the Turkish police has been carried out, with some studies published in recent years (Sokullu-Akıncı, 1990; Gültekin, 1997; Cerrah and Semiz, 2000; Çağlar, 2001). Below, the issue of what social strata police officers come from will be addressed first, based on field data[2] on the socio-economic structure of police candidates.

3. FACTORS AFFECTING POLICE SUBCULTURE

The factors shaping police subculture can be examined under two main categories. The

first category is the socio-economic environment in which the police candidates grew up, and the second category is the professional socialization process they underwent.

The effects of the cultural values of the social environment in which the candidates joining the police organization live can be clearly observed in their actions. So can the effects of the candidates' professional socialization upon joining the organization, beginning with the training they get in police school, and continuing throughout their time of service. The values of the social structures from which the police candidates come and the professional socialization process they experience after they join the profession demonstrate similarities and even overlap. As a result, a police subculture and professional values emerge and can be at least as effective and dominant as the legislation relating to the behaviors of the security personnel.

3.1. Social structure

The effects of the socio-economic background of police candidates on the formation of police subculture are evident (Özcan and Çağlar, 1994). The data from the research on police candidates in police schools in 1997 show that members of middle-class families, which constitute the majority of the society, are not interested in policing. Instead, the majority of those who apply to enter the profession come from working class, blue collar or farming families, and they naturally bring the values of these classes with them to the police organization. A questionnaire given to over nine thousand candidates getting training in police schools in 1997, showed that a large majority of the police candidates come from low socio-economic backgrounds. The candidates joining the profession with the cultural values of this background experience

2   This research is a questionaire conducted in 1997 by Security General Directorate, Education Division on 9.019 police candidates in police schools.

a professional socialization parallel to the cultural values they carry with them.

Studies on urbanization have shown that parental professions and education levels have an important effect on social class differences. Research in this area has concluded that the education levels of mothers living in economically lower class neighborhoods are significantly lower than those of the fathers (Ayata and Güneş-Ayata, 1996: 12-13). The data collected through the police schools questionnaire support this information. While three-fourths of the mothers of those who completed the questionnaire were elementary school graduates, 20% of the candidates left this question unanswered. This situation suggests that the mothers of the candidates who left the question blank dropped out in or before elementary school. While the percentage of mothers who are junior high- or high-school graduates was 4%, college graduates make up only 0.4%.

As a result, it is understood that families with higher education levels do not direct their children to policing, which they do not seem to perceive as an attractive profession. The results of the questionnaire show that 84% of police candidates' fathers work in or are retired from relatively low-paying jobs such as blue collar, farming and factory work.

3.2. Police training and socialization

There is always an idea, theory, philosophy, or scientific reason, even if not conscious, behind people's attitudes and behaviors. Most of the time people may not be aware of the scientific reasons behind their own behavior. However, this does not mean that a scientific explanation for their behavior does not exist. The effects of professional socialization and professional subculture on an individual's ideas of security personnel manifest themselves in their behaviors and actions.

The first phase of professional socialization occurs during the basic training provided prior to the actual service. Through the pre-professional formal training offered at the Police Academy and in police schools, candidates are not only provided with the theoretical foundations for their future duties but also with a professional subculture. Partly acquired through preliminary formal training, this subculture is further reinforced by the much more effective informal training that takes places while on duty. To summarize, it is evident that the police (or law enforcement) subculture is a product of both pre-professional formal training and informal training during service. In other words, the on-duty actions of the security personnel are not shaped only by the basic training they receive when they enter the profession. Police/law enforcement subculture, informally passed on from generation to generation within the profession, plays a more significant role than the formal training offered before entering the profession.

The training processes of Turkish security personnel before and during their professions take place in places and environments that are detached from civil society. The training of all security personnel, chiefs and officers, is conducted in a boarding school environment. With the arrangements made through the Police Higher Education Law No. 4652,[3] the duration of police officers' training has been increased to two years. Class companionship, which starts with the training process in police schools and continues for two years in a boarding school environment, occupies an important place in professional socialization. For some officers this relationship is a brotherhood beyond ordinary friendship.

Class companions who are on duty on the same or nearby locations reinforce these friendships after graduation by becoming housemates. Revolving around the axis of class companionship, this relationship,

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3   For Law No.4652 on Police Higher Education dated 25 April 2001 see Official Gazette (Resmi Gazete) No.24397 dated 9 May 2001..

however healthy it may be, will distance the officers from society and will in time turn them into people of a detached world. Protecting a colleague, especially a class companion, is a rule of the police subculture that should never be broken. Those who do not protect their colleagues, especially class companions who are in need, are somewhat stigmatized.

The duration of training for candidates for chief is four years for students coming to the Police Academy from high school, and eight years for graduates of the Police College. These entire periods of time are spent inside a boarding school environment, and deep friendships naturally arise. Similarly, the beginnings of sentiments such as resentment, jealousy, competition, and animosity that police officers experience later in their careers can also be rooted in their training years.

Police candidates enter police schools with the characteristics of the social structure in which they have been born and raised, and in which social ties requiring solidarity with people such as relatives and fellow countrymen are very important. The type of socialization experienced by candidates in police schools parallel the values with the socialization processes they experienced before. Similar friendship solidarity is built also in police schools and some new professional-cum-social ties such as friendship, brotherhood, class and colleagueship easily develop on top of social ties such as 'relative' and 'countrymen' that already exist among students.

The effects of these relationships formed through the training years can continue throughout the whole of the security officer's professional career. Security personnel appointed to high-level positions may resort to nepotistic selection processes based on individual relationships such as class friendship or brotherhood instead of using objective criteria such as merit, competence, knowledge, and expertise when choosing the

staff with whom they will be working together.

Appointing personnel through selecting work friends under these circumstances can, at best, be defined as forming 'teams.' However, in cases where togetherness beginning with work friendship grows stronger and shifts to the direction of types of behavior such as corruption, favoritism, and abuse of authority it can go as far as a kind of 'gang' formation. For example, it is known that the roots of the Söylemez Brothers gang that appeared within the security sector in 1990s went back to their training years.

These kinds of friendship cliques do not always include all of the classmates. While there can be more than one friendship clique in a class, some students can stay out of groups (cliques). It is also observed that students who do not belong to any particular group almost naturally form a group of those without a group. The groupings can be shaped as regional friendship groups such as Black Sea natives, Easterners, Aegeans, or as city-based friendships such as people from Kayseri, Izmit, or Adana.

On the other hand, it should also be noted that the kinds of relationships that begin in student years and continue on a personal level throughout the professional lifespan do not always result in negative consequences or turn into gangs. It is a fact that some of these continue as healthy social relationships that do not impact the quality of service.

These friendships that start as innocent social relations resulting from the the nature of the boarding school environment and which continue to provide mutual support throughout an individual's career, on the other hand, cause the exclusion of those who are left out of groups. This exclusion becomes more distinct higher up in the police hierarchy, where the 'pieces of pie' are bigger but fewer. Accusations going back to student years can be made to those who are left out of groups. Information known about one an

other, which may be outdated and has never been legally wrong, can resurface. Boarding wards and classroom behaviors can be remembered and used as tools for accusations. Many high-level security personnel base their judgments of their peers more on relationships and impressions they had in student years than their current behavior. It is almost assumed that people will not change, that they will be the same as they were thirty years ago.

Many security personnel that are currently in high-level positions were first introduced to the 'us versus them' mentality around the ages of 13 or 14. As a result, this very early and dense socialization process taking place in the boarding school environment shapes the collegial relationships and friendships on the one hand, and the security personnel's view of society on the other.

In short, professional socialization is evident among members of the policing profession starting from their student years and lived intensely throughout their career. The feeling of belonging becomes deeply rooted through the class psychology that is constantly emphasized in the school environment. A feeling of viewing one's self out of and different from society becomes embedded within the security personnel who are systematically isolated from society as early as the training process. It can become difficult to perceive their obligations as deriving from the rule of law, because the value systems of police are developed over the long-term – up to eight years – training environment. A conflict can arise between the principle that everybody is equal before the law and de facto professional values – such as the belief that my friend, classmate, or colleague is more equal, more correct, or always right, and should be protected.

Values and professional ethical principles are naturally shaped within the framework of the social relationships experienced in these educational institutions. Many security personnel think that the media, the judicial

powers and high-level administrators do not protect them as well as they ought to, that they even exclude them, and they often feel that the services they provide are not appreciated. This in turn feeds the tendency to protect friends and colleagues, who they think are not protected by anybody else. This perspective, even if true, if fed systematically turns in time into a vicious cycle of a kind of social distancing and alienation by detaching society from the police, and the police from society.

On the other hand, during boarding school training, which takes up to eight years, all the students' basic needs, such as food and accommodation, are taken care of by their institutions. These benefits they receive in return for future compulsory service include all school costs, books, clothes, even handkerchiefs; nail clippers, toothbrushes and toothpaste, and stipends. After graduation, police candidates whose needs are fulfilled by their institutions during the long years of training are appointed to their jobs with a salary that is insufficient. The effect of this situation on the tendency to accept bribes is another issue that must be studied. The fact that students' every need is taken care of by their institutions, and that they are not even charged for electricity, water, and heating costs, creates an expectation that certain needs within the professional life should be taken care of them for free. The use of some services in the name of social benefits with no cost to individuals who are in the middle of their career may strengthen and sustain these expectations.

It can be thought that the state's fulfillment of the basic needs of police chief and officer candidates through their school years will result in candidates' gratefulness and dependency on their institutions. However, the real gratefulness should be felt for the society that supplies these resources. Therefore, throughout the training of security personnel, their role as civil servants rather than state officers should be

emphasized. All the needs of the security personnel are fulfilled by the country's taxpayers. Security personnel should feel responsible to their nation, before their organizations and their state. The state is comprised of institutions established to serve the people of a country. In reality, the state is an abstract concept, and is no other organization than the one consisting of public service institutions.

The 'state' is an abstract concept that provides service for the nation using public resources through the public service institutions. Material resources used by the state and its institutions are supplied by the people living in that country. Therefore, all public service personnel, especially armed forces and security personnel, have a responsibility to the people of their country before their own organizations. That law enforcement personnel (the police and the military) feel loyalty to the state or their own institutions only, excluding the society and its elected civilian political authorities, is a product of the crooked mentality of a state employee.

As a result of this crooked mentality, state employees in some cases can perceive themselves under the control of their organizations, or just as employees of the state, rather than under the control of those elected to govern them. However, society administers and controls these services through its elected administrators, and it supplies these benefits given to them through the state, as well.

It would be an incomplete approach to think of the state as an abstract concept comprised exclusively by either the elected administration or simply a bureaucracy. The legitimacy of a state that is not controlled and administered by political authorities elected through democratic mechanisms is disputable. An abstract concept of state, where it is not clear who the state is or whom it serves, and that is not controlled by political mechanisms, can in time create a hegemony of bureaucrats. This kind of a state

structure is defined by the lately popular term 'deep state.' In short, the deep state is a structure that does not allow itself to be controlled by the politicians elected by the people, resists democracy, and, therefore, lacks legitimacy.

3.3. Work environment and socialization

The second phase of professional socialization, following training, takes place within the work environment. In both phases subcultural values held previously by police candidates are retained to a great extent. In this process, instead of a transformation of the already existing cultural values and perspectives in viewing events, they become denser through the inclusion of professional content.

A great majority of security services are produced in environments closed to civilians. The practice of policing takes place in working environment in which civilians are present to a very limited degree or not at all. There are virtually no women personnel working in police or gendarmerie stations. Civilian personnel are either literally or virtually non-existent. In stations, where public relations occur most often in the service context, and in other units, policemen and soldiers in uniform are always the majority. In other words, members of the profession mostly spend long hours of working time together with their colleagues. The interactions with civilians as required by their duties are tense and of negative content. This situation will naturally distance and alienate the police and society from each other. In developed countries more civilian personnel are hired to overcome this problem, especially for duties that do not require the involvement of policemen, such as office services. By positioning civilian personnel in police stations and other units as much as possible, police units should be supplied with an environment similar to that of other institutions serving the public.

On top of the on-duty time spent mostly in environments distant from the civilians, sharing most off-duty life with colleagues gives rise to a kind of professional solidarity and ghetto-ization among the members of the profession. Although the ghetto concept suggests in its original meaning the insufficiency of the physical conditions of the living spaces, it also implies isolation from the society, a homogeneous internal social structure, and closed-mindedness to different ideas. Below, some benefits that the Turkish security personnel enjoy and their potential effect on security services will be discussed.

3.4. Social benefits and socialization

Just as in the case of other Turkish public institutions, security service personnel and their relatives enjoy access to a series of amenities, such as housings, cars, service vehicles, police guesthouses, military guesthouses, and clubs. Although some of these are justified by pressing needs such as the absence of sufficient residential buildings at the post location, they also exist in large residential areas with a broad range of available accommodations and social benefits. Therefore, parallel to the training and work environment, the private lives and social benefits enjoyed by police staff also reinforce the values of their original socio-economic and socio-cultural structures, thus giving rise to a profession-specific type of socialization. The so-called social benefits supplied to the security personnel by the state or its institutions for use in their non-professional private lives make the final contribution to their subculture. As is the case with many civilian state employees, the so-called social benefits for the police and gendarmerie, such as housing, cars, service buses, vacation resorts, and special shopping centers, increase professional socialization (Such 1989), but they also exclude and distance them from the civilian society.

4   The quantitative data used on the housings, service cars, and other social compounds are based on the records of the General Police Headquarters, Office of Social Services as of December 2002.

Housing (Lojman)

Many employees use the housing and other welfare complexes, increasing the time spent together off-duty. Long working hours, and a working atmosphere involving tension and adverse interactions resulting from the nature of their duties, are important factors leading to the increase of solidarity among the security personnel. In addition, the use of service buses for transportation between work and home increase the time security personnel spends together and works as a barrier isolating security personnel from society. In particular, when security personnel live in housing facilities that are designated for their use, in the form of communities surrounded by barbed wire, this togetherness extends to every aspect of their daily life, and non-professional contacts and relationships with the society decrease even more. In addition, the spouses and children of security personnel who live in this form of social quarantine get their share of these effects.

According to 2002 data, there are over 35,000 housing complexes just for the police sector.[4] In addition, the construction of more than 3,000 housing complexes is currently underway. Some of the service buildings belonging to the security sector are built so that the upper floors can be used as housing. Mostly in suburban areas, the housing complexes built in the form of communities resemble police towns. The housing ratio for the total of the police sector is 19%. This ratio exceeds 50% in eastern towns of the country, such as Kars and Bitlis, and ranges from 8% to 9% in cities where more police are on duty, such as Ankara and Istanbul.

The ratio of gendarmerie personnel living in designated housing is not smaller than that of the police. Especially privates - the lowest rank in the hierarchy of the gendarmerie - spend their entire day in military compounds out of the civilian society. Privates living in military spaces constitute the vast majority of gendarmerie personnel. Having received

their military training these privates are completing the compulsory military service. They should be distinguished from the paid professional staff of the gendarmerie. A great majority of the professional members of the gendarmerie of the middle- and high-officer ranks also live in housing in these military areas.

It cannot be said that the size and physical conditions of the housings satisfy the personnel. 3,400 police housings are 60m² in size. Many middle- and upper-level law enforcement personnel make use of this housing although they are insufficient and under-maintained in terms of physical conditions. While 50% of the existing housing is between 80 and 100m², a very small portion of these are bigger than 100m². Some of these housing complexes look almost like ghettos, with insufficient physical conditions and inhabitants isolated from the rest of society. The few housing complexes that are in good physical condition are available only for high-level security personnel and are often criticized for being luxurious and wasteful.

Whatever the physical conditions of the housings may be, professional ghetto-ization is at issue here, whereby the housings do not really satisfy their inhabitants, and contribute to the social distancing between the institution and society. A different form of ghetto-ization exists for police officers who do not live in housings. Due to economic difficulties, a considerable number of police officers and middle-level administrators live in suburban areas. From this perspective, although social isolation is not experienced to the same extent by these police officers as by those living in the housing complexes, we can still talk about a kind of police neighborhood. This kind of professional ghetto, which is more widespread in underdeveloped and developing countries, is not limited to the Turkish Police Service. High-level personnel of almost all public institutions live in this kind of housing ghetto. People living in these housings have limited contact with the civilian society, and because they are incapable of comprehending the problems of their society through direct experience, they go into a state of alienation from their society.

However, it must be added that it is security personnel themselves who are mostly disturbed by social isolation. Aside from security concerns, changing the appearance of service vehicles into civilian ones may be a step towards social harmony. It is for the same reason that employees of the Turkish security services prefer to be dressed in civilian outfits on their way to work and back home, and a great majority of high-level administrators prefer dressing in civilian outfits during working hours. The most important evidence is the fact that many security personnel have stated that they would prefer not to live in the housing complexes if their economic condition allowed it. It would not be an arbitrary forecast to predict that housing practice will disappear in the country in the next 20–30 years, given the recent government decision to increase housing rents by 110%, as a result of which the attractiveness of the housings in economic terms disappears.

It can be argued that the housing practice is justified by the need for security and convenient transportation. However, the common point of these justifications is to support underpaid public employees. However, in addition to its negative social effects, it is difficult to argue that the housing policy as a kind of economic support is economically efficient.

In developed countries, while accommodation problems of both civilian citizens and public employees are solved through long-term policies, the use of benefits by security service personnel, such as housing and service cars, is limited to the highest positions and is in fact exceptional. For example, the deputy chief of police in Northern Ireland, who has the longest experience in dealing with terrorism in the

world, does not have housing at his disposal, nor does he have a service car, bodyguards, or drivers at his service. The situation is the same for the deputy chiefs of the 43 administrative districts on mainland England. In these institutions, only the district police chiefs have access to special housing and only one service car each.

Service cars

As with housing, service car use is extremely widespread in Turkey compared to developed countries. In developed countries, opportunities and benefits to purchase private transportation vehicles rather than service cars are granted to public employees.

Service cars are only granted to a limited number of public employees in accordance with the law. Nevertheless, the vehicles given to public institutions to be used for service are used as status cars. In general, the vehicles given to the highest chiefs of units and other administrators are used as status cars in contradiction with the spirit of the law. Since a great majority of the cars used by the police service are used under the name of service vehicles, it is quite difficult to give a number for the vehicles used as status cars. However, it can be said that many middle- and high-level security personnel currently on active duty use status cars. In some cases, the number of vehicles used by an administrator is more than one, and vehicles are also given to the family members of security personnel.

As is the case of housings, the use of status cars constitutes a significant expense for the state on the one hand, and further decreases the social interactions of the individuals using these vehicles with the civilian society on the other.

Police Guesthouses and other social compounds

The benefits granted as social services to security personnel include Police Moral Training Centers, Training and Resting compounds, Clubs, Guesthouses, and even

Thermal Compounds. These are vacation and entertainment places for the exclusive use of security personnel and their families, and which cannot be used by civilian members of society. As mentioned above, these compounds, which partially intend to provide cheap accommodation, resting, and recreation facilities to security personnel without sufficient material resources, serves to limit the social contact and relationships of professional personnel even during vacations. Since it is perceived to be cheaper and safer to stay and eat at police guesthouses, personnel are induced to feel less safe and lonelier outside.

These measures cannot be accepted as efficient economic resource management, aside from their social costs. Many chiefs and officers, whose main duty is to provide security services, are appointed to positions in these compounds. From the perspective of a personnel-appointment policy, these compounds are not economically favorable. Middle- and high-level chiefs, who have received policing and high-level administration training for eight years in boarding school environments, practice hotel management in these compounds. It is a curious situation that hotel management, which is a sector in itself, is practiced by personnel with training in policing. On the other hand, the personnel who are on duty in these compounds feel excluded from policing and idle.

The continuous use of position cars, housing complexes and other social benefits can have very different effects on individuals. One of these effects is the 'role conflict' that can be experienced by security personnel when off-duty. Being continuously addressed as 'Chief!' not only within professional relationships but also in a private, every-day context, pushes individuals to view all human relations hierarchically and have corresponding expectations. Being always addressed in a way that expresses respect and obedience and getting used to exclusive treatment limits the

individual's ability to adapt to environments other than their service sector.

It becomes difficult for public personnel who are accustomed to living almost the whole of their professional lives within hierarchical concepts such as rank, employee record, and seniority to adapt to the civilian society where each individual is an equal citizen. In particular, maintaining their professional roles as chief, director, and commander even out of working hours makes these roles very dominant, and security personnel tend to have difficulties being a person among other people.

Security personnel can be easily differentiated within the civilian society by their gestures, speaking manners, and their tones of voice. Many perceive this differentiation as a professional requirement. In some cases when they are treated as ordinary people, arguments along the lines of, 'Do you know who I am!' come up. This dimension of the problem is not limited to security personnel, and is observed to be experienced by members of many other professions, especially by parliament members and their families.

Individuals who experience difficulties living in society without privileges or exceptional treatment find shelter, even refuge, in their own institutions. They elongate their workday and even spend weekend holidays at their place of work instead of home. There are many security officers who do not go home after working hours, or who do not really have an environment in which they can socialize outside their home. There are those who come to their police stations or units even on weekend holidays, since they get bored at home and do not have an environment they can adapt to outside their home. There are those who spend part of their time in police stations even after retirement, and who consider it a kind of loyalty to their profession. People who get used to the respect and attention they receive in their working environments prefer to have

even their vacations in environments where they can benefit from their hierarchical titles, such as police guesthouses and police camps.

4. SOCIAL ISOLATION AND ALIENATION

Due to the above mentioned social benefits, hierarchical relations do not appear only at work, but also in service vehicles used for commuting to work, and even in housing complexes that are the sphere of family life. It is inevitable that security personnel, who do not mix with society even when commuting to and from work, and who spend not only working hours, but virtually all of their daily life under the influence of professional rules, will become somewhat distant and alienated from society.

It is often observed that police and gendarmerie personnel, and even other civilian and official personnel, demonstrate odd attitudes and behaviors towards civilian citizens when they are using their private vehicles or when shopping at the marketplace. It is clear that it will not be very easy to accept being an ordinary individual within the civilian society for a person who is used to exceptional treatment, at all times in professional life and at most times in private life, and who has never waited in a line. The solution to this problem is to help them integrate into society by not always treating them as privileged people, instead of creating for them a special world in which they can live.

Almost all professional and private lives of police and gendarmerie personnel take place in a professional environment and atmosphere. As a natural result of this, members of the profession are distanced and alienated from society and live in a world of their own. However, it is observed that law enforcement personnel are not isolated from the civilian society to the same degree in modern societies. To the contrary, law enforcement personnel spend their daily

lives, to the extent that is possible, within the society that they serve. This requires being involved not only in terms of physical spaces, but also in terms of social relations. The placement of police and gendarmerie stations at city centers cannot be considered sufficient involvement with civilian society. The same applies to the locations of military compounds and housing complexes at city centers. These compounds isolate the military life from the civilian social environment, even when they are located at the city's centre. In terms of daily life, these places can be accessed by civilians in a very limited way, while military relations maintain their predominance.

The necessity for closer interaction and common environments and spaces between public servants and the people they are meant to serve should be acknowledged in order to remove the obstacles to contact between public institutions and society and to establish social peace. This is the direction of practices in modern countries. For example, in Western countries the number of public personnel with special protection is very limited, and this protection does not take the form of explicitly armed guards. Practices such as housing, status cars, and the use of service vehicles for transportation are virtually non-existent.

The negative side-effects of the so-called social benefits granted to public personnel by the state are not only relevant to security personnel. It will be especially difficult for high-level public personnel, who are not involved with the people and are distanced from them, to closely observe and understand their problems. This situation is true not only among security personnel, but also among high-level administrators of many institutions. It is inevitable that these kinds of so-called social benefits will bring about social polarization and will impair social peace. Therefore, the problem cannot be solved solely by limiting or cutting back some social benefits given to the security personnel.

The problem of isolation of public personnel from the civilian society is not limited to the police and gendarmerie services. This problem should be considered with respect to all public personnel. The solution does not lie in removing these benefits, but in making adjustments so as to cover the actual needs of the public personnel as well as increase their standards of living.

5. CONCLUSION AND EVALUATION

The basic criteria for the services provided by security personnel to internal and external customers should be the the establishment of the rule of law and the maximum respect for civil rights and liberties. In order to be able to provide security services in accordance with these criteria, factors such as professionalism, meritocracy, and expertise should be prioritized in personnel selection and training. It may be the case that primary relationships such as friendships that go back to student years, details of an individual's private life, political views and tendencies, and personal experiences affect professional practices and selection process in disregard to the above-mentioned objective criteria. This constitutes a conflict with the principle of meritocracy, the public service philosophy of modern societies, and results in the continuation of the nepotistic system that is common in backward societies.

Ethical and legal problems arise from the fact that solidarity based on primary relationships rather than the principles of the rule of law and respect for human rights is effective in the security services, both with professional members - the internal customers - and with citizens - the external customers. It is inevitable that a social and institutional structure prioritizing personal friendships and animosities and the details of private lives of individuals in its selection and assignment of personnel will experience difficulties in integrating to the Western world, where objective criteria such as the rule of law and meritocracy are valued.

In short, one of the reasons behind the ethical problems experienced in the Turkish police service both at an institutional and an individual level is dense professional socialization. Regardless of the underlying reasons, whether economic or security-related, spending virtually all of their professional and private lives out of the civil society and in places and times under their own control will result in an extreme professional socialization for security personnel. In time, this extreme professional socialization will result in adaptation problems in the form of detachment from society and alienation.

SECTION III
PROFESSIONAL SOCIALIZATION AND ETHICAL PROBLEMS

1. INTRODUCTION

This section will discuss professional socialization processes and the potential effects of the resulting police subculture and professional values. The first of these concerns the quality of the relations of security personnel with civil society and civilian authorities. Civil society includes all individuals of the society who receive the services provided by security personnel. Civilian authorities are appointed civilian administrators such as governors and sub-provincial governors who are the local representatives of the elected national government and central government.

The control and inspection of security forces (the army and the police) by elected and appointed civilian authorities in Turkey is one of the most frequently discussed issues in recent years. This problem was mentioned frequently in progress reports prepared by the European Union (Commission of the European Communities, 2004 and 2005). These principles, which will be discussed within the context of the 'mental modernization' of law enforcement in this section, are basic values particularly emphasized by the European Union. Principles such as the rule of law and human rights are not criteria imposed exclusively on Turkey. These principles are presently upheld with care in member countries of the European Union are required from all countries pledging to join the Union.

Professional socialization has very significant effects on security personnel's perceptions of civil society and civilian authorities as well as on the quality of the relationship between

them. Security organizations that have been modernized to a certain extent in terms of physical conditions also need to be also modernized in terms of mentality and to catch up with the times. The acceptance and practice of principles such as the rule of law and human rights by law enforcement agencies is related to their acceptance of the supremacy of civilian authority. This issue is an important phase in the 'mental modernization' of the internal security services (Cerrah, 2005). The acceptance of these principles and their reflection in security practices is an urgent issue. Virtually all articles in ECPE are directly or indirectly related to these two principles.

Unless internal security services achieve mental modernization, the following situations are likely to occur. The first is institutional paranoia, defined as 'the personnel's perception of everyone else as an enemy,' a negative social effect of dense professional socialization. The other may be termed 'corruption of a noble cause,' whereby the security service personnel resort to unethical practices that they consider to be right according to their own professional values.

2. LAW ENFORCEMENT – CIVIL SOCIETY RELATIONS

As mentioned in the previous sections, personnel of organizations who spend a great majority of their professional and private lives in isolation from society can be termed law enforcement. On the other hand, organizations that are physically and mentally involved with society and the duties they perform are defined as security services. The nesting of the rationality in the minds of the police and gendarmerie personnel that internal security duties constitute a service is closely related to socialization processes of the personnel of both institutions in their professional and private lives.

The great majority of security personnel, especially those in command and decision-

making positions, entered this profession at the age of 13 or 14. They have been isolated from their families and the civil society from an early age, and they have lived almost all of their childhood and youth in military/police boarding schools where uniformed and hierarchical relations are dominant. As discussed in some detail in the previous section, professional socialization starts with the training period and continues throughout the professional life. Security personnel, who experience the entirety of the duty within a hierarchical web of relations with colleagues, lead their family lives in housing complexes where hierarchical relations are also dominant. Professional socialization does not remain limited to professional and family life, but is experienced also in social life, in military spaces and environments such as military nightclubs, shopping centers, military/police guesthouses, and military vacation camps (Çağlar, 2001: 115–143). These processes, through which an extreme form of professional socialization is experienced, result in differentiation between the professional values of law enforcement institutions and the values of civil society.

On the other hand, social values are not only acquired through formal educational institutions, but also directly from individuals living in that society. Security personnel should not be isolated from their own society if they are to acquire and share the society's values. On the contrary, they should be in society as much as possible. As previously discussed in some detail, security personnel who are systematically isolated from the society they serve throughout their training, professional, and private lives will naturally be distanced from the values of their own society and experience a conflict of values.

2.1. Civilian and military values

The values and lifestyles of civil society present both rapid change and wide variety. On the contrary, military values and lifestyle are monotypic and resist change. This in turn

creates a void and a cultural lag (Abercrombie *et al.*, 1988: 58) between civil society values and military values. Furthermore, conservative security personnel resisting change can over time develop a tendency to project their professional values and principles onto the whole of society. Moreover, over time they can start perceiving ideas and lifestyles that are not in line with their own preferences as a kind of threat. In short, the professional military values of conservative security personnel cause difficulties in adapting to the rapidly changing civil society values.

When it comes to relations between security personnel and civil society or civilian individuals, we notice a conflict of institutional subcultures. Even though it never explicitly takes place in formal training, military education and institutions include teachings that condescend to civilian characteristics. Working in harmony with civilians, let alone accepting their command, can sometimes be perceived as betraying the profession, or at least as a weakness. Personnel of the institution expect from their leaders to always stand up to civilians and to defend the rights of their personnel. In some cases, this turns into an expectation of solidarity regardless of who is right and who is not.

In short, military values that develop in the institutional military structure and social environment sometimes contradict, and even conflict with, civil society values. It is obvious that the established practice according to which the superior is always right in the military institutional structure and the rule of law, which is a civil society value, cannot be easily reconciled. Again within the *modus operandi* of the profession, concepts such as absolute obedience to leaders and superiors, the necessity of which is to a certain extent inevitable, and obedience to civilian authority, which is a civil society value, are not always in harmony. In short, professional values and approaches that form and develop

in the professional lives of security personnel can be in conflict with civil society values.

2.2. Superior-subordinate relations and the chain of command

All relations while on duty and even in the private lives of security personnel take place within the context of a superior-subordinate hierarchy. In both verbal and written communication, all parties involved are either a subordinate or a superior. It is observed that the personnel of security service institutions, whose interactions take place in a superior-subordinate hierarchical web of relations, can experience difficulties when dealing with equals, which is generally the case for civilians. The subconscious idea that places civilians at the bottom of hierarchical relations is reflected in all uniformed–civilian relations, regardless of their positions and titles. In short, there is a role conflict in relations between uniformed personnel and civilians. Thus uniformed employees experience a conflict of roles vis-à-vis civil society, both before and after their retirement, because of their self-identification with their professional role and status within the institution's hierarchy.

Security duties are carried through inside a set of hierarchical relations that manifest themselves in a chain of command, whereby a command given by a superior is carried out by a subordinate. The relations and problem-solving processes in civil society on the other hand are more complex. In civil society, interactions between equals are carried out through communication, dialogue, and reconciliation. Members of professions who perform their duties in a chain of command, and who also solve problems, or believe to be solving them, through a chain of command show a tendency to solve problems they encounter off-duty also through a command chain.

Individuals who live to some extent away from conditions and difficulties specific to civilian life are inclined to think that many

of problems they encounter in their professional lives are solved quickly through chain of command relations. These individuals, who are too much under the influence of their professional lives, will in time develop a tendency to accuse civilians of incompetence. According to people of this mind-set, civilians waste time with procedures such as asking for opinions, taking recommendations, discussions, and evaluations in solving problems.

2.3. 'Us-them' and 'friend-foe'

Another problem that naturally develops in security sector environments is the 'us-them' distinction and the definition of 'friend-foe' as a more extreme dimension of it. In relationships, an individual is either with us -- in other words he or she is a member of the institution -- or is not with us. Security personnel whose professional relationships are formed through these concepts can naturally place the differences in society within this definition, and either perceive civilian individuals as with us or against us, in other words, as friend or foe.

However, difference, variation, and colorfulness are among the richness of the civil society. Institutions with professional values that tend to be monophonic and monotypic will perceive those who are not from their sector almost as enemies and can see them as a source of threat. According to Tarhan, 'it is not a healthy psychological state when there is a tendency to perceive people who do not think and live like oneself as enemies' (2004: 133). On the other hand, the differentiation in terms of ideas and lifestyle does not threaten to destroy social unity, but is a colorfulness and richness necessary for society's health and progress. This concept, which is defined as diversity in Western societies, and which is not alien to the Turkish society at all, should be appropriated not only by security personnel, but by all individuals in society.

In everyday conversations with security personnel, institutions and individuals that are 'police-friendly' or 'military-friendly' are mentioned. This situation naturally implies the existence of some individuals and institutions that are 'not friendly'. Such practices sometimes can even lead to the public exposure of 'non-accredited' institutions and individuals via the accredited media. The public exposure of any individual or institution as not accredited, or lacking legal basis, is a violation of the principle of the rule of the law, also known as conviction without trial. Especially when this is done by official state institutions and law enforcement agencies, the result is that of an unlawful 'accreditation'[5] system.

Individuals or institutions that are discredited in such a way, without due process, will be pushed into unlawful and illegitimate practices to escape this situation. Examples of these unlawful practices include offering high-paying symbolic jobs, known as 'grants' to public employees retiring from high-level jobs in institutions that practice accreditation, or forcing others to donate millions of dollars to clubs and foundations that are extensions of these institutions.

The two examples given here are the most common practices for gaining accreditation. In some cases, some individuals can directly benefit. In other cases, a military accreditation system that victimizes some commercial institutions will distort and destroy market competition, one of the basic dynamics of the economy. Competing firms will, rightfully or not, make complaints about each other to the accreditation system to advance their economic interests, and this will in turn damage the impartiality and respectability of the army and other security organizations.

Some commercial institutions that engage in production and trade, and that have documented that they have been fulfilling their responsibilities to the country by paying their taxes, as well as media organizations

and individual journalists, academics, public and private educational institutions, civil bureaucrats, and elected politicians, have all gone through an accreditation process in the recent past. All these practices are a result of the difficulties that security personnel, living in extreme professional socialization, experience in understanding the differences in social life.

The existence of an accreditation system that lacks any legal basis and that is founded solely on security personnel's professional concerns reveals the troublesome dimensions resulting from their isolation from society. In this light, attaching the label 'non-accredited' without any legal procedure and solely according to the fears and concerns of a single service institution points to the existence of institutional paranoia.

3. PROFESSIONAL SOCIALIZATION AND SOME ETHICAL PRINCIPLES

Certain dominant professional values will develop among law enforcement personnel who spend virtually their entire professional and private lives in isolation from society and in very dense interaction with their colleagues. This can in time turn into a loss of trust in civil society and in those who are not colleagues. This loss of trust, which results from physical and social exclusion from society, can lead to a perception of society as a source of danger and threat, and to a kind of institutional paranoia.

In addition, as a result of the discrepancy between professional values and universal and social values, some law enforcement agencies can practice 'noble cause corruption' whereby actions that lack legal legitimacy are considered to be right and necessary. The tendency to apply laws according to personal interpretations or to go beyond the limits prescribed by a law considered inefficient is

5   The 'military' concept used here does not only mean 'related to the army'. Although the word military brings to mind uniformed institutions such as the army and the police, all uniformed and civilian institutions closed to democratic organization and interaction, and ignoring the principle of the rule of law are characterized as military.

not a problem that is specific to Turkey, but is a form of professional abuse that is also often observed in law enforcement agencies even in developed countries.

3.1. Institutional paranoia

The basic duty of security units is not to guarantee the safety of a specific part of society, but to be equally close to all the people living in that country and to serve all without discrimination. The successful implementation of these principles by security units is possible when they are in close physical and social contact with all sectors of society, as described in Article 27 of the ECPE. This article, which includes the expression 'general police training shall be as close to society as possible,' emphasizes the need for openness and transparency in law enforcement training, as well as the provision of services. If law enforcement agencies want to perform their duties in synergy with the people, they must be trained in environments close to social realities. This closeness includes the close resemblance to real, daily life of the information provided through training, as well as the physical proximity of training facilities to the civilian population.

It can be necessary to choose areas and locations away from residential areas for some training that requires the use of weapons, such as arms training and hostage rescue training. However, the places where general training of the police is offered must be at locations where normal conditions of life continue to the extent possible.

Another point covered by the 'openness' mentioned in the ECPE Article 27 is the use of non-police institutions and individuals in police training. Although civilian academics participate in the training of the Turkish police, complementing this participation with the inclusion of lawyers who are members of the bar and representatives of non-governmental organizations is crucial.

As mentioned above, professional solidarity and unity develops among professional personnel who spend most of their time in environments distant from society and in dense institutional socialization. This can in time reach the extent of perceiving everybody outside that profession as a danger and an enemy. Scientific research on the police subculture shows that police personnel and members of similar security organizations have a tendency to view civilians as potential criminals. It is even observed that civilian administrators working in high-level positions within uniformed institutions are not well trusted. The feeling of mistrust towards people that are not colleagues, and even the perception of them as potential criminals, can be defined as a kind of institutional paranoia when it becomes dominant in an institution. However, mutual trust between civil servants and those being served is essential for the healthy functioning of public institutions. Mistrust and suspicion must be a temporary situation relevant only under certain circumstances, not the rule. The institutional paranoia considered here is related to the isolation of security personnel from society. In addition, lack of professionalism and self-confidence can also be at play.

Scientists argue that one of the sources of psychological problems such as paranoia can be the subconscious lack of self-confidence. Psychologists define paranoia as a psychological disorder in which delusions of grandeur and suspicions of being in danger are significant (Öztürk, 1990: 199-201; Arkonaç, 1999: 144, 384-385). While paranoia is known as a mental illness, paranoid is defined as a personality type reflecting the symptoms of this disease (Tarhan, 2004: 130). The paranoid individual feels a lack of self-confidence in addition to mistrust toward his or her environment. Paranoid persons 'evaluate every event in the plane of partnership-in-crime, and of friend-or-foe. They classify people as "my friend" or "my enemy"' (Tarhan, 2004: 131). These

individuals constantly feel the presence of extreme threats or dangers directed against themselves. Therefore, they redirect the lack of confidence within themselves outwards through the mechanism of projection. These people also strongly deny their delusions and psychological disorder.

In short, individuals who basically lack self-confidence perceive others as their enemies (Öztürk, 1990: 199-201; Arkonaç, 1999: 144, 384-385) and project this in the form of perceived threats directed against themselves. 'Paranoid personalities seek confidence in the behaviors of others. In fact, lack of confidence looms in their heads. A paranoid person feels constantly under threat. An enemy exists that wishes to harm him. He constantly questions whether people in his environment are his friends or not. He constantly thinks about these issues. He is not comfortable since he is constantly in this kind of fear' (Tarhan, 2004: 133, 138).

Whether dynamics similar to the ones underlying individual paranoia as summarized above are also relevant to institutional paranoia is an issue that should be researched through an interdisciplinary study. In a world where national borders are blurred through information technology, society's expectations from the institutions that serve it have also increased. People expect law enforcement agencies to serve them with the quality that they observe in modern countries. A gradual, subconscious loss of self-confidence is in question with security organizations that cannot function according to the requirements of the times. It is inevitable that this subconscious lack of self-confidence will transform into mistrust towards society and, in turn, to society's perception as a threat. An institution's self-perception as inadequate and its resorting to activities that are unfitting for the security services of modern societies will create anxiety and inconfidence in that institution. In addition, when the members of the institution are isolated from civil society in terms of their professional and personal lives,

the lack of self-confidence and the perception of society as a threat may appear as a result.

As discussed above, whether a result of the lack of civilian socialization, or of individual conditions, the existence of individuals with paranoid personalities within decision-making mechanisms is alarming. Especially in cases where the decisions made are put into practice solely through the chain of command, without being filtered through democratic mechanisms, the worries and anxieties of individuals with paranoid personality traits will be reflected upon the practices of the institution as a whole. On the other hand, one of the advantages of democratic administrations is 'the criticism and elimination of erroneous decisions that will result in social disasters' (Tarhan, 2004: 139). As Tarhan explains about paranoid individuals, '...if they are the heads of a country, they give too much priority to the arms industry. They create a massive internal enemy, and perceive law-abiding people as a potential danger' (Tarhan, 2004: 133-134).

On the other hand, security organizations' perception of themselves as the sole guarantor of the regime will naturally result in their perception of society and all other institutions as a source of threats. The mistrust towards others by the members of any institution, when widespread, will take on dimensions of institutional paranoia which has been referred widely in this book. Personnel of security organizations, who are trained and employed within a very dense process of professional socialization, can gradually begin to see themselves as the only protector of the country. However, the protector of democracy, defined briefly as the rule of the people, is civil society and all of its institutions. A system of government with security services as its sole protector, and in which other institutions are not trusted to safeguard democracy, cannot constitute a democracy, regardless of what it may be nominally termed.

The ethical problem here is law enforcement agencies' subconscious perception of society – which is actually the receiver of service – as a source of threat and the influence this perception has on the agencies' behaviors and views of civilian members of society. After all, according to both the *European Code of Police Ethics* and the code of conduct of uniformed security personnel, the function of these institutions is not the application of force, but the provision of service. The armed and uniformed personnel of the police are defined as 'Security Services Class' (SSC) in the laws currently in effect. Although some high-level authorities use the phrase 'a security institution is an armed force' in oral and written briefings, the basic function of the security personnel is *to serve* according to the legislation currently in effect. The fact that security personnel perceive the society it is intended to serve as a threat constitutes a serious ethical problem.

3.2. Crimes committed for the higher interests of the country and the nation

Another troublesome behavior observed among security personnel is the possibility of 'noble cause corruption' (Crank and Caldero, 2000). This problem can be defined as 'the mistakes made and crimes committed in the name of protecting the higher interests of the country and the nation.'

Doing wrong for a supposedly good purpose is not limited to purposes such as the higher interests of the country and the nation, the reign of the country, national interests, and national security. Security personnel can try to legitimize unlawful practices at the micro-level, such as arguing that they are defending victims and protecting their rights by being tough on criminals. Examples include torturing a suspect who is believed to be guilty in order to satisfy the feelings of a

victim, or ignoring evidence that is to the advantage of a suspect and that can mitigate the crime committed. However, whatever the dimensions and motives of such actions may be, it is unacceptable to 'commit immoral acts for a moral cause'[6] (Ostrovsky and Hoy, 1990).

In some cases security personnel commit crimes that cannot be justified by their own interests or the higher interests of the nation. However, 'law enforcement personnel who have violated the law once will seek to find and fabricate self-righteous and legitimate reasons for this violation, instead of continuously experiencing guilt' (Birinci, 2005).

Legal and ethical violations by some security personnel may occur in the name of perceived higher ideals, such as the protection of the higher interests of the state and the nation, without consideration for any personal interest. However, it has been observed in the past that legal and ethical violations for short-term benefits can in the long run cause more harm than good to the principles defended and to the country. The comment made by an American judge to a group of policemen who had collected evidence through illegal means in order to ensure the sentencing of suspects whom they believed to have been guilty concisely expresses this danger: 'Nothing can destroy a government more quickly than its failure to observe its own laws.'[7]

It is a fact that the problem of illegal and unethical acts committed by some security sector personnel is not sufficiently addressed. The most important reason for this is professional solidarity resulting from professional socialization discussed from various perspectives in this study. Members of the security profession are in a kind of unwritten agreement to protect each other and not to speak out against each other, outside of exceptional and compulsory situations. This agreement is referred to as the 'blue wall of silence' in American police literature ('blue' as in the color of the

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6   'Do not commit immoral acts for a moral cause,' Ostrovsky, V. and Hoy, C. (1990) **By Way of Deception: The making and unmaking of a MOSSAD officer**, New York: St. Martin's Press.

7   'Nothing can destroy a government more quickly than its failure to observe its own laws,' cited in Grant, H. and Terry, K. J. (2004) **Law Enforcement in the 21st Century**, New York: Pearson. (pp 172).

uniform of American policemen). Although within the Turkish police service it is observed that this rule has been broken from time to time in recent years, it can be said that this kind of agreement is widespread, judging by the actual high numbers of legal and ethical violations.

4. CONCLUSION AND EVALUATION

Because the personnel of the security service institutions themselves are in the position of enforcing the laws, legal, and ethical violations committed by them are partly obscured and, therefore, their real extent is unknown. Security personnel retain both the individual and institutional initiative for addressing legal and ethical violations. However, legal and ethical violations by one member of the security force can be seen and ignored by another member.

Regardless of the motives, the continuous silencing of illegal and unethical actions and behaviors does not only incite restlessness among personnel, but also creates discontent towards the police among the public. This in turn erodes institutional legitimacy, which is a fundamental principle in democratic societies.

SECTION IV
CONTROL OF THE INTERNAL SECURITY SECTOR

1. INTRODUCTION

The problem of control over individuals and institutions with the potential and power to use force for legitimacy is an old one. Historical documents record that the question 'who guards the guards?' was first asked by the Roman poet Juvenal who lived around 150 A.D.[8] On the other hand, the expression 'Power tends to corrupt, and absolute power corrupts absolutely,'[9] points to the possibility of abuse of power by the individuals and institutions that hold the authority to use force.

A country's institutions, as well as the services they provide, should be controlled by civilian authorities according to the necessities and complexities of those services. Regardless of their significance, no service area should be left out of civilian control. The significance of these services requires not their exclusion from control, but the opposite, tighter control over them. The ratio of financial resources reserved from the country's budget for the police and gendarmerie is quite significant. The limits of power held – actually and potentially – by these institutions over individual and social rights and liberties are quite significant. The manner this power is used has an effect not only on suspected and convicted criminals, but also on the quality of life of all people. For these reasons, the services of security institutions such as the police and the gendarmerie should be first

among the institutions that require civilian control.

2. STATE CONTROL OF THE INTERNAL SECURITY SECTOR ACCORDING TO ECPE

Democratic control of the armed forces is one of the *sine quo non* of democratic government. However, since the armed and uniformed forces are not placed within a single category, the issue of which division should be under what kind of control should be discussed. Democratic control of the services of the armed military forces, whose main duty is to ensure external security, and those of the police and gendarmerie, whose main duty is to ensure internal security, will not be of the same quality or level. The gendarmerie, which provides internal security services defined as 'policing' in Turkey, should be controlled just like the police. However, the different structuring of the police and gendarmerie organizations providing same services of same quality bring about some control problems.

The idea that the internal security service organizations should not have a military structure is emphasized in Article 13 of the ECPE: 'The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.' In the commentary to the same article, it is explained that the ECPE aims not to define the existing structures of the law enforcement agencies, but how they should be in a modern society.

According to the article's commentary, law enforcement agencies should be integrated inside civil society from the perspective of the judicial aspects of police work, as well as their role as the providers of public order and public service. According to Article 13's commentary, when these aspects of the police are taken into consideration, its functions cannot be military in nature. The article's commentary notes that 'the legal basis and powers of the police in a rule of law society,

8   'Quis custodiet ipsos costodes?', (Who guards the guards, who police the police) 'Bekçileri kim bekleyecek', (Lynch, 1999: 3).

9   'Power tends to corrupt and absolute power corrupts absolutely'. Lord Acton (1907) **The History of Freedom and Other Essays**, London, S. 504, aktaran, R. Yumner, 'Devlet Kuramında Liberal Temalar: Devletin Sınırları' (I) **Toplum ve Bilim**, 31/39, Autumn 1985 - Autumn 1987, pp 50.

where the focus is on the respect for civil and political rights of individuals, are also different from those of the military.' Although there are some similarities between police and military functions and performances, providing public order and public service, especially judicial work, are services which should be reserved for the police. The institutions performing these duties, namely the police and the gendarmerie, should be under the responsibility of civilian authorities. A police service under civilian authority is more likely to cultivate the type of police professionalism suitable for civil society.

Since the duties performed by the police and gendarmerie are essentially policing services that are very much involved with daily life, they need to be more transparent and accountable to regular scrutiny. Both the media and non-governmental organizations should monitor policing actions and inform the public about them. On the other hand, the public should be able to participate in policing services both at the national and local levels and even control them. A series of European cases can provide examples of how and by whom such activities can be carried out (Cerrah, 2000 and 2001).

As stated in the ECPE, internal security services constitute a civil service area (Cerrah and Eryılmaz, 2002). The fact that these services are carried out by a military institution such as the gendarmerie on a temporary basis does not mean that these services are military duties. Instead of taking the fact that a civilian duty is performed by a military institution as a basis for militarizing the duty, the institution that performs this duty should be civilianized. After all, the direction of legitimate change in today's world is not towards more militarization, but towards more civilianization.

2.1. Legislative and executive control according to the ECPE.

The legislative, executive, and judicial powers, which are the main powers of

modern government, are not as independent from each other as they may seem at first. The legal arrangements made by the legislative authority of the parliament, which is the highest expression of political will, exercise legislative control. The executive authority lies in the executive control used by the government and in the governors it appoints. Lastly, judicial control makes sure that the legislation prepared by the parliament is practiced.

Although these institutions seem to be partially different and independent from each other, they are parts of a whole, in the sense that they are state institutions. From this perspective, although the control exercised by these three institutions is necessary and even essential, it does not substitute the control that should be conducted by civil society, and it does not make the latter unnecessary. This section will discuss the control functions of the legislative and executive institutions over security services and the problems that may be encountered therein.

The articles of the ECPE presented below discuss the ways in which the internal security services performed by the police and the gendarmerie should be controlled. The most pronounced principle among them is that the internal security services are civil services that should be performed under the command and control of the civilian authorities. Articles that present this and similar concepts are categorized and listed below. The same articles also appeared in the book *Gendarmerie Ethics* published by the Command Headquarters of Gendarmerie Schools in 2001.[10]

The following articles of the ECPE explicitly state that internal security services performed by the police and the gendarmerie in our country are a public service that should be open to civil society participation and control.

10 Command Headquarters of Gendarmerie Schools (2001) **Gendarmerie Ethics** Ankara: Command Headquarters of Gendarmerie Schools.

Article 1: 'The main purposes of the police in a democratic society governed by the rule of law are …. to provide assistance and service functions to the public.'

Article 12 : 'The police (and the gendarmerie) shall be organized with a view to earning public respect as professional upholders of the law and providers of services to the public.'

Article 13 : 'The police (and the gendarmerie), when performing police duties in civil society, shall be under the responsibility of civilian authorities.'

The concept of 'service' used in Articles 1 and 12 signifies the quality of the duties. As with other public service institutions, duties performed by the police and gendarmerie organizations are a service and should, therefore, be open to civil society's participation and control.

Article 13 includes the notion that the police and gendarmerie shall be under the responsibility of civilian authorities. The Turkish civilian administrative offices are taken as a whole, and the police and the gendarmerie organizations are under the command and control of the Minister of the Interior, and of provincial governors in towns. This situation is necessitated by the government system in Turkey. In this light, the persons responsible for the security and tranquility of provinces and towns are not police chiefs, as it is commonly assumed, but the Minister of the Interior, governors and provincial governors respectively. However, upon examining the relations between the heads of the civilian administration and the police, it is observed that they lack an efficient and productive method of civilian control. The first findings of a study in this area (Goldsmith and Cerrah, 2005) suggest that heads of civilian administration offices are not sufficiently supported in terms of know-how, institutional organization, and personnel to be able to conduct the necessary control.

Civilian control and supervision are not limited to the civilian authorities that are the local representatives of the central government such as governors and provincial governors, either. Article 18 of the ECPE emphasizes that the internal security sector should allow civil society participation and control. Accordingly, local governments should participate in civilian control and should further be supported by other non-governmental organizations.

Article 18: 'The police (and the gendarmerie) shall be organized in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organizations and other representatives of the public.'

Nevertheless, if we take into account the obstacles that even the heads civilian administrative offices encounter when exercising supervision and control as prescribed by the law, civil society control of the security forces proves to be little more than wishful thinking.

Articles 26 and 27 emphasize the importance that police (and gendarmerie) training include democratic values and be open to the public. Basic concepts such as the fundamental values of democracy and the rule of law cannot be taught exclusively in a classroom environment. Security personnel should participate in civil society as much as possible, both in their training and the performance of their duties.

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

Article 27: 'General police (and gendarmerie) training shall be as open as possible towards society.'

The phrase 'General police (and gendarmerie) training shall be as open as possible towards society' in Article 27 does not only suggest that police training should not take place in physical settings that are distant from the society, but also that its contents should reflect society's values.

Accountability is one of the principles that should pervade the services sector, whether public or private. However, accountability should not only remain discursive, but should gain functionality through institutionalization. Articles 59, 60, 61, 62, and 63 of the ECPE cover the issue of accountability of the internal security sector (police and gendarmerie).

Article 59: 'The police (and the gendarmerie) shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.'

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

Articles 59 and 60 of the ECPE emphasize that security personnel should be open to the control exercised not only by the legislative, executive, and judicial elements of the state, but also by members of civil society. The efficiency of such control is possible only through the operation of the necessary institutional mechanisms.

2.2. Judicial control according to the ECPE

Just as all actions and procedures of the government are open to judicial control, so are all actions and procedures of the institutions and individuals providing internal security services. Law enforcement agencies that have the authority to limit or interrupt individual rights and liberties cannot be exempt from judicial control. This is essential both for the protection of the rights of the citizens, who are the receivers of the service, and for the protection of security personnel themselves from possible wrong-doings by their own institutions.

As an important element of the judicial system, law enforcement agencies cannot be partly or totally exempt from judicial control. According to Article 5 of the ECPE, 'Police (and gendarmerie) personnel shall be subject to the same legislation as ordinary citizens.' The same article further states that 'exceptions may only be justified for reasons of the proper performance of police work in a democratic society.'

In Turkey, police personnel who have committed a crime, whether on or off duty, are tried in civilian courts, like ordinary citizens. However, gendarmerie personnel who commit the same crimes are tried in military, not civilian, courts. The fact that one of the two law enforcement institutions that perform the same kind of duties is subject to a civilian judicial process, and the other to a military one, is in conflict with Article 5 of the ECPE, which states that the exemption of law enforcement personnel from the civilian judicial system should be the exception, not the rule.

On the other hand, the punishment of disciplinary offenses of law enforcement personnel is the outcome of internal control mechanisms. Disciplinary punishment includes both light sanctions and heavy sanctions such as banishment from the profession. While Article 5 requires that law enforcement personnel are bound by the same judicial system as civilian citizens, Article 33 protects the rights of law enforcement personnel. According to this article, 'Disciplinary measures brought against police (and gendarmerie) staff shall be subject to review by an independent body or a court.'

There are several benefits to having an independent body, such as a court, review the disciplinary measures brought against law enforcement personnel by the disciplinary boards of their institutions. First, this will protect law enforcement personnel from heavy and arbitrary sanctions that may be brought against them by their institutions.

Second, considering that court decisions are open to the public, law enforcement personnel will become more transparent and open to society.

In Turkey, personnel of the gendarmerie, which provides internal security services, cannot be tried in civilian courts, and the disciplinary sanctions or legal sentences issued by their organizations are not open to the control of any independent organization or civilian judicial body. While the 2004 European Union progress report for Turkey stated that 'the procedure of trials of civilians by military courts is abandoned,' the decisions of the Supreme Military Council remain closed to judicial control.

3. CIVILIAN CONTROL OF THE INTERNAL SECURITY SECTOR

In democratic governments, the participation of the public in the government is not limited to their periodical participation in the election of the authorities that represent them. The public should both participate in the services provided to them, and should also control them. Modern service organizations provide their services in a way that is open to the public and transparent, and through an institutional organization that is systematically accountable to the public. These concepts are particularly essential for security services compared to other public services. Law enforcement agencies use a significant part of national resources and should not be exempted from control, but on the contrary, should be under tighter control compared to other organizations. A service is considered to be public precisely because it is under the control and oversight of the civilian and political authorities elected by the public.

Acknowledging the supremacy of civilian authority over the security services entails the institutionalization and functionality of concepts such as transparency and accountability in security. Institutionalized and systematized transparency and

accountability will not reduce the respectability of the police, the gendarmerie, or other armed forces, but will reinforce it. Arguing that corruption and degeneration, as observed in every level of society, are altogether absent from the law-enforcement agencies or the armed forces is not scientific, pragmatic, or credible. In this light, dealing with corruption in an inefficient and non-transparent manner, without the participation of the media, will in fact have the opposite effect than the one intended: instead of defending the reputation of the security services from exposure, such practices will cultivate suspicion and lack of credibility towards these institutions.

The secrecy that is necessary for the state's security should never be used to obstruct the transparency needed for public services. Secrecy is necessary from time to time not only in regards to the security services, but also in other public services. However, unlimited and uncontrolled secrecy will encourage those who abuse their duties and will further increase corruption. It is not possible to completely silence the corruption that takes place in security organizations in a world in which all kinds of information and news spread rapidly and are shared through the audio and electronic media. Concealing corruption and not pursuing due legal processes on the grounds of protecting state institutions enables corrupt personnel to act more comfortably and fearlessly, and at the same time increases suspicion of the institution as a whole.

3.1. Civilian participation and control mechanisms in the gendarmerie

The areas of duty and responsibility between the two law enforcement agencies, the police and the gendarmerie, are laid out in Article 10 of the 2803 Act on Gendarmerie Jurisdiction and Authorities. According to this act, 'the general jurisdiction areas of the gendarmerie are distinct from the jurisdiction areas of the police, and are outside the borders of the municipalities of

towns and provinces or anywhere where no police service is available.'[11] In other words, the gendarmerie shall not perform duties within the borders of province and town municipalities. An exception to this rule is the case where there is no established police organization within the borders of the municipalities of the towns and provinces. If, for some reason, a police unit is not established within the borders of the municipalities of a province or town, a gendarmerie unit can be established. Again, the performance of duty by the gendarmerie out of the limits of municipalities of towns and provinces depends on whether there is an established police organization in these areas.

The gendarmerie, as a part of the armed forces, which is a defensive force intended to prevent external threats, is assigned to internal security services that are a civilian service area. In its present state, institutional or active mechanisms of civilian participation and control are completely absent, and the service seems to be quite determined to retain this structure. As explained above, there is resistance even to being controlled by high-level civilian and political authorities, let alone openness to public participation and control. However, according to Article 13 of the European Code of Police Ethics, 'the police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.' According to this phrase, the policing that are performed by the gendarmerie, which is a military organization, are a service that should be performed by a civilian authority.

The only civilian control mechanism that seems to operate over the gendarmerie is its control by the heads of the civilian administration offices. From the point of the performance of law-enforcement duties, the gendarmerie is a part of the civilian administrative system, according to the laws currently in effect. This means that the gendarmerie, like the police, should be under the command and control of governors and provincial governors. However, there is insufficient civilian control over the gendarmerie as a result of the vagueness of the laws in this area, as well as the fact that the absence of civilian administrative control has become a customary practice. Newly established territorial organizations other than administrative divisions (provinces, towns, subdistricts) and the use of civilian administrative authorities by the territorial military commanders, is usually expressed as a problem by the governors.

In short, the problem is not limited to the capacity of civilian administrative officers to control the gendarmerie. There are also problems in terms of legal arrangements. First, governors and provincial governors are not the chiefs of records of the gendarmerie, while they are the chiefs of records of the police and all other public personnel. Secondly, while governors and provincial governors have the authority to pursue disciplinary procedures for disciplinary offenses committed by the police, they have indirect authority over the gendarmerie, which is not used in accordance with its nature. Third, in job assignments and changes concerning the gendarmerie, governors have very limited authority (only with respect to noncommissioned officers and sergeants at the province level). Provincial governors, who are the chief administrators of towns, the smallest administrative unit, do not have records, disciplinary, or appointment powers over the gendarmerie. Finally, gendarmerie personnel, who are under the command of the governors and provincial governors as law enforcement agencies, are not under such command even in relation to routine procedures such as discharges. All these issues raise concerns about the efficiency of the control of the services the law enforcement agencies that are supposed to be under the command of governors and provincial governors. It does not seem that all these

11 For Law No.2803 on the Establishment, Duties and Jurisdiction of Gendarmerie dated 10 March 1983 see Official Gazette (Resmi Gazete) No.17985 dated 12 March 1983.

issues can be amended by the positions of the provincial governors as the heads of the civilian administrative offices responsible for the public order and tranquility. Within these limitations, when many high-level civilian administrative officers go to law enforcement agencies' service buildings, it is more in the context of a visit rather than actual civilian control.

On the other hand, gendarmerie organizations in European countries, while they are still partly military organizations, operate under the command and control of the civilian authorities. In France, where the police and the gendarmerie perform internal security services, the gendarmerie resembles a police institution rather than a military one (Pothus, 2005; Moretti, 2005). Similarly, in France, the National Commission of Deontology and Security (CNDS),[12] established by law in 2000, is an independent civilian external control mechanism that controls the services of all security organizations, focusing on the police and the gendarmerie. Experts observing the evolution of the structures of internal security organizations in European countries predict that European gendarmerie services will either become civilian, or will completely disappear from the internal security sector in the next 10 to 15 years.

Experts point out that, although for the time being the French gendarmerie (the most typical example of a military-police service) is resisting this transformation, it cannot avoid this democratization and civilianization trend in the long run. In addition, even in its present form, the French gendarmerie presents a structure open to civilian participation and control when compared to the Turkish gendarmerie. For example, in the last sixty years, with one exception, the chiefs

of the French gendarmerie have been civilians (Moretti, 2005; Pothus, 2005). Additionally, the French gendarmerie is not structured as a military organization in isolation from civil society; on the contrary, it has existed as an institution in close connection to civil society.

In a conference[13] on possible reforms of the internal security sector, civilian academics working on this area as well as police and gendarmerie members from Turkey, Germany, France, Belgium, Spain, and Holland, discussed the European internal security framework and assessed the possibility for its implementation in Turkey. Conference presentations pointed out that countries such as England, Holland and the Scandinavian countries do not employ military organizations such as the gendarmerie for the provision of internal security services. The Spanish gendarmerie has been democratized and civilianized to a significant extent, while the Belgian gendarmerie has been abolished and internal security services have been completely transferred to the police (Bergmans, 2004).

Internal security is not a service sector where organizations compete to prove that they can do the job better in order gain more assignments. In other words, the issue is not whether the gendarmerie can outperform the police in providing internal security or vice versa. The areas of duty of public service institutions are clearly defined in democratic societies. Security organizations cannot interpret existing laws through the prism of their own institutional approach and concerns or expand their areas of operation. When an organization performs some duties that are outside the boundaries of their primary duties, and even when they do better in performing these duties than the organizations that are mainly responsible for those duties, it does not follow that this transgression of operational boundaries is justified. For example, the high quality of the construction works by the armed forces does

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12 The National Comission of Deontology and Security (CNDS) established by Law 2000-494 of June 2000.

13 'Turkey and European Security Sector Governance Experience,' International Conference, 3 February 2005, Turkish Economic and Social Studies Foundation(TESEV) and Geneva Center for the Democratic Control of the Armed Forces (DCAF), Ankara: Hacettepe University

not necessitate the militarization of the construction sector; and if the landscaping of military buildings and complexes are done very well, this will not put parks, gardens, and landscaping into the duty areas of the military. The fact that health services in military hospitals are better than in some civilian hospitals does not mean that civilian hospitals and health services should be managed by military organizations.

Similarly, the argument that internal security services normally performed by civilian authorities are performed much better by the military – the truth of this argument is also open to debate – does not automatically transform internal security services into military service areas. This constitutes the intrusion by one institution into the service areas of another. If police inadequacy is an issue, it should be made more adequate by being given the necessary resources and personnel, instead of transferring its duties to another institution by using its inadequacy as an excuse.

3.2. Civilian participation and control mechanisms in the police organization

Although the current structure of the police service appears to allow more civilian control than the gendarmerie, its civilian control mechanisms are still inadequate when compared to civilian control and oversight practices in European countries. In our country, where even the central political authority has limited control over the security services, no civilian participation or control exists at the local level. The democratic quality of an internal security service that is only under the control of a central political authority and is not open to any kind of civilian participation and control at the local level is dubious. Since governors and provincial governors are the representatives of the central government, the control that should be exercised by them cannot be classified as local control. Also, to what extent this control is efficient and effective is an issue that needs to be

investigated. Some gaps are observable in the control mechanisms of the police service, even by civilian authorities. For example, in the part of the statutes of the chiefs of records concerning the central Ministry, the permanent undersecretary, the highest-level civilian administrator of the ministry, is not counted among the chiefs of records. In cases where the first chief of records is the Police Chief, the ministry of Interior, the civilian authority, is counted as the second chief of records.

However, civilian control of internal security services should not be limited to the control by the head of a civilian administrative office, the effectiveness and efficiency of which is disputable. As suggested by the related articles of the ECPE, law enforcement agencies that provide security services (police-gendarmerie) should be accountable to the state, the citizens, and their representatives (ECPE, Article 59). Again, according to Article 60 of the ECPE, the state's control over the police (and the gendarmerie) should be divided between legislative, executive, and judicial. Accountability as mentioned in Article 59 requires first of all the acceptance of accountability and then its functionality and institutionalization. Otherwise, a vague understanding of the mission of the service, simply along the lines of 'we serve the people,' will never be tantamount to actual and healthy accountability.

The legislative control mentioned in Article 60 refers to the control of the security forces by the parliament through the laws; executive control consists of the control exercised by the central and local governments; and judicial control obviously refers to control exercised by the judicial system. However, since local administrations, despite their being an important part of democratization, are very weak in our country, there is practically no control of the security sector at the local level.

A point that is frequently expressed in Articles 59 and 60 of the ECPE, and in many

other articles of the document, is the necessity for control over the security sector by civil society, which is the receiver of the services. Civilian control carried out both by private persons and non-governmental organizations is the healthiest control mechanism for the security sector. As a Latin proverb goes: 'The cobbler knows best how to make shoes, but it is the wearer who knows where the shoe pinches.' Although the importance and necessity of the control carried out by the legislative, executive and judicial powers cannot be denied, the healthiest control will be performed by the recipients of domestic security services, i.e. the citizens and the non-governmental organizations that will do it in their name.

4. PARLIAMENTARY CONTROL OF THE INTERNAL SECURITY SECTOR

The modernization of an institution should not be perceived only as the physical improvement of its buildings, equipment and arms. This rather costly type of improvement only covers the formal (physical) aspects of modernization. It should be complemented by transformation of mentality, which constitutes true modernization. The important issue is not the acquisition of modern buildings and equipment, but their effective and efficient use in accordance with the expectations and requirements of society and in a manner that is open to society. In other words, this transformation of mentality, or alternatively the modernization of thinking, should be a top priority for policy-makers.

Living conditions within security institutions such as the police and the gendarmerie are above the national average, in terms of material resources and physical conditions. However, when transformations in the material culture are not reflected in the ethical culture, in terms of understanding of one's duty and role in society, there is a cultural lag. Formal modernization should not only take place at a formal level, but also effect mentalities and behaviors.

The most important expression of mental modernization is the internalization of democracy and civil society and the supremacy of civilian authority, or, as put by Ataturk, 'Sovereignty belongs to the people without restrictions or conditions.' Security personnel who are not adequately trained in terms of democratic values will perceive the acceptance of the superiority of civilian authorities as a weakness, and will have difficulties working in harmony with civilian authorities, let alone taking orders from them. Of even more concern are their efforts to shape the whole of civil society in accordance with their own professional values.

Important steps have been taken in Turkey in recent years concerning civilian control of the armed forces and law enforcement services. The most important of these is the limitation of the powers of the National Security Council, a point that also appears in the progress reports prepared by the European Union (Commission of the European Communities, 2004). The 1998 Progress Report explicitly mentioned the deficiency of control of civilian authorities over the armed forces (Commission of the European Communities, 1998). In the reports prepared by the Commission in 2003 and 2004, the significant steps taken by the present government within this area did not go unnoticed (Commission of the European Communities, 2003 and 2004). These recent arrangements limited significantly the executive jurisdictions of the National Security Committee, formally a consultative body. In previous years, the National Security Committee had maintained a fairly influential position by its use of executive jurisdiction towards government. That the Committee, which is a predominantly a military institution, held executive powers over the government, which is the highest-level executive power, constituted quite a paradoxical situation for Turkish democracy. According to the 2004 Commission report, civil-military relations in Turkey achieved

better conformity with the standards in other European Union members after the recent reforms of the jurisdiction, powers, and functions of the National Security Committee (Commission of the European Communities, 2004).

The crucial question about Turkish law-enforcement agencies concerns the degree of civilian, democratic control of their services at the local level. Beside the positive changes with respect to the duties and powers of the National Security Committee, whether or not these changes are reflected in the lives of ordinary citizens remains to be seen. No organizational restructuring of the control of routine duties of the police and gendarmerie has yet been affected in Turkey. The Human Rights Directorate established within the Prime Ministry may be seen as institution that may produce civilian oversight over law enforcement agencies. The Directorate is organized on the basis of Human Rights Committees in provinces and towns. These committees consist of representatives of civilian public institutions and non-governmental organizations and are headed by governors in the provinces and provincial governors in the towns.

Although the control of the police and the gendarmerie by Human Rights Committees is a more democratic and civilian measure compared to control by governors and provincial governors, it cannot be argued that this is an ideal civilian control mechanism. These committees, which are established to investigate human rights abuses, are chaired by governors and provincial governors, who are the civilian administrators of the police and the gendarmerie. Given that governors and provincial governors are simultaneously the chief administrators of the police and the gendarmerie, whether the control exercised in these meetings can be considered civilian or as a type of effective external control (Article 59 of the ECPE) is open to debate.

On the other hand, with the exception of some non-governmental organizations, participants of the Human Rights Committees typically include members of the executive branch. Furthermore, given that important non-governmental organizations, such as the Human Rights Association, are actually absent from these committees, it becomes clear that these committees cannot serve as ideal civilian control mechanisms.

In conclusion, although according to the Commission report important steps have been taken since 1999 in the direction of democratization of civilian-military relations, it is clear that these steps are mostly limited to the removal of the executive powers of the National Security Committee. It cannot be argued that there has been concrete progress towards the democratic control and oversight of the police and gendarmerie services, which deeply affect the life of ordinary citizens. Research conducted by Goldsmith and Cerrah (2005) has found that, while Human Rights Committees are a very important step forward in this area, they are not quite sufficient to control abuses by the police and the gendarmerie.

On the other hand, it has also been observed that the resistance of law enforcement agencies is not the only reason for the lack of adequate civilian and parliamentary control over them. Upon observing the current system, one may conclude that parliament members do not even use their existing authority adequately in order to shape security policies and to control security practices. In this light, members of the parliament either have excessive confidence in the security bureaucrats or they do not have enough knowledge to contribute to their work.

For instance, parliament members do not take an active role in decision-making processes to determine security policies at the level of political offices, and leave these to the bureaucrats and technocrats in charge of the organizations that provide these services.

However, politicians should assume the responsibility of making these decisions, while taking into account the opinions of the bureaucrats and technocrats. The persistent and uncritical adoption of suggestions made by bureaucrats will instill into the latter a perception of themselves as omniscient, infallible authorities on security issues. This misperception will lead to a tendency to intervene in services other than security, such as education, economy, health, and media. However, the opinions of bureaucrats and technocrats are of value as technical opinions, and they can gain legitimacy only when they are turned into general policies through evaluation by institutions and individuals with political responsibilities.

5. CONCLUSION AND EVALUATION

Many articles of the ECPE discuss the issue of control and oversight over internal security services by various institutions. The first of these are the control by the legislative, executive, and judicial powers. However, in addition to these, the ECPE emphasizes the need for civilian control and oversight mechanisms.

However effective they may be, legislative, executive, and judicial control cannot assume the function of control that should be performed by civil society. Civil society control is one of the prerequisites for a truly democratic life. Modern security organizations should provide their services within a transparent organizational structure open to control by their own societies. The police and the gendarmerie, the two official law enforcement agencies in Turkey, should first open themselves to full control by governors and provincial governors in accordance with our laws and administrative system, and then to the control, and in some cases supervision, of the local people and society that receive these services. For the implementation of the values that are on the rise in modern societies, such as the rule of the law and human rights, civil society should have the opportunity to participate in and control all services provided.

PART II

SECTION V: EUROPEAN CODE OF POLICE ETHICS AND EXPLANATORY MEMORANDUM
Recommendation (2001) 10 adopted by
the Committee of Ministers of the Council of Europe on
19 September 2001
and
Explanatory memorandum

SECTION VI: CONCLUSION AND EVALUATION
İbrahim Cerrah

Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics

(Adopted by the Committee of Ministers on 19 September 2001

at the 765th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article15.b of the Statute of the Council of Europe,

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

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

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

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

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

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

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights;

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

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

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

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

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

Appendix to Recommendation Rec(2001)10

Definition of the scope of the code

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

I. Objectives of the police

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

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

2. The police are a public body which shall be established by law.

3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.

4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.

5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

III. The police and the criminal justice system

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

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

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

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

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

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

IV. Organisational structures of the police

A. General

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

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

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

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

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

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

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

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

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

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

B. Qualifications, recruitment and retention of police personnel

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

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

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

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

C. Training of Police Personnel

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

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

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

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

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

D. Rights of police personnel

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

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

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

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

V. Guidelines for police action/intervention

A. Guidelines for police action/intervention: general principles

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

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

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

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

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

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

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

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

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

44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.

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

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

B. Guidelines for police action/intervention: specific situations

1. Police investigation

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

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

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

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

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

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

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

2. Arrest/deprivation of liberty by the police

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

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

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

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

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

VI. Accountability and control of the police

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

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

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

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

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

VII. Research and international co-operation

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

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

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

Explanatory Memorandum

I. INTRODUCTION

1. Codes of Police Ethics

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

A glance at the role of police in a democracy reveals the particular relevance of a code of ethics for the police. People within democracies have organised their states to secure maximum freedom for themselves within the rule of law. Likewise, the criminal justice systems have been developed with the purpose of providing individual liberty and security. In democratic societies where the rule of law prevails, the police undertake the traditional functions of preventing, combating and detecting crime, preserving public tranquillity, upholding the law, maintaining public order, and protecting the fundamental rights of the individual. Moreover, in such societies the police provide various services to the public that are of a social nature, which support their other activities. They are granted discretion to fulfil these functions. The police in democracies help to sustain the values of democracy, and are themselves imbued with the self-same values. In general, the public consent to and, indeed, welcome the exercise of legitimate authority by the police so long as the police are seen to carry out their tasks towards worthwhile, democratic ends in an ethically acceptable manner. In turn, when they fulfil these conditions, the police have every right to expect that the public will trust them to carry out their responsibilities, and support and co-operate with them in their activities when doing so. These ideas about policing within democracies are at the heart of the Council of Europe.

Although a code of police ethics is only the beginning of any process to secure common police standards, without one such a process has little hope of succeeding. By laying the foundation for ethical norms, a code of police ethics enhances the possibility that ethical problems are more readily identified, more fully understood, analysed more carefully and more readily resolved. It also prompts questions about the values served by the police as an organisation, and their proper application. Key concepts within the police, such as `loyalty', `consent', `impartiality', `discretion' and `professionalism' all benefit from the common reference and shared meaning, and hence understanding, made possible by a code. Moreover, it can help articulate personal standards of conduct, which captures a sense of pride in being members of a police organisation. This is of particular importance to police recruits, who need to know from the outset the core values that should define and govern their work. The mention of police recruits is a reminder of how important codes are for police training. Without some such objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be argued for, with the risk that they are seen as merely local and the

creation of no one but the trainer. It should be added that a police code of ethics has merit at all levels of training.

As has been mentioned, police services are greatly enhanced if police enjoy the consent and close co-operation of the public. The public is dependent upon the responsible delivery of police services for the delivery of which the police are invested with considerable authority, including discretion, which constitutes a virtual monopoly of legitimate coercion. For this reason the public has a need for assurance. A well publicised police code of ethics, by underlining the common standards, purposes and values of the police, can help to promote public trust in the police and further good public relations and co-operation. The same standards, by making clear the range and scope of police services help safeguard the police against unwarranted, frivolous and vexatious demands, and, above all, limit their liability for failures of service.

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

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

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

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

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

The European Code of Police Ethics aims to provide a set of principles and guidelines for the overall objectives, performance and control of the police in democratic societies governed by the rule of law,

and is to a large extent influenced by the European Convention on Human Rights. The Code is concerned to make specific and define the requirements and arrangements that fit the police to meet the difficult, demanding and delicate task of preventing and detecting crime and maintaining law and order in civil, democratic society. Even if the Recommendation primarily is aimed at Governments the guidelines are drafted in such a way that they may also be a source of inspiration to those dealing with the police and police matters at a more pragmatic level.

2. The background to "The European Code of Police Ethics"

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

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

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

The *"Declaration on the Police"*, adopted by the Parliamentary Assembly of the Council of Europe in 1979, was an early attempt to provide ethical standards for the police. It has been a source of inspiration for answering policy questions on the police in many European states. While the Committee of Ministers shared the Assembly's view of the necessity to apply particularly high ethical standards to the police in democratic societies, they did not give the `Declaration' unqualified support, and it did not become a legal instrument of the Council of Europe.

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

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

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

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

The following terms of reference were given to Committee PC-PO:

"The Police play an important role within the criminal justice system. As opposed to other professional groups within that system, few international instruments apply to the Police. At the moment many European countries are reorganising their Police as a crucial part of the process to promote and consolidate democratic ideas and values in society. Police ethics have thus become an important topic in several member States of the Council of Europe.

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

- *the role of the Police in a democratic society and their place in the criminal justice system;*

- *the objectives of policing under the Rule of Law – prevention of crime, detection of crime etc;*

- *control of the Police.*

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

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

The Committee was composed of experts from Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Lithuania, Moldova, Poland, Portugal, Romania, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and the United Kingdom. The Committee included experts coming from ministries of the interior, ministries of justice, the police, the prosecution and the judiciary. The Committee was chaired by Mr Karsten Petersen, Deputy Police Commissioner, Denmark. Two scientific experts – Mr Amadeu Recasens i Brunet (Director of Escola de Policia de Catalunia and Professor at the University of Barcelona, Spain) and Mr Neil Richards (Director of Chief Police Officers Development Programme, National Police Training, Bramshill, United Kingdom) – were appointed to assist the Committee. The Secretariat was provided by the Directorate General of Legal Affairs, DG I, of the Council of Europe.

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

The Committee based its work upon legal instruments (conventions and recommendations of the Council of Europe and other international organisations) as well as principles established by the European Court of Human Rights and other bodies of the Council of Europe, mentioned above. The Committee organised hearings with representatives of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the European Committee of Social

Rights. Moreover, the Committee was informed of projects and activities related to police carried out by the various Directorates General of the Council of Europe. The work of the Committee was presented and supported at the Twelfth Criminological Colloquium, organised by the Council of Europe in November 1999, on the theme "Police Powers and Accountability in a Democratic Society", and at the High Level Conference between European Ministers of the Interior, in June 2000.

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

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

II. PREAMBLE TO THE RECOMMENDATION

The Committee of Ministers, under the terms of Article15.b of the Statute of the Council of Europe,

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

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

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

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

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

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

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for human dignity and individuals' fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;

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

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

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

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

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

Commentary on the preamble:

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

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

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

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

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

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

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

- Framework Convention for the Protection of National Minorities (ETS No 157);
- Resolution (78) 62 on juvenile delinquency and social change;
- Recommendation R (79) 17 concerning the protection of children against ill-treatment;
- Recommendation R (80) 11 concerning custody pending trial;
- Recommendation R (83) 7 on participation of the public in crime policy;
- Recommendation R (85) 4 on violence in the family;
- Recommendation R (85) 11 on the position of the victim in the framework of criminal law and procedure;

- Recommendation R (87) 15 on regulating the use of personal data in the police sector;

- Recommendation R (87) 19 on the organisation of crime prevention;

- Recommendation R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families;

- Recommendation R (96) 8 concerning crime policy in Europe in a time of change;

- Recommendation R (97) 13 concerning intimidation of witnesses and the rights of the defence;

- Resolution (97) 24 on the twenty guiding principles for the fight against corruption;

- Recommendation R (99) 19 concerning mediation in penal matters;

- Recommendation R (2000) 10 on codes of conduct for public officials;

- Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system;

- Recommendation Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality;

- Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer;

- ECRI General Policy Recommendations; European Commission against Racism and Intolerance.

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

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

The establishment of common standards is very timely. Police reforms are being carried out throughout Europe and, in particular, in the more recent democracies police reforms are part of general processes with the overall objective of consolidating democratic principles such as the rule of law and the protection of human rights, in public administration.

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

III. APPENDIX

Definition of the Scope of the Code

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

Commentary

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

For the reasons referred to above, the definition of the scope of the Code only contains the "hard core" characteristics that are entrusted to all existing public police bodies in Europe, that is the power to use force in order to maintain law and order in civil society, normally including upholding public order, prevention and detection of crime. Having this definition, as the lowest common denominator for the applicability of the Code, there is no need to establish a detailed description of various types of police to be affected. Thus, this Code applies to all police responsible for police activities in civil society. The Code applies regardless of how such police are being organised; whether centralised or locally oriented, whether structured in a civilian or military manner, whether labelled as services or forces, or whether they are accountable to the state, to regional or local authorities or to a wider public.

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

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

I. Objectives of the Police

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

   – *to maintain public tranquillity, and law and order in society;*

   – *to protect and respect the individual's fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;*

   – *to prevent and combat crime;*

   – *to detect crime;*

   – *to provide assistance and service functions to the public.*

Commentary

This Article contains a selection of the most important objectives of the police in a democratic state governed by the Rule of law.

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

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

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

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

As follows from the Council of Europe Recommendations No. R (83) 7 on Participation of the Public in Crime Policy as well as No. R(87)19 on Organisation of Crime Prevention, effective crime prevention

requires active participation by the community at large, including the public. "Partnership" in crime prevention is an often used term in recent years, which indicates that this is not a task exclusively of the police. Activities in crime prevention need to be co-ordinated between the efforts for the police and other agencies and the public. Even if the ultimate responsibility for crime prevention policy, in most member states does not lie with the police, it is nevertheless one of their main objectives, which, in a society governed by the Rule of Law requires certain safeguards to curb abuse directed against individuals.

Crime detection is one of the classical primary objectives of police in all states. Even if crime detection often amounts to a limited part of the total police work, it is a vital component of the activities of the police. People expect much of the police in terms of their crime detection. Effective crime detection has also a preventive effect in itself, and is thus crucial for promoting public confidence in criminal justice.

Crime detection is organised differently in various states; in some states it is the responsibility of the general police, whereas in other states it is carried out by special branches of the police, such as criminal police or judicial police. The independence of the police from the prosecution authorities also differ to a large extent. However, the problems the police are facing in their crime detection are identical all over Europe. This Code does not challenge the centrality of the crime fighting side of police work, but it underlines the importance of upholding a proper balance between the efficiency of the police and the respect for individuals fundamental human rights, which is particularly difficult in crime fighting. The principle of "presumption of innocence" and its accompanying safeguards are certainly of great importance for persons suspected of crime. In addition, the respect for individual rights in crime detection, also comprises the rights of other persons affected, such as victims and witnesses, towards whom the police also have responsibilities. Safeguards in crime detection are dealt with in Chapter V.2, below.

The provision of assistance to the public is also a feature of most police bodies, but such functions are more or less developed in various member states. The inclusion of service functions under the objectives of the police is somewhat different as it changes the role of the police from that of being a "force" to be used in society into a "service" body of the society. For some years there has been a clear trend in Europe to integrate the police more fully into civil society, to bring them closer to the public. The development of "community policing" in several member States serves such a purpose. One important means used to do this is to give the police the status of a public service body rather than a pure law enforcer. In order to make such a shift a bit more than a semantic exercise, the service side of the police should be included as one of the purposes of a modern democratic police. Whereas assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other authorities or social services, the service side of the police is more vague and thus difficult to define. It should not be confused with certain administrative duties given to the police (issuing passports etc). In general, the police as a public service body is connected to the role of the police as a resource for the general public, and easy access to the police is one of the basic and most important aspects in this respect. The service side of the police has more to do with police attitudes towards the public than with giving the police far going service functions in addition to their traditional duties. It is clear that the police cannot be charged with a too heavy responsibility for service functions in society. Member states should therefore establish guidelines for police performance and duties in this respect.

II. Legal Basis of the Police under the Rule of Law

2. *The police are a public body, which shall be established by law.*

3. *Police operations must always be conducted in accordance with the national law and international standards accepted by the country.*

4. *Legislation guiding the police shall be accessible to the public and sufficiently clear and precise and, if need be, supported by regulations equally accessible to the public and clear.*

5. *Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.*

Commentary

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

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

Moreover, Article 2 states that police organisations should be established by law. This implies that the police are based on the constitution and/or ordinary legislation, however, it does not exclude detailed regulations of the police in subordinated instruments, such as governmental decrees or instructions of the Head of Service, provided that these are given with delegated powers in conformity with the constitution/legislation.

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

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

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

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

III. The Police and the Criminal Justice System

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

Commentary

As already stated in the preamble, the police are one of the four components of the criminal justice system; police, prosecution, courts and corrections. Even though this model of the criminal justice system sees each element as independent, it is widely accepted that the system should incorporate a number of checks and balances in order to ensure that the total system, and its constituent elements operate according to the law and in an efficient way. At the same time, this model of the criminal

justice system, in which individual cases are seen as passing from one element to another and thereby justifying the criminal justice process, requires that these elements are independent and autonomous to a certain degree with regard to each other. Such a system is more likely to provide safeguards for those passing through it.

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

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

Commentary

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

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

The second part of this Article would normally imply that the police must respect all judgments and decisions of courts and even do whatever is appropriate to enable their execution. However, the way in which the Article is formulated opens a possibility for the police not to play the role of "blind implementers" in situations when the requirements for justice in a democratic society governed by the rule of law are clearly set aside. It follows from Articles 3 and 37 that the police always must check the lawfulness of their actions.

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

> 8. *The police shall, as a general rule, not have judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission by the police affecting individual rights, before the judicial authorities.*

Commentary

As an exception from the main rule of strict separation of powers between the Executive and the Judiciary, the police may in certain situations be entrusted with judicial powers. The Recommendation emphasises that the police should be in a position to exercise judicial powers only to a limited extent, normally in regard to minor offences where the facts are simple and where the offender accepts guilt, the sanctions are limited, and often standardised. It is crucial that decisions, by the police based on delegation of judicial powers can be challenged before a court and that the offender is made aware of this. This follows from Article 6 of the European Convention on Human Rights, which states everyone's right to a fair trial by a court of law. The present Article provides for the possibility to challenge all decisions by the police before the judicial authorities.

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

Commentary

This Article reflects the principles contained in the Council of Europe Recommendation on the Role of Public Prosecution in the Criminal Justice System (Rec(2000)19) concerning the relationship between

the prosecution and the police. Due to the different systems prevailing in Europe, that Recommendation makes a distinction between member states where the police are independent from the prosecution and those where the police are placed under the authority of the prosecution. Irrespective of what kind of system, that Recommendation gives two general functions to the prosecution vis-a-vis the police; to scrutinise the lawfulness of police investigations, and to monitor that human rights are respected. Moreover it indicates that there should be appropriate and functional co-operation between the public prosecution and the police.

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

a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution, ... etc;

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

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

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

Article 9 of the present Recommendation, mirrors the above described rules for the prosecution on the police. States should therefore see to it that there is functional and appropriate co-operation between the police and the prosecution, also with a police perspective. In particular, measures should be taken with the view that the police should receive clear and precise instructions from the prosecution. Such measures could be instructions through legislation or lower forms of regulations, accompanied by training, even co-training between the police and the prosecution etc. On the other hand, the co-operation also requires that the police is obliged to inform the superior investigating authority of progress in policy matters and, in particular, in the specific cases. The reporting back to the prosecution/investigating judge should preferably be regulated in detail and equally requires training.

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

Commentary

One of the corner stones in a rule of law society is to provide everyone equal access to law and justice. Generally, this implies also to provide effective legal assistance to everyone whose rights and interests are threatened, see Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer. Moreover, Article 6 of the European Convention on Human Rights contains the specific provision that everyone charged with a criminal offence has the right to defend himself/herself in person or through legal assistance of his/her own choosing (see also Article 47 of the present Recommendation).

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

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

Commentary

This Article, complementary to Article 6, has been included to emphasise the absolute difference between the functions of the police, which in its judicial function is preoccupied with the pre-trial procedure, from that of treating convicted and sentenced offenders. According to Council of Europe

standards concerning the administration and management of probation and prison systems, for example the European Prison Rules (Rec. No. R (87) 3) and the Recommendation on staff concerned with the implementation of sanctions and measures (Rec. No. R (97) 12), it is clear that the professions of probation and prison staff are completely different from those of the police, in particular in their crime detection function. Accordingly, personal qualifications, recruitment procedures and training are all very different. This rule indicates an important principle for the separation of powers within the criminal justice system, before and after sentencing. However, it does not preclude that police are called for in emergency situations.

(In some member States, correctional staff are referred to as "penitentiary or prison police". As was mentioned in the commentary to the "Definition of the Scope of the Code", this category of staff are not covered by the Recommendation.)

IV. Organisational Structures of the Police

A. General

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

Commentary

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

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

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

Commentary

It should be recalled that the scope of the present Code is limited to police work in civil society. The judicial side of police work – the police being a component of the criminal justice system – and the public order side of the police, as well as the public service dimension of police work, and the integration of the police in civil society, are all elements that are different from military functions and objectives. Moreover, the legal basis and powers of the police in a rule of law society, where the focus is on the respect for civil and political rights of individuals, are also different from those of the military. Although there are some similarities between police and military functions and performances, the above special characteristics of the police are so important in a democratic society governed by the rule of law that they should be supported by all means. The organisational responsibility is one of the means in this respect. A police organisation under civilian responsibility is likely to best cultivate police professionalism suitable for civil society.

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

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

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

14. The Police and its personnel in uniform shall normally be readily recognisable.

Commentary

This Article contains a principle of crucial importance for the traditional police in a democratic society governed by the rule of law; it should be easy for the general public to recognise police stations and the uniformed police. This also covers equipment used (cars etc). The Article indicates that, unless there are special reasons, such as the proper exercise of police functions, the police should be distinctively recognisable from other bodies. This forms part of the general requirement of openness and transparency of the police organisation, however, it also serves the purpose of easy access to the police in emergency situations. (See also Article 44.)

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

Commentary

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

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

Commentary

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

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

Commentary

This Article, which is complementary to Article 16, concerns the responsibility for orders within the police. The fact that all police personnel are responsible for their own actions, does not exclude that superiors may also be held responsible, for having given the order. The superior may be held responsible side by side with the "implementing" official, or alone in cases where the latter person followed orders in "good faith". (See also Article 38.) Through an established chain of command, ultimate responsibility for police action can be traced in an effective way.

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

Commentary

This Article recommends states to organise their police from the perspective of the police as an integrated part of society. The police may increase its efficiency if well-functioning relationships are

established between them and other public bodies on different levels and, in particular, between the police and the wider public, the latter often being represented by groups or organisations of a non governmental character.

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

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

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

Commentary

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

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

Commentary

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

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

Commentary

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

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

The present Article aims at highlighting that member States should put in place effective internal measures to combat corruption within their police. This could include measures to define corrupt behaviour, to the extent possible; that the causes for corruption in the police be studied, and that organisational structures and control mechanisms to combat corruption be established.

It should be mentioned that corruption has only in recent years become a focal point on the international agenda. Nowadays, member states consider corruption a real threat to democracy, the rule of law and the protection of human rights, and, as a result, the Council of Europe, being the pre-eminent European institution to defend these rights, has developed a series of instruments for the fight against corruption; the Resolution on the twenty guiding principles for the fight against corruption ((97) 24) and Recommendations on the status of public officials in Europe (No. R (2000) 6) and on codes of conduct for public officials (No. R (2000) 10), which all apply to the police, and the Criminal Law Convention (ETS No 173) as well as the Civil Law Convention on Corruption (ETS No 174), adopted in 1999. Moreover, the Group of States against Corruption (GRECO) was established in 1998 to monitor corruption in member States. The Council of Europe is also performing other programmes with the overall objective to the fight against corruption, inter alia in the police sector, which are open to member states.

B. Qualifications, Recruitment and Retention of Police Personnel

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

Commentary

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

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

Commentary

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

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

Commentary

This Article sets a minimum standard, which should apply to those at the point of recruitment, to recruits and to fully recruited police personnel. It is, however, open to member States to decide what "degree of tolerance" should be accorded to crimes that fall short of the category of serious crimes. Furthermore, the requirement of a conviction should also be interpreted as a minimum standard, which does not exclude that recruits and personnel be disqualified as police, or from carrying out police duties,

for the reason of well substantiated suspicion of criminal activities, committed by the person in question.

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

Commentary

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

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

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

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

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

C. Training of Police Personnel

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

Commentary

The police play a prominent role as a defender of the society it serves and should preferably share the same fundamental values as the democratic state itself. The fostering of democratic values in the police is therefore crucial and training is one of the most important means in furthering values among the staff. As a result, this Article brings in the fundamental values of all member states of the Council of Europe as an integrated part of the training of the police.

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

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

Commentary

The principle of openness and transparency of a police organisation, must also be reflected in the training of its staff. A police which aims to carry out tasks with the support of the public, must have its

personnel trained in an environment, which is as close as possible to social realities. This would include the physical environment (place and equipment) as well as the intellectual input to the training.

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

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

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

Commentary

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

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

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

Commentary

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

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

Commentary

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

D. Rights of Police Personnel

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

Commentary

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

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

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

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

Commentary

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

Police personnel have the status as public servants (or civil servants) in several member States. As this is not the case in all member states, it is stated that police personnel, to the extent possible, should enjoy social and economic rights as public servants. Such rights may be limited for reasons of the special character of police work. The listed social and economic rights in the Article highlights a few crucial rights but is not exhaustive.

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

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

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

Commentary

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

The possibility to have disciplinary decisions challenged by an independent body, preferably a court of law has two main advantages. Firstly, it would provide police personnel a safeguard against arbitrary decisions. Secondly, it opens up the police towards society (transparency), in particular, given that court hearings and judgments/decisions of courts are normally made public.

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

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

Commentary

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

V. Guidelines for Police Action / Intervention

Commentary

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

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

A. Guidelines for Police Action/Intervention: General Principles

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

Commentary

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

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

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

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

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection."

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

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

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

Commentary

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

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

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

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

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

Commentary

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

As a starting point, there must always be a legal basis for police operations (Article 3), 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 using of force and the situation in which the force is used. In practical terms, this means, for example, that no physical force should be used at all, unless strictly necessary, that weapons should not be used, unless less strictly necessary, and, if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary; shoot to warn before shoot to wound and do not wound more than is strictly necessary, etc.

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

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

Commentary

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

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

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

Commentary

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

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

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

Commentary

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

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

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

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

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

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

Commentary

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

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

Commentary

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

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

Commentary

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

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

> 44. *Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.*

Commentary

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

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

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

Commentary

This Article, which is closely linked to Article 14, has two main purposes. Firstly, the intervening police personnel shall as a rule always be in a position to give evidence that they belong to the police. Secondly, they shall normally also be in a position to identify themselves as an individual member of the police ("professional identity"). The requirement that police personnel normally should give evidence of their professional identity before, during or after intervention is closely linked to the personal police responsibility for action or omission (Article 16). Without a possibility of identifying the individual police man/woman, the personal accountability, seen in the perspective of the public, becomes an empty notion. It is clear that the implementation of this regulation must be balanced between the public interest and the safety of the police personnel on a case by case basis. It should be stressed that the identification of a member of the police does not necessarily imply that his/her name be revealed.

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

Commentary

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

It should be noted that the Council of Europe Recommendation No R (2000) 10 on Codes of Conduct for Public Officials (drafted by the "Multidisciplinary Group on Corruption", GMC) is applicable to the police and its personnel.

B. Guidelines for Police Action/Intervention: Specific Situations

1. Police Investigation

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

Commentary

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

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

Commentary

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

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

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

Commentary

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

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

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

Commentary

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

"...the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address inter alia the following matters: the informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview.

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

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

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

Commentary

Police personnel must be competent in handling the early stages of an investigation, in particular, contacts with those implicated by a crime. The proper protection of witnesses is necessary for their

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

This Article underlines how important it is for the police to be aware of the special needs of witnesses in different situations, and their protection. Not only does this call for special training of police personnel, but also guidelines are necessary to determine the proper handling of witnesses by the police. In this respect reference is made to the extensive work already carried out by the Council of Europe, concerning witness and victim protection (Recommendations No. R (85) 4 on the violence in the family, No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R ((87) 21 on assistance to victims and prevention of victimisation, No. (91) 11 on sexual exploitation, pornography and prostitution of , and trafficking in children and young adults, No. R (96) 8 on crime policy in Europe in a time of change and recommendation No. R (97) 13 on intimidation of witnesses and the rights of the defence).

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

Commentary

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

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

Commentary

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

2. Arrest/Deprivation of liberty by the police

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

Commentary

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

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

"The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For

various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record."

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

Commentary

This Article brings to the attention the right provided for in Article 5.2 of the European Convention on Human Rights (that "[e]veryone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.") and a statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 2nd General Report (1992), that persons "taken into police custody should be expressly informed without delay of all their rights" (including those contained in Article 56). To this has been added that persons deprived of their liberty should also be informed of the procedure of their case. (The wording "to the extent possible according to domestic law" is used as this information is sometimes provided by other authorities than the police, such as the public prosecution.)

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

Commentary

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

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

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

Commentary

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

"The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against

the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc)." (CPT 2nd General Report, 1992)

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

Commentary

Out of respect for the dignity and integrity of individuals and their needs, the police should avoid, whenever possible, keeping criminal suspects together with other categories of persons deprived of their liberty (c.f. immigration detainees). This rule is in accordance with principles established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other grounds for separation are sex and age, however, separation on these grounds must also take into account personal needs and decency.

VI. Accountability and Control of the Police

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

Commentary

The police shall be accountable to the state (through central, regional or local bodies) as the state is the principal of the police. Accordingly, there are state bodies to monitor and control the police in all member states. However, state control over the police must in an open democratic society be complemented with the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability vis-a-vis the public is a crucial condition for making the mutual relationship between the police and the public a reality.

There are several means of rendering the police accountable to the public. The accountability can be direct or channelled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective. Complaints procedures, dialogue and co-operation as means for accountability are included in Articles 59-62.

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

Commentary

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

In a simplified model, the legislative power (Parliament) exercises an a priori control by passing laws that regulate the police and their powers. Sometimes the legislative power also perform an a posteriori control through "justice and interior commissions" or through "Parliamentary ombudsmen", who may initiate investigations, ex officio or following complaints by the public concerning mal administration.

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

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

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

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

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

Commentary

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

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

Commentary

This Article points to the possibilities of developing public–police relations through accountability mechanisms, which bring the public closer to the police and thus contribute to a better mutual understanding. Accordingly, mechanisms, which foster the settlement of disputes between the public and the police are to be recommended. That may be established as a mediation or complaints structure, which opens a possibility for contacts and negotiations between the public and the police in order to settle disputes in an informal way between the parties. Such mechanisms should preferably be independent from the police.

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

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

Commentary

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

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

VII. Research and International Co-operation

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

Commentary

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

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

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

Commentary

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

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

Commentary

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

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

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

Appendix to the explanatory memorandum

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

Member States: Albin Dearing (Austria); Luc Boghaert, Claude Gillard ve Jean-Paul Wuyts (Belgium); Drazen Ivanusec ve Zdravko Zidovec (Croatia); George Panayiotou, Harry Stavrou ve Kyracos Theophilou (Cyprus); Radim Bure, Tomás Buril ve Hana Snajdrová (Czeck republic), Thomas Jacobi ve Karsten Petersen (Chairman of PC-PO) (Denmark); Dominique-Antoinette Gaux, Magali Ingall-Montagnier, Jean-Amédée Lathoud, Hugues Lebeau, Emmanuel Miglierina, Jean-Louis Ottavi ve José R-V Razafindranaly (France); M. Efstratios Papathnassopoulos (Greece); Giovanni Cataldo ve Francesco Mandoi (İtaly); Darius Grebliauskas ve Edmundas Jankunas (Lithuania); M. Alexander Bordian ve Nelea Didic (Moldova); Andrzej Wis'niewski (Polond); Alberto Borges, José Manuel Carrolo ve Silvia Pedrosa (Portugal); Pavel Abraham (Romania); Janez Mekinc (Slovenia); Juan María Cabo Mansilla, Domingo Perez Castaño ve Manuel Marion Mainer (Spain); Alexandar Doncev ve Nikola Matovski (the Former Yugoslav Republic of Macedonia*); Osman Balcı, Kemal Başlar, Vahit Bıçak, İbrahim Cerrah, Kadri Özkan ve Mustafa Yavuz (Turkey); Hugh Orde ve John Slater (United Kingdom).

Observers: Etienne de Perier (European Commission); Olivier Foures ve Laurent Grosse (ICPO–Interpol); Guido Brummelkamp, Juan María Cabo Mansilla ve Emmanuel Miglierina (AEPC) ve Edouard Janssens (Intercenter).

Scientific Experts: Amadeu Recasens I Brunet (Spain) ve Neil Richards (United Kingdom).

Secretariat: Björn Janson, Council of Europe.

SECTION VI
CONCLUSION AND EVALUATION

1. THE EFFECTS OF THE ECPE ON POLICE PRACTICES

1.1. How effective are police ethics on security personnel?

A profession's ethical rules are principles that speak to the professional conscience of its members and that have professional, rather than legal, sanctions. However, the control of personnel that provide security services that impact individual liberties and the quality of life of a society cannot be left to ethical principles only. Although there are ethical principles generated and appropriated by members of law enforcement agencies, the necessity of control over law enforcement institutions by the legislative, executive and judicial powers (Articles 59 and 60 of the ECPE) is indisputable.

Ethical rules are first of all a type of internal control mechanism. They are supportive of legislative, executive, and judicial control over the law enforcement personnel. However, the effectiveness of ethical rules is possible first and foremost by their appropriation and internalization by members of the professional field. This in turn can be achieved through an emphasis on ethical principles in pre-professional and professional training.

By far the most appropriate form of control of the security services is an effective external control as explained in Article 59 of the ECPE. Neither legislative-executive-juridical control of law enforcement agencies, nor their professional self-control, can be classified as external control. External control, as the term implies, refers to the

control and supervision exercised by civilian individuals and public rather than state institutions. Therefore, civilian and democratic control mechanisms should be developed at different levels, in addition to the control mechanisms mentioned above. These can be classified under categories such as civilian participation, control and oversight.

1.2. How effective is the control over security personnel by state organizations?

Articles 60 and 61 of the ECPE refer to the control of security forces by state institutions. State control, as discussed in detail in the fourth section, can be summarized as legislative, executive, and judicial control.

Legislative control, as can be inferred from the phrase, refers to the control through laws passed by the parliament that concern the performance of security services.

Executive control refers to the control exercised by the Interior Minister of the national government, over law enforcement agencies. This type of control is also exercised indirectly, in provinces by governors and in towns by provincial governors.

Judicial control includes the accountability of security members before the country's courts for illegalities and crimes committed in relation to their services.

The laws in effect require that the police and the gendarmerie should be under the command and control of governors and provincial governors, who are the representatives of the central government in provinces and towns. However, a study conducted on this area gives rise to concerns about the adequacy of the control by governors and provincial governors over the security organizations (Goldsmith and Cerrah, 2005).

On the other hand, civilian control over the law enforcement agencies should not be

limited to control by governors and provincial governors. Although governors and provincial governors are civilian bureaucrats, they are also personnel of the Ministry of Interior and representatives of the central government like the police and gendarmerie administrators, and, therefore, their control does not qualify as democratic and civilian. The conclusion that the control by governors and provincial governors over law enforcement agencies is not quite adequate is further supported by the above-mentioned study. For this reason, the need for healthier civilian control and oversight mechanisms over law enforcement agencies has emerged as an issue that needs to be addressed.

1.3. Why are civilian oversight mechanisms needed for security services?

The existence of professional solidarity among members of public service institutions is well known. This phenomenon is not unique to law enforcement agencies such as the police and the gendarmerie, but can be observed among all public personnel.

This kind of solidarity is observable in many professions. It derives its basis from the very social structure of Turkish society, and extends into national solidarity which is in turn reminiscent of clan solidarity. Such expressions of solidarity are especially common inside law enforcement agencies, in which the 'blue wall of silence' or the 'blue code of silence' is a very common occurrence according to the international police literature.

Neither is professional solidarity limited to the heads of the civilian administrative offices or the personnel of law enforcement services. Even among different professional groups, such as academics or doctors, a similar form of solidarity known as the 'white wall of silence' can be observed. Professional solidarity can be defined as concealing or failing to expose a wrongdoing

committed by a colleague against a citizen or the public as a whole.

Claiming that a phenomenon much attested in international police literature, such as professional solidarity, does not exist at all among Turkish law enforcement agencies is both unconvincing and methodologically flawed. In fact, in the case of Turkey, both public personnel and professional solidarity is evident among law enforcement personnel. In Turkey, public employee or collegial solidarity is observed among all public personnel in general, and among the personnel of the uniformed security organizations in particular. This solidarity hinders the effective operation of internal control mechanisms. In this light, civilian control and civilian oversight by civil society members over publicly provided services is an extremely important issue.

1.4. What is the civilian oversight mechanism for internal security services?

In European Union member countries, internal security services in charge of policing are controlled by local, elected authorities, and in some cases, by appointed civilian elements such as governors and provincial governors. However, in these countries some separate and additional civilian oversight mechanisms such as the Independent Police Compliance Authority, Police Watch and Lay Visitors also serve that purpose.

As the financer and final beneficiary of the security services, civil society remains the most suitable actor for monitoring and controlling this sector. Turkish law enforcement agencies (the police and the gendarmerie), which serve their own people with self-sacrifice and pride, should not have any reason to feel reluctant towards a systematic and institutionalized control conducted by their own people.

In modern administrative systems, duties related to internal security performed by law

enforcement agencies are evaluated within a public service framework. General law enforcement duties performed by the police and the gendarmerie in Turkey can be identified as 'internal security services,' or shortly as 'policing.' Internal security services are better defined as law enforcement *services*, rather than *forces*, which implies military duties.

Defining the duties of internal security agencies as services immediately introduces concepts such as civilian oversight, civilian participation, and even civilian control. In this sense, law enforcement services, regardless of which institution provides them, should be open to the oversight, participation, and control of citizens. These principles, which appear prominently in the *European Code of Police Ethics*, can also be found in books published by the Turkish Police and Gendarmerie.[14]

Nevertheless, the service philosophy of most security staff lies closer to an armed forces mentality, rather than a public service one, despite the fact that state funds provide for their training and subsistence throughout the 2–8 years they spend in boarding schools. As explained in detail in the previous sections, security personnel trained in a boarding school environment tend to feel indebted to the state, rather than the society. This idea nestled over time in their subconscious, sponsors a deep loyalty to the state and to their institution, rather than society. This in turn can transform their perception of civilians into people in their service, rather than vice versa (Birinci 2005).

Official law enforcement agencies are not only closed to local civilian participation but also present an extremely centralized organizational picture. It should not come as a surprise therefore that security personnel tend to prioritize organizational loyalty over

the idea of serving civil society. This in turn gives rise to a security force approach that is incompatible with the security service approach of modern societies. According to Western criteria, the gendarmerie has a completely military structure, while the police has a paramilitary/semi-military organizational structure, and this results in their personnel's self-perception as members of armed forces rather than of public services. On the other hand, organizations such as the police and the gendarmerie, which often declare themselves to be 'in the service of the people,' cannot be closed to the control and oversight of the society that they serve. What needs to be done in this case is the institutionalization and practice of this idea, which after all is accepted by both law enforcement agencies, at least in principle.

In addition, it cannot be argued that there are no civilian oversight and control mechanisms at all within the existing system. The control exercised by governors and provincial governors as local representatives of the central government constitutes a civilian control mechanism. However, the governors and provincial governors contacted within the context of the project conducted by Goldsmith and Cerrah (2005) expressed the view that the Turkish administrative system is a whole and that the law enforcement agencies are under their command and control as a part of that whole. Similarly, high-level police and gendarmerie authorities that were interviewed identified themselves as part of the civilian administration system, and recognized the command and control of the heads of civilian administration offices in terms of the law enforcement services they perform. However, although control by governors and provincial governors over the police and the gendarmerie may partly appear to be civilian control, it cannot replace effective external control as described in Article 59 of the ECPE. As it has been mentioned before, these statements show that the control carried out by governors and provincial governors is not

14   Cerrah, İ. Eryılmaz, M. B. (2001) **Avrupa Polis Etiği Yönetmeliği & Açıklayıcı Notlar,** Ankara: Institute of Security Sciences Pres (Güvenlik Bilimleri Enstitüsü Yayınları); Command Headquarters of Gendarmerie Schools (2001) **Gendarmerie Ethics** Ankara: Command Headquarters of Gendarmerie Schools.

ideal civilian control, but internal control, and as such cannot alone constitute effective external control, as prescribed by Article 59.

A main conclusion of this study is that the current civilian control mechanisms over law enforcement agencies are not sufficiently effective or efficient. Existing oversight mechanisms should be accompanied by new oversight mechanisms designed to increase their efficiency. The insufficiency of control over law enforcement agencies by heads of the civilian administration offices is considered from the perspective of whether or not they are organizationally supported in terms of knowledge and personnel, rather than reduced to their personal sufficiency or insufficiency.

On the other hand, with the understanding that civilian oversight and control cannot be limited to the heads of the civilian administration offices, the issue of what kind of contributions can be made to the oversight and control of law enforcement agencies by elected local authorities (mayors and municipal councils), national and local NGOs, and unorganized individuals of the civilian society will be elaborated on.

1.5. What are the characteristics of effective civilian control?

There is the possibility, as has been the case for some other areas before, that the concept of civilian oversight may be misunderstood if it is not the product of informed academic knowledge and approach.

For example, the community policing model of Western Europe and the United States seems to have been adopted by the Turkish police, at least in principle. However, it is also observed that the studies conducted within the context of community policing are limited to practices of public relations in Turkey. The interpretation of community policing by high-level security authorities does not go beyond asking the public to be more helpful to the police than before. In

short, high-level decision-making mechanisms of the Turkish security institutions perceive community policing very differently from organizations in Western countries.

Although the idea of community policing has enjoyed wide acceptance by the middle and lower levels of security institutions, its reception by high-level administrators has been very different from that of their European counterparts. The most significant reason for this is its formation through the classic approaches and opinions of high-level security administrators instead of academics, after being prepared by lower- and mid-level ranks with academic knowledge and approaches. As a result, the model that emerged had nothing to do with community policing as it occurs in democratic societies. However, in real community policing citizens do not only constitute an element that helps the police fight crime, but they also play an active role in identifying security issues and priorities for fighting crime. In addition, they share the function of overseeing and even controlling the security services.

As with the example of community policing mentioned here, the concept of civilian oversight can fall victim to similar misunderstandings. For instance, according to some high-level security authorities, control over the security personnel by governors and provincial governors is a sufficient form of civilian oversight (Goldsmith and Cerrah, 2005). Still some others think it would be sufficient civilian oversight if a police officer in action is simply seen and watched by civilian bystanders. It is, therefore, necessary to clarify precisely from the beginning what is meant by the concept of civilian oversight mechanisms and as well as describing its methods of implementation. Otherwise, some so-called civilian oversight mechanisms that do not really satisfy the essential criteria of the concept may emerge instead.

1.6. What is the significance of political determination for effective civilian oversight?

Many civilian academics work within the Police Academy, which is the university-level educational institution of the Turkish police. These professors, who have completed masters, PhDs, and other studies in Western countries, especially in England and the US, can be useful to the Police Academy in ways other than teaching.

The international experience and knowledge of these academics, in areas such as law, human rights, crime, policing, security administration and policies, can be consulted in order to identify specific problem areas of the security organization and for determining policies. This is a necessary condition so that various misunderstandings will not arise, as in the above examples regarding the concepts of community policing and civilian oversight.

The general definition of the duties of internal security institutions can be given as a last example on this subject. Internal security duties are defined as a public service open to the participation and control of democratic societies, whereas current high-level security authorities can from time to time emphasize that the security organization is an armed force in bulletins sent to the organization. The definition of internal security duties as a force instead of a service goes beyond a simple slip of the tongue, and reflects a very significant mentality that affects the quality of the service.

The perception and definition of internal security duties as a public service is not just a formality for Turkey, given its determination to join the European Union. Nor is the primary problem the formal adaptation of security services, which are of vital importance, to the European Union criteria. The appropriation, institutionalization, and practice of the policing service approach instead of the traditional police force one, are

very important obligations for the elevation of the quality of life of Turkish society.

When high-level security administrators employ all security personnel as an armed police force they under-utilize the academic brainpower of their institutions. In that case, projects that are important for internal security policies, such as community policing, civilian participation, and civilian oversight are shaped through the individual approaches of high-level security administrators. This in turn hinders fundamental organizational changes and opening up. As a result, no significant increase is observed in service quality of the security services, while their economic and social costs increase even more.

The institutional resistance of the security service bureaucracy can be overcome only through political determination and position in this direction. The political power to determine the high-level administrators of Turkish security organizations should promote staff members that appropriate the idea of civil society and democratic principles, and that will be able to prioritize European Union criteria as well as the general interests of the society in Turkey.

1.7. How should political participation in security services be?

Members of the Turkish police often complain about the political intervention directed towards themselves, as sometimes also happens in democratic Western countries. The police, demonstrating the mentality of a military structure that is closed to political interaction, advocate that they should be distant from political pressure or influence, as the military is, in order to better perform their duties.

However, in democratic administrations, it is neither possible nor desirable for any public institution to be completely independent of political influence, regardless of the duties and qualities of those institutions. The control of an institution exclusively by

internal mechanisms will multiply problems instead of solving them. This will in time allow the institution to continue its operation without control or oversight. The lack of control over public institutions, especially over the armed forces and the police, can give rise to results that just as negative as an unhealthy intervention aimed at their solution.

In democracies, all institutions and their services are performed under civilian and political control. A system lacking this cannot be called a democracy. Also, it cannot be argued that the legislative, executive, and judicial powers are completely devoid of political influence. For example, institutions perform according to the laws passed in parliament. These laws are usually drafted by the political party that holds the power in the parliament. In this context, legislative authority is also the use of political power. On the other hand, the executive authority used by the government is already a totally political interaction. Lastly, it would not be convincing to argue that the judicial control that applies the laws and addresses their violation, and which is headed by an elected political figure, is not political. In conclusion, there is already a kind of political influence over the armed forces and law enforcement agencies. While this is the case, advocating the necessity of an absence of political influences does not conform to reality, and signifies a lack of understanding of democratic mechanisms.

Nevertheless, law enforcement officers are right in protesting against political interventions and influences into issues that fall into their own area of duties. After the determination of the general policy of service institutions by the political authority through voted laws, their implementation should be left to the personnel of that service institution. There should not be political intervention of this kind when it comes to law enforcement personnel who perform their duties professionally. Such

interventions do not constitute legitimate political interaction anyway. However, it is not right to completely obstruct all kinds of political interaction by using illegitimate political pressures and interactions as an alibi. In all modern democratic countries, especially in the United States and in Europe, law enforcement personnel complain about the pressure exercised by politicians over their institutions. Nevertheless, they never reject political interaction altogether. Rejecting negative political interactions, and rejecting political interaction of all kinds, are two different things that should not be conflated. To be completely against political interaction means shelving democracy.

In this sense, there is some truth in the complaints of security personnel about pressure from politicians in areas related to their profession. However, this should not be perceived to mean that politicians should not interfere with internal and external services at all. Besides, political interventions into the professional practice area of any profession are undesirable not only for security services, but for all public services.

Opposition to political intervention should never take the dimension of a rejection of all kinds of political control and intervention. When the political powers responsible for governing the country do not have the authority to appoint and control the administration to provide security services to the country, the principle expressed in Article 13 of the ECPE – that 'The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities' – loses its meaning. What kind of administration can function over personnel whom the civilian authority cannot appoint or remove? Gendarmerie personnel are perceived to be under the command of the heads of civilian administrative offices when performing their internal security duties, but these civilian administrators have no say over issues of human resources. Even when appointing the police chief of a province,

governors do not have any formal influence. Appointments are made by the central government. However, some of these appointments can be overturned by the courts.

In conclusion, there are some problems concerning the authority and control powers of elected and appointed civilian authorities who are supposed to have authority over the Turkish law enforcement agencies. There is no local participation in appointing the high-level law enforcement administrators, while the central political authority is not completely effective, either.

2. POLICE ETHICS AND SECURITY SECTOR REFORM

The ECPE is not limited to ethical principles that are to be disseminated among security personnel through training. These principles need to be appropriated and practiced by officers, and a series of organizational changes, especially regarding the organizational structuring of the internal security organizations, need to take place, such as the selection of personnel and the establishment of civilian oversight mechanisms.

The realization and practice of the principles of the ECPE regarding the control and oversight of internal security services is possible through changes on the level of reforms in the security sector.

2.1. What kind of relationship exists between the ECPE and security sector reform?

It is observed that there is a gradual transformation of security organizations' service understanding that parallels the evolution and democratization of social life. However, the rapidity of this transformation largely depends on the degree of democratic character of a given country. Security organizations, which usually have a conservative structure, cannot keep up with the transformations taking place in other

public service institutions. This points to the fact that the gradual transformations realized as evolution are not enough for some countries, and that transformations at the level of reforms should be designed and implemented.

In many European countries, the transformation necessitated by the principles of the ECPE has been achieved as a result of an evolutionary process. For example, principles of the ECPE such as the rule of law, the rule of civilian authority, transparency, accountability, and civilian control and oversight were being practiced in many European countries for a long time before these articles were laid down. However, relying solely on the natural evolution of society will slow down, if not impede, the process in countries that are currently undergoing democratization. The democratization of the security services should, therefore, be accelerated through reform efforts, instead of being left to their natural course.

The term 'security sector' includes all organizations performing duties in the areas of internal and external security. While these organizations were once limited to the military, the police, intelligence agencies and other armed forces of the state, today the private security sector may be added to it (Born, Fluri and Johnsson, 2003). Security sector reform can be summarized as the completion of physical and mental transformations necessary for this sector to provide services in line with modern principles and values. This, in turn, necessitates a series of transformations by means of reforms, particularly of an organizational nature.

The first of these is the clear delineation of internal and external security, and the structuring of internal security as a non-military civilian public service. This structuring brings about institutional organizations with qualities such as transparency and accountability that enable

the participation and oversight of civil society.

The institutionalization and systematization of transparency and accountability are important parts of security sector reform. The realization of such institutional structuring will transform police institutions, which are currently non-military organizations under the civilian authority only on the surface, into a civilian service institution in the real sense. True civilianization should be achieved through the operation of existing control mechanisms and the establishment of new civilian oversight mechanisms.

The compatibility of the processes of employment and training in security organizations with modern and democratic values is another important part of security sector reform. Lastly, the professional and private socialization processes of the security personnel that are emphasized in this study should also be reconsidered.

Security sector reforms constitute an important phase in democratization processes in the European Union, but also in Eastern European, Black Sea, and Mediterranean countries. When the relationship between economic progress and democratization is taken into account, it becomes clear that security sector reform is an important element of progress. It is a known fact that progress will not take place without democratic control (Fluri, 2005) and that this control comprises all public institutions, including the security sector. A series of recent publications have discussed the effects of security sector reforms on democratization (Bryden and Fluri, 2003; Caparini and Marenin, 2004; Hanggi and Winkler, 2003; Cawthra and Luckham, 2003).

Although the relationship between democratization and progress is mentioned above, security sector reform is not only necessary for developing countries outside of the European Union. Transformations in the level of reforms are currently taking place in

the security sectors of many countries constituting the European Union. Reforms or transformations on the level of reforms have been taking place in recent years in countries such as Belgium, England, Germany, and France. A complete internal security reform recently took place in Belgium, and reforms took place in England and in Germany. A national committee formed in France in the year 2000[15] formed a civilian control mechanism controlling all organizations providing security services, including the police and the gendarmerie. Experts predict that France may carry out a security reform similar to Belgium's in the near future.

Security sector reform is also part of the agenda of countries outside of the European Union, including Eastern European and Black Sea region countries (Munteanu, 2005), and even in the Arab world including Middle Eastern and North African countries (Qatarneh, 2005). In these circumstances, it is not acceptable for Turkey, which is in the process of joining the European Union, to ignore the necessity of security sector reform. Turkey cannot continue to avoid security sector reforms, whether it joins the European Union or not. Resistance to these reforms will only result in losing time for Turkey.

Civilian control of the security sector is an important constituent of democratic life. Security services should not be thought of as a taboo issue. Democratization of this sector cannot be resisted using the importance and secrecy of these services as an alibi. Routine security services as well as services that require more secrecy, such as intelligence agencies, should be controlled in a way that takes the special requirements of their nature into account (Gill, 2005). Lack of control over intelligence activities that naturally require secrecy will in time turn into a kind of immunity. In a service sector that is not controlled, corruption and decay are inevitable. Security organizations that are not controlled by civil society can themselves

15   The National Comission of Deontology and Security (CNDS).

constitute a threat for the national interests of a country.

It is natural for security institutions that control their services through internal mechanisms only and that are accustomed to operating outside the context of democratic control, to resist reforms. Security sector reform resembles conducting repairs on an inhabited house. It has some unique difficulties and distresses. Sometimes it can be more difficult and more expensive than building a new house. However, in order for the house to stand and for its inhabitants to be healthier and in peace, this restoration is necessary, and even inevitable (Fluri, 2005).

2.2. Who will benefit from security sector reform?

There is a direct relationship between the quality of security services and social prosperity and progress. In this light, the United Nations Development Programme (UNDP) carries out a series of projects on the security sector, as a key aspect of a country's institutional development (Goldsmith and Cerrah, 2005). There are several different relationships between economic progress and security. The economic and social costs of a society's security are important, as well as whether or not that country is secure to live and invest in. The ratio of budget allocations to education and health to the money allocated to internal and external security is an important criterion of the quality of life in a country.

On the other hand, security should not be a service that is provided without considering its costs. The economic cost of security should be acceptable and affordable. An understanding of absolute security that causes an excess economic burden to society and decreases the society's quality of life is less and less accepted in modern societies.

People want to decrease the high costs of security services and to shift these resources to other basic needs of life, such as education, health care, and food. An unreasonable ratio

of security expenditure can become 'security abuse' if it is not systematically controlled by civil society and the elected political authorities that are its legitimate representatives. How can it be determined whether the costs of security are acceptable unless there is systematic external control? In modern societies people can question the costs they are being charged for security, and enjoy better security service at less cost.

When the necessity of security sector reform is viewed from this perspective, it becomes clear its significance is independent of and distinct from the process of Turkey's joining the European Union. A healthy security sector reform will increase the quality of life in the country, and cause fewer economic and social costs. It is not only civil society that stands to benefit from such developments, but also the personnel of law enforcement agencies. Unless the use of resources allocated to security services are systematically controlled, there will be no clarity about whether these resources are used effectively and in a socially beneficial way.

2.3. What should be the role of security institutions in the struggle against human rights abuses committed by its members?

Human rights abuse watch units may be established within official law enforcement agencies such as the police and the gendarmerie. However, activities by these units will only serve as internal control; they will not take the place of control and oversight that should be conducted by civil society nor remove the right of civil society to do so.

On the other hand, in many countries, including many democratic ones, members of the society tend to trust the military more than the police. However, this does not mean that military institutions can provide better internal security services. The main reason why the people trust the military more than the police is that the police interact very

often with the people, and the interactions are generally tense and negative, while in democratic societies, the interactions between the military and society are very limited and thus the military's reputation is not as negatively affected as the police's (Van Eekelen, 2005). On the other hand, it is also a fact that the armed forces are more difficult to criticize compared to other institutions. Given that the military's reputation is often better than the police's, regardless of the reason, does not mean that security services will be better provided by military organizations. In cases where police duties are performed by the military, it is likely that the military will be criticized and its reputation eroded at least as much as the police's.

As a public service, law enforcement should be performed under tight civilian control and oversight, regardless of what institution performs them. This situation will certainly not prevent official law enforcement agencies from increasing the quality of service through their internal mechanisms. Internal control is necessary but not sufficient. In addition to internal control, security service institutions should both educate their personnel to be open to civilian control and oversight, and carry out organizational changes to enable this.

As expressed in the progress report of the European Commission, human rights violations are not systematically practiced in Turkey. The significance of the resolution and efforts of the political powers on this issue in recent years cannot be denied. In particular, the Human Rights Directorate established under the office of the Prime Minister is an important step taken by political authorities in order to prevent human right violations. However, the scarcity of complaints made to the Human Rights Committees, which are the extensions of the Human Rights Directorate in provinces and towns, raises some concerns about the adequacy of this system. The scarcity of complaints either demonstrates

the decline in human rights violations over the past few or it may suggest problems in the performance of official committees as official oversight mechanisms.

On the other hand, the positive efforts made within law enforcement agencies to prevent human rights violations are quite important. However, in spite of all these positive efforts, the healthiest control of human right violations is performed by civil society which is the recipient of these services. It is true that the society that receives these services and its members are the best to control the quality of these services. While the positive contributions of the internal mechanisms of law enforcement organizations cannot be denied, real control is the one that is conducted by society.

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