

TEACHING POLICE HUMAN RIGHTS¹

Poliste İnsan Hakları Eğitimi

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Özet

Birleşmiş Milletler ve Avrupa Birliği polis uygulamaları ile, bu uygulamalar sonucunda doğabilecek insan hakları ihlallerini hukuki açıdan değerlendirerek bu konularda polis eğitiminde kullanılacak dokümanlar hazırlamışlardır. Ancak, bu dokümanlarda problem ağırlıklı olarak hukuki açıdan değerlendirildiğinden konunun sosyal boyutuna yeteri kadar önem verilmemiştir.

Birleşmiş Milletler'in polis eğitimi için hazırlamış olduğu İnsan Hakları konulu materyaller bu alanda atılmış olumlu adımlar olarak değerlendirilebilir. Ancak, bu dokümanlar içerik açısından İnsan Hakları ihlalleri sorununun sadece teorik ve hukuki boyutunu kapsadığı görülmektedir. Kurumsal faktörlerden kaynaklanan insan hakları ihlallerine ise yeteri kadar değinilmemiştir. İnsan hakları ihlalleri probleminin çözümü, polis teşkilatlarının alt kültürlerini de kapsayacak şekilde eğitim, sosyal, kültürel, ekonomik, politik, kurumsal politikalar ve organizasyon yapısını da içeren bir eğitim sistemi ile mümkün görülmektedir. Bu makalede problemin sosyal ve kurumsal boyutlarının önemine vurgu yapılarak bazı çözüm önerileri sunulmuştur.

Anahtar Kelimeler: İnsan Hakları, Birleşmiş Milletler, Polis, Polis Eğitimi, Polis Alt-Kültürü

Abstract

Human rights violation is not simply a matter of lack of legal information on the part of law enforcement officers. Lack of knowledge on legal instruments constitutes only a minor part of the problem. Therefore, training and education, which aims to give the law enforcement officers an awareness of human rights legal instrument, can only address a small part of the problem.

Human rights instruments prepared by the UN are very good steps towards the right direction, but if the activities of the UN are limited only with the theoretical education of law enforcement officers on legal instruments they will not yield the desired and long lasting result unless they are supported by institutional changes. The solution involves a duality of change in both the law enforcement field and the UN human rights instruments which provide a greater attention for movement directed at both institutions where their ethics and values are more in line with each other.

Key Words: Human Rights, United Nations, Police, Police Training, Police Sub-Culture,

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Introduction

The United Nations (UN) human rights instruments attempt to incorporate universal human rights standards, for the guidance of police all over the world. As stated in the United Nation's document on *Human Rights: A Compilation of International Instruments*, "International human rights law is binding on all States and their agents, including law enforcement officials" (United Nations, 1996). Today, despite the fact that most nations of the world have ratified a large number of human rights instruments sponsored by the UN, human rights violations still seem to be a major concern.

In this paper, the contents of these instruments and the way the world police may be motivated to adhere to them and the challenges in the field will be looked at.

Human rights violation is not simply a matter of lack of legal information on the part of law enforcement officers. Lack of knowledge on legal instruments constitutes only a minor part of the problem. Thus, training and education, which aims to give the law enforcement officers an awareness of human rights legal instrument, can only address a small part of the problem.

UN documents on human rights seem to overemphasize the personal failure of law enforcement officers as the main source of the human rights problem. The document mentions a number of law enforcement practices, which can lead to human rights violations and tries to give practical advice and guidelines to law enforcement officers.

A similar document, partly inspired from the UN human rights documents, has been prepared by the European Council between the years of 1997-2001 (Council of Europe, 2001). Both documents cover a vast area of police practices and addresses law enforcement officers, with little emphasis on the social aspects of the problem.

In fact, like many other social problems human rights violations are multi faceted issues and unless all aspects are addressed, problems tend to remain. Any genuine attempt, which aims to solve, or at least to minimize, the human rights violations should start by identifying the roots of the problem. Our argument, in this paper is that, the problem has political, economic, social, cultural and educational implications.

However, existing human rights instruments seem to be superficial as they mainly try to address the issue of human rights violations as if they are only personal failures of law enforcement officers. This approach will not only mislead us from the real causes of the problem, but also will waste the resources and time spent to eradicate the problem. A close examination of human rights violations will lead us to the fact that the problem is both social and institutional. Therefore,

efforts spent for the training of law enforcement officers will be in vain unless these efforts are supported by some long-term arrangements, which aim to result in institutional change.

Before moving on the institutional aspects of human rights violations let us begin with what are human rights violations according to the human rights instruments of the United Nations.

Human Rights

As stated in the United Nations' document on Human Rights: A Compilation of International Instruments, "Human rights derive from the inherent dignity of human person" (United Nations, 1996). As they are "...derived from inherent dignity and worth of the human person they are universal, inalienable and equal" (Crawshaw, 2000). These statements clearly demonstrate that, human rights instruments, by their very nature, have to be applied universally without discrimination. As they are universal and inalienable, identity and position of the victim or the aggressor should not have any impact on the application of human rights instruments. A human rights violation is an act, which is bad in itself, *mala in se*, with no respect to the identity of the aggressor or the victim. Therefore, there has to be standard criteria about it in the first place.

As the UN human rights instruments seem to focus on personal failures of the law enforcement officers to comply with human rights laws, it overemphasizes the role of individuals in human rights violations. Although the apparent violators of the human rights laws may seem to be individuals, a close examination of the issue will reveal that the real causes of the problem does not stem from individuals. Rather the problem lies with institutional factors such as 'educational', 'socio-cultural', 'organizational' and 'political'. Unless, the impact of these institutional factors are taken into consideration efforts spent to improve the quality of the services rendered by law enforcement officers will not have enduring and long lasting results.

The problem is not because law enforcement officers, simply, do not know what is right and what is wrong, rather in many cases they are unable to respect human rights because of the pressures coming from institutional factors.

The main argument of this paper is that, human rights instruments prepared by the UN are very good steps towards the right direction, but if the activities of the UN are limited only with the theoretical education of law enforcement officers on legal instruments they will not yield the desired and long lasting result unless they are supported by institutional changes.

Institutional Roots of Human Rights Violations

There seems to be a broad agreement about what constitute human rights and what human rights violations are. However, a close examination of the issue will reveal that, corruption and human rights violations are not only an individual deviation but also a by-product of educational, social-cultural, political, economic and organizational factors.

Educational

Education and training, both in terms of theory on human rights law and in terms of practical skills in investigation, interrogation and handling of suspects, fall in the area of institutional aspects of human rights violations. If law enforcement officers are not adequately trained to carry out their functions with professional standards, human rights violations are inevitable and these violations cannot simply be seen as personal failures.

Educational aspects of human rights violations in itself can be divided into some sub-categories. Training of police officers in basic practical police skills may constitute one part of the educational aspect of the issue. The second part is more theoretical and involves the inculcation of ethical norms and values into the minds of law enforcement officers. Human rights law cannot be imposed on law enforcement officers. They have to be accepted willingly and voluntarily and adhered to by the law enforcement officers themselves.

Practical Training in Basic Skills

The first part of educational aspect of human rights violations may be the lack of expertise and professionalism on the part of the law enforcement officers. In some cases law enforcement officers may not even be aware of the fact that their particular actions are crimes and constitute human rights violations. But this is only a minor part of the problem. To have enough information about what is human rights and what constitutes human rights violations is not good enough to respect human rights. In short, lack of knowledge on legal instruments is only a minor part of the problem.

Professionalism in policing will have a great positive effect in reducing human rights violations as long as it is also supported by other institutional changes. In many cases, law enforcement officers commit human rights violations not because they deliberately have no respect for these laws, but because they are not adequately trained to fulfill their task. So, training and education of law enforcement officers in performing police tasks such as surveillance, interrogation, investigation, and questioning will definitely reduce human rights violations.

Theoretical Training on Ethical Values

“Practical training” in basic police skills is a good start and a solid foundation for a human rights friendly law enforcement. Unless properly trained in preventing crime and apprehending criminals any attempt to teach law enforcement personnel ethics will be baseless. Theoretical education on ethics will fall on deaf ears unless it is based on a solid foundation of professionalism.

However, in addition to “practical training”, given to law enforcement officers they also need to have “theoretical training” on legal instruments and moral and ethical values behind these universal values. Teaching morals and ethics is an important part of legal education of law enforcement officers. Law enforcement officers cannot be forced to comply with the laws, which they do not believe and adhere to in the first place. The need to control law enforcement officers is not something new, rather the question, “Who guards the guards, who polices the police?” dates back as far as the Roman poet Juvenal (AD 60-140), “*Quis custodiet ipsos custodes?*” (Lynch, 1999).

Human rights have been one of history’s most important concepts. It is the common element in all discussions of the rule of law. Therefore, theoretical training on human rights should aim to inculcate some basic values and norms such as “justice”, “fairness”, “preeminence of law” or “rule of law”. To uphold justice and respect human rights, the fundamental principle is to believe in the “preeminence of law”. This is the idea expressed in the well-known tenet in the jurisprudence of Turkish tradition: “Right is respected, and nothing can be superior to it”.

Second, human rights violations are very closely linked to the distribution and concentrations of power in individuals, institutions and society. Power in all of its manifestations may harm those who have it, as well as those who may be abused by the powerful. It is sometimes said, “power corrupts and absolute power corrupts absolutely”. Power, whether embodied in political, monetary or military status, may abuse or corrupt the administration of justice and, therefore, must vigilantly be kept in check by legitimate means.

Socio-cultural

Law enforcement officers are recruited from the society they serve and therefore via many ways have and reflect the societal values they are serving. As human rights violations are not individual deviations, but a socially constructed deviant behavior, any approach to understand and solve the problem of corruption and human rights violation has to analyze and understand the social structure of that particular society.

Cultural actors can be taken at a national level or institutional level. Police organizations throughout the world are known for their subculture and this subculture that divides the society into two, `them versus us`. The second problem stems from the police culture or the occupational culture of law enforcement personnel.

The problem with human rights violations is not the lack of knowledge on the part of the law enforcement personnel but it is the policy, which governs these practices. Law enforcement personnel in general and the police officers in particular tend to believe that one cannot always play by the book. This is almost one of the most commonly shared elements of police culture.

Organizational and Economic

Effects of organizational factors on human rights violations can be analyzed in two categories. In the first category, law enforcement officers can be influenced, if not forced, by an informal organizational pressure coming from the police subculture. The police subculture is a major contributing factor to human rights violations because officers who violate human rights are often overlooked and condoned, if not praised and supported, by other members of the police subculture. In short, police culture may tolerate if not encourage the use of illegal means to achieve the so-called "good ends". Corruption and human rights violations, that are committed with a so-called "good ends", is also defined as "noble cause corruption", a major concern for many police organizations (Crank and Caldero, 2000).

Second category will be the organizational pressure on law enforcement officers from the formal organizational hierarchy. In some cases, individual law enforcement officers, as well as units and agencies, can be under pressure from the senior management and politicians to do something about crime and criminals. This pressure may give a green light to use illegal means to achieve the so-called `good ends`. Inadequately trained police officers, with some pressure from the top to do something about crime, are again a source of human rights violations.

Another factor contributing the law enforcement personnel's human rights violations are their own working and living conditions. In some countries the working conditions are unbearable and the pay is so low that the law enforcement personnel themselves are the victims. It is not realistic to expect the law enforcement officers to respect human rights while their own rights are not respected. If we are really concerned about human rights violations about a particular country and, we do not want to use it as a pretext for something else, we have to take into consideration these elements, which creates condition for human rights violations.

Political

Although, the main manifestly stated role and function of the law enforcement officers is said to be serving the whole society by prevention of crime and apprehending criminals, the reality is that the law enforcement agencies serve to some section of the society more than others. So, law enforcement agencies are not as neutral as some people would state. In reality, law enforcement officers serve politically and economically powerful sections of the society at the expense of the least powerful.

Law enforcement agencies are the coercive tools used by the ruling system and classes. Therefore, there is always a correlation between the legitimacy of a system in general and the legitimacy of the law enforcement in particular. If the overall system is democratic and functioning fairly, the overall role of the police within that system will be more or less legitimate. Alternatively, if a system, which the law enforcement officers and agencies are expected to maintain, is not legitimate and fair this will inevitably cause the police to deploy illegitimate means of control, which consequently result in human rights violations. In many cases of human rights violations law enforcement officers violate human rights not as a personal deviation and decision but as a role expected from them by the system. So, any attempt, which targets individual law enforcement officers as the main target of human rights violations without paying attention to making structural changes in the system, is bound to have a very minimal effect.

There usually seems to be a correlation between the legitimacy of a particular regime and the level of human rights violations. Those countries that are ruled by less democratic regimes, if not oppressive ones, seem to experience more human rights violations than those that are more democratic. As the police reflect the political system they are expected to serve, it is inevitable that oppressive regimes will experience more human rights violations than democratic regimes. So the issue is not simply a police or law enforcement issue, rather it is a wider political problem.

In some cases law enforcement officers, despite their unwillingness, violate human rights because they cannot resist the institutional pressure put on them. So in this case, law enforcement officers can, in a way, be seen as the victim of their own violation.

Human rights is an issue, which has international political dimensions. Despite the efforts of UNHCHR's objective efforts on human rights, some countries resent the fact that their bad records are used to force them to accept some unfair economic deals. Especially, the citizens of many oppressed countries see the West, in general, and the USA, in particular, as allies of their oppressive rulers. Many developed and so-called civilized Western world leaders (or countries) have very good relations with the rulers of those oppressive regimes.

Citizens of these oppressed countries see the efforts of the Western world not as genuine attempts to solve the human rights problems, but only as a lip service paid to human rights. They feel that, bad human rights records of the oppressive regime are used as a tool to blackmail these systems to force them to accept their unfair economic deals. In short, while the Western world has good relations with the rulers of some countries that have very bad human rights records, on the other hand, they use their bad records as a tool to subjugate and manipulate them further.

Again, the Western approach to human rights violation can sometimes be hypocritical and problematic. While, the Western world seems to be blaming the developing countries for human rights violations without taking into consideration the factors, which creates the environment for it, they themselves may actively commit or support human rights violations. For example, when the leader of the PKK, a Kurdish terrorist organization was forced to leave Syria in 1999, he first had to go to Russia. And then because of the pressure from Turkey he had to leave Russia for Italy. On his way to Italy he was also harbored in Greece. Upon his arrival in Italy he was very much welcomed by the then Italian government. Despite the fact that the PKK terrorist organization was responsible for killing over 30.000 people, among the victims there were soldiers, police officers, civil servants as well as civilians who were living in the region, the Italian government at that time treated him not like a `terrorist` but as a leader of political movement or a `freedom fighter`.

The leader of the PKK, Ocalan spent some time in Italy as a guest of the Italian government. During his stay in Italy, he was under police protection. But as a result of mounting pressure from the Turkish government, the Italian government had to force him to leave Italy for Kenya. He then was captured in Kenya by the members of the Turkish security services and brought back to Turkey.

When this example is examined in the light of United Nations human rights legislation there seems to be two problems. First, if Ocalan was a terrorist, Italy, a part of the civilized world was harboring terrorism. This was something which was clearly not acceptable especially after the terrorist attack on the World Trade Center on September 11, 2001. On the other hand, if Ocalan was not a terrorist but a freedom fighter, according to the UN legislation he should not be handed in to a country where it is likely that he could be tried with a capital punishment. UNHCHR document states that,

“No one shall be returned to a country where his or her life or freedom would be threatened, or where he or she would be persecuted, nor to a third country likely to return the refugee to such a county”²

2 UNITED NATIONS (1996) *International Human Rights Standards for Law Enforcement: A pocket book on Human Rights for the Police*. New York: United Nations High Commissioner for Human Rights, Center for Human Rights.

In either case, Italy was responsible for human right violations. These violations involve harboring terrorism, and secondly, helping the Turkish security forces to capture a so-called “freedom fighter”.

Conclusion

There is a strong need for institutional change as how human rights violations is taught in police education and training. There is a need to address a parallel set of circumstances: 1) Social aspects of the problem and 2) Institutional aspects of the problem. Both aspects have mutual relations in assisting the change that is needed for the revision of the UN human rights instruments and institutional change of law enforcement.

This call for duality of change in both the law enforcement field and the UN human rights instruments provides a greater attention for movement directed at both institutions where their ethics and values are more in line with each other. My proposition is directed at the law enforcement field to further the education and training of ethical norms and values, in addition to balance challenge and support of the institution. This problem calls to the attention of second-order change, one whose occurrence changes the system itself.

Bibliography

- Cerrah, İ. ve Eryılmaz, M. B., (2001), *Avrupa Polis Etiği Yönetmeliği & Açıklayıcı Notlar*, Ankara: Polis Akademisi Yayınları.
- COUNCIL OF EUROPE, (2001), *The European Code of Police Ethics and Explanatory Memorandum*, Strasbourg.
- Crank, J. P. and Caldero, M. A., (2000), *Police Ethics: The Corruption of Noble Cause*, Cincinnati: Alderson Publishing Co.
- Crawshaw, R., (2000), *Human Rights and Their Protection under International Law: Pamphlet for the Police*, Essex: Council of Europe, Human Rights Center.
- Crawshaw, R., (2001), *Essential Texts on Human Rights for the Police: A Compilation of International Instruments*, London: Kluwer Law.
- John Kleinig, (1996), *The Ethics of Policing*, Cambridge UP.
- Crank, John P. and Caldero, Michal A., (2000), *Police Ethics: The Corruption of Noble Cause*, Anderson Publishing.
- Lynch, G. W., (1999), *Human Dignity and the Police: Ethics and Integrity in Police Work*, Illinois: Charles C Thomas.
- UNITED NATIONS, (1996), *International Human Rights Standards for Law Enforcement: A pocket book on Human Rights for the Police*, New York: United Nations High Commissioner for Human Rights, Center for Human Rights.