THE EUROPEAN CODE OF POLICE ETHICS
20 YEARS ON - A VIEW FROM A TRAINING ANGLE

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Abstract:

This article is based on a conference contribution as presented by the author[1] on behalf of CE-POL- the EU Agency for Law Enforcement Training, to the Council of Europe conference on the role of police in democratic societies[2]. Following a historical examination of the context leading to the publication of the European Code of Police Ethics against the backdrop of the 2004 EU Enlargement after the decade of reforms in the countries of the former Eastern European block, the article examines the importance and the challenges of fundamental rights and police ethics from a training viewpoint, considering the changing landscape of policing in democratic societies.

Keywords: *Police Ethics, Enlargement, EU, Training*

Introduction

It was on 19 September 2001, just a few days after the fateful events known as 9/11, that the explanatory memorandum on the European Code of Police ethics set the scene for the approval, by the Committee of Ministers of the Council of Europe, of a document that could be defined as the blueprint of European policing. But while the whirlwind of

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2   "The police role in a democratic society: European code of police ethics, nearly 20 years", 20-21 October 2020 (https://www.coe.int/en/web/human-rights-rule-of-law/police-conference2020).

emotions and preoccupations of 9/11 was probably very prominent in the policy maker's minds- it was understood immediately in the collective conscience as a watershed moment- another set of considerations must have led the elaboration of that milestone document. This was notably the looming 2004 EU enlargement process as well as the progressive building of a space of freedom, security and justice in the European Union.

The Memorandum states those considerations in no uncertain terms:

"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" (Council of Europe, 2001: p.1).

From the point of view of the European construction (which brings together the two historical parts of the European project as conceived at its very post-WWII inception; the European Communities and the Council of Europe) (Council of Europe, 2001b: pp.4-7).

These were, in fact, the years following the seismic shift generated by the 1995 Treaty of Amsterdam's setting up of institutions and mechanisms further projecting the European Union towards a more supranational approach to the concept of European security, triggered by the need to underpin free movement of persons with a series of measures to ensure its viability. Structured, and even institutionalised police and judicial cooperation measures existed before that, of course (think of the creation of the Europol Drugs Unit in 1995, the forerunner of today's Europol). However, the movement of certain policy areas from the third to the first pillar of the Union were an explicit recognition that the intergovernmental method was not fully suited to achieve the policy goal of building a common area of freedom, security and justice (AFSJ). While it would take another decade for the Lisbon treaty to take effect, Amsterdam was definitely the tipping point towards a more integrative approach in European internal security.

This integrative approach was however criticised in the public and institutional debate by some as being overly securitarian, and that human rights risked being left out[3]. The Tampere European Council of October 1999 was to further shape what the future FSJ would look like, and would take some of those concerns on-board, including the establishment of a body to elaborate a Charter of EU fundamental rights. The Council would also pave

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3   Testimony of Mr Stephen Jakobi of Fair Trials Abroad to the UK House of Lords Select Committee on the European Communities in June 1999 (Select Committee on European Communities Nineteenth Report 1999).

the way for the evolution of Europol, the creation of Eurojust, and the establishment of a European Police College.

The role of Fundamental Rights in European Policing

The 1999 Tampere Council Conclusions stated that "the area of freedom, security and justice should be based on the principles of transparency and democratic control", and that the EU "must develop an open dialogue with civil society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed" (European Parliament, 1999).

The road to EU enlargement therefore had to pass through a debate on the democratisation and harmonisation of police practices across what was already a diverse community bringing together, among the pre-2004 EU member states, different approaches and models of policing. The policy and operational differences on key subjects such as asylum and immigration policy – a hot and controversial topic to this day- border controls, judicial cooperation in civil and criminal matters and police cooperation pre-existed the AFSJ area. With a good degree of foresight, the academic and policy debate identified the bumps in the road the enlargement process would elicit:

"The eastern enlargement is likely to add considerably to the existing diversity… because of the applicant countries' different institutional and structural basis, implementation capacity and standards, and policy orientations. A certain degree of diversity in justice and home affairs may be both inevitable and desirable as an expression of the variety of European legal, judicial and law enforcement cultures. Yet …. a failure to control and reduce the growth of diversity could jeopardise this most recent and ambitious integration project. It could not only undermine the development of the AFSJ but also cause serious disruption in the enlargement process. Without this coherence both the political momentum and the credibility of the AFSJ integration process could be lost" (Monar, 2000: p.7)

The accession of a number of new Member States coming from an extended period of authoritarian rule, often plagued by oppressive and violent policing underpinning those regimes or "nominal democracies" until the early 1990s. Reforms and restructuring efforts certainly were somewhat effective in cleaning up tainted institutions, but often made law enforcement structures unstable and unfocussed; the lack of resources rendered them often operationally unable to live up to a renewed mandate to serve the citizens and not uphold autocratic regimes. Profound renewal also meant a loss in institutional memory.

Awareness, let alone concrete measures to prepare accession in the areas of justice and home affairs came relatively late and were questionable from the point of view of efficiency and effectiveness. The European Commission's PHARE programme was able to provide more substantial resources for institution building and the areas of justice and home affairs only from 1998 (European Parliament, 1998).

However, albeit late the EU did act and particularly the Tampere Council provided a new impetus to the European agenda on justice and home affairs and the AFSJ.

Among the institutions created in Tampere, we have cited CEPOL, initially founded as a network of police training institutes with the aim of bringing together senior police officers from the Member States and the candidate (*applicant*) countries. During these first years of CEPOL's existence, its mandate was almost more culturally relevant that otherwise. Interestingly, the expressions "human rights" or "fundamental rights" were not used in CEPOL's first legal basis[4] (the legislators focussed on "democratic safeguards" and the "rights of the defence"). Nor, as a matter of fact, did the subsequent legal bases that underpinned CEPOL's transformation into a fully-fledged EU agency in the course of the next decades. Indeed, one would have to wait until 2015 to see the expression "human rights and fundamental freedoms in the context of law enforcement" written into CEPOL's founding act[5].

However, since its inception CEPOL has been active in providing fundamental rights trainings for police forces. Key courses are the multi-step courses on FR and Police Ethics, present each year in our training catalogue. Interactivity and real life simulations. By this, CEPOL seeks not only to raise awareness of reality and legal frameworks, but also to facilitate the identification of unconscious bias, and encourage self- reflection. Ethics is, indeed, primarily an exercise in self- reflection leading to establishing behavioural standards. It is those standards that can be properly addressed by training- if we accept the common definition of training as a set of activities seeking to modify and improve skills, knowledge and behaviour.

Challenges in Fundamental Rights training

The relationship between police ethics and fundamental rights is so tight that any difference is almost indiscernible. This does not mean, by far, that they do go hand in hand.

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4   Council Decision 2000/820/JHA of 22 December 2000

5   Reg. (EU) 2015/2219 on the European Union Agency for Law Enforcement Training, art.3 (1)

The primary challenge that training in the area of fundamental rights and police ethics has to face is cultural. Police officers often perceive human rights as an obstacle to, rather than as the foundation of, their work (European Union Agency for Fundamental Rights, 2016). External scrutiny of a profession that is so often so taxing on those individuals that perform it, is also very often met with perplexity if not hostility.

In this context, the European Code of Police Ethics ("The Code") is a fundamental document: put into historic context it is no less than a Magna Charta of "good policing" on the background of recent and not so recent experiences with oppressive and unfair policing. In fact, the "Code" is one of the rare official attempts to move away from authoritarian police models towards "democratic policing" for democratic societies – democracy being understood in its "European" (Western) version at the time of the biggest EU enlargement. The "Code" covers the cornerstones of an ideal democratic, European police model addressing objectives, rule of law, position within general criminal justice, organisational structures, police action, accountability – and last and maybe least – independent research.

The scientific debate on the Code has flourished in the period 2001/2010, and then steadily declined. One of the reasons being that by default police organisations deal with operational matters first. The reflective discourse on policing has moved away from its democratic, value-based foundations and has shifted to other strategic policing areas: police reform and restructuring, cost efficiency and effectiveness, and of course the vast areas of organised crime and counter-terrorism. While this is understandable, it is clearly not good when institutional self-reflection goes into the background. We are actually seeing some of the shortfall as this piece is being written.

We need to better link fundamental rights training and ethics training with modern technology and the latest societal dynamics. Interactive, integrated training, large scale simulation exercises involving operations and exchange of data are the way to go as the EU gears up for a massive growth in IT security systems, most of which were coincidentally set up in the post-Amsterdam era. Against this backdrop, proper monitoring of the quality and weight of the ethics and fundamental rights components into law enforcement training is also very important.

How we measure and enhance the impact of fundamental rights inspired training is also very important. While CEPOL trains between 25 and 30 thousand officials a year, only a few can get in a classroom based Fundamental Rights training done at the EU level. At national level sometimes, the picture could be even bleaker since police budgets seldom provide adequate resources for training. More needs to be done to ensure ethics-based police and law enforcement training not only makes a dent, but is conducive to long

lasting and widespread change in individual and corporate mindsets and corresponding behaviours.

Conclusion

The discussion on police ethics is actual, and in the view of the writer, it should be framed within a wider discourse on public ethics that cannot take place within this article. However, a few considerations appear opportune. Widening the view to global developments, it is difficult to ignore that the institutions of liberal democracy as we have understood them in the post-WWII environment are evidently been placed under serious strain by the resurgence of nationalisms, populisms of all political colours, and a general impatience to the rational analysis of facts when they may contradict closely held views. Liberal democracy is predicated not only on laws, but also if not even more on the generalised acceptance of the "rules of the game", on the assumption that individual behaviours should conform to the overall parameters that these rules imply, and on the premise that even in the presence of strong disagreements, the values that ultimately make liberal democracies possible will uphold. Individual behaviours of public servants- such as police and law enforcement officials- are all the more important as they embody the very institutions they serve; unethical behaviours by public servants cause as much damage, if not more, to the individual victim as they do to society as a whole.

2020 is likely (and hopefully one might add) to see a revamping of the debate over police and LE ethics, as well as a revival of a serious, deep reflection on how to strengthen fundamental rights compliance by police and law enforcement structures in our changing societies. The times we live in so demand.

The impact of a pandemic unseen in 100 years; the implications around artificial intelligence on not only data processing but actual decision making, the impact of policing on rapidly diversifying societies impacted by mass migration are all factors that call for renewed attention to self-reflection in the law enforcement sector.

While no straight parallels can be drawn between the United States and Europe, the recent and acknowledged examples of structural racism and violence against detainees within security structures in European Union member states, as well as the democratic backsliding in certain EU Member States that is making the headlines, are all signs that we can by no means take good police ethics as a low priority, least as a given.

CEPOL

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