

## FOREWORD BY THE COMMISSIONER OF POLICE

In every country, police effectiveness, seems largely to depend on public opinion as well as on the will the public has to assist the police. Malta is no exception. Some time ago, results of two independent questionnaires showed that about 80% of those taking part expressed trust and respect in the Malta Police. I think that oddly enough, most of those who made approving comments about the police would not, if pressed, be able to find convincing reasons for their view. I think most of them would rely on the general impression of a comparatively orderly society, or the fact that our police do not carry firearms as a routine measure. It could also be seen, in our readiness to respond to public need in any kind of emergency.

These factors undoubtedly make a deep impression on public opinion - all are essential and necessary relationships. However, they are really only superficial indications of a relationship determined by much more significant realities, *i.e.* -

- the legal limitations on police powers;
- our degree of accountability of our actions towards the law;
- our loyalty to the oath of office taken as police officers to execute our duty according to law, without fear or favour, affection or ill will.

If scrupulously observed, the above principles, will definitively enhance public confidence in the police. The manner in which we discharge our duty is also an indispensable matter as this will determine how the public will perceive us.

In this context, the Corps is giving great effort in preparing a set of standards to enhance professionalism amongst its officers. The Act to amend the *Malta Police Ordinance* continues to give legal strength, credibility and accountability by the establishment of new measures of control. From this legal document, as well as from other legislation which is in force, one notes as well that certain ethical principles emanate which binds every member of the Force as regards the discharge of his duties. This is the aim of this booklet - to codify these principles which will act as behavioural guidelines for each member of the Force.

As members of the Malta Police Force, we were given a certain amount of power by the state (ultimately from the same people we serve) in order to safeguard the legal principles that our society feels are indispensable for the protection of the common good. These powers which are to be enforced on a daily basis may limit the rights of individuals in order to protect the rights of other individuals. Certainly, a significant power such as arrest creates a serious responsibility that

has to be guided not only by law but also from moral principles that have been written in this document.

Therefore, every member of the Malta Police Force must strive so that daily and in every time and circumstances, his behaviour will reflect the zeal towards the observance of this Code.

I sincerely hope that this booklet will serve as an inspiration to that ethical conscious for more professionalism within the Corps.

**John Rizzo**  
Commissioner

Floriana, December, 2002.

## OUR ROLE AND MISSION IN THE MALTA POLICE FORCE

The mission of the Malta Police Force is -

**“to promote and maintain Malta as a safe and secure State”<sup>1</sup>**

The Force’s vision is to -

**“to enhance public respect, pride and confidence, by distinguishing itself in its strategies, actions and behaviours, as a dedicated, professional, honest and responsible Police Force”.<sup>2</sup>**

Legally, we can manage to do this by -

- (a) preserving public order and peace, preventing the commission of offences, promoting and enforcing the observance of the laws, as a first guarantee of the rights of all persons in Malta, even before action is needed through the judicial system to repress, sanction or remedy any breach;
- (b) responding immediately to any request for the protection and intervention of the law;
- (c) applying the law 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;
- (d) promoting the orderly and peaceful coexistence of all persons in Malta, paying due attention not only to private property rights but also to public property;
- (e) seeking to protect the environment as part of the common good;
- (f) assisting, within reasonable limits, any person seeking the help of a police or other public officer even though the ultimate responsibility to provide such help may not lie with the Force;
- (g) performing honestly and effectively all those duties assigned to it by this Act or by any other law.<sup>3</sup>

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<sup>1</sup> Strategic Plan - *L-Impenn Taghna* 1999 - 2001, *Il-Korp Tieghek*, p.4.

<sup>2</sup> *Ibid.*

<sup>3</sup> *An Act to Amend the Malta Police Ordinance*, Cap 164, article 4.4.

Although the law points to us which direction we are to take, regrettably, there is nothing spelt out in the law as to how we are to take that necessary action in order to achieve our objectives. Therefore, every type of decision we take in the exercise of our duty, we must ensure that we must provide quality service to the public and the individual citizen by maintaining the highest standards of integrity, respect, professionalism and efficiency.<sup>4</sup>

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<sup>4</sup> Vide Organisational Values, Malta Police Force, *Strategic Plan, op. cit.*, p.4.

## THE OBSERVANCE OF HUMAN RIGHTS AND THE LAW

### Principles

**No-one is above the law;**

**The dignity of a human being is to be respected at all times and circumstances;**

**The rights and liberties of every person are enshrined in the Constitution, in our domestic laws and in the regulations that are issued from time to time by the Police Force. Amongst the most important are -**

- **the right to life**
- **the prohibition of torture or inhuman and degrading treatment**
- **the presumption of innocence**
- **the right to silence**
- **the right to personal expression.**

### Commentary

The rights of a human being are considered as amongst the most fundamental that a person can have. They are considered as the food and shelter that are necessary for a person to live. There is no doubt, that in a democratic society such as ours, every person has the right for the enjoyment of his fundamental rights including those imposing restrictions. The protection and the respect of the fundamental human rights are two important aspects in our work. Failure in this regard, reflects negatively on our behaviour as agents of the Maltese state.

One can never be justified in trampling any one of these fundamental principles in order to enforce another law. This is exactly the limit imposed on our powers and duties by the law. Unfortunately, although fundamental human rights are protected by law,<sup>5</sup> including those limitations in which one can derogate from, it may be possible that certain police officers, who in their zeal to enforce the law, break fundamental human rights. This is not tolerated. If this happens, a contradiction is created in the sense that these officers would not be diminishing criminality but adding to it.

There is no need to say that as police officers, and as any other individual in Malta, if we break the law or else exceed our powers, we can be arraigned both criminally and civilly in court. We were also taught at the beginning of our career that obedience to superior orders are not a defence if that particular order

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<sup>5</sup> Vide Chapter 4 of the *Constitution of Malta* and Chapter 319 - *The European Convention Act*.

is clearly and manifestly illegal or else if that particular order is tainted by an abuse of power from our end. This could certainly be an illegal act and contrary to every ethical principle that when an officer issues an order to his/her subordinate, take any disciplinary measure or other sanction if he/she had refused to carry out an illegitimate order.<sup>6</sup>

Therefore, as members of the Malta Police Force, we have to ensure that -

- we carry out our duties according always in the parameters of the law where we have to strictly adhere to the powers vested upon us.<sup>7</sup> We shall do this without fear, favours, prejudice or malice and with absolute impartiality; and
- we have to establish a relationship of trust and mutual respect with the community and with each individual citizen irrespective of his nationality, race, colour, class, education level, religion, sex and political opinion.

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<sup>6</sup> Vide Article 14 of the *European Convention on the Protection of Fundamental Human Rights* and para. 35 of the *European Code of Ethics*.

<sup>7</sup> Vide Article 349(1) of the *Criminal Code* - Chapter 9.

## OUR OBLIGATIONS TOWARDS THE COMMUNITY

- **Members of the Force must undertake their duties in the community with courtesy, integrity, patience and even-handedness. In carrying out investigations, enquiries shall be made in a discreet manner, and care shall be taken that embarrassment or humiliation is avoided;**
- **Truth, objectivity and due regard for the privacy of the individual, and other rights, must characterise all statements made by members of the Malta Police Force when supplying information to or about the public;**
- **Physical intimidation, the use of words or disparaging/offensive gestures, racial/sexual remarks/jokes or other similar conduct which is not conducive in a democratic society, is unacceptable by officers of the Force;**
- **Special attention should always be given to vulnerable groups (such as minors, old persons, persons suffering from disabilities, etc) who in view of special circumstances, need more protection than others.**

## COMMENTARY

Everyone knows that as members of the Malta Police Force, we are few in number and in the majority, we do not carry firearms. Naturally, we live in the same communities that we serve. Our authority under the law is strictly defined and therefore, we are personally responsible for all those consequences that we bring by ourselves. We have no power to determine guilt or to inflict punishment on those persons that we ourselves arraign before the courts, whereas our accountability is always towards the law, both criminal and civil, towards the Force's hierarchy and to public opinion.

In the legal and constitutional framework where society requires us to enforce the laws of the land by means of the elected deputies in Parliament, the most important arms that we must display in our armoury are not firearms, tear gas or our service truncheons, but our protection should be focused on the confidence and sustainability that fellow citizens bestow upon us. We must also show respect towards the different races and cultures that surround us and this, by appreciating and acknowledging diversity and not by judging different persons from us as being somewhat subordinate.

This is what determines our relationship with the public, especially in the keeping of public order and peace. This is what effectively allows us to execute

our duties with the least number of persons, with limited powers and without the use of force or with that minimal force as explained in the law.

Therefore, as members of the Malta Police Force we have to ensure that -

- we must strengthen public trust by ensuring that we are the first persons to observe the law, be honest, educated in our behaviour with everybody as well as professional in our duties;
- we must consolidate the reputation of the Malta Police Force both when we are executing our duties as well in our private lives. During our tour of duty, we must be smart in appearance; present ourselves according to regulations, and be impartial and consistent in the decisions we make. We must also resist any attempt to bribery. As officers of the Police Force, we must sincerely believe that we do not enjoy any privilege above any other person.



## ARREST, DETENTION AND CUSTODY

### PRINCIPLES

- Any arrest, detention as well as custody of every person must always be carried out according to law and according to recommended procedure. The arrest as well as the detention of individuals must always be carried out in the interest of justice and this when other choices were considered as being unsuitable or otherwise not desirable in the circumstances.
- The dignity as well as the rights of the arrested person must always be respected. The legal and procedural regulations of persons who are in custody must be scrupulously followed.
- All persons who are in police detention must be informed of their legal rights. They must also be given every basic need that is required. Particular attention to medical assistance must be given whenever this is requested or when this is considered as necessary.

### COMMENTARY

Our country's Constitution guarantees to each individual the right from arbitrary arrest, *i.e.* any arrest without any basis at law. The supreme law of the land establishes that an arrest should only be made if a 'reasonable' suspicion exists that a person is going to commit or else has already committed an offence punishable with imprisonment. This means that for an arrest to be effected, the circumstances of the case must be such, that a reasonable person acting without any passion or prejudice, may instil a slight suspicion on the person who is about to be arrested, that he/she may have been the person who may have committed the offence.<sup>8</sup>

The police officer effecting the arrest is by law duty bound to inform the arrested person with the reasons about the arrest. We have been criticised several times that we observe this more in its breach than anything else. Both the Criminal Code as well as the Constitution require that reasons for the arrest must be given at the time when such arrest is effected by the arresting officer. The Constitution provides that in certain cases (example - the person is drunk or else that there are

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<sup>8</sup> Vide *Re Shaaban Bin Hussein et. v Chong Fook Kam et* (1969) e All E.R. 1626, as well as (1) *Joseph Briffa v Commissioner of Police*, First Hall, Civil Court (21<sup>st</sup> November, 1994) and the appeal in the Constitutional Court (14<sup>th</sup> June, 1995) and (2) *Tonio Vella v Commissioner of Police and Superintendent Carmelo Bonello*, Constitutional Court (5<sup>th</sup> April, 1991).

language problems), the arrested person must be informed “as early as possible” (when it becomes sober or else when an interpreter is present).

It of extreme importance that the person subjected to the arrest must be informed of the real reason behind his arrest and not to a vague reason remotely connected. This in order for that person to be able to regulate itself against that particular suspicion.

An arrest has to be made according to the legal provisions found in the Criminal Code.

Needless to say, that when a person is arrested or else kept in a police station or in a place of detention, it has to be registered and a record of her arrest should also be kept. This record should *inter alia* show the details of the arrested person and the reasons or authority for his/her arrest. A record of the time when the person was initially arrested should also be kept as well as details pertaining to interrogation and the time when the person was transferred to another place of detention or released from arrest. A detailed and precise account should also be kept of any event which occurs from the initial moments of arrest until the person arrest is transferred or else released.

The custody officer must explain to all arrested and detained persons of their right to inform a family member or friend regarding their arrest/detention. They (arrested/detained persons) should also have access to the *Code of Practice for the Interrogation of Arrested Persons*.<sup>9</sup> In the case of an arrest of vulnerable persons such as handicapped persons, those suffering from mental illnesses, ageing persons or minors under 16 years, the police has the duty to send for the person exercising authority (example: parent) or the ability/experience in assisting these persons in the place of their detention.

All arrested/detained persons are entitled to certain reasonable standards of physical commodity such as food, adequate drink, access to toilets, clothing, writing material and exercise. It has to be ensured that the cell or place of detention as well as any accessories therein are clean and in a good state of repair.

Medical assistance should always be sought if the detained person appears to be suffering from a particular ailment or mental disease, wounded or else fails to answer in a normal way any questions made to him/her. If instructions are given by a medical doctor who had medically examined the arrested or detained

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<sup>9</sup> Issued by the Ministry for Home Affairs in March, 1996. Today, the Code forms part of *The Police Act*.

person, these have to be scrupulously followed by the officer who is in charge of the place of detention.<sup>10</sup>

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<sup>10</sup> Article 14 – Resolution 690 (1979), *op. cit.*

## USE OF FORCE

### PRINCIPLES

The level of permissible force and the mode of how this should be applied, varies according to the nature and gravity of the situation that the police may find itself in.

When no other alternative is available except to use force, the law states -

- The force applied must be moderate and proportional to the circumstances of each particular case;
- No extra force other than that which is necessary must be used in order to attain that legitimate aim for which force was used.

### COMMENTARY

As police officers, we were given statutory power to use force whenever it is deemed necessary. Without this power and without other powers such as arrest, it would not be possible for us to enforce and uphold the law. However, at the same time, it is fundamental for us to know, that before any force can be used, all peaceful methods must be exhausted. It is only if these means prove to be insufficient and only as a last resort, that force should be used in its most minimal degree.<sup>11</sup> Such force has to be applied 'strictly in balance' with the level of threat/violence being faced by the police officer. The use of force should only be prolonged until it is deemed necessary, however, one must keep in mind that this power, should never be exercised arbitrarily

Firearms should be used only in these special circumstances<sup>12</sup> -

As a means of lawful self-defence from an imminent threat of death or grievous bodily harm made either (1) against the police officer him/herself or (2) against any other person.

In every case, the intentional use of firearms must always be carried out when **no other alternative** to protect the life of an individual exists. This principle also fits

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<sup>11</sup> Vide Article 3 of the *UN Code of Conduct for Law Enforcement Officers* – adopted by Resolution 34/169 on the 17 December, 1979.

<sup>12</sup> Vide Basic Principle no 9 of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers*.

in the framework when force must be used in order to quell riots or other civil disturbances including the maintenance of public order in places of detention. Therefore, no other circumstance, which does not impinge upon the matter is justifiable, including the use of firearms when there is internal or political instability and any other public emergency.<sup>13</sup>

One must not forget that this power of use of force can never be used in an arbitrary or an abusive way. We must remember that as police officers, we must always be legally accountable and correct for whatever we do. We must also keep in mind that obedience to superior orders is not considered to be as a means of a defence if the use of force or firearms results in loss of life or grievous bodily harm and that order to use force was manifestly illegally where we had every opportunity to refuse to obey it.<sup>14</sup>

Therefore, as officers of the Malta Police Force, we must see that during the use of force/firearms -

- we act proportionally according to the seriousness and gravity of the offence in order to obtain our legitimate aim<sup>15</sup>;
- we minimise as far as possible any material and physical damage and respect the right to life;
- we ensure that every medical assistance is given to wounded or affected persons; and that the next of kin or relatives of such persons are informed immediately.

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<sup>13</sup> Vide Principle 8, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers*.

<sup>14</sup> Vide Principle, 25, *ibid*.

<sup>15</sup> Vide case *McCann and others v The United Kingdom* – European Court of Human Rights (27 September, 1995, 17/1994/464/545).

## TESTIMONY AND EVIDENCE

### PRINCIPLES

- **Testimony and court evidence should be given and presented with honesty and without any hints at favouritism or prejudice.**
- **Any fabrication, lies, changes or concealment of evidence are considered as serious violations of the law and should never be tolerated.**

### COMMENTARY

The cardinal point is, that no police officer can go against the due process of law. If police officers' act is above the law, they will endanger the trust that the public shows in them.

Our responsibility to ensure that a criminal is found guilty after due process of law, may sometimes bring with it a conflict in some of the Force's members who in an attempt to secure a conviction against that individual, do their utmost to twist evidentiary facts. This is an illegal act and should not be committed. The actions of the Force's members must be seen to be just. If this is not so, the whole system collapses as public trust and co-operation which is necessary between the police and members of the public is inevitably lost.

## OBLIGATIONS OF THE MEMBERS OF THE MALTA POLICE FORCE

### PROFESSIONAL OBLIGATIONS

**Professional competence is a moral obligation which should be shared by all members of the Malta Police Force, in the interests of the public and the profession as a whole. Weaknesses attributable to incompetence can be as dangerous to the public as are faults of character and other failures of judgement.**

### COMMENTARY

Accordingly, as member of the Malta Police Force we must -

- (i) be faithful to our oath of office, to our profession and to the principles upon which it is built;
- (ii) maintain the integrity of the Force through compliance with the laws which are our responsibility to enforce and by operating with the trust, support and respect of our colleagues;
- (iii) respect the aims and objectives of the Force and carry out our duties in a professional manner;
- (iv) endeavour to enhance and improve our level of knowledge at every reasonable opportunity. Whilst education and training do not guarantee competence, they help to equip members to meet the demands of the profession.

The integrity and honesty of each member of the Malta Police force should extend to his or her personal and private life and no member may engage in any activity which may bring discredit to the force or to herself or himself, or lessen his/her efficiency in the performance of duty.

Identification by a member of the Malta Police Force actively or publicly with a political party is prohibited.

Membership in the Malta Police Force does not bestow any special rights or privileges and any expectation of such reflects a lowering of the standards of the individual member and ultimately of the Force.

Every member of the Force should resist any attempt to compromise his or her impartiality or to undermine the integrity of the Force. A member of the Malta Police Force shall not accept any gifts, favours, discount or hospitality which might be seen to compromise his or her duties in the present or in the future.

Members of the public have a right to privacy. Improper disclosure of information can violate that right and also damage the reputation of the Force and undermine public confidence. Members of the Force are required to observe strict confidentiality in all matters relating to the force, unless the law or other obligations arising from the performance of duty requires otherwise.

The Malta Police Force and its individual members are accountable to the public on whose behalf we perform the task of policing. For this reason, care in the management and control of state resources entrusted to us is a responsibility which rests on every member of the Force.

**Note:** This is a basic Code of Ethics which was inspired by Recommendation Rec(2001) 10 of the Committee of Ministers of the Council of Europe. Therefore, it has also to be supplemented by conventions, case-law, codes of practices and/or other laws (domestic and international) that come in force from time to time.

Any police officer breaching any principle found in this code, may be liable to disciplinary proceedings against him/her.