

## MODULE 6: HUMAN RIGHTS OF POLICE OFFICERS

<b>Introduction</b> .....	<b>171</b>
<b>Activity 1: Human rights experiences</b> .....	<b>172</b>
<b>Activity 2: Case study – discrimination in the workplace</b> .....	<b>174</b>
Handout – Activity 2: Case study – discrimination in the workplace .....	176
<b>Briefing notes</b> .....	<b>178</b>
1. Key concepts .....	178
a. Do police officers have human rights? .....	178
b. Challenges to the human rights of police officers .....	180
c. Which human rights are particularly relevant to police officers? .....	181
2. Activity guide: human rights analysis.....	183



# Human rights of police officers

## Introduction

The subject of the human rights of police officers is an important element in training and one that comes up in almost every human rights training course: “What about my human rights? Who cares about them?” Taking these concerns seriously can contribute to police officers’ acceptance of the human rights system as a whole. Police officers need to understand the benefit of human rights not only for others but also for themselves. Police officers are confronted with many human rights-relevant questions when performing their jobs; they are also directly affected when it comes to their own rights.

One might consider starting the training course with this module in an effort to show participants that their concerns are taken seriously. This would help reduce the moral ‘charge’ of human rights and encourage a positive approach towards human rights during the training course.

Participants’ concerns sometimes stem from the sense that neither the public nor police authorities respect or value their work. In the discussion it might be useful to ask participants to come up with concrete examples and take a look at them from a human rights perspective. To maximise your discussion input, familiarise yourself with national rules and regulations that are established for the specific protection of police officers, such as in the penal code, inner-organisational regulations regarding working conditions, operational measures for the protection of police officers and police union activities.

## Activity 1: Human rights experiences

### Purpose:

Police officers often bring up the issue of their human rights during human rights training because they don't feel that they are protected by them. It is, therefore, a good idea to take a pro-active approach to this question and incorporate it into an early stage of training.

### Objectives:

#### Knowledge

- understand the notion of human rights of police officers

#### Attitude

- gain an increased acceptance of others' human rights through the acknowledgement of their own
- raise awareness of their own rights and the empowering function of human rights
- feel part of the human rights system rather than its opponent

#### Skills

- be able to conduct a human rights analysis of organisational structures and practices

### Requirements:

- time: 60–70 minutes
- materials:
  - flip charts with discussion questions
  - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size: 15–20 persons



## Activity 1 description: **Human rights experiences**

- ❶ Introduce the purpose and objective of the activity.
- ❷ Ask participants to think individually about 2–3 examples that they either experienced personally or heard about, where their human rights as police officers were respected or protected and another 2–3 examples where they were not. Write both categories on the flipchart. (about 10 minutes)
- ❸ The examples given should be as concrete as possible, describing an organisational practice, order, an actual situation or a short scenario/case. In other words, prefer a specific example, such as: “last week my superior called me and addressed [...]” to the more general “superiors don’t care about the needs of employees”.
- ❹ Have participants form 3–4 person discussion groups, discuss their experiences and select 2–3 positive and negative examples to present to the plenary. (about 25 minutes)
- ❺ Answer any questions that arise during group work.
- ❻ The groups present their examples to the plenary. Discuss them (what is the impression of the other participants? Is this example also applicable to other participants’ working environments?) Look at the examples from a human rights perspective: how are the examples of relevance to human rights? What rights are concerned? What organisational structures tend to favour or obstruct police officers’ full enjoyment of their human rights? (about 30 minutes)
- ❼ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

## Activity 2: Case study – discrimination in the workplace

### Purpose:

Police officers often bring up the issue of their human rights in human rights training because they don't feel that they are protected by them. It is, therefore, a good idea to take a pro-active approach to this question and incorporate it into an early stage of training.

### Objectives:

#### Knowledge

- understand the notion of human rights of police officers
- know the relevant questions of a human rights analysis with respect to their own rights

#### Attitude

- have an increased acceptance of others' human rights through the acknowledgement of their own
- raise awareness of their own rights and the empowering function of human rights
- feel part of the human rights system rather than its opponent

#### Skills

- be able to take a human rights perspective on their own rights
- be able to raise the relevant questions that apply to human rights analysis and use them within participants' own organisational contexts

### Requirements:

- time: 60–90 minutes
- materials:
  - Handout 1 with case study and guiding questions
  - optional: power point presentation and projector
  - flipchart
- space: plenary room plus two working group rooms
- group size: 15–20 persons



## Activity 2 description: **Case study – discrimination in the workplace**

- ① Introduce the purpose and objectives of the activity.
- ② Present the case in the plenary.
- ③ Distribute the handout. (Case study plus guiding questions)
- ④ Ask participants to think individually about their approach to solving the case study.
- ⑤ Have participants form 5–6 person groups to discuss the case.
- ⑥ Answer any questions that arise during group work.
- ⑦ Have groups present their results in the plenary. Discuss the solutions proposed – take down some key points on the flipchart.
- ⑧ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

## Handout – Activity 2: Case study – discrimination in the workplace

### Case study: Discrimination in the workplace

Despite numerous applications over seven years, Assistant Chief Constable Alison Halford was not promoted. She believes her superior, the Chief Constable, did not promote her because he objected to her commitment to the equal treatment of men and women. She therefore started discrimination proceedings on the ground of sex.

During the following months, she felt that certain members of her department launched a 'campaign' against her because of her complaint. She alleged that the landline phone in her private office was tapped in order to obtain information to use against her in the discrimination proceedings. She presented evidence to support her allegations and claimed a violation of her human rights.

### Discussion questions:

1. What human rights are applicable?
2. Does the tapping of an office phone constitute an interference with human rights?
3. Does the tapping of an office phone constitute a violation of human rights?
4. What (conflicting) interests are involved?
5. What other areas of tension might arise with respect to human rights at the workplace?





## Handout – Activity 2: **Case study – discrimination in the workplace** *(continued)*

### **PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE?**

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

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

### **PART 2: JUSTIFICATION OR VIOLATION?**

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

## Briefing notes

These Briefing notes discuss the human rights of police officers. They then turn to an analysis of the case study on respecting human rights, using the analytical scheme presented in Module 3.

### 1. Key concepts

- a. Do police officers have human rights?
- b. Challenges to the human rights of police officers.
- c. Which human rights are particularly relevant to police officers?

### 2. Activity guide: human rights analysis

- Application of human rights analysis, especially the principle of proportionality, with respect to police officers' human rights.

## 1. Key concepts

### a. Do police officers have human rights?

When talking about human rights, the most prominent consideration is the relationship between private persons and the state. When talking about human rights and police, the first consideration is that the police are acting as state agents and are therefore obliged to respect and protect the rights of the people. Police officers themselves, however, often raise the question of whether, as they carry out their duties, they are also rights' bearers. The answer is a simple 'yes'.

- Police officers are entitled to the same rights and freedoms as other persons and are protected by human rights when performing their jobs. They can refer to their rights laid down in various international human rights documents, such as: the European Convention on Human Rights (ECHR) or the International Covenant on Civil and Political Rights (ICCPR). The same principles apply to the human rights of police officers as to human rights in general. Police rights may be restricted, but only if they are relative rights and their restriction is necessary in a democratic society for the police to function in accordance with the law and with respect to the principle of proportionality.<sup>1</sup>
- Human rights are indivisible and refer to all human beings due to their inherent dignity. Joining a police organisation or putting on a uniform does not mean that one must sacrifice human rights for the sake of that organisation's internal rules. A former interpretation held that human rights were not applicable to police officers,<sup>2</sup> but this restrictive conception is now out-dated.
- One exception to this general notion of human rights of police officers can be found in Article 11 of the ECHR,<sup>3</sup> which refers to the right to freedom of assembly and association. Article 11 (2) does not prevent states from imposing lawful restrictions on the exercise of the right to freedom of assembly and association for members of the armed forces, the police or the state administration. Because of their specific positions, the right to freedom of assembly and association of states' agents may be subject to tighter restrictions than that of the average citizen. This reflects the state's interest in prioritising vital security

1. Council of Europe, Committee of Ministers (2001), Explanatory Memorandum, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, 19 September 2001.

2. This also referred, for example, to state agents, members of the armed forces as well as convicts.

3. See also: United Nations (UN), International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, Art. 22 (2).



functions over individual interests. A complete denial of the right to freedom of assembly and association, however, might not adhere to Article 11 (2) of the ECHR. Restrictions must be in accordance with domestic law and they must not be arbitrary.<sup>4</sup> A Hungarian constitutional ban on police officers' political activities and membership in political parties was not found to violate Article 10 and 11 of the ECHR because it served the legitimate aim of depoliticising the police after the communist era and was not disproportionate during the transformation from a totalitarian regime to a pluralistic democracy.<sup>5</sup>

Exposure to challenging situations is part of the job of a police officer. It is understandable that such exposure may call forth emotions such as anger or aggression. During a training course, participants may use arguments such as: "As a police officer I have to accept that people shout at me, spit at me, disrespect me, throw stones at me and I still have to stay respectful, polite and calm. That's too much."

Therefore a police organisation must ensure that its police officers receive sufficient operational guidance before they get into such situations. There also needs to be room for reflection following difficult police operations. Training offers an opportunity to raise awareness among police officers as to why it is important – for themselves, the police and society as a whole – that human rights are protected and respected even in difficult situations.

Police officers often consider aggressive acts towards the police as human rights violations, but we can't speak of human rights violations concerning acts of individuals against police officers. The relevant human rights axis is actually drawn between the police officer and the police organisation. How are police officers prepared for an operation? What measures protect them in dangerous situations? What equipment do they require? What strategic operational measures have been put in place?

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

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.
32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.
33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.
34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

4. Grabenwarter, C. (2005), *Europäische Menschenrechtskonvention*, Vienna, Verlag C. H. Beck, pp. 263 and 271.

5. ECtHR, *Rekvenyi v. Hungary*, No. 25390/94, 20 May 1999.

## b. Challenges to the human rights of police officers

- If working conditions and organisational structures or measures fail to ensure or even undermine/violate the human rights of police officer. “My boss just gives orders. He always says – if you don’t like it, you can leave. As long as you are here, you belong to my command.” Or “We have been asked to submit DNA samples, this is against our human rights.”

Police leaders are responsible for dealing with their employees’ human rights. Structural factors and the culture of a police service also impact on the civil, economic and social rights of police officers, such as working conditions/hours, social security, transparency and participation in communication and management processes, human resource management, managerial responsibility or training and education. A closer look at the organisation from a human rights perspective provides important information about whether or not the setting favours the human rights of police officers.

- If police officers are confronted with aggressive, highly provocative or violent behaviour and are restricted – from their point of view – to moderate interventions. “During protests I have to stand in a row. Protestors provoke us, spit at us, throw objects at us and act violently, while all we are allowed to do is hunker down behind our shields.”

When carrying out police functions, especially when applying police powers, a police officer is not acting as a private individual but as an organ of the state. The state’s obligation to respect and protect human rights therefore has a direct effect on the options a police officer has to respond to aggression. The rights of police officers, who might risk injury or death to fulfil their duties, must also be respected and protected, such as by providing protective equipment, carefully planning police operations or putting in preventive measures. Restrictions to his/her rights might be necessary for the exercise of police functions but any such limitations must reflect the principle of proportionality. Given their particular role as a state organ, police might face a greater limitation of their rights than a ‘normal citizen’. Returning to the example of a demonstration turning violent, a ‘normal citizen’ might run away or seek help, whereas a police officer is obligated to protect the human rights of others and restore public order.

- If a police officer is confronted with allegations of ill-treatment or held responsible for acts/omissions in performance of his/her duties.

Generally, a police officer’s superiors will hold him or her liable through disciplinary proceedings within the organisation. If serious consequences result from police action, a police officer must bear individual responsibility for his/her acts or omissions before the criminal justice system and face penalties including imprisonment. In such cases, vital interests conflict: everyone has the right to scrutinise police acts and to compensation in case of misconduct while police officers have the right to a fair trial including the presumption of innocence. These conflicting interests must be balanced by considering the police’s function and the principle of proportionality. Standards developed by jurisprudence of international human rights courts contribute to a fair procedure in such cases.



**Training tip: Dealing with the feeling of “we don’t have any rights, nobody cares about us.”**

- Emphasise that police officers have a legitimate claim to human rights based on human rights law;
- Clarify a police officer’s individual responsibility and accountability for his/her actions and discuss the consequences;
- Use cases studies, such as the *Halford* case, on the human rights of police officers;
- Launch the day with a situation in which police officers must deal with this issue, such as a hearing;
- In scenario training, explain and make explicit that the human rights of police officers are also protected;
- Mention that monitoring bodies like the European Committee for the Prevention of Torture take into consideration the working conditions and organisational structures relevant to the human rights of police officers;
- Explain domestic procedures to protect the rights of police officers from a human rights perspective (labour rights, police unions, safety regulations, social security issues, anti-discrimination and anti-harassment procedures).

Human rights and democracy determine the role and the objectives of policing, including the duties of police and how these should be carried out. Acknowledging the human rights of police officers is an important element of the rule of law, and helps embed police within the society they serve.<sup>6</sup>

Human rights of police officers are of value *per se*, and upholding police officers’ rights is linked to their human rights performance. The European Committee for the Prevention of Torture, for example, monitors detention facilities throughout Europe, focusing on the conditions of detainees. To do so, it also looks at the working conditions of the officers in detention facilities. Factors such as understaffing, working hours and material conditions are all relevant for human rights performance.

**c. Which human rights are particularly relevant to police officers?**

National legislation and internal organisational directives determine the human rights of police officers. In addition, there is a human rights perspective from a higher level. In many police organisations, the rights of police officers are talked about when it comes to concrete rules and regulations related to issues such as pay, overtime, leave or working conditions. But this debate is only rarely couched in human rights language. The *Halford* case is a good example of a different approach. It shows that human rights are relevant to internal organisational standards.

Restriction of the rights of police officers must be grounded in law and allowed only when there is a legitimate aim and the principle of proportionality is respected.

6. Council of Europe, Committee of Ministers (2001), Explanatory Memorandum, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, 19 September 2001, p. 30.

**Table 6.1: Examples of the human rights of police officers**

<p><b>Right to life</b> Article 2 of the ECHR Article 2 of the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights) Article 6 of the ICCPR</p>	<p>Right to be protected in dangerous situations Equipment, training, professional police operations, allocation of adequate resources, effective investigation when a police officer has died on duty</p>
<p><b>Right to a fair trial</b> Article 6 of the ECHR Articles 47 and 48 of the EU Charter of Fundamental Rights Articles 14 and 15 of the ICCPR</p>	<p>If a police officer must stand trial in criminal proceedings due to acts performed as an official, all fair trial elements apply (right to be informed of the accusation, right to defence including the right to remain silent, legal assistance, presumption of innocence, review by an independent body)</p>
<p><b>Right to privacy, including data protection</b> Article 8 of the ECHR Articles 7 and 8 of the EU Charter of Fundamental Rights Article 17 of the ICCPR</p>	<p>To have a reasonable expectation of privacy in the workplace (<i>Halford v. UK</i>). Sensitive issues: workplace surveillance, email and telephone monitoring, drug testing, requirements to submit DNA samples, fingerprints, regulations on appearance</p>
<p><b>Freedom of expression</b> Article 10 of the ECHR Article 11 of the EU Charter of Fundamental Rights Article 19 of the ICCPR</p>	<p>Political activities of police officers with respect to ensuring political neutrality with the police services, confidentiality of official information</p>
<p><b>Freedom of assembly and association</b> Article 11 of the ECHR Article 12 of the EU Charter of Fundamental Rights Articles 5 and 6 of the European Social Charter (ESC) Articles 21 and 22 of the ICCPR Article 8 of the ICESCR</p>	<p>Forming police labour organisations. Are police officers allowed to strike?</p>
<p><b>Freedom from discrimination</b> Article 14 of the ECHR, Articles 20 and 21 of the EU Charter of Fundamental Rights Article 26 of the ESC Articles 2 and 24 of the ICCPR Article 2 (2) of the ICESCR</p>	<p>Discriminatory recruitment procedures, working conditions, promotion practices, equal pay for men and women, dismissal practices, harassment</p>
<p><b>Right to fair and just working conditions</b> Articles 2, 3 and 4 of the ESC Article 31 of the EU Charter of Fundamental Rights Article 7 of the ICESCR</p>	<p>Reasonable working hours, rest periods, paid holidays, adequate remuneration, health and safety regulations</p>
<p><b>Social security</b> Articles 8, 12, 27 and 32 of the ESC Article 34 of the EU Charter of Fundamental Rights Articles 9 and 10 of the ICESCR</p>	<p>Pension system, sick leave (especially with respect to on-duty accidents), invalidity insurance, maternity leave, childcare responsibilities</p>

Source: Information in this table is primarily drawn from Council of Europe, *European Platform for Policing and Human Rights*, Police officers have rights too!, Strasbourg, Council of Europe



## 2. Activity guide: human rights analysis

### Case study: Discrimination in the workplace

This case study is a good illustration...

... that human rights are applicable to police officers as well. There are cases before the ECtHR on whether the human rights of police officers have been respected and/or protected.

... that there is a reasonable expectation of privacy on business premises/at police stations. An interference with Article 8 of the ECHR must adhere to the law, reflect a legitimate aim and give due consideration to the principle of proportionality.

### Analysis

The case of Assistant Chief Constable Halford refers to the obligation of the state to respect her human rights. We apply the human rights analysis tool introduced in Module 3 to find out whether an interference is justified or there has been a human rights violation.

#### PART 1: APPLICABLE HUMAN RIGHTS/STATE INTERFERENCE?

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

#### Additional Protocol 12, European Convention on Human Rights Articles

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, 'race', colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Additional Protocol 12 to the ECHR contains a general prohibition on discrimination relevant to the lack of promotion. However, at the time this case occurred, Protocol 12 had not yet entered into force. A national tribunal awarded Assistant Chief Constable Halford compensation for discrimination with respect to the lack of promotion. She focused her ECtHR case on the tapping of her office phone. At present, Additional Protocol 12 of the ECHR is binding for seven EU Member States. The equivalent provision in Article 26 of the ICCPR is applicable to all EU Member States.

#### European Convention on Human Rights

##### Articles 8: Right to privacy

Everyone has the right to respect for his private and family life, his home and his correspondence.

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

*With respect to Article 8 the ECtHR observed that “telephone calls made from business premises as well as from the home may be covered by notions of ‘private life’ and ‘correspondence’”.*

*ECtHR, Halford v. United Kingdom, No. 20605/92, 25 June 1997, paragraph 44*

Article 8 comprises various aspects of privacy such as individual autonomy and identity, home, family, marriage and the secrecy of correspondence. Although correspondence was initially applied to written letters, it now covers all modern forms of communication and data transfers including telephone calls and emails.

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

Any withholding, censorship, inspection or interception of publication of private correspondence constitutes interference.<sup>7</sup>

Assistant Chief Constable Halford said her office telephones were tapped. Therefore the question arises whether the notion of privacy also applies to business premises, or in this specific case, to police stations.

There was no evidence of any warning given Ms Halford, as a user of the internal telecommunications system operated at her department, that calls made on that system would be liable to interception. (*Ibid.*, paragraph 45) “*She would have had a reasonable expectation of privacy*” (*Ibid.*) for such calls, the ECtHR said.

The ECtHR did not agree with the defendant’s view that “*the employer should in principle, without the prior knowledge of the employee, be able to monitor calls made by the latter on telephones provided by the employer.*” (*Ibid.*, paragraph 43)

The ECtHR concluded that “*the telephone conversations made by Ms Halford on her office telephone fell within the scope of the notions of ‘private life’ and ‘correspondence’ and that Article 8 was therefore applicable to this part of the complaint.*” The ECtHR said that “*there was a reasonable likelihood that calls had been intercepted by her Department with the primary aim of gathering material to assist in the defence of the discrimination proceedings.*”

There was no doubt that this concerned an “*interference by a public authority*”. (*Ibid.*, paragraph 48)

## PART 2: JUSTIFICATION OR VIOLATION?

### 2.1. Is there a domestic legal basis for state action?

The next step is to determine whether the interference was ‘in accordance with the law’. To protect against arbitrary interference, “*domestic law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and conditions on which public authorities are empowered to resort to any such secret measures.*” (*Ibid.*, paragraph 49) According to the ECtHR’s well-established case law, this expression does not only “*necessitate compliance with domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law.*” (*Ibid.*)

“*In the context of secret measures of surveillance or interception of communications by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law must provide some protection to the individual against arbitrary interference with Article 8.*” (*Ibid.*)

In this case domestic law did not regulate phone tapping on internal communications systems operated by public authorities. Therefore, the rules established for public telecommunication systems did not

7. Inter-Parliamentary Union (IPU)/UN Office of the High Commissioner For Human Rights (OHCHR) (2005), *Human Rights: Handbook for Parliamentarians*, IPU/OHCHR, pp. 104 and following.





apply to internal communication systems used by the police.

Thus an interference with Ms Halford's right was not *"in accordance with the law since domestic law did not provide any regulation of interceptions of calls made on telecommunications systems outside the public network."*(*Ibid.*, paragraph 50)

The ECtHR concluded that the lack of legal regulations specifying the public authority's options to interfere with the right to privacy in this specific context meant that there had been a violation of Article 8. Further steps, examining whether the measure applied fulfilled a legitimate aim and adhered to the principle of proportionality, were therefore not necessary to determine if there had been a violation.

This case is a leading case for the concept of police officers' rights and for the issue on which it focuses: the right to privacy is applicable also within the context of a police organisation. It makes clear that there are no distinctions between the rights of police officers and the rights of citizens. The same principles apply.

Other issues related to the right to privacy of police officers:

- workplace surveillance (video cameras, email and telephone monitoring)
- use of private cell phones
- obligatory drug testing
- obligatory blood testing with respect to HIV
- submitting DNA samples or fingerprints
- restrictions on individual appearance/habits (such as haircuts, tattoos, make-up, religious symbols, earrings, smoking in public)

