

THE POLICE AND HUMAN RIGHTS

- A HANDBOOK FOR POLICE OFFICERS IN BULGARIA

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INTRODUCTION

Human rights are inherent to all human beings – this means that no one can deprive others of their rights nor can people renounce their own rights. The main purpose of human rights is to prevent abuse of power on the part of the state and to provide due compensation should such abuse of power occur.

One of the main functions of the police is to defend human rights. They do so by maintaining public order and by providing all members of society with the opportunity to exert their rights. In addition, each police officer is obliged to observe all the rules relating to human rights and fundamental freedoms as strictly as possible while performing his or her legal duties. Effective police operations involve the performance of police functions in such a way that they do not infringe upon human rights.

The issue of human rights is not a new one for the Bulgarian police. However, it was not given a high priority in the training and practice of the police during the past. For long periods, it was widely assumed in police circles that the final result of police work was of primary importance. Little attention was paid to the means by which these results were achieved. Such a view of police matters could exist under the conditions of a totalitarian state where control over human rights observance was rather limited. But this perception is impossible and impermissible in a time of democratic rule.

Today, we live in a dynamically changing world in which the police cannot remain in the backwaters of public development. Public expectations of police work have changed radically. People hope that they will be provided with a more efficient service, but that this will not infringe upon their legal rights and interests. Each unlawful police action leads to a loss of public support, which sharply reduces the efficiency of efforts to reduce crime.

The purpose of this Handbook can be explained in the following way. Topics such as the theoretical knowledge of police powers and international standards on human rights make up an important part of police officers' training, but this is not enough. Theory has to be supported by the development of practical skills. A police officer must learn to assess his or her conduct and decisions on an individual basis. A police officer should develop the ability to be self-critical about the decisions he or she makes in any situation. Police officers should also be aware of the exact reasons they act in a particular way in each case. With this in mind, the contents of this Handbook provide an opportunity for reflection for all police officers facing practical problems in the field.

The Handbook is intended to function as a practical guide for organizing the curriculum of a training year - without involving work interruption - for all Ministry of Interior offices. Its contents have been selected to meet the needs of both police chiefs and trainers, as well as those of the regular officers and sergeants. It can also be used for instruction purposes at the Academy of the Ministry of the Interior, at specialized centers for cadet training and in preparatory courses for police officers and sergeants.

This Handbook aims to achieve the following:

- To allow, on a nationwide basis, all police officers and their chiefs to acquire the minimum knowledge and practical skills required for the observance of European standards on human rights.

This goal can be achieved if managerial staff address the problem with the required seriousness and if the necessary training can be organized for the entire police force.

- To clarify the basic powers of the police as stipulated by the Ministry of the Interior Act, by relating their performance to the standards of human rights protection.
- To help police officers understand that professionalism involves carrying out service tasks that are based upon complete respect for human rights. These rights are protected by law and the police implement the law. It is inadmissible to break the law for the purpose of its implementation.

The Handbook has the following structure:

- The first chapter examines the significance of observing human rights in police work, and the international commitments undertaken by our country in this field;
- The second chapter focuses on practical police work. The individual powers of the police are examined through the prism of human rights protection;
- The third chapter considers the public status of vulnerable social groups, such as young people, women who are victims of violence, and minorities. Special attention has been paid to the question of what measures should be adopted by the police when working with vulnerable groups;
- The fourth chapter addresses the subject of international and national procedures for investigating violations of human rights carried out by the police or state;
- The last chapter focuses on the rights and status of police officers. This is in response to current needs, as the emphasis in police education so far has been on the obligations of the police.

The initiative for and the organization behind the creation of this Handbook came from the Danish Institute for Human Rights in Copenhagen and the Rule of Law Institute in Sofia. As a result of the interaction between these organizations and the Ministry of the Interior, a workgroup was established consisting of:

- Latchezar Popov (lawyer) – Project Coordinator;
- Boyko Slavtchev (Expert at the Ministry of the Interior) and Kristina Dilova (legal adviser at the Police National Service) – authors of the text;
- Hristo Doshkov (lawyer) – author of Section 4 of Chapter 1 and Section 2 of Chapter 4.

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ABBREVIATIONS

CU – The Council of Europe

EU – The European Union

PACU – The Parliamentary Assembly of the Council of Europe

ECHRFF – European Convention on Human Rights and Fundamental Freedoms

ECPTIDTP – European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

UN – United Nations

ECAT – European Committee Against Torture

CRB – Constitution of the Republic of Bulgaria

CPC – Criminal Procedure Code

CC – Criminal Code

MIA – Ministry of the Interior Act

RAMIA – Regulations on the Application of the Ministry of the Interior Act

MI – Ministry of the Interior

RDMI – Regional Directorate of the Ministry of the Interior

DNPS – Directorate of the National Police Service

RPD – Regional Police Department

MO – Ministerial Order

MV – motor vehicle

SG – security guarding

MSSA – Municipal Service for Social Aid

HTAMJ – Home for Temporary Accommodation of Minors and Juveniles

CAAMJA – Combating Antisocial Acts of Minors and Juveniles Act

JDC – Juvenile Delinquency Cabinet

LCCABMJ – Local Committee for Combating Antisocial Behavior of Minors and Juveniles

1. THE POLICE AND HUMAN RIGHTS

The Chapter *The Police and Human Rights* aims at familiarizing the police officers and their chiefs with the great importance of observing human rights and with the European commitments undertaken by our country in this field.

For achieving this aim, the following basic questions will be examined here:

- What is the importance of observing human rights in police officers' activities?
- What should be the training on human rights in the police?
- What are the responsibilities of police chiefs for the observance of human rights?
- What are our country's international commitments for observance of human rights?
- What are the bodies and legal means of human rights protection within the Council of Europe?

After reading this chapter, trainees will be able to comprehend the social significance of the police profession, which is aimed at defending citizens' rights. This will be beneficial for boosting the professional self-confidence of police officers.

1.1. Importance of Human Rights Observance in Police Activity

After reading this text you will get an answer to the following questions:

- Which are the most important rules to be observed by police officers in their day-to-day activity from the viewpoint of the international standards on human rights protection?
- Which are the main merits to be demonstrated by each police officer?
- How should the managerial personnel system of police be structured so that to prevent human rights violation by police officers?

The standards on human rights are not a far-fetched concept in our reality but a part of the interior legislation of each member state of the Council of Europe, including the Republic of Bulgaria. Police officers must implement the law and human rights observance should always be among the priorities when performing particular police actions.

Police officers have to be aware that any breach of law performed by them with respect to citizens during execution of their official duties constitutes a violation of human rights too. In such cases, besides the responsibility born by police officer, the affected person also becomes entitled to receive compensation from the state. In order not to admit such cases, the police officers have to observe the following rules in their routine practice:

- To use force and firearms only as the last resort when there is no alternative way to perform the tasks assigned
- To use force and firearms only subject to strict compliance with legal and sub-legal (if any) requirements related to this issue
- To be aware that they are obliged not to obey any orders and instructions aimed at torture and maltreatment
- To know that the Republic of Bulgaria is a signatory to the European convention on the prevention of torture and inhuman or humiliating treatment or punishment. The Committee for prevention of torture is empowered to visit the regional police offices where it may carry out inspections for the observance of the Convention
- To create their “inner belief” related to the commitment of a crime or an offense based solely on objective facts or information
- To respect the legally established assumption for the innocence of the person arrested or suspected
- To respect the laws and rules regarding the attitude towards the arrested persons, suspects or witnesses when carrying out interrogations and taking explanations from the citizens
- To keep the confidentiality of all information obtained with reference to the performance of their functions, save when otherwise is required by justice
- To keep secret the information related to the personal life of citizens and to avoid and prevent the dissemination of such information for unauthorized purposes

- To obey the legal regulations when performing searches, inspection of premises, phone tapping or checks of correspondence
- To protect all persons from discrimination based on religious, ethnic or social criteria
- To fill in and keep in an accurate and correct way all data, registers, lists and other documents required for performance of their duties

The above-mentioned rules are a guarantee for impartiality in the actions of police officers. Impartiality is a sign of police professionalism. Often, the police officer is subject to pressure both by his or her chief and by the public (especially when investigating crimes of substantial public resonance). Such pressure is capable of distorting the concept of professionalism and of prompting the officer to illegal acts. In such a moment, it is his training and experience that will help him or her to act in an impartial and professional way.

Observance of human rights is a basic requirement when performing police activities. In this respect, the nature of the individual police officer is of great importance. Respect and recognition of the personality of individual members of society is one of the most important criteria for selection of police officers. This has to do with the fact that no one can expect observance of human rights from people who do not include respect of others and recognition of the other's personality in their value system. The important part played by the managerial staff of police consists in the prevention of such people entering the police system. With no qualitative selection of the applicants for such works no efficiency of their future activity could be achieved.

A basic requirement to the managerial staff is to prevent employment of people unmotivated and unsuitable for police work in the police system. The economic situation in the country during the years of transition, the high rate of unemployment and the lack of alternatives for realization in society could urge such people, whose most serious motive is to ensure a steady job and good remuneration for themselves, to apply for jobs in the police bodies. This may be especially dangerous for the police, since the specific work here may be done efficiently only by persons having a highly developed feeling of responsibility and strong motivation.

This problem could be solved by the joint efforts of all those people on whom the maintenance of the police personnel system depends. It is essential to get to know each candidate for such a job very well. This includes the examination of his character through:

- Personal contacts
- Obtaining information from documents
- Obtaining information from third parties
- Assigning tasks to the job applicant and observation of his behavior in the course of the procedure for his employment, etc.

The main goal of these activities is to find out in an objective way the possible weaknesses in the character and in the motivation of the applicant in question.

It is especially important to prefer applicants who have good communication skills. This is a merit that results in a multitude of good personal features, knowledge and skills, such as:

- patience
- consideration
- ability to give an unemotional judgment when choosing the way to react in a particular situation

It would be especially useful to introduce a competitive basis, that is to have several candidates for each vacancy and to make the selection of the prospective employee based on a regulatory established set of objective criteria.

An important element of each key personnel system consists in the established rules and practices for growth in the hierarchy of the respective organization. Professional development on the particular job position as well as in the managerial hierarchy is an important factor for stimulation of the performance and motivation of police officers. It is necessary to adopt and practically implement such rules and procedures that establish respect of human rights in the professional performance of officers as main criteria. The establishment of the modern Bulgarian police should be related to creating a possibility for hierarchical growth of those employees who perform their duties in an efficient manner and with absolute and unquestioning respect of human values.

In recent years, the developed police systems around the world have shown that the extent of efficiency is higher proportionately to the extent of correspondence between the social and ethnic structure of police and the social and ethnic structure of society. Achieving such a structure should be a basic priority for the personnel system. Police acts are most effective and are in greatest harmony with human rights when its officers come from the same social and ethnic groups as the potential subjects of police interference. It is necessary to break the stale conventions and to create more favorable conditions for employment of applicants from the minorities in the areas of mixed ethnic population.

1.2 Human Rights Training in the Police

This text answers the following questions:

- Why is human rights training so important to the police system?
- What are the main goals of such training in the police?

The new priorities to the profession of police officer require a change in the training of newly admitted and existing police officers. International law and the standards of human rights are developing dynamically and the solution could therefore be an adequate training of all police officers.

Police officers may respect and protect human rights only if they are well acquainted with them. Otherwise, their only value will be on paper instead of in real life.

Correct training will lead to a clear awareness of the fact that aggression and confrontation in police work is not the most direct way to truth and justice, nor the way that leads to the best possible result in a specific situation. The most important goal of the training is that every police officer should understand the importance of the police profession, the purpose of which is to protect the rights and freedoms of citizens. By carrying out their duties, the police does not allow the occurrence of unfavorable changes in the private life of many citizens, respectively helps lots of people to achieve favorable results in their personal life. This is cause enough for any police officer to feel proud with his profession.

The main goals of the training are:

- Police officers should be well trained to exercise their power to use physical force, auxiliary aids and weapons. This requires clear and specific rules for their use and also control mechanisms
- Police officers should be trained in the correct treatment of detained persons. Abilities to interrogate without using unlawful methods and with the aim of establishing the objective truth are required
- Police officers should be well aware of the cases in which they can detain a person. The training should form a strong “internal conviction” regarding the existence of a committed crime or violation. Moreover, the training should clearly indicate the respect of all rules and procedures concerning detainment
- Fair justice is a result of effective investigation of a crime. That is why the work of police investigators aims at providing evidence good enough to stand in court, which is a good guarantee for a fair trial. In this regard, the training should give knowledge about the lawful and impartial investigation of crimes
- The exercise of police powers, which may affect the personal or family life, the home or correspondence of an individual, should be legal and required for legal purposes in police work
- The training of police officers should form an attitude of confidentiality regarding information related to the police work

- The training of police officers should prevent the use of the police for searching, arresting, guarding or escorting persons, not because they are suspected of committing illegal actions, but merely because of their religion or beliefs
- It is necessary for the police officers to be trained in applying the principle of proportionality in order to secure the balance between protection of the right to peaceful gatherings or associations on the one hand and acting in the interests of public security, prevention of public disturbances or crimes, and protection of the rights of others on the other hand. The adopted strategies and tactics for protection of public gatherings should not provoke violence
- Police officers should be trained to protect the right to movement and the freedom to choose a residence without any discrimination whatsoever
- Police officers should be trained to cooperate and assist governmental bodies in their work with persons who claim to be victims of violation of their rights and freedoms
- Police officers should be trained to correctly fill and keep all data registers and records that are necessary for the execution of their duties

The effective and comprehensive training in human rights will lead to the harmonization of Bulgarian police methods with the world police culture. In this way, Bulgaria will meet the requirements of internationalization of police operations, which becomes even more important in relation with combating trans border crime and with European unification.

1.3. Human Rights and Responsibilities of Police Chiefs

The text answers the following questions:

- Why police chiefs should be well acquainted with the main international standards for the protection of the rights of citizens
- What are the main principles that police chiefs should observe
- What are the main tasks of police chiefs related to human rights

Police chiefs are responsible for the actions of their subordinates, including the observance of human rights when exercising police powers.

The first important condition for police chiefs is to have passed the required training in this field. The goal of this training is to establish a conviction that quantitative methods of reporting are not the only important criteria for the efficiency of police works. The other important criterion is the observance of human rights of citizens.

In a democratic society, it is inadmissible to have professional success as a result of law violations committed by police officers.

Under the conditions of the modern working police, the work of police chiefs is not limited only to responsibility, analysis and control. The aspiration for high professional achievements requires that police chiefs observe the principles of proportionality and none-discrimination.

The principle of proportionality is searching for a balance between the executions of police duties that may impose restrictions to human rights on the one hand and the observance and protection of human rights on the other.

The principle of none-discrimination implies that human rights should not be restricted regarding certain individuals, and that there should be cooperation in order to avoid discrimination.

Police chiefs have the following main duties:

- To select appropriate candidates for work
- To organize and carry out the training of police officers without taking a leave from work.
- To attract the public to cooperate with the police. The lack of such a cooperation sharply diminishes the efficiency of police work.
- To guarantee that their subordinates shall use force, auxiliary aids and firearms only under determined circumstances permitted by law and that unauthorized use will be punished by law
- To run and control police operations by making precise analyses of the information and the operative data, by planning and instructing in details their subordinates, as well as by analyses after completion of the operation
- To train and control their employees with the aim not to allow torture and degrading treatment of citizens
- To control their officers regarding the lawful treatment of detained persons
- To train and control their officers regarding the lawful and professional conducting of interrogations of suspects and witnesses during preliminary police investigations and in collecting explanations in other cases
- To be responsible for making their officers fully understand their powers and apply them in practice. The power of the police to detain and in this way deprive perpetrators of freedom is of utmost importance
- To ensure that their subordinates lawfully exercise their powers when detaining people, observing the rights of the detained and the procedures for detainment till it is over
- To be responsible for the police to have the necessary skills to investigate crimes lawfully and impartially
- To control their subordinates to promptly conduct investigations and to conduct them in conformity with the standards of a fair trial

- To ensure the observing of clear instructions when using anonymous witnesses in order to diminish the possibility for corruption and to enable reliable evidence to be provided for the use of the trial of the accused
- To guarantee that their officers are aware of their powers in conducting searches, correspondence check, phone tapping, police surveillance, and the restrictions of these powers
- To provide control regarding the observance of the law during searches and correspondence check
- To guarantee that police resources are not used for the purposes of tracking, detaining, guarding and escorting persons who, without being suspected of a crime, were searched, detained or persecuted because of their race, religion or convictions
- To adopt strategies and tactics for the protection of public gatherings, without provoking violence
- To guarantee that their subordinates are aware of their powers which may restrict the right to freedom of movement and the right to freedom to choose a residence
- To guarantee the full and exact keeping of the whole documentation concerning the exercise of powers or the execution of police duties, including data about employees and the roster

One of the most important duties of police chiefs is the control of the observance of human rights. It could be a current control (daily) with petitions against unlawful actions of police officers. Current control is an important condition for the normal, lawful and efficient work of police staff. The performance of control is a measure of the organizational skills of the police chief and an important criterion for evaluating his daily work.

In developed democratic societies, there is a practice for petitions against unlawful actions of police officers to be checked by independent bodies or organizations outside the police system. This will be our practice too, but presently mostly police chiefs carry out this activity. In this way their responsibility substantially increases, because the objective progress of the checks to a great extent depends on their actions and accuracy. In this regard it is necessary to establish an atmosphere of intolerance towards the violations of human rights and to the taking of decisive measures against offenders.

1.4. International Treaties

This text answers the following questions:

- What are the international treaties on human rights?
- How does the Constitution and internal law guarantee the observance of human rights?

1.4.1. Development and Description of the International Law Concerning Human Rights

After the end of World War 2, the process of internationalization of human rights and freedoms expanded. The constantly unifying international community of national states created global international organizations for the protection of human rights such as the UN, which laid down the foundations of the contemporary world legislation in the field of human rights. Here, we can mention the International Chart on Human Rights and its global influence on the Constitution and national laws of the UN member states. Regional international organizations acting in Europe, North and South America and Africa were also created. All these international organizations play a major role in the legal development of international instruments, regulating the contents, principles and limits of the protection of human rights adopted by the member states of such organizations.

In the field of international law there are different international legal instruments.

The first group includes international treaties called “pacts” or “conventions” having legal binding force - they are known as “hard law” for the member states that adopt them. This means that member states under such international treaties shall observe and protect the fundamental rights and freedoms of persons – citizens and non-citizens under their jurisdiction. Here we can mention the International Treaty for Civil and Political rights and the International Treaty for Economic, Social and Cultural Rights adopted with Resolution of the UN General Assembly in 1966, giving legal force to human rights expressed in the Universal Declaration on Human Rights which has no legal binding force. These three international instruments of global application form the International Chart on Human Rights.

The European Convention on Human Rights and Fundamental freedoms adopted by the Council of Europe in 1950 has a regional application for the member states of the Council of Europe and is compulsory for the national institutions including the national police services.

The second group of international legal instruments includes declarations, resolutions, principles and rules recognized in the UN system such as the UN Basic Principles on the use of force and firearms by law enforcement officials, Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment. These international instruments may also have regional force, such as the declaration of the police of the council of Europe.

This second group of international legal instruments has no legal binding force - they are known as “soft law” for the member states who have signed them.

1.4.2. The Constitution and the Application of International Treaties

The Constitution of the Republic of Bulgaria art.5, para. 4, art.85, para 1, and art.149, para 1-4 determines the order of admission and validity of international treaties. In order to make them a part of the internal laws, international treaties should be ratified by the national Assembly, published and entered into force in the Republic of Bulgaria. The purpose of the ratification of the international treaties is to check their compliance with the Constitution and the internal laws of the Republic of Bulgaria.

The second necessary condition is the publication of the international treaties in order for governmental institutions and citizens to get acquainted with them.

Three days after their publication in the Official Journal, or after the expiration of a longer term if such is indicated, the international treaties enter into force and become part of the internal laws of Bulgaria.

This means that international treaties become part of the legal system of Bulgaria and the national judicial institutions (courts, administrative authorities, police) are obliged to enforce them as part of the national legislation. They become a direct source of rights and obligations for all the subjects of these international treaties – the member states and the individuals.

Bulgarian citizens and persons legally residing in Bulgaria become party to these international treaties and subjects to the rights and obligations mentioned therein, having the right to require their implementation, observance and protection by the governmental institutions and officials.

An international responsibility arises for Bulgaria to implement and execute the international obligations undertaken in these treaties. The state is also responsible for eliminating the damages and compensating the offended in cases of violation of international obligations. This means that the state bears responsibility for the actions of its institutions and its officials that have judicial functions.

The international legal standards in these treaties are interpreted and implemented in accordance with the international practice and standards and the governmental institutions and officials are obliged to avoid arbitrary and illegal restriction of the rights and freedoms specified therein.

The international treaties that have become part of the internal law of Bulgaria have a priority to the internal regulatory acts that contradict them (art.5, para 1-4 of the Constitution.) The rule of priority to international law over national law gives a priority to the generally recognized norms of international law (international treaties with a binding legal force – “hard law”) over the norms of the internal law.

The rule is not applicable regarding the Constitution that has a priority over all other legal sources in Bulgaria.

The internal legislation comprises the Constitution of the Republic of Bulgaria, legal and regulatory acts in Bulgaria. The Constitution is the supreme law of Bulgaria and its provisions have an immediate action - no other law can contradict it. This is an important guarantee for the essential human rights and freedoms formulated in the very Constitution, which have been adopted almost literally by the international treaties.

The international treaties already in force have become part of the internal law of Bulgaria and occupy a second place after the Constitution of Bulgaria. In case the provisions of an act or regulation of the internal law restrict certain rights recognized by international treaties, an obligation arises for the State to amend or

cancel these contradictory internal regulations by changing the legislation. Until then in specific cases, the regulation of the international treaties that provide better protection than national laws shall be applicable.

The implementation of international standards in the field of human rights in the internal law of Bulgaria is a step towards joining the developed countries of the world and it creates additional guarantees for the democratic processes in our country.

1.5. The Council of Europe and the European Union

1.5.1. The Council of Europe

The Council of Europe (CU) was founded in May 1949 and is the oldest European political institution established on our continent after WW2. Its headquarters are in Strasbourg, France. Presently it has 44 member states. Bulgaria became a CU member on 7th May 1992. The main purpose of the CU is “to achieve a greater unity between its members, in the name of preserving and materializing the ideals and principles which are their common heritage, and facilitating their social and economic progress.”

The Council of Europe carries out its activities within the following bodies:

- The Committee of Ministers that counts 44 foreign ministers of the member states or their standing representatives or ambassadors in Strasbourg. This is the body that takes decisions
- The Parliamentary Assembly is a consultative body and consists of representatives and proxies elected by the national parliaments of the member states
- The Congress of the Local and Regional Authorities comprising a local and regional chamber. This is a consultative body representing the local and regional authorities and helping the building of an effective local and regional management

The Secretary General is the highest-ranking official in the organization and has representative and administrative functions.

The CU is the most active body in the field of human rights and plays a major role in the development of standards on human rights and the organization monitors their application. Part of the most important regulatory acts in the field of human rights adopted by the CU are: the European Convention on Human Rights (ECHR), the European Convention for the Protection of National Minorities, The Declaration of the Parliamentary Assembly of the CU on the Police, etc.

The goals of the CU are:

- To protect human rights, parliamentary democracy and legal order
- To assist the implementation of the common European agreements in order to bring the social and legal practice of the member states into compliance with the common standards
- To focus on the importance of the European identity based on shared values and a variety of cultures
- To seek solutions to problems arising before the society in Europe (minorities, xenophobia, intolerance, environmental protection, AIDS, drugs, etc.)

After the changes occurred in Central and Eastern Europe, CU has included the following activities in its priorities:

- To monitor human rights in the new democracies
- To assist Central and East European countries in the conducting and strengthening of the political, constitutional and legal changes as well as economic reforms
- To provide support in the field of human rights, local government, education, culture, environment

The Council of Europe prepares an annual report on the condition of human rights that it presents for discussion to the European Parliament. This organization exists simultaneously with the European Union.

1.5.2. The European Union

The European Union (EU) is a community of national states that have voluntarily agreed to entrust part of their national sovereignty to the common European bodies and institutions, in order to synchronize and develop the common policy of the community.

The EU agreement from 1992 officially puts the protection of democracy and fundamental freedoms as major goals for the integration of the community. The preamble of the agreement of the community establishes the responsibility of the community regarding the protection and support for human rights. This agreement specifies the requirement for respect of the essential rights stipulated in the ECHR from 1950.

The legal system of the EU provides for the immediate rights and obligations of the citizens of the member states. The adopted acts have a compulsory character. The principle of direct application of the agreements requires an equal application and observance of the EU law that is an important condition for the existence and functioning of the EU.

In the framework of the agreements with third countries, the EU systematically includes a clause for the observance of democracy and human rights. The engagement for the protection of human rights is part of the policy of the EU not only in Europe, but all around the world.

By signing and ratifying the agreement for joining the EU in March 1993, Bulgaria has taken the obligation to change its national laws in order to harmonize them with the EU law.

The two most important bodies of the EU are the European Council and the European Parliament.

The European Council is the highest-ranking body in the system of the EU and the institution with the largest powers. It consists of the heads of state and the heads of the governments of the member states. The Council has a sovereign right to make laws and take political decisions on key problems of the European Union (revision of the EU agreement or admission of new members.)

The European Parliament (EP) is an institution that represents “the peoples of the states united in the Community” (art.137 of the EU agreement.) Its structure and functions resemble national parliaments. The members of the European Parliament are elected by universal and direct elections by the member states of the Community, and they are members of “political parties at an European level”.

The European Parliament exercises a general political control over the activities of the Community institutions. The sessions and deliberations of the EP are public and its debates, positions and resolutions are published in the Official Journal of the EC.

The European Parliament comprises standing committees, assisted by subcommittees, competent in the following specific areas:

Foreign Affairs And Security, Regional Policy, Legal Issues And Rights Of Citizens, Agriculture, Budget, Economic And Exchange Issues, Industrial Policy, Power Engineering, Science and Technology, Environment, Culture and Education, Healthcare and Consumer Protection, Employment and Labor Conditions, etc.

The Parliament gives an advisory opinion on the bills of regulatory acts and participates in the legislative activities together with the European Council. The Parliament gives an advisory opinion on all international treaties entered into by the European Community and the member states.

At its sessions, the European Parliament deliberates on specific cases of human rights violations and issues resolutions condemning violations, having practical importance for the protection of individual and collective freedoms.

The Parliament monitors for the implementation of the general policy of the Community regarding the development of democracy in the countries outside the EU and can veto agreements with third countries when these countries do not follow the policy of guaranteeing essential human rights.

2. POLICE PRACTICE FOR THE OBSERVANCE OF HUMAN RIGHTS

The chapter *Police Practice in the Observance of Human Rights* introduces police officers and the methods for observing human rights in their daily work.

In order to achieve this purpose, we shall present the following police powers, regulated by the Ministry of the Interior Act:

- Detention
- Police interrogation
- Use of force and auxiliary aids
- Use of weapons
- Identity check
- Personal check, check of personal belongings, vehicles and premises

Police actions in the text are discussed in view of the international treaties presented in the previous chapter. As already mentioned, the Republic of Bulgaria is a party to these treaties and they are part of our legislation.

After reading this chapter, the trainees will learn the legal requirements for the application of various police powers and the related major international standards for the protection of human rights. The observance of these human rights will make the police work transparent, precise and perfect. In modern society, this is one of the formulas to achieve efficiency in police work and to gain the public trust regarding police work.

2.1. Detention

This text will answer the following questions:

- What are the requirements of international treaties and international acts on human rights in case of a person being detained by the police
- When can a person be detained
- What is the meaning of the terms “torture” and “inhumane and derogatory treatment”
- Which documents must be filled in for the detention of a person
- What is the term of police detention

The subject includes:

- Legal grounds for detention
- Rights of the detainee
- The main recommendations made by the Committee for Torture Prevention during their visit in Bulgaria
- Exercises for the trainees

Key positions must be known. The trainees must have in mind that often in the spoken language, literature (especially the translated one) and periodicals, the word “arrest” is used. The term used in Bulgarian legislation is “detention in custody”.

MINISTRY OF THE INTERIOR ACT

Art.70 /1/

The police bodied may detain persons:

- 1. Who have committed crimes**
- 2. Who, after a respective warning, are intentionally preventing the police officer from carrying out his duties**
- 3. Showing serious mental disturbances and whose behavior violates public order or endanger their life**
- 4. Juvenile delinquents who have left their homes, their custodians or guardians or the social homes they were placed**
- 5. If it is impossible to establish their identity in the cases and as stipulated in art.68;**
- 6. Who have avoided the punishment “imprisonment” or have escaped from the places they have been detained as accused, in execution of a police administrative measure or by court order**

7. In the cases stipulated by law

/2/ in the cases as per cl.1 the persons can be placed in special premises and measures for personal security may be taken against them if their behavior and the purpose of their detention require this.

/3/ The detainee has the right to appeal against the legality of detention before court. The court shall immediately consider the petition and deliver a ruling.

/4/ From the moment of detention the persons have the right to legal defense.

Art.71. The persons detained pursuant to art.70, para 1, cl.1-5, cannot be deprived of any other rights but the right of free movement; In this case the term of their detention cannot be longer than 24 hours.

Art.72./1/ The police bodies shall issue a written order for the taking of the detainees to the places for detention.

/2/ The police bodies shall immediately free the person if the grounds for his detention have ceased to exist.

REGULATIONS ON THE IMPLEMENTATION OF THE MINISTRY OF THE INTERIOR ACT

Art.53 /1/ The police bodies have the right to detain persons in the cases stipulated by law.

/2/ The detainees shall be taken to the police departments or to other places provided for this purpose.

/3/ The furnishing of the premises for placing detainees and the order in them shall be defined by the Minister of the Interior.

Art.54 /1/ For persons as per art. 53, para 1, a written order for detention shall be issued.

/2/ The order as per para 1 shall state:

- 1. The name, position and place of work of the police officer who issued the order;**
- 2. The grounds for detention;**
- 3. The identification data for the detainee;**
- 4. The date and time of detention;**
- 5. The rights the person has as per cl.70, para 3 and 4 of the Ministry of the Interior Act.**
- 6. The order shall be signed by the police officer and by the detainee.**

/4/ The refusal of the detainee to sign the order shall be certified by the signature of one witness.

/5/ the order for detention shall be entered in a special register.

/6/ A copy of the order shall be given to the detainee.

2.1.1. Legal Grounds for Detention of a Person

The grounds for detention of a person in Bulgarian laws are in compliance with and based on the requirements of the European Convention on Human Rights and Fundamental Freedoms and of the international treaties on this subject.

A. The person has committed a crime (ECHR, art.5, cl.1 /c)

- The person was caught at the scene of the crime
- The person was in immediate proximity to the scene of the crime, and there is information for that person's participation in the crime - the person was identified or described by eyewitnesses, there are traces of the crime on the person's body or clothes
- When there is a court order for "detention in custody" against the person

B. After an adequate warning, a person is willfully creating obstacles for the police officer to carry out his duties

- A person can be detained if he created obstacles for the police officers to carry out their duties as stipulated by law. The person must be aware that his behavior is obstructive to carrying out a specific police action;
- A person's behavior is characterized by:
 - aggressive actions - pushing, swinging, threats, appeals for fighting, insults;
 - not obeying a verbal command related to the execution of the duties.
- the person must be explained the illegality of his behavior and warned that if the person does not change this behavior, he can be detained.

C. The person shows serious mental disturbances, and his behavior disturbs the public order or endangers his life (ECHR, art.5, cl.1 /a)

-
- The person's behavior is inadequate to the circumstances
- the person's behavior represents a threat to himself or to the public

D. The person is a juvenile delinquent who has left his home, his custodian or guardian or the social home he was placed (ECHR, art.5, cl.1 /d)

E. The person is of unknown identity.

- Identity check is done for persons:
 - For which there is information they have committed a crime or a violation of the public order
 - When this is necessary for solving or investigating crimes and in case of opened administrative criminal proceedings
 - For controlling the regularity of identification documents and Bulgarian residence permits
 - At a police check point

- At a cooperation request by another state body under the conditions and according the law (art.68 of the Ministry of the Interior Act)
- In order to detain a person on these grounds, all other ways for establishing the identity stipulated by law, should be used

F. The person has avoided the punishment “imprisonment” or has escaped from the place he has been detained as accused, in execution of a police administrative measure or by court order (ECHR, art.5, cl.1 /a)

- The person has been placed in the places intended for this purpose

G. In the cases stipulated by law (ECHR, art.5, cl.1)

The sub-law regulatory acts - regulations, ordinances, instructions, cannot create or add to such grounds. Only law can stipulate the grounds for detention of persons.

Apart from the Ministry of the Interior Law, grounds for detention in pre-judicial procedures are stipulated in art.152 of the Criminal Procedure Code.

Important

The decision whether or not to detain a person is taken by the police officers in the presence of a legal basis and regarding the circumstances in each specific case.

The operative independence whether or not to detain a person, increases the responsibility of police officers before the public regarding the taking of lawful and correct decisions, and requires adequate training of police chiefs and officers.

2.1.2. International Standards on the Rights of the Detained

The Standards on the Rights of the Detained presented below have been taken from:

- The European Convention on Human Rights and Fundamental Freedoms of the Council of Europe – art.2,3,5 and 6
- UN The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Declaration on the Police of the Council of Europe – art.3, 14
- UN Code of Conduct for Law Enforcement Officials – art. 5, 6
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, art. 15, 16 (see the Appendices)

Any person detained by the police has the following rights:

- The detainee shall be informed promptly, in a language which he understands, of the reasons for his detention, and if he deems appropriate, to be able to protest the legality of the detention before a court. ECHR aims at giving the following guarantee to the detainee: court proceedings guaranteeing that none will be arbitrarily deprived of his freedom and that such detention shall be the shortest possible.
- Right to an attorney
 - The detainee and his attorney shall have the right to be in contact and to be provided with a suitable time and conditions for consultation under the conditions of full confidentiality
 - The police officer may monitor the meetings of the detainee, but cannot listen to his conversations and use them as evidence
- Right to inform a close relative or a third person of his choice of his detention
- Right to medical examination including a doctor of his choice and at his expense
- Pursuant to art. 71 of the Ministry of The Interior Act, the detainees under the provisions of art. 70, para 1 /1-5/ of the Ministry of the Interior Act, cannot be restricted in any other rights but the right to free movement

During the detention and the work with the detainee within 24 hours, police officers shall take all necessary measures not to allow the violation of the right to life, prohibition of torture, inhumane or degrading treatment or punishment, the right to freedom and safety of the individual.

According to art. 2 of ECHR, a weapon can be used resulting in the taking of human life in the following cases: *“During a lawful arrest or the prevention of the escape of a convict.”* It is very important to know that the use of force and firearms cannot exceed the absolutely necessary for this purpose. The police officer should take the specific situation, the nature of the violation and the personality of the offender into consideration and all possibilities for non-forced detention should be exhausted.

The criterion of absolute necessity requires evaluation from the police officer regarding whether the use of force or firearms is adequate to the threat in the specific case or not, and the purposes, dangers and the risks should be taken into consideration.

According to art.15 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, police officers *“cannot use force unless absolutely necessary for maintaining the security and order inside the institution, or when their personal safety is threatened”* in their dealings with the detainees. Art. 16 of the same Act stipulates that a police officer can use a firearm in his contacts with the detainee in case of *“self-defense or defense of other people from an immediate threat of death or serious injury or when absolutely necessary during the escape of the detainee.”*

Police officers should know that it is absolutely inadmissible to break the prohibition for torture, inhuman or degrading treatment or punishment as protected in art.3 of ECHR in their work with the detainee. The respect for human dignity requires from police officers to abstain from aggressive behavior and to replace it with patience and to search alternative methods of influence.

Lets define the terms

Torture – is an inhuman treatment aiming at achieving a purpose, namely to extract information or confession using physical or mental suffering (police officer beating a detainee during an interrogation to make him confess a crime)

Inhuman treatment – is a treatment intentionally causing physical or mental suffering unjustified in the specific situation (a police officer beating a detainee)

Mental suffering – in most cases it is external, unnoticeable, and is achieved by creating a status of torment and stress using means different from bodily injury (while interrogating a suspect, the police officer threatens or insults him)

The attitude towards a person can be defined as **degrading** in cases when it affects his dignity, discredits him in front of other people or makes him act against his will or conscience (a police officer insulting a citizen in the presence of other people)

It is necessary to provide a possibility for the detainee to file a petition or complaint in the cases of cruel, inhuman or degrading treatment.

In case of any detention as per art.70 of the Ministry of the Interior Act, police officers should issue a written order (for its wording see art.54 of the Regulations on the Application of the Ministry of the Interior Act.) Since February 2002, there has been a requirement for the detainment order to be accompanied with a declaration in which the detainee certifies with his signature that he has been acquainted with his rights as detainee.

The fact of detention and the information on the person shall be entered into a register (Book of Detainees) containing:

- Name and data on the detainee
- The police officer who detained that person
- The reasons for the detention
- The time of the detention
- The number of the detention order
- The actions undertaken by the police officers
- The results from the medical examination
- The police officers who will be working on the specific case
- Hour of release or imposition of a measure of procedural enforcement

2.1.3. Term of Detention

The term of detention as per the Ministry of the Interior Act in the premises of the Ministry of the Interior cannot exceed 24 hours. The term starts from the moment of actual detention, i.e. from the moment the person has been restricted from his right to free movement as per art.71 of the Ministry of the Interior Act. It is not mandatory for the detained person to stay for 24 hours at the respective police department. Pursuant to the requirements of art.72, para 2 of the Ministry of the Interior Act, “the police bodies must free the person if the grounds for his detention have ceased to exist”.

Important

What are the guarantees for the detainee, which arise from the issue of the detention order?

The issue of a detention order is only possible and necessary in case of detention of persons in police buildings. In such case the detention order determines:

- The rights of the detainees
- The observance of the term specified by the law

2.1.4. Main Recommendations of the Committee for the Prevention of Torture, made during its visit to the Republic of Bulgaria

The conditions in the places of detention and the attitude towards detainees are subject to systematic checks. In 1984, UN adopted a Convention against Torture and other forms of Inhuman or Degrading Treatment or Punishment (in force in Bulgaria since 26th June 1987.)

The Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987. The main difference between the two conventions, apart from the fact that one is regional and the other is global, is that the European committee Against Torture (a.k.a. European Committee for the Prevention of Torture) has broader powers in comparison with the UN Committee. Having no court measures, its purpose is to pay visits in different countries in order to strengthen the protection of persons deprived of their freedom.

As a member of the Council of Europe, Bulgaria ratified the European Convention for the Prevention of Torture in 1994. Since any police department can be visited by the European Committee Against Torture (ECAT), it is important for police officers to know the functions and powers of the committee members.

ECAT is based on the same principle as the European Court of human Rights. Its composition includes one representative from each member state, who participates personally and who should be independent and impartial in his work. However, while the national judge obligatory participates in any trial against its own state, the member of ECAT does not participate in the visits of the Committee in his own country. Another

difference is that the members of the Committee could be not only lawyers but also medical doctors, criminal experts, penitentiary specialists.

The method of work of the Committee comprises periodical visits (usually once in four years) to all member states of the Convention. During such visits, the Committee may visit any place where people are being detained by a governmental body – premises for detention in police departments, investigation arrests, prisons and psychiatric establishments. The Committee shall notify the government of its intention to visit the country where after it shall receive a full list of all places of detention. The Committee may attract experts and interpreters for its needs.

The members of ECAT have broad powers:

- Unlimited access to any place at any time where there are detainees
- The right to movement inside such places without limitation
- The right to communicate with the detainees without witnesses
- The right to communicate with any person they believe can give them useful information

The guiding principles in the work of ECAT are as follows:

- It is absolutely prohibited to maltreat detainees
- Maltreatment is incompatible with the principles of civilized behavior, even in its softer forms
- Maltreatment is damaging not only to the victim but also demoralizes the officer exercising or allowing this to happen and is inadmissible for the national police in general

Important

The Committee for the Prevention of Torture (CPT) has the right to inspect detention places at all police departments in the Republic of Bulgaria.

These are some of the recommendations of the CPT established during their visits in Bulgaria on the conditions in the detention places:

- All police cells must be of reasonable size depending on the number of persons they are intended for, must be well lighted, the light being sufficient for reading except during the sleeping period, and must have good ventilation
- The cells must be furnished in such a way that rest is possible, for example by having a chair or a bench, and when it is necessary for the person to spend the night there, a clean mattress and a blanket
- The detained persons must be able to perform their natural functions in clean premises and to be provided normal conditions for washing
- They must have constant access to drinking water and shall be given food at certain hours, including one main meal a day

Exercises

The following exercises will help in the field training of police. It is recommended for trainers and chiefs carrying out training in the human rights field to use examples from their own experiences, also.

Exercise 1

At 03:30 am, the Regional Police Department of the town K. received information on a burglary in a food shop. A police team was sent to the scene of the crime, consisting of one officer and three sergeants. At their arrival, they found three persons of Romany decent at the site who, seeing the police car, left the stolen goods and ran. During the started chase, one of the sergeants made a warning shot in the air. A second sergeant attempted to climb a fence, fell and made an unintended shot with the police gun he was holding. One of the three perpetrators was caught and it was established during his check that he was wounded in the pelvis area, though without danger to his life.

Questions:

- Were the actions of the police officers professional?
- Did the situation require the use of weapons?
- Were some of the following rights violated:
 - The right of life
 - The prohibition of torture and inhuman or derogatory treatment or punishment
 - Prohibition of discrimination
- For police chiefs: If you were the head of the police team, how would you carry out the actions for detaining the alleged perpetrators?

Exercise 2

The police officer IM noticed a suspicious person walking among the cars at the parking lot in front of his home, when returning from work at 10.00 pm. The police officer approached. Seeing him, the person tried to run away with a noticeably wobbling walk. IM caught up with him and detained him, after which he called for a patrol car. The person was inadequate and strongly smelled of alcohol. He was unable to speak.

The police officers arriving established that two of the motor vehicles at the parking lot bore traces of attempted breaking and entering. They handcuffed the detained person and took him to the regional police department.

At the station, it was established that the person had a criminal record and multiple convictions for theft. He was too drunk to be questioned. Further actions regarding the detained person were therefore postponed for the following day. He was left to sleep in the corridor, handcuffed. One of the police officers on duty was ordered to check him from time to time. Around 03.00 am, the police officer noticed that the detained was

snoring and trembling. He took off the handcuffs and tried to lift the detained from the ground. The detained fell down and soon after died.

The autopsy established that the death resulted from asphyxiation (suffocation) as a result of breathing vomited materials.

Questions

- Comment the professional actions of the police officers
- Are human rights violated in this case?
- For police chiefs: What measures would you have taken to avoid such cases in your practice?

Key positions:

- The noncompliance with the legal grounds for detention can lead to violation of the right to freedom and safety of the individual
- The noncompliance with the regulations on detention may lead to violation of torture or inhumane or derogatory treatment or punishment, and in some cases may lead also to violation of the right to life
- During detention, police officers should not allow any discriminatory behavior
- Police officers must be aware of the fact that they bear responsibility for the detained persons from the moment of their detention, and that the violation of their guaranteed rights will be subject to control
- The term of detention starts not from the moment of signing the detention order, but from the moment the person was actually deprived of free movement, i.e. the actual detention.

2.2. Police Interrogation

This text will answer the following questions:

- What are the requirements of the international and internal acts in view of human rights during police interrogation (taking explanations)
- What are the main practical actions of police officers in conducting police interrogation

The discussed topic includes:

- Determining the cases in which police bodies conduct interrogation of a person
- International standards
- Practical actions
- Exercises for the trainees
- Key positions that should be known

The interrogation is one of the most frequent police actions. Therefore, a serious attention to the training and control of the officers is required in order to reach a correct tactical interrogation and the observance of the requirements for respecting human rights.

2.2.1. Cases in which the Police Officers carry out Interrogations

The police carry out interrogations in the following situations:

- Of a person detained as per art.70 of the Ministry of the Interior Act
- Of an incriminated person during an investigation or pre-judicial police proceedings (as evidence under art.85 of the Criminal Procedure Code)
- Of a witness during investigation or pre-judicial police proceedings (as evidence under art.85 of the Criminal Procedure Code)
- During a preliminary check as per art.191 of the Criminal Procedure Code
- When taking explanations from citizens as an operative-search measure as per art.162, para 1, cl.1 of the Ministry of the Interior Act
- When taking explanations from citizens during a check under an assigned file

2.2.2. International Standards for Non-allowed Violation of Human Rights During Police Interrogation

The standards that should be observed during interrogation relate to the following rights: to fair trial, to life, to freedom and personal safety and prohibition of torture and inhuman or degrading treatment or punishment.

The main international acts on this issue are:

- The European Convention on Human Rights and Fundamental Freedoms – art.2, 3, 5, 6
- The UN Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment – art.10, 11
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment – Principles 21, 23 (See the Appendices)

The main standards that police officers should observe during interrogation are:

- During interrogation, the police officers should always take the legal presumption of innocence of the interrogated person into consideration
- During interrogation, it is absolutely inadmissible to use force, threat or other actions which may be harmful to the life, health or mental state of the interrogated (see 2.1.2. regarding the definitions of torture, inhuman and degrading treatment and mental suffering)
- The confession of the interrogated cannot be the only grounds for drawing the conclusion that he is the perpetrator of the crime or of the offense. The confession should be obligatory supported by another evidence

In some countries there is a practice to videotape the interrogations. The videotapes are the best guarantee that the statements of the interrogated will be presented as they are. Videotapes also guarantee that the interrogated has given the statement out of own free will.

2.2.3. Practical Actions of the Police for Non-allowed Violation of Human Rights During Police Interrogation

The police officer must be well prepared for all cases of carrying out an interrogation.

The preparation includes:

- Getting acquainted with all available information
- Studying the person to be interrogated
- Preliminary formulating the questions and planning the order of asking them
- Providing suitable environment for the interrogation, in order to minimize any possible distracting factors
- Asking the attorney to be present, if the interrogated person has chosen to use his right to an attorney

During the interrogation, the police officer must comply with the following requirements:

- The questions asked must be related to the subject of the interrogation, must be specific and exactly formulated, must be comprehensive for the interrogated, must be asked in a certain logical consequence, must not contain any information regarding the event that has to be cleared, must not suggest or hint the answer, must be asked in a neutral form
- To encourage the person to share all details, even if they do not seem important
- To encourage the person to volunteer information, without being urged to do so
- Not to interrupt the person when he speaks

In case of interrogation of a detained person as per art.70 of the Ministry of the Interior Act, the police officer must to begin with explain the detainee the grounds for his detention, his right to refuse to give explanations and provide him with a chance to meet an attorney.

During the interrogation of an incriminated person, the interrogator must, at the beginning, inform him of the crime he has been charged with, the possible punishment for this crime, as well as his right to refuse to give explanations or to give whatever explanations he chooses to, and must also provide him with a chance to contact an attorney.

During the interrogation of a witness, the interrogator must explain to him his right to abstain from giving testimony that may be used to incriminate him, a relative of his by ascending or descending line, brothers, sisters or his spouse (art.96, para 1 of the Criminal Procedure Code). If the witness is a spouse, relative by ascending or descending line, brother or sister of the incriminated person, he is explained the right to refuse to testify (art.94 of the Criminal Procedure Code.) The witness cannot be questioned about circumstances that may have been entrusted to him in his capacity of an attorney or a representative (art.96, para 2 of the Criminal Procedure Code.)

The police officer must provide a translator or interpreter when the interrogated person does not understand the spoken language or has a hearing impairment.

The interrogated person must be provided with a chance to use his right to an attorney.

Important

The interrogation must be documented with:

- Transcripts prepared by the interrogator for the questioning of an incriminated person and a witness in an investigation or pre-judicial proceedings
- In all other cases by written explanations – with the own hand of the interrogated person or written by the police officer and signed by the interrogated person

The following exercises aim at helping the practical training of police officers. It is recommended for trainers and chiefs when conducting training for the protection of human rights also to use examples from their own experience.

Exercise 1

BI was detained in the building of the Regional Police Department in the town of X on suspicion of theft. The detainee denied all charges. The police officer did not have enough evidence to justify his detention.

Trying to provide evidence, both police officers hit the detainees several times on the head during interrogation, trying to convince him to make a confession. As a result of the hits, BI fell from the chair and felt dizzy and confused.

The police officers lifted him on his feet and continued to hit his body until he confessed having committed the theft. In the transcript written thereafter, BI explained in details how he committed the crime and where he had hidden the stolen goods. The confession led to the finding of the stolen goods and they were returned to the owners.

BI was tried and convicted.

Questions:

- Are the actions of the police officers correct from a professional point of view?
- Which human rights were violated in this case?
- For police chiefs: Do you encourage such a practice for solving crimes? What would have been your reaction in this case?

Exercise 2

NI has been convicted for trade of drugs in the past. The police had information that he continued with the same business after his release from jail.

One evening, two police operatives who knew him met him and took him to the police station. No drugs or other evidence were discovered during the personal search. The police operatives then handcuffed him to a rail so that he would stand all night without being able to sleep. The next morning he was questioned on his participation in the illegal drug trade and he was beaten in order to confess. He refused to talk and was released without being charged with any crime.

The following evening, NI was arrested once again by the same police officers. He spent the night in police detention. Early the next morning, the two police officers came again and interrogated him about his participation in the illegal drug trade. Both officers beat and kicked him. After that, and under the threat of continuous beating, he “confessed” having bought and sold some quantity of drugs. As a result of this, an investigation was opened and NI was imposed a permanent detention in custody. No other evidence for the “committed crime” was collected.

A few days later, through his attorney, NI complained to the Chief of the Regional Police Department of the force used against him.

Questions:

- Do you approve of such a practice applied to criminals?
- Is there a violation of human rights in this case? – Which rights and how were they violated?
- For police chief: Comment on how you would react when receiving information on similar actions taken by your subordinates?

Key positions

- The unprofessionally prepared interrogation, with the use of unlawful methods and means, can lead to drastic violations of ECHR related to the right to life and to the prohibition of torture and inhumane or degrading treatment or punishment
- The presumption of innocence of the interrogated person should always be respected
- The police officer must not use any force, threats or actions harmful to the mental state and humane dignity of the interrogated during the interrogation
- The police officer should always be prepared for cases requiring interrogation
- Any interrogation should be documented

2.3. Use of Force and Auxiliary Means

This text will answer the following questions:

- What are the requirements of the international and internal acts regarding human rights in the use of physical force and auxiliary means by the police?
- What are the main practical actions of police officers in the use of physical force and auxiliary means for preventing the violation of human rights?

The topic for discussion comprises:

- The legal grounds for using physical force and auxiliary means
- International standards
- Practical actions
- Exercises for the trainees
- Key positions that should be known

The training should focus on the fact that there is a difficult balance in police work according to which officers should measure their actions. On the one hand, the possibilities for dialogue with the offenders could be exhausted, but on the other hand the right decision should be taken and no rights should be violated in the process.

MINISTRY OF THE INTERIOR ACT

Art.78 /1/ Police officers may use physical force and auxiliary means in performance of their duties only if they cannot be carried out in any other way, in case of:

- 1. resistance or refusal to execute lawful order;**
- 2. detention of a perpetrator who has not obeyed or has resisted the police officer;**
- 3. escorting a person or during an attempt to escape, to take his own life or the lives of other persons;**
- 4. assistance to other state bodies or officials who are unlawfully prevented from carrying out their duties;**
- 5. attacks against citizens and police officers;**
- 6. liberation of hostages;**
- 7. group violations of public order;**
- 8. attacks on buildings, premises, facilities and motor vehicles;**
- 9. eviction from illegally occupied sites if there is an order by a competent body.**

/2/ The auxiliary means are: handcuffs, strait jackets, rubber and electroshock clubs and devices; chemicals approved by the Minister of Public Health; police animals - dogs, horses; blank cartridges, cartridges with rubber, plastic and shock bullets; devices for forced stopping of motor vehicles; devices for opening premises; light and sound devices with distracting effect; water and air cannons; armored motor vehicles and helicopters.

/3/ The procedure for using the devices as per para 2 shall be defined by the Minister of the Interior.

Art.79 /1/ Physical force and auxiliary means shall be used after an obligatory warning, except in cases of sudden attack and in the liberation of hostages.

/2/ The use of physical force and auxiliary means shall depend on the specific circumstances, the type of public order violation and the identity of the perpetrator.

/3/ When using physical force and auxiliary means, the police officers shall, if possible, protect the health, and shall do all they can to protect the life of the persons at which such force or devices are being directed.

/4/ the use of physical force and auxiliary means shall stop immediately after achieving the goals.

/5/ It is prohibited to use physical force and auxiliary means against obviously minors and pregnant women. This prohibition is not valid for cases of riots, when all other means were exhausted.

2.3.1. Legal Ground for the use of Physical Force and Auxiliary Means by the Police

The Bulgarian legislation provides a possibility for the police to use physical force and auxiliary means solely and only when the police tasks cannot be carried out in another way. This requirement is in compliance with the international standards on police actions. The use of physical force and auxiliary means can be directed against an individual in the following cases:

- Resistance or refusal to execute lawful order
- Detention of a perpetrator who has not obeyed or has resisted the police officer
- When a detainee attempts to escape, to take his own life or the lives of other persons (including during the escort of the detainee)
- Assistance to other state bodies or officials who are unlawfully prevented from carrying out their duties
- Attacks against citizens and police officers
- Liberation of hostages
- Group violations of public order
- Attacks on buildings, premises, facilities and motor vehicles
- Eviction from illegally occupied sites if there is an order by a competent body

The types of auxiliary means are described in detail in art.78/2/ of the Ministry of the Interior Act.

Important

The decision to use physical force and auxiliary means shall be taken:

- In the process of carrying out individual tasks for public order protection and fight against crime - by the individual officer
- In collective actions or police operations - by the chief (senior officer)

2.3.2. International Standards for the Non-allowed Human Rights Violation in using Physical Force and Auxiliary Means

The standards that should be observed during use of physical force are closely related to the right to life, freedom and personal safety. They have been derived from:

- The European Convention on Human Rights and Fundamental Freedoms – art.2, 3
- The Declaration on the Police of the Council of Europe – art.13
- The UN Code of Conduct for Law Enforcement Officials – art.3
- The UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials – art.4, 5, 6, 20 (see the Appendices)

The use of physical force and auxiliary means is closely related to the right to life, freedom and personal safety. According to art.2/2/ of the ECHR “the taking of life is not considered as contradicting the provisions of this article, when it results from the use of force recognized as absolutely necessary:

- a) In the protection of whatever person from illegal violence
- b) While doing a legal arrest or while preventing the escape of a person legally imprisoned
- c) In actions taken in compliance with the law for suppressing a riot or an insurrection”

The use of force and auxiliary means should not exceed the absolutely necessary for achieving the specific goals. The police officers should take the specific circumstances, the nature of the violation and the personality of the offender into consideration and all possibilities for non-forced execution of the specific police power shall be exhausted.

The criterion “absolute necessity” requires an evaluation by the police officer of whether or not the use of force is adequate to the threat in a specific case.

The legal use of force and auxiliary means is possible when other means have proved ineffective or when there is no chance of achieving the goal by using such means.

Police officers should know that according to art.3 of the ECHR “nobody can be subjected to torture or inhuman or degrading treatment or punishment”. Such a provision is also contained in the Constitution of the Republic of Bulgaria, art.29. The beating of a detainee in order to make him confess a crime represents torture.

When the use of force and auxiliary means by police officers is inevitable, they should take into consideration the following requirements:

- To abstain from the use of force and to act adequately to the assignment and the threat in any specific case
- To minimize the damages and injuries, as well as to protect human life
- To provide medical aid to those in need of aid
- To notify relatives and friends of the affected or injured person

Should death occur as a result of the use of force, police officers should report the incident to their superiors. The international acts are of great importance to the training of police officers. For example, according to art.20 of the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials, the training of the police officers should be focused on:

- Issues of police ethics and human rights
- Alternatives of the use of force, including peaceful means of solving conflicts
- Analysis of crowd behavior and methods of persuasion, negotiations and mediation
- Technical aids for limiting the use of force

2.3.3. Practical Actions of the Police Directed against the Violation of Human Rights in the Use of Physical Force and Auxiliary Means

The rules below have been derived from the Ministry of the Interior Act and the effective Instruction on the Use of Force, Auxiliary Means or Weapons by Police Officers. They include the following requirements:

- The police officers shall use physical force and auxiliary means after a warning, except in cases of sudden attack and liberation of hostages
- The use of physical force and auxiliary means shall stop after achieving the goals
- In case of use of physical force and auxiliary means, the police officers shall do all they can to protect the health and life of perpetrators, except in situations of riots when all other means were exhausted
- Police officers shall provide first aid to persons who suffered as a result of the use of physical force and auxiliary means

- In case of use of handcuffs, they should not be placed in such a way as to cause physical pain or stop the blood circulation of the person on whom they are placed
- When using a police dog, its guide shall loudly and clearly warn the perpetrator: “Police! Stop - get out - or I will unleash the police dog”
- The hits with rubber clubs shall be made if possible to the muscles of the limbs in order to parry the actions of the perpetrators. Hits on the head are not allowed
- The use of electroshock clubs to the face or against visibly sick persons is not allowed
- The aiming of chemicals directly to the breathing organs or to the eyes of the perpetrators is not allowed
- The gas cartridges shall be shot by a gun /revolver from a distance no less than one meter from the perpetrator, and the gun barrel shall be aimed at the chest
- In case of shooting rubber, plastic and shock bullets, it is prohibited to aim the weapon at the head of the perpetrator, as well as a random shooting against a group of people. The maximum allowed distance for the use of these weapons shall be determined by the tactical and technical characteristics of each specific ammunition
- In case of the use of devices for forced stopping of motor vehicles, the police officer shall provide the necessary signals and give, on time, a visible sign for stopping, from a distance depending on the specific road characteristics.

Important

After the use of physical force and auxiliary means, police officers should prepare a report containing:

- When, where and against whom they were used
- Description of the whole scenario
- What were the actions of the police officer
- What was the end result
- At what point the use of physical force and auxiliary means stopped
- Which measures were taken for helping the victims

Exercises

The following exercises aim at helping the practical training of police officers. It is recommended for trainers and chiefs when conducting training for the protection of human rights also to use examples from their own experience.

Exercise 1

The Regional Police Department of the town D received a call saying that a large fight had started in front of the town nightclubs. 4 police cars immediately departed for the scene. The fight was stopped without any serious efforts by the police officers. Some of the participants in the fight were injured. The police officers invited some of the participants to come to the Police Department for medical aid and in order to clear up the situation. They categorically refused. The police officers then used physical force, clubs and handcuffs. The investigation of the fight continued in the Regional Police Department, where a medical team was called for medical aid. The following day, the participants in the fight filed complaints against the actions of the police officers.

Questions

- Is one of the following rights violated:
 - prohibition from torture, inhuman and derogatory treatment or punishment
 - the freedom and safety of the individual
- For police chiefs:
 - How would you organize the reviewing of the filed complaints?
 - Do you believe that a greater objectivity will be reached if the complaints against the illegal actions of police officers are reviewed by an external, independent body, and thereby improving your work?

Exercise 2

The youth VD was driving his motorcycle within the town limits, where the driving of motor vehicles was prohibited. A police officer met him and gave him a sign to stop. Since VD did not stop, the police officer called a patrol car which chased VD on the town streets. Finally, the patrol car stopped VD and it turned out he had no documents. The police officers handcuffed him and took him to the police department. There, he was slapped and kicked. Police officers explained to him that they beat him because he did not obey them. Then they let him go.

Questions

- Did this case require the use of handcuffs and force by the police officers?
- Which rights were violated by the police officers' actions
- For police chiefs: How would you organize the work and training of your officers as to avoid such cases?

Key positions:

- When using physical force and auxiliary means, the police officers shall strictly abide by the requirements of law. Otherwise it is possible to violate:
 - the right to life
 - the prohibition of torture, inhuman or degrading treatment or punishment
- The police officer shall carry out his duties in a way excluding the possibility of confrontation and clash with the citizens. However, there are cases in practice when the duties cannot be carried out in a peaceful way through negotiations and dialogue. The training in the use of physical force and auxiliary means by police officers is therefore of highest importance
- The use of physical force and auxiliary means is allowed under strict observance of the law and under the condition that the police duties cannot be carried out in any other way
- The use of physical force and auxiliary means shall take the specific circumstances, the type of offense and the identity of the perpetrator into consideration
- It is prohibited to use weapons against minors, mentally disturbed, and pregnant women

2.4. Use of Weapons by the Police

This text will answer the following questions:

- What are the requirements of internal law regarding human rights in use of weapons by police officers
- What are the requirements of international standards for the use of weapons by police officers
- What are the main practical actions of police officers when the use of weapons is necessary
- What should be taken into consideration when training police officers in the use of weapons

The subject includes:

- Legal grounds for the use of weapons
- International standards on the use of weapons
- Practical actions and main issues during training
- Exercises for the trainees
- Key positions they must be aware of

When the state gives legal powers to the police to use weapons, this does not mean that the state renounces its right to protect the right of life. The right of life cannot be renounced

MINISTRY OF THE INTERIOR ACT

Art.80 /1/ The police officers may use weapon as a last resort:

- 1. in case of an armed attack or a threat with firearms**
- 2. in case of liberation of hostages and abducted persons**
- 3. in case of unavoidable defense**
- 4. after a warning, in the process of detaining of a person who has committed or is in the process of committing a crime of general nature**
- 5. after a warning, for preventing the escape of a person, detained pursuant to the respective procedures for committed crime of general type.**

/2/ The police officers, when using a weapon, must, if possible, spare the life of the person they are aiming the weapon, and not risk the life and health of other persons.

/3/ After the use of a weapon, the police officers must made a written report as per the standard procedure.

2.4.1. Legal Grounds for Use of Weapons by the Police

The use of weapons is an extreme measure in the work of the police and should only be used when all other means and methods are impossible. According to Bulgarian law, weapons can be used in the following cases:

A. Police officers may use weapons in case of armed attack or threat with firearms (ECHR, art.2, cl.2.a)

The armed attack and the threat with firearms are two independent hypotheses at each of which may be use weapons.

In the first hypothesis, the law does not specify what may be the weapon of attack. This means that the attacker may be armed with any kind of weapon, both firearm and blank weapon. In this hypothesis may be included attacks with various materials at hand (metal rod, chain, spike etc.) that can threaten the life and health of the person attacked.

The second hypothesis requires the threat to be carried out with a firearm. The threat may be carried out in different ways (by words or actions) but it must be real, i.e. the threatened person must be in real danger of a weapon being used against him.

Important

In the two hypotheses above, there is no obligatory legal requirement for the police officer to warn the person against whom he will use his weapon. However, if the specific situation allows this, he must give a warning. This way the requirements of the ECHR will be fully satisfied.

B. In cases of liberating hostages and abducted persons

In these cases, the perpetrators are often armed and pose a real danger to the health and life of the persons illegally deprived of freedom.

Important

The operations for liberating hostages and abducted persons must be carried out after comprehensive and careful planning and preparation as to exclude or minimize the possible risks for the participants, persons held and third persons.

C. In case of unavoidable defense

The unavoidable defense is a criminal law institute stipulated in art.12 of the Criminal Code.

According to art. 12 of the Criminal code, *“an action is not dangerous to the public safety if it has been done in unavoidable defense – to protect from immediate illegal attack on state or public interests, the person or the rights of the defending person or another person, by causing damage to the attacker within the reasonable limits.*

Exceeding the limits of unavoidable defense is, when the defense is clearly inadequate to the nature and danger of the attack.”

Regardless the nature and danger of the defense, there is no exceeding the limits of the unavoidable defense if the crime has been done:

- By entering a home with violence or by breaking and entering
- The attack could not have been repulsed in any other way

A person is not punished when the action of exceeding the limits of unavoidable defense has been done in fear or confusion.

Art. 12a of the Criminal Code: *“The causing of damages to a person who has committed crime is not considered a public danger, if this is done during this person’s apprehension in order to surrender him to government bodies and to prevent the committing of another crime, if there is no other way to apprehend him and if during this apprehension the necessary and lawful measures have not been exceeded.*

The necessary measures for apprehending a person who has committed a crime are exceeded if there is an obvious inadequacy between the nature and the level of public danger of the crime committed by the apprehended person and the circumstances of the apprehension, as well as when the person was caused unnecessary damages. In such cases, criminal responsibility shall be born only if the damage was caused intentionally.

If the police officer has used a weapon, the defense must be adequate to the attack.

The evaluation of the adequacy is done considering the following circumstances:

- force and intensity of the attack
- importance of the defended site
- degree of the threatening danger
- identity of the attacker
- devices used in the attack
- number of attackers and defenders
- place and time of the attack, etc

Important

If the use of weapon is not adequate to the nature and danger of the attack, this will exceed the limits of unavoidable defense. In this case, police officers will bear the respective responsibility.

D. After a warning in the process of detaining a person who is committing or has committed a crime

There are two independent hypotheses triggering the legal use of weapons on the grounds above:

- The first includes the situations when a person has been caught by the police in the process of committing a crime
- The second includes the cases when the police has identified persons who have committed a crime, for example: they were near the scene of the crime, have been identified by eyewitnesses, or bear traces of the crime

Important

Based on the grounds above, a weapon can only be used during the carrying out of the police right of “detention”.

In order to use a weapon during the detention, the perpetrator must resist.

The police officer must be convinced that the person to be detained is in the process of committing a crime or has committed one.

Before using a weapon, the police officer must give a warning.

The use of weapon is not justified against pickpockets, small thieves or persons who have committed small crimes, or against persons who have not resisted detention and do not pose a danger to the public.

E. After a warning to prevent the escape of a person detained in compliance with the respective procedure for a committed crime of general nature

- The person must have been detained in compliance with the respective procedure by the police, i.e. one of the following measures must have been applied to him:
 - detention in custody as per cl.152 of the Criminal Code
 - preliminary detention as per cl.202 of the Criminal Code
 - police detention as per cl.70 of the Ministry of the Interior Act
 - conviction to imprisonment

- The person must have been detained for a committed crime of general nature
- The person must have attempted escape by committing real actions of attack, for example against a police officer. These are the most often grounds for using a weapon during escort duty.

Important

Before using a weapon on the above grounds, the police officer must give a warning.

2.4.2. International Standards for Non-allowance of Human Rights Violations in use of Weapons by Police Officers

The standards on use of weapons reviewed further in the text are taken from:

- The European Convention on Human Rights and Fundamental Freedoms – art.2
- The Declaration on the Police of the Council of Europe – art.13
- The UN Code of Conduct for Law Enforcement Officials – art.3
- The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials – art.4, 5, 6, 7, 8, 9, 10, 14, 20 (see Appendices)

No one can be deprived of life intentionally. The ECHR allows the taking of human life as a result of the use of weapons in the cases as per art.2, cl.2. a, b, c, and in certain conditions: (*a/ in defense of a person from unlawful violence; b/ during a lawful arrest or for preventing the escape of a person lawfully convicted; c/ during lawful actions for suppressing a riot or mutiny*).

In the specific situation, when one of those three cases is present, the use of weapons must be absolutely necessary. This means that all alternative ways of solving the situation have been exhausted or that they are obviously ineffective. It is prohibited to use weapons against minors, mentally ill or pregnant women, as well as against persons who have committed offense requiring administrative punishment.

Moreover, the use of weapons must be adequate to the threat in each specific case, and to the degree necessary for the execution of the police duties. The purpose of use of weapons is not to kill the person against which the weapons are being used.

International acts require the following from police officers:

- Police officers to restrain from the use of weapons and to act adequately to the seriousness of the crime and the purpose they are after. Using a weapon, police officers must not threaten the life and health of other people

- The damage and wounds caused by the use of weapons must be minimized. If possible, the life of the person against whom the weapon is being used must be spared
- In case of a casualty, the police officer must immediately render medical aid
- The relatives of the wounded person must be informed of the incident

2.4.3. Practical Actions of the Police Directed against Violation of Human Rights in Use of Weapons

The use of a weapon is a last resort to be used by police officers in cases when no other legal measure could neutralize the criminal (perpetrator).

The decision to use a weapon is taken by:

- The individual police officers in case of armed attack, threat with firearms and unavoidable defense
- The commanding officers of the operation in case of liberation of hostages and abducted persons
- Depending on the situation - by the police officer or the by the chief (senior officer) in the cases of cl.4 and 5 of art.80 of the Ministry of the Interior Act.

The warning the police officer must give before using the weapon must be clear and plain and directed to the person against whom the officer is acting. This warning can be given in two ways:

- In words - the police officer loudly and clearly declares his intention to use the weapon, and invites the person to cease his action
- by a warning shot in the air

After using a weapon, the police officer must prepare a written report containing:

- The name and position of the police officer
- Date and place of the action
- What was the carried out duty
- The circumstances in the case that led to the use of the weapon
- Grounds for using the weapon and the name of the person against whom the weapon was used
- The consequences of the use of the weapon

The carrying out of the police officers' duties in compliance with the international human rights standards is a complex of precise legislation and correct training. The decision whether to use a weapon or not, taken by the police officer can be developed after an adequate training.

Important

According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the training of police officers must pay special attention on:

- the problems of police ethics and human rights
- alternatives to the use of weapons
- peaceful means for solving conflicts
- methods of convincing, negotiation and mediation
- technical aids for limiting the use of weapons

Exercises

The following exercises aim at helping the practical training of police officers. It is recommended for trainers and chiefs when conducting training for the protection of human rights to also use examples from their own experience.

Exercise 1

Patrolling his area, Captain AK of the Traffic Police noticed two persons standing around a fire on the beach of the nearby river. The fire was of blue-green color typical for burned cables. The police officer suspected a theft of cables for selling them as non-ferrous metals, stopped the car and made a call on his radio. The duty officer ordered him to take the actions necessary for apprehension of the persons.

Seeing the stopped police car, the two persons split and ran in different directions. Captain AK got out of the car, took out his gun and called: "Stop! I will shoot". Then he shot once in the air and once at one of the running persons, as a result of which the person fell in the river he was trying to cross. The police officer rendered immediate help by entering the water and pulling him to the shore. However, the person died instantly of a bullet wound to the head.

The consequent investigation confirmed that the victim has participated in a theft of cables. The actions of Captain AK were considered lawful and no accusations were raised against him.

Questions:

- Despite the confirmed legality of the police officer's actions, do you think he has complied with the criterion for absolute necessity as per cl.2 of the European Convention for the Protection of Human Rights?
- For police chiefs: What is your evaluation of the training of police officers for using weapons? Do you have any suggestions on this?

Exercise 2

After his van was stolen, the citizen AB filed a complaint at one of the Sofia Regional Police Departments. The car was declared for search. At the same time, the son of AB began individual actions for search and managed to contact the perpetrators. He gave them the required ransom of DEM 4,000. In exchange, he was tolled that the car was parked before one of the motels near the city. The son called his father and the two of them went to pick up their car. However, since the search of the car continued, car was noticed by a police officer at a crossing. The officer immediately informed the SOD duty officer. The SOD ordered all SOD car patrols to initiate chase and detention of the alleged perpetrators of the theft.

The police officers GP and AP were in a patrol car on one of the crossings with traffic lights. They noticed the car that had stopped at a red light. The two police officers immediately went to the driver's place, occupied by AB. Another two officers who had just arrived at the scene, went to the other door. All police officers took out their weapons and put a cartridge in the barrel. The police officer GP opened the driver's door and cried out: "Stop, police!" At this moment AB, surprised, reached to close the car's door. Startled by this reaction, GP shot AB in the head and he died immediately.

Questions:

- Please comment the professional actions of the police officers
- What human right was violated in this case
- For police chiefs:
 - Is there a relation between the selection of police officers and their professional training, and the police action on human rights protection?
 - In this relation, do you have any suggestions for improving the personnel selection and the professional training in the police?

Exercise 3

The duty squad of a Regional Police Department received a call that a robbery had taken place near the city. A patrol car with two police officers immediately headed for the scene of the crime. Approaching, they noticed a man and two women with an appearance similar to the description of the perpetrators. They started to run when they saw the police car. One of the police officers got out of the car and gave a chase. The running persons went in different directions and the police officer took out his weapon - after a verbal warning and a warning shot in the air, he shot at the legs of one of the women. She was hit and went down. The police officer detained her, took her to the car and she was taken to the Regional Police Department. The check established that the detained had in fact taken part in the robbery. The shot had torn the muscles of her right leg, and the following day she was rendered medical aid after the detention.

Questions:

- Were the actions of the police officers correct, from a professional point of view?
- Is one of the human rights violated in this case?

Key positions:

- The unlawful or irregular use of weapon can lead to a violation of the right of life. Therefore, the police officers should receive effective training on:
 - the legal requirements for the use of weapons
 - the correct use of the registered personal weapon
- When the state gives legal right to the police to use weapons, this does not mean that it weavers its responsibility to protect the right of life, freedom and safety of the individual
- The police officers should be trained and motivated to refrain from the use of weapons when possible. It must be allowed only in case of utmost necessity when there are no other possible means.

2.5. Identity Check

This text will answer the following questions:

- What are the requirements of international and internal acts regarding human rights during identity check?
- What should be the police officers do in order to comply with these acts?

The subject includes:

- Cases where police officers have the right to perform an identity check of a person
- International standards
- Practical actions
- Exercises for the trainees
- Key positions they must be aware of

The trainees must know that police officers have no right to stop and check each citizen they meet. This can be done only if the necessary grounds are present and in the order stipulated by law.

MINISTRY OF THE INTERIOR ACT

Art.68 /1/ The police officers may carry out identity checks of persons:

- 1. when there is an information they have committed crimes or other public order violations**
- 2. when this is required for uncovering or investigating crimes and in case of opened administrative criminal proceedings**
- 3. for controlling the regularity of identification documents and Bulgarian residence permits**
- 4. at a police check point**
- 5. at a cooperation request by another state body under the conditions and according to the law**

/2/ The identity can be established by presenting an identification document of the person, by information from citizens with established identity who know the person, or in any other way a reliable information can be gathered.

2.5.1. When can an Identity Check be Performed

A. An identity check of persons on which there is information that they have committed crimes or other violations of the public order

In this case, the police officer must have reliable information that the person is a perpetrator. This may happen in the following cases:

- the person has been caught at the scene of the crime
- during the identity check, objects or traces were found on the person proving that the person has committed a crime or a violation of the public order
- in the process of detaining persons in hiding
- a reliable information was received that the person is a perpetrator of a crime

B. When the identity check is necessary for uncovering or investigating crimes and in case of opened administrative criminal proceedings

There are three hypotheses in this case:

- the first includes the cases where a crime has been committed but the perpetrator has not been uncovered. These checks can be done by all police officers related to uncovering crime. The object of the checks is the persons that are possible perpetrators of crimes or have information on committed crimes. A cause for the check may be a suspicious behavior of the person or his presence near the scene of the crime, etc.
- the second hypothesis includes the cases where the check is necessary for uncovering crimes. This requires an initiated preliminary proceedings or pre-judicial police proceedings. These checks can be done by police officers with investigating powers or by others ordered to help in a specific investigation. Object of the checks may be suspected persons or persons that may be used as witnesses in the investigation
- the third hypothesis includes the cases of initiated administrative criminal proceedings. The police officers must identify perpetrators of the administrative violation and of the witnesses

C. In case of a check of regularity of identification documents and Bulgarian residence permits

D. At a police check point

These check points are controlling the passing citizens and motor vehicles. The identity checks of citizens are carried out at their entering zones of limited access or sites guarded by the police.

E. After a cooperation requirement by another government body, as stipulated by law

Another government body must file a requirement - the court or municipal administration, officials of financial, sanitary or other services.

The citizens do not have the right to require cooperation from the police in their performance of identity checks, unless this is related to a crime or public order violation.

2.5.2. International Standards for Non-allowance of Rights Violations in Identity Checks

The police officer cannot stop and check the identity of everyone. His actions must be in compliance with the following international acts:

- The European Convention on Human Rights and Fundamental Freedoms – art.3, 14
- The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – art.1
- The Declaration on the Police of the Council of Europe – art.2, 12
- The UN Code of Conduct for Law Enforcement Officials – art.2, 7

The actions for establishing identity are strictly regulated. The check for establishing identity cannot be done in a way degrading for the reputation and human dignity of the person who is being checked. The check cannot violate the prohibition against torture, inhuman or degrading treatment or punishment, subject to art.3 of the ECHR. No exceptional circumstance exist that may allow any cruel, inhuman or degrading behavior of the police officer.

In their work, police officers must carry out their obligations without any discrimination based on sex, race, ethnic background, religion, convictions etc. According to art.14 of the ECHR, the rights and freedoms provided for in the Convention must be guaranteed without any discrimination. This text is not directed against the discrimination in principle, but in relation to the rights and freedoms guaranteed by the ECHR.

According to art.1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the actions of police officers cannot aim at scaring or forcing a person and they cannot be based on any form of discrimination. The direct participation of a police officer in instigation to or silent agreement with such actions is not allowed.

Important

The principles of equality and non-discrimination are violated if there is a different attitude towards similar cases, without any objective and reasonable cause, and if the used means are inadequate to the purpose.

2.5.3. Practical Police Actions Directed Against Violation of Human Rights During Identity Checks

During an identity check, police officers enter into direct contact with citizens. The police officers must act honestly, with dignity and with the necessary impartiality.

Ways to establish an identity:

- showing an ID card, passport or another official document, for example - driver's license, service card etc.
- if there is no identity document or other official documents, the police officers may use information from citizens with established identity who know the person - relatives, neighbors, relatives, friends, colleagues, etc.
- other ways of establishing the identity may be used. They require that the police officer is certain that he will receive reliable information on the identity of the checked person. For example, it is possible for the police officer to make a telephone call to the stated relatives of the person, to visit his address or the address of his relatives, etc.

Usually, the police officer decides whose identity to check and when to do so. This depends on the nature of the duties in question and of the nature of each specific case.

If the identity cannot be established, the person may be detained in the respective police department - art.70, para 1, cl.5 of the Ministry of the Interior Act.

During the check, the police officers must identify themselves by showing their service card (if they are in plain clothes), their badge and state their rank, name and the police structure where they work.

During the check, the police officers cannot remove the identification document. This can only be done if the person has been detained, imprisoned, detained under art.70 of the Ministry of the Interior Act or in other cases provided by law. The removed document is to be returned after the grounds for taking it away are no longer valid.

Important

The undertaking of identity checks imposes limitations on persons object to those checks. However, if the actions are in conformity with the law, their guaranteed rights will not be violated - only limited. The actions on establishing an identity are strictly regulated.

During the check, police officers must have in mind that the person is innocent until proven guilty and their behavior must be in conformity with this presumption. The police officers cannot undertake any discriminative actions. The identity check cannot be carried out in a way damaging the reputation and human dignity of the checked person.

Exercises

The following exercises aim at helping the practical training of police officers. It is recommended for trainers and chiefs when conducting training for the protection of human rights also to use examples from their own experience.

Exercise 1

SP, a woman of Romany descent, was selling goods at the cooperative market of the city P. At the beginning of the working day, the police officer responsible for the security of the market approached SP and began checking her documents and goods. After he found no irregularities, he tried to chase her out with the words: "Get out of here so that I wouldn't see your ugly face." She refused to leave. The police officer then took her ID card and, using physical force, took her to his service premises. There he continued to beat her with a club and kick her. The next day, SP filed a complaint at the Prosecutor's Office.

Questions:

- Do you think the police officer had grounds for checking SP?
- Which human rights were violated in this case?
- Please, comment on the way of carrying out the check
- For police chiefs: How would you react if you receive information that an officer of yours has acted in the described way?

Exercise 2

A police car patrol stopped a passenger car for a check near the town of Sh. In the car were three young men without papers. In the trunk of the car, the police officers found goods, suspected to be stolen. The police officers ordered the young men to get out of the car and lay on the ground. One of them did not obey and was hit with a fist in the face. After that, he laid on the ground, but the police officers continued to kick him. The young men were taken to the Regional Police Department and detained there because it was established that the goods were actually stolen. The beaten young man complained from strong pain and swelling of the jaw. A doctor consulted him but since he was not a specialist in a facial surgery, an exact diagnosis was not made. During the next few days, his condition worsened and after a week he was put in a hospital in the county center. There it was established his jaw was broken.

Questions:

- Please comment on the professionalism in the police officers' actions
- Which human rights were violated in this case
- Please give examples from your own experience regarding the check of belongings, persons and motor vehicles in relation to the human rights protection.

Key positions:

- During identity checks, there is a danger of violating the prohibition against torture and inhumane or derogatory treatment or punishment as well as the prohibition against discrimination. This requires training in conformity with the requirements for police officers, police chiefs and control during the performing of these powers
- The identity checks carry a risk for the police officers performing them. Their actions must be adequate to the specific situation and avoid creating danger, both for them as well as for the citizens
- During the contact with the citizens, the police officers must be ready to listen to the persons they are checking and to show tolerance and patience

2.6. Personal Search, Check of Personal Belongings, Motor Vehicles and Premises (Police Search)

This text will answer the following questions:

- What are the requirements of the international and internal acts regarding the human rights during police search
- What should be the actual actions of the police officers in order to comply with the above acts

The subjects includes:

- Cases illustrating when police officers have the right to carry out personal search, check of personal belongings, motor vehicles and p remises
- International standards
- Exercises for the trainees
- Key positions that must be known

The trainees must understand that the person is untouchable. The intrusion in the personal life of citizens by the police must be minimal and only in cases stipulated by law and the police actions must be adequate to the purpose to be achieved.

MINISTRY OF THE INTERIOR ACT

Art.73 /1/ The police officers may carry out personal search of persons:

- 1. detained as per art.70, para 1**
- 2. If there is information that they carry dangerous and prohibited objects.**
- 3. Persons, found on place where a crime or violation of the public order were committed, when there are enough data to believe they are carrying objects related to the crime.**

/2/ A personal search can be carried out only by a person of the same sex as the searched person.

Art.74/1/ The police officers may check personal belongings of persons:

- 1. in the cases as per art.68-70;**
- 2. when there is sufficient information that there are hidden material evidence for committed crimes.**

/2/ The check of a motor vehicles may be carried when there are data for carried out public order violation.

Art.75/1/ For all cases of a personal search, check of belongings and motor vehicles, the police officer must prepare Protocol signed by him, by one witness and by the respective person, and one copy of the protocol is given to the respective person.

/2/ The personal search, check of belongings and motor vehicles must be carried out in a way damaging the reputation and human dignity of the citizens.

Art.75/1/ For all cases of carried out personal search, check of belongings and motor vehicles, the police officer must prepare Protocol signed by him, by one witness and by the searched person, and one copy of the protocol is given to the searched person.

/2/ The personal search, check of belongings and motor vehicles must be carried out in a way damaging the reputation and human dignity of the citizens.

Art.76/1/ The police officers may carry out search of premises without the agreement of the owner or occupant or in their absence, only when:

- 1. they must prevent threatening or started serious crime;**
- 2. they must render immediate help to persons whose life, health or personal freedom are in danger, or in other cases of absolute necessity.**

/2/ The police officers, after the end of the search of premises, must prepare Protocol stating the name and position of the police officer and his place of work, the identity of the owner or occupant, the grounds for the search, the time and place of the search and the results from it. The Protocol shall be signed by the police officer, one witness and the owner or occupant of the premises, if he is present. The refusal of the owner or occupant to sign the Protocol shall be certified by the signature of the witness. A copy of the Protocol shall be given to the owner or occupant of the premises.

/3/ The prosecution authorities shall be immediately informed of the search.

2.6.1. When can a Police Search be Performed

Police officers may carry out personal search of persons in the following cases:

- If they are detained as per art.70, para 1 of the National Police Act
- In all cases of detention of persons, police officers must carry out a personal search
- If there is information that they carry dangerous and prohibited objects
 - The performance of a personal search on these grounds requires the presence of information that a person carries dangerous and prohibited objects
 - If the carrying of such objects creates danger for the person himself as or for the life and health of bystanders

- The police officers must watch for discovering dangerous objects carried by persons at public places
- Persons found on a place where a crime or violation of the public order has been committed, when there are enough data to believe they are carrying objects related to the crime
 - grounds for a personal search may be the existence of information and suspicion that some persons present at the place of the offense, are holding objects, documents or other objects related to the offense
 - the police officers must not allow any material evidence that may help the investigation and solution of the crime and his perpetrator, to be covered, hidden or throw away.

Check of personal belongings may be carried out in the following cases:

- for the identity check of a person
- during the detainment of a person
- when there are enough data to establish that the person is hiding material evidence for a committed crime
- check of a motor vehicle can be carried out when there are enough data for a committed violation of the public order

Police officers can carry out check of premises without the agreement of the owner or inhabitant or in their absence in the following situations:

- in order to prevent an immediate, forthcoming or started serious crime
- if there is information saying that a person who committed a serious crime is hiding at the premises
- to render an urgent help to persons whose life, health or personal freedom are in danger, or in other cases of utmost necessity

2.6.2. International Standards for Non-allowance of Human Rights Violations in Police Search

During police searches, it is of utmost importance to comply with the right to respect of personal and family life. The main international acts on this issue are:

- The European Convention on Human Rights and Fundamental Freedoms – art.3, 8
- The Declaration on the Police of the Council of Europe – art.15
- The Code of Conduct for Law Enforcement Officials – art.4

According to art.8 of the ECHR “1. Everyone has the rights to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercises 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.”

The ECHR gives a right to anyone to have a personal and family life and it protects the inviolability of person’s correspondence and home. The invasion of the police in the private life of citizens must be minimal. Each member of society must determine his own way of life, creating and maintaining relations with the people in order to express his own personality. According to the ECHR this right to freedom is subject to the following limitations in the best interests of:

- National and public safety or the economic prosperity of the country
- Preventing riots or crimes
- Protection of health and morality
- Rights and freedoms of other citizens

During performance of personal search, check of personal belongings, motor vehicles and premises, police officers often find confidential information regarding citizens’ personal life. It is absolutely prohibited to disclose that information. It must be treated as service secret and is only to be used for the carrying out of police duties or for the needs of justice.

2.6.3. Practical Actions of Police Officers Directed Against Human Rights Violation in Police Search

A. Personal search

A personal search can only be performed by a person of the same sex as the searched person, except when the searching person is a medical doctor.

The carrying out of personal search is a justified exception of the international principle of inviolability of the person and this police action must be carried out in a way that is not derogatory to the honor and dignity of the searched person, for example: persons to be undressed on public places, in the presence of other people; to be insulted or threatened, foul language to be used against them, etc.

For the performance of personal search, police officers must prepare a protocol.

The protocol for a carried out personal search must be prepared even if nothing has been found on the searched person. The Protocol shall be signed by the police officer who carried out the search, by one witness and by the searched person. The searched person has to be given one copy of the prepared Protocol.

Important

The Protocol must contain all actions carried out by the police officers, the behavior of the searched person, all objects, belongings and documents found, which must be characterized with their specifics, the data of the witness present at the search.

B. Check of personal belongings and motor vehicles

The personal belongings subject to the check are those found in the pockets of the person, in his personal bag and the luggage carried by him.

The check of a motor vehicle includes:

- check of the papers of the persons in the motor vehicle
- check of the drivers license of the driver
- check of the documents of the motor vehicle and the transported cargo

The check of belongings and motor vehicles must be carried out in a way not damaging to the honor and dignity of the citizens, with confidence and calm, without any harassing or insults or accusations.

The police officer carrying out the check must identify himself before the citizens, stating his rank, surname and the department he works at.

The police officer must inform the citizens subject to the check of the grounds and purpose of his actions.

For the safety of the police officer and citizens driving the motor vehicle, the check of the motor vehicle must be carried out when the motor of the vehicle is not running.

For all cases of check of belongings and motor vehicles, the police officer must prepare Protocol.

Important

The Protocol must state the date and place of the check; the names and place of work of the police officer carrying out the check; the grounds for the check as stated in the law; the checked personal belongings; the evidence and material evidence found; in case of a check of a motor vehicle, the protocol must state the registration plate, color, make and other identification data.

C. Check of premises

The lawful search of premises limits the personal life of citizens without necessarily violating the inviolability of home and the principle of non-interference in the private sphere.

The sudden interference of premises without the agreement of the owner or occupants or in their absence may be very risky to the police officers and the persons at the premises. The police operations for search of premises must be correctly planned and prepared.

The search of premises may be carried out simultaneously with other police actions: identity check, personal search, check of personal belongings, and detention of a person. They shall be applied when there are grounds for them, in order to achieve the purpose of the search. All police activities undertaken must be in conformity with the law.

When the persons found at the place of the search need help, the respective measures for protecting their life and health shall be undertaken.

In all cases of check of belongings and motor vehicles, the police officer must prepare a protocol.

Important

The Protocol must state the name and position of the officer and his place of work, the identity of the owner or inhabitant, the grounds for the check, time and place of the check, and the results of that check. The protocol is signed by the police body, by one witness and by the owner or inhabitant of the premises, when he is present. The refusal of the owner or inhabitant to sign the record shall be certified by the signature of the witness. A copy of the record shall be given to the owner or inhabitant of the premises.

The prosecutor's office shall be notified immediately of the check.

Exercises

The following exercises aim at helping the practical training of police officers. It is recommended for trainers and chiefs when conducting training for the protection of human rights also to use examples from their own experience.

Exercise 1

A police patrol met the person KL during their night duty. KL had a criminal record (he had been convicted of theft in the past.) The police officers knew him, stopped him and carried out a personal search during which they did not find any suspicious objects. No protocol was drawn up. When KL asked why he was being searched, police officers answered that they will do this each time they meet him.

Questions:

- What do you think of the professional actions of the police officers?
- Which human rights are violated in this case and how?
- For police chiefs: Do you approve of such actions against criminals?

Exercise 2

A police operative was informed that the citizen M.Ch. was hiding stolen goods in his home. Without taking any additional actions to confirm the information and without informing his superior, the police officer

decided to carry out a check on the address. M.Ch. refused to let him enter his home and asked a judicial order for the check. In response to this, the police officer called for some colleagues and with their help he carried out a check of the premises despite the objections of the owner. Nothing was found during the check. M.Ch. filed a complaint at the prosecutor's office for the police actions.

Questions:

- Were the actions of the police officers lawful?
- Were human rights violated and how?
- For police chiefs: How would you carry out the check and how would you react if you receive information of such actions done performed by your officers?

Key positions:

- During the carrying out of a personal search, the police officers must not allow any violations of the prohibition on inhuman or derogatory treatment
- The police officers must not allow any behavior or act discriminatory to the citizens subject to personal search
- The possibility to use force against a searched person must only be considered in case of absolute necessity and must be corresponding to the threat in each specific case
- In their direct contact with citizens during a personal search, the police officers must use their communication skills. The aggression and confrontation must be replaced by tolerance and psychological influence

3. POLICE WORK WITH VULNERABLE SOCIAL GROUPS

The purpose of the chapter *Police Work with Vulnerable Social Groups* is to introduce the trainees to the particularities of the police work in connection with some social group, which due to their specific social status need specialized protection. This makes the problem of protecting their human rights especially important in the performance of police functions.

For this purpose, we will review police actions in respect to three social groups:

- Minors and juveniles
- Women-victims of domestic violence
- Minority groups

This chapter aims at teaching police officers the requirements of international acts regarding the protection of vulnerable groups and the leading principles in the work of police officers.

The most important contents is the following:

- Regarding minors and juveniles; taking measures for educating, stopping and protecting these persons
- Regarding women-victims of domestic violence; rendering cooperation to the effective investigation and solution of their cases. This area must be subject to future legislation.
- Regarding minority groups; tolerance and integration into society

3.1. Police Work with Minors and Juveniles

This text will answer the following questions:

- International standards on the rights of and work with minors and juveniles
- How should police officers work with minors and juveniles?

The discussed subject includes:

- International standards on children rights
- Main issues in carrying out police protection of children
- Functions of the local committees for combating antisocial acts of minors and juveniles, juvenile delinquency cabinets and homes for temporary accommodation of minors and juveniles

Police officers must realize that in the work with these categories of persons, the priority must be the achievement of a correctional, educational and stopping effect. In this activity, they must seek public support and assistance.

3.1.1. International Standards on Children's Rights

The Republic of Bulgaria ratified the Convention for Children Rights by Decision of the Great National Assembly as of 11th April 1991. The basic principles laid down in the convention are the following:

- Children have a right to special care and help
- The main cell of the society is the family, and the children must be rendered the necessary protection and help in order to enable them to adequately undertake their responsibility in society
- The child, due to his physical and mental immaturity, needs special guarantees and care

Let's specify the term

The term "child" as per the Convention means all human beings under the age of 18, unless otherwise is stated in the law.

As a party to the Convention on the Rights of the Child, The Republic of Bulgaria must respect and provide the rights provided for in the convention to each child within its jurisdiction. This must be done without any

discrimination on the grounds of race, color, sex, language, religion, political or other ideas, national, ethnic or social origin, property status, handicap, birth or other status of the child or his parents or legal guardians.

The best interests of the child are the primary concern in all actions related to the children undertaken by public or private institutions for social help, courts, administrative or legislative bodies.

According to the Convention, each child has an irrevocable right to life.

As a party to the Convention, The Republic of Bulgaria must take measures for combating the illegal transfer and non-return of children from abroad.

The Republic of Bulgaria must undertake all necessary legislative, administrative, public and educational measures for protection of the child from all forms of physical or mental violation, lack of care, or negligence, maltreatment or exploitation, including sexual crimes. The police must prevent and uncover the cases of maltreatment of children.

- No child can be subject to torture or other cruel, inhuman or derogatory treatment or punishment
- No child can be deprived of freedom illegally. The detention of children must be according to law and for the shortest possible term
- Each child deprived of freedom must be treated humanely, with respect of his human dignity and in such a way as to take care of the needs of the persons of his age
- Each child deprived of freedom must be separated from adults unless it is believed that it is in the best interest of the child not to do so, to allow him the right to have contacts with his family by correspondence and visitations, unless in extreme circumstances
- Each child deprived of freedom must have immediate access to legal and other necessary assistance as well as the right to contest the lawfulness of the detention before a court or other competent, independent and impartial body, and to a quick decreeing

The police work with minors and juveniles is related to a category of persons that may be perpetrators of anti-public offenses, as well as endangered by dangerous and harmful influence. Of this reason, the work extends from prevention and uncovering of crimes to humane interference for help and protection of vulnerable persons. Such scope of work cannot be carried out only by the police. The participation of the whole society is necessary in order for the offenders to be reformed and corrected and the children in the risk zone to receive help.

3.1.2. Main Issues in the Carrying out of Police Protection of Children

The police protection represents urgent means provided by police bodies. It is used in conditions of danger.

A police protection can be provided when the child:

- is an object of a crime
- there is immediate danger to his life or health

- there is a danger the child to be involved in committing a crime
- has been lost
- has been left without supervision or is in helpless condition

In performing these measures, the child must primarily be removed from the environment or people that have or may have harmful influence on the child. Following, the circumstances that led the child to this state must be cleared. In the process of the police protection, measures are taken to eliminate the causes endangering the physical, mental or moral development of the child together with the social workers in the municipal services for social aid (MSSA).

A police protection is provided after a request by:

1. the child
2. a parent or person entrusted with parental functions
3. a social worker
4. a representative of the municipal administration or member of the local committee on combating antisocial behavior of minors and juveniles
5. police body
6. prosecution
7. court.

The police protection must not exceed a term of 24 hours, at any time of the day or night. The police protection will be terminated after the circumstances requiring it have ended or after the end of the term.

It is possible for police security to be provided for the child during the police protection. The police security is required when:

- the child is subject to a crime or the access to him must be limited
- his physical, mental or moral development is endangered

A police security is provided by police officers, by order of the chief of the Regional Police Department or an officer authorized by him.

A child for which a police protection is required, shall be immediately placed in the Home for Temporary Accommodation of Minors and Juveniles (HTAMJ) at the Ministry of the Interior, according to the requirements of the Combating Antisocial Behavior of Minors and Juveniles Act (CABMJA) and the Regulation on the Organization and Operation of the HTAMJ, when:

- his residence cannot be established
- it is established that the child is begging, prostituting, drinking or using drugs

- the child has left an institution for obligatory education or forced medical treatment without permission
- the child has committed antisocial actions

The police officer carrying out the protection of a child shall:

- establish the identity of the child
- establish the parents or persons entrusted with parental functions
- introduce the child and explain to him, comprehensively, the measures undertaken and the grounds for them
- organize events for the performance of police protection, perform them, and after the expiration of the term of the protection, report as required
- enter all data in the Diary for registering children provided with police protection

The police officer who has undertaken a protection of a child shall immediately notify:

- the parents of the child or the person entrusted with parental functions
- the municipal social service in the region of which the protection has been provided
- the municipal social service in the territory of which the child lives
- the regional prosecutor's office on which territory the measure has been undertaken

A Notification Letter shall do the notification.

If the child for which police protection has been provided, is a foreign citizen, except for the above mentioned, the duty officer in the Regional Police Department shall also be notified. This duty officer shall notify the respective embassy or consular office as required.

The child under police protection shall be placed in suitable premises in the Regional Police Department or in separate premises in the HTAMJ. In this case, it is not allowed for the child to communicate with persons that may have harmful influence on him.

3.1.3. Local Committee for Combating Antisocial Behavior of Minors and Juveniles (LCCABMJ)

For carrying out the activity for preventing and combating antisocial behavior of minors and juveniles and for providing for the normal development and education of the perpetrators, local committees for combating antisocial behavior of minors and juveniles are created at the municipalities or regions.

The bodies of the Ministry of the Interior cooperate with and help the government bodies and public organization in their combating antisocial behavior of minors and juveniles.

By suggestions of police officers, the local committees consider the offenses of minors and juveniles.

If the minor or juvenile as well as the parent or the person acting as parent do not appear, the local committee files a written request to the police for their forcible bringing.

3.1.4. Juvenile Delinquency Cabinets (JDC)

Juvenile delinquency cabinets are opened at the municipal councils. If necessary, such cabinets are opened at the regions and some municipalities. Inspectors head the juvenile delinquency cabinets with higher education in pedagogic, appointed by the Minister of the Interior. The juvenile delinquency cabinets are specialized establishments that participate in prevention of crimes and antisocial actions carried out by minors or juveniles.

The juvenile delinquency cabinets work for protection of the rights, life, health and property of minors and juveniles from criminal encroachments. They also act in order to uncovering, studying and removing the factors for committing crimes and antisocial actions by and against minors and juveniles.

The functions of the JDC inspectors are specified in detail in the Regulations on Juvenile Delinquency Cabinets. They participate in the activity of the HTAMJ, provide the necessary information on the structure, dynamics and tendencies of children crime, make concrete offers for influencing minors and juveniles registered at the JDC, suggest considering of educational cases against minors and juveniles in the cases as per the CAAMJA, as well as measures against parents or persons performing their functions.

The documentation and the archive of the JDC is used only by the bodies of the Ministry of the Interior, prosecution and court.

3.1.5. Homes for Temporary Accommodation of Minors and Juveniles (HTAMJ)

Minors and juveniles are placed in homes when:

- their residence cannot be established
- they have been caught to wander, beg, prostitute, abuse with alcohol, distribution or use of drugs or other intoxicating substances
- they have left an institution for obligatory education or forced medical treatment
- they have committed an antisocial action and have been rendered to such condition of uncontrollability that makes it unsuitable for them to live with their parents or with the persons performing parental functions

When there is no possibility for these persons to be placed in the homes immediately, they are placed in separate proper premises of the respective Regional Police Department, where they cannot spend more than 24 hours.

The placing in homes cannot exceed 15 days. The prosecutor must approve a stay lasting more than 24 hours. In exceptional cases, the term of placing in the home may be extended up to 2 months by decision of the respective prosecutor.

The persons placed in the homes shall be distributed in different dormitories depending on their sex, age and the grounds for placement.

Appointed at the HTAMJ shall be:

- managers with higher education in pedagogic or law
- pedagogues, psychologists, psychiatrists, medical doctors with higher education
- evacuators, duty personnel and drivers
- administrative and technical personnel

Medical-psychological council shall be created at the HTAMJ, chaired by the manager of the home and his consultative body. In the council, psychologists, pedagogues and psychiatrists - medical doctors participate. Persons in obviously helpless condition cannot be placed in the HTAMJ. Persons in such condition shall be accepted and immediately taken to the respective health or other specialized establishment for receiving competent help.

Minors and juveniles shall be accepted at the HTAMJ at any time. The person on duty in an Acceptance Diary shall register minors and juveniles brought to the HTAMJ. The Diary shall also include information on the identity and address of the brought person, the names and exact address of parents or people performing their functions, the grounds for bringing them in the home and who brought them.

The identity shall be established as per art.68 of the Ministry of the Interior Act. If necessary, identification actions shall be undertaken as per art.69 of the Ministry of the Interior Act. If it is impossible to establish the identity of the person brought, the person on duty shall immediately notify the Regional Police Department in the area of the home and the Directorate of the National Police Service.

After acceptance, minors or juveniles are given the respective hygienic, and if necessary - sanitary services. Those accepted in non-working hours are placed in an isolator where they remain until the Manager of the home arrives. A protocol is made for the removed clothes, money, documents and other belongings, that they have no right to keep. The protocol is made in 2 copies, one of which remains with the belongings and the other is given to the person.

The persons accepted in the HTAMJ shall immediately be subjected to a medical examination, for which a document is issued. If necessary, the person should be send for examination and treatment in a hospital.

The Manager of the home must accept the minor or juvenile no later than the next day.

The Manager carries out the placing of children in the HTAMJ after an interview with them. For each person placed in the home, a registration file is made signed by the Manager. After the placing, the Manager shall distribute the minors and juveniles to dormitories and shall define the duties they will carry on.

The following groups should be placed separately:

- boys and girls
- juveniles and minors
- perpetrators of crimes or antisocial actions and the rest

The parents or persons performing parental functions shall be informed of the placement of the children in the HTAMJ, as well as the inspectors of the JDC at the place of residence. If the children have left an establishment where they were placed, this establishment should also receive information about the placement.

The following measures shall be taken no longer than the next day after placement:

- establishing the address of the minor and juvenile
- finding the parents or people performing parental functions, of minors and juveniles, or their placement in establishments for obligatory education or forcible treatment
- establishing, whether the minors or juveniles have left without permission
- placing the perpetrators of crimes or antisocial actions in establishments for obligatory education or forcible treatment
- The Manager of the home shall terminate the stay at the home. The order for termination of the stay shall be registered in the registration file, with the signature of the Manager

The persons placed in a HTAMJ shall have the right to:

- free food as per the standards of MZ 1-93/10.06.1991, Chapter 14, cl.4.1., and the registration for food - on the grounds of Chapter 6, cl.5.4. of the same Order
- free clothes, shoes, bedroom and toilet requisites
- free treatment, which includes free drugs when they are prescribed by a physician
- uninterrupted time for sleep for 9-10 hours each day, on a separate bed
- spending no less than 3 hours a day outside. The children placed in the home have a right to visitation, correspondence and to receive parcels. The Manager of the home may forbid visitation and correspondence with persons when there is a danger of harmful influence on minors or juveniles.

The persons placed in the HTAMJ have a right to access to papers, electronic media and books. The persons, who are placed in the home, shall be provided with free food until the time of evacuation. If minors and juveniles do not have the clothes, underwear and shoes necessary for the season when their stay in the home terminates, they are provided to them if they have no money.

The persons in the home must observe the internal regulations. The minors and juveniles violating the internal regulations, may receive the following disciplinary punishments:

- reprimand
- warning
- isolation up to 3 days in a solitary room

Gratitude and awards may encourage the exemplary conduct of minors and juveniles. The punishments and encouragements are made with a written order of the Manager of the HTAMJ.

It is prohibited to apply punishments related to physical violence and deprivation from food, water, or physiological needs.

Under the management of the Manager, the following work is carried out with the persons placed in the HTAMJ:

- educational work
- health and moral education
- cultural, sport and labor activity

If necessary and after order by the Manager of the home, minors and juveniles may be subject to complete or partial medical-psychological research. The results of the research shall be send to the body that ordered it and to the inspectors of the JDC. The body that carried out the research shall suggest concrete measures for influence.

The HTAMJs are occupying specially built or adapted buildings, corresponding to the sanitary and hygiene requirements, with a yard and a fence. Each home must have:

- cabinet for pedagogues
- cabinet for the psychologist
- cabinet for the physician and surgery
- dormitories
- single premises for isolation
- kitchen
- sanitary-isolation rooms
- hygiene premises /wash-basins, bathrooms, WC
- study rooms with the respective audio and video aids, and library
- workshops
- premises for sports
- warehouses and other administrative premises

Exercise 1

A Regional Police Department received a report on theft. The duty operative group visited the place of the crime and soon, by descriptions of eyewitnesses, caught the alleged perpetrator. This was the 15-year old CP, registered at the JDC. The boy was also registered in the hospital with diagnosis Epilepsy and Oligophrenia. CP was taken to the Regional Police Department, where he was accepted and identified by the officer on duty. He tried to call the JDC inspector of the home but didn't succeed. CP was entered into the book of brought persons and after a search of his clothes by the duty officer, he was placed alone in the arrest premises.

After about half an hour, cries and knocking were heard from the arrest. After the door of the arrest premises was opened, CP went out with burning clothes. As the fire was put out, CP was placed in hospital for treatment. It turned out that the police officer, which did the search did not notice the gas lighter CP used to start the fire.

Questions:

- Did the police officers act correctly? Are there more violations beside the mistake of the duty officer?
- What would you do in such a case?
- Is there a violation of human rights in this case?

3.2. Women-victims of Domestic Violence

This text will answer the following questions:

- What is domestic violence and why it is important in police work?
- How should police officers act in a case of domestic violence?
- Which are the most often cases in police practice?

The discussed issue includes:

- Nature and forms of domestic violence
- Practical actions of police officers
- Identification of the violation and gathering of evidence
- Acceptance in Regional Police Departments

3.2.1. What is Domestic Violence

The cases of domestic violence are some of the most frequent cases in police practice.

Police officers may be the first witnesses of the violence.

The reaction of the police regarding the victims has important effect on the later events, both for protecting the safety of the victims and for their protection from further violence. Therefore, it is very important for the police officers to understand the delicate problem of domestic violence in order for them to be able to provide adequate help to the victims.

The police actions must allow the women-victims of violence to receive the necessary protection, as well as information and help for collecting and presenting proof of the suffered violence.

Important

What is domestic violence?

This is a process during which an intimate or marital relation uses an aggressive, violent or destructive behavior for the human individual. In most of the cases, the man applies the violence.

The violence may take various forms:

- Verbal; insults, extortion, threats
- Psychological; contemptuous behavior or words, diminishing the opinion, values and actions of the woman
- Physical; hitting, beating
- Sexual; unconventional sex, accompanied with physical violence and threats, group rapes, forcible showing of pornographic films
- Economic; depriving of basic means of existence, and in this way controlling the behavior of the woman

This process develops in time with repeating incidents, often getting graver, which leads to physical injury and serious psychological trauma.

Not only is violence a serious symptom for the marriage or a problem relation, but it is an unacceptable behavior that must be punishable by law. According to many studies, the domestic violence develops in stages; its intensity and frequency increase in time and may lead the woman to suicide or to increase the risk of murder.

After the crisis, the relationship is often restored. The man, afraid to lose his partner, diminishes the facts, justifies his behavior with external reasons, promises that this will never happen again and returns to his normal behavior. This visible change makes the woman hope that he will no longer use violence if she adjusts her behavior and is more tolerant. These are the so-called “honeymoon” periods.

The woman in the environment of domestic violence may be subject, daily, to contempt, excessive control and aggressive behavior; she lives in fear and insecurity, focusing on the moods of her partner. The home for the woman is not a place of peace and security, but rather a place where she is subject to abuse every day.

Important

Who are the victims?

There is no group portrait of the women-victims of domestic violence and there is no factor that may predetermine the possibility of a woman becoming a victim to such violence.

The domestic violence is not a destiny for a specific group of the society, it is found in all social, economic and cultural groups, in all ages, in the cities and villages, it does not depend on the level of education, religion or ethnic background.

Contrary to many assumptions, most victims of domestic violence are working and have an income of their own. It is mistaken to believe that a beaten woman is consciously provoking the violence, or that she is staying with this partner because of pure masochism or the need to be dominated.

No woman would like the humiliation and destructive influence in a relation where violence exists.

The reasons the women often remain with their violent partners are:

- hope that they will change the situation and their partner will change his behavior
- to protect the family and not to deprive the children of a father, if the children are not threatened by such violence
- due to external pressure, for example - the relatives do not approve. A woman wishing to get out of such a situation is often on her own against everybody
- the feeling of isolation and the lack of any support
- fear of poverty and reasons of purely material nature - to find a home, work, etc.
- physical and mental condition. The undertaking of official actions required vitality and internal strength, lacking in many women-victims of systematic violence
- grave threats, fear of repression against them, their children or relatives, threat of suicide by the husband, which become more frequent when the woman decides to break up with him
- lack of knowledge of her own rights, prejudice and internal inhibitions regarding judicial institutions

3.2.2. How should Police Officers Act in a Case of Domestic Violence

There is no law in the Republic of Bulgaria protecting women-victims of violence. Moreover, in the rare examples of initiated cases for domestic violence the fact that this is done by the husband is considered extenuating circumstance.

Important

What requires the involvement of the police in the home?

Involvement in cases of domestic violence is very delicate. In order for it to be effective, the police must protect the victim from further violence.

When calling for help on the phone, the victim may be upset, terrified, and insecure in her claims. Other people may make the call: children, parents, and neighbors. The main role of the duty officer is to calm the victim in order to obtain the necessary information, then to give adequate advice, while the patrol car eventually arrives.

The calls may concern different situations:

- crisis situation developing in the moment
- violence that has already taken place

According to the urgency of the situation, the behavior of the police officer must be different:

- In a crisis situation it is important immediately to learn the name and address of the victim, the floor, telephone number, the place from where she is calling and the place where the violence took place
- The duty officer must tell the caller that he is sending help in order to calm her. When police reach the place of the incident, police officers must obtain more detailed information, for example: description of the situation, is there any serious danger - armed person, number of the victims, is there a need for medical or other help
- If the victim and the children are in immediate danger, the police officer must talk them into staying on the phone until the help arrives. The victim may be advised to:
 - o close all exits, if the violator has left the place of the aggression
 - o to escape to the neighbors, if the aggressor is dangerous

If children make the call, it is very important that they are calmed down.

Despite the fact that it concerns the private life, domestic violence is an act of abuse that must be punished by the law and must not be ignored. This violence is a violation of the human rights of the victim, and has a priority over the protection of personal and family life.

The involvement of the police must happen in case of each call of a victim, neighbor, parent or other witness, even when these calls concern families already known to the police.

In case of each involvement in a domestic scandal, police officers must comply with the usual safety rules: if possible, enter into a preliminary contact with the person seeking help and with witnesses in order to establish if there are people in danger, if there is a weapon, if dangerous objects have been used. In this way the police officers will be able to comply their behavior with the severity of the situation. During domestic violence many women are exposed to serious risks as strangling, injury by cold steel, murder disguised as suicide, etc.

During each involvement, the police officer must:

- evaluate the immediate danger to the woman and the other family members, taking into consideration:
 - o the present behavior of the author of the violence - alcohol crisis, dementia, carrying weapon, threatening with violence
 - o the behavior of the victim (shock, depression) and her first information on the circumstances of the event
 - o the condition of the home
- In order to help restore the real calmness, stop the violence and provide the immediate security of the victim, to call if necessary specialized services - physicians, firemen, etc.

- To gather more information on the event, by listening carefully and separately to the victim, violator and witnesses.

To assume adequate behavior:

- Regarding the aggressor: to establish his identity and relation with the victim; to remind him of his responsibility of what has happened and of the fact, that regardless the reason for the conflict the use of violence is unwarranted
- Regarding the victim: to calm her down and listen to her; to question her on the facts of the suffered violence; to evaluate her situation and condition – isolation, presence of children, need of care, presence or absence of family or friendly support; advise her to visit a physician and to obtain a medical report on the beating or sexual violence; inform her of all her rights and the various possibilities she has – it is of utmost importance for the victims to be able to talk about their problems with persons who have the time and knowledge to guide them on to further actions (social workers, associations for helping women-victims of violence). The police officer should have the necessary addresses for the victims

3.2.3. Identification of the Violation and Gathering of Evidence

The police officer must be able to evaluate the gravity of the situation and to define its legal frames, since the conflict may have judicial continuation, both criminal and civil (divorce procedure).

He must gather all facts (addresses, name of witnesses, medical certificates) that may clear the circumstances of the violation. Several of the filed claims lead to nothing due to lack of evidence.

Cases of domestic violence where there is no offense against the person

The making of noise (cries, insults, breaking of furniture etc.) is the main element of the conflict. Even if no consequences are expected, the police officer on duty must ask the victim for the name and address and enter them in the Duty Book. The officer must include the facts in a report as of this date. In case of further worsening of the conflict, this information will be used as evidence in the procedure the victim may initiate.

Cases of domestic violence of more delicate nature

At first look the facts do not seem dangerous, but the situation, according to the testimony of the victim or according to the gathered additional information may worsen: the offender is agitated (use of alcohol or drugs); there is a threat of use of weapon or dangerous objects (kitchen knife). These elements of danger must not be neglected and must be described in the report of the police officer.

According to the gathered information:

- police officers should visit the apartment, led by the woman, in order to establish its condition, and in the presence of witnesses (neighbors) look for the weapon she has reported (check the weapon license)
- the violator may be tested for alcohol

Despite the serious assumptions of danger, this situation is still only an offense. In the risky situations, the police officer must help the woman and the children and together take the necessary protection measures.

Cases of domestic violence where there is an offense against the person

The situation becomes dangerous from the moment violence is expressed with hits and bodily injury inflicted by the husband or partner, whatever their severity.

The consequences for the violator shall depend on the type of the bodily injuries.

When the evidence on the committed offense is gathered, the adequate measures should be taken against the aggressor. The police officer must register evidence, and after the data are collected they should be handed over to the prosecutor. It is recommended that the victim be informed of the measures taken against her violator.

After the issue of a medical certificate stating the gravity of the bodily injuries (pierce wounds, burns, hemorrhages, breaks) as well as some invisible injuries (burst ear-drums as a result from a slap, aggression against pregnant woman, sexual violence), evidence must be gathered. In order to do so, the police officer must cooperate for the certification of the victim by the first medical help service, and then, if possible, by forensic doctor.

In cases of domestic violence where there is a danger of committing heavy crime, the offender must be detained immediately by the police officer.

3.2.4. Acceptance in Regional Police Departments

Often the women-victims of domestic violence highlight the significance they attach to the acceptance and listening in the Regional Police Department. The situations that may make a woman go to the police and report domestic violence, are different: she was thrown out by her partner; she looks to the police for help, in order to stop the violence; she came to file complaint; she came to withdraw a complaint.

In all those situations, the woman has suffered difficult moments she can no longer bear. She has the complex feelings of shame because of the situation, she is ashamed of herself, ashamed to have betrayed her partner who is the father of her children, but also fears further violence against her or her loved ones being a

subject to serious threats. At the same time, she may not be completely ready to accept the separation and hopes that the interference by the police may stop the violence. Due to all those reasons, her coming to the police is a difficult and painful step for the victim. In this regard, the officer accepting the victim must treat her in a suitable way, to calm her and to convince her that her action is correct, and at the same time to provide the necessary environment in order for her to share the facts that have led her to the police. During the interview, the victims must overcome their worry and embarrassment in order to be able to speak of intimate facts of their family life, related to the event. In this case, the officer must show respect, calm and understanding, in order to create a climate of trust.

The woman was thrown out of her home, alone or with the children

Together with the victim, the police officer must think of the possibilities for placing her with parents, relatives, in a hotel or shelter. When there is an organization in the town, providing consultations to women-victims of violence, the police officers must direct her to it.

The victim must be offered to file a claim. The woman must be advised to get a medical certificate. If the victim wishes to return to her home, the officer must evaluate with her the risks of the presence of the violator and take precautions. If the victim wishes only to take her personal belongings or those of her children, the police officer must, within his duties, accompany her to her home and provide her with adequate protection. If the woman was thrown out of a home that belongs only to her, she may require by the prosecutor's office to restore her access to the home.

The woman came to the police looking for help to stop the violence

In her confusion, the victim sometimes waits for the police to solve the problems she cannot deal with herself. Without stepping into the shoes of a social worker, the police officer must, however, listen to her and advise her of the steps she must undertake. It is advised that the women be directed to the social services dealing with victims of violence.

The woman came to file a complaint

Often victims come to file a complaint without realizing the procedural consequences of this. If, during the police check, the circumstances of violence are confirmed, a criminal procedure may be initiated. Notwithstanding whether a criminal proceedings will be initiated or not, the police has the following quite broad authorizations for protection of the victims. The police officer may detain the violator up to 24 hours, on the grounds of art.70 of the Ministry of the Interior Act. When an urgent help must be rendered to persons whose life, health or personal freedom is in danger, the police have the right to carry out search of the premises without the agreement of the owner or in his absence. In all cases of established violence, the police must warn the violator. In case of written warning, a protocol is prepared, warning the violator of the responsibility for such action. The warning Protocol is prepared in the presence of the perpetrator of the violence, where after he is acquainted with its contents. The protocol is signed by the police officer and by the perpetrator. The signature of the police officer certifies the refuse of the violator to sign it.

The woman wishes to withdraw her complaint

Often women-victims of domestic violence wish to withdraw their complaints. The reasons for this are many: on the one hand, during the check the perpetrator may influence the victim and convince her to change her position. On the other hand, there is no procedural possibility to separate the victim and the violator during the check.

The statement for withdrawing the complaint must not be generalized too quickly; the motives behind it must be understood.

3.3. Police Work with Minorities

This text will answer the following questions:

- Which international acts treat protection of national minorities?
- In what consists the national unity of Bulgarian people?
- What are the main principles for police work with minority groups?

This text also includes exercises.

3.3.1. International Standards for Protection of Minorities

The Republic of Bulgaria has ratified all international conventions on minorities' rights - the UN International Convention on Abolishing All Forms of Racial Discrimination, and the CE Framework Convention on Protection of National Minorities. The latter is not directly applied but works through the national legislation and suitable government policy.

According to art.5, para 4 of the Constitution of the Republic of Bulgaria, *“The international treaties, ratified, published and entered into force for the Republic of Bulgaria, are part of the internal law of Bulgaria. They have priority before the contradicting norms of internal legislation”*.

3.3.2. In What Consists the National Unity of Bulgarian People?

The Constitution of the Republic of Bulgaria established a general state structure of Bulgaria, which is decided only by the united and independent Bulgarian people. Art.1, para 2 of the Constitution of the Republic of Bulgaria prohibits the realization of the sovereignty of any part of the people, political party or another organization, state institution or individual person.

Important

The national unity is expressed in exact application of the main constitution principles:

- unity of the Bulgarian people
- equal constitutional guarantees for the dignity and rights of the individual
- equality of all citizens before the law, without limitations of rights and privileges due to race, nationality, ethnic background, sex, religion, education, convictions, political orientation, personal and public position or property status

The Constitution's main principle is the rights of the individual, his dignity and security. Equality is proclaimed to be a universal value together with freedom, peace and humanism.

Important

The term “national minority” has no legal definition in the internal law of the Republic of Bulgaria, but this must not be an obstacle for the work of the police in the real multi-ethnic society.

3.3.3. Which are the Main Principles for Police Work with Minority Groups

The region of the Balkans is full of movements of different ethnic groups. One of the main minority groups in the Republic of Bulgaria is the Romany population. Under the conditions of the real economic decline in Bulgaria, the police register increased criminal activity of the Romany. The ethnic prejudice against the Romany, the high level of unemployment resulting from the changed economic relations, the low level of education, low professional qualification, as well as their specific culture, make the task of integrating them into the Bulgarian society quite difficult.

The problem of their criminal activity is serious and cannot be solved by force measures. This requires that the police direct its attention to the Romany community with the purpose of increasing the trust in the police. One of the expressions of this attention is the realization of programs for attracting Romany to work in the police with the purpose that their ration in the Regional Police Departments to comply with the relative share of the Romany living in the respective territory.

The peace, stability and security in a country depend, in a great extend, on the possibilities of police bodies to effectively uphold internal order and security. Dealing with serious social conflicts requires more than understanding of the particularities of the social conflict. On the other hand, not understanding the responsibilities of the police may lead to danger of escalating violence and peaceful events becoming violent. The effective execution of police functions in the multi-ethnic society requires application of the principles of equality of the citizens in one state, tolerance towards the representatives of the minorities.

The equality of the citizens may be realized by undertaking effective measures and training for integration of minorities into the society. It is also necessary that the activity of the government bodies, including the police, is carried out without any discrimination due to race, religion or background.

Important

The principle of tolerance requires that the police officers practice their duties without minding race and prejudices. In order to apply this principle, it is necessary to study the culture, customs and traditions of the minorities groups.

The tolerance towards the minorities is closely related to observing:

- the prohibition on torture or cruel, inhuman or derogatory treatment
- the non-allowing of discrimination

Exercise 1

After information by a non-governmental organization, a check was made of the activity of the police officer GM - Regional Inspector in the Romany neighborhood of the town of B. It was established that GM carried out the interrogations on the entrusted tasks in the presence of a police dog that he set on the interrogated persons. The explanation GM gave was that in this way it was easier to uncover perpetrators of crimes, by obtaining their confessions. Moreover, it was established that GM often performed search in the Romany houses without approval or order and without preparing Protocol. He had established a police hour - 20:30, after which the Romany were forbidden to leave the neighborhood.

Questions:

- Are there similar cases in your practice?
- Please comment the professional actions of GM
- Which human rights were violated by the actions of GM?
- For police chiefs:
 - How do you train your officers for not allowing discrimination in their work?
 - Do you believe that if the public order in the Romany neighborhoods is maintained by Romany police officers, there will be better combination of professional efficiency and human rights protection?

Exercise 2

VA of Romany origin and with a criminal record entered the fruit garden near the town of P with the intent of theft of the picked fruits. The guard saw him and called the Regional Police Department. A patrol car arrived and VA was detained at the moment of theft. At the same time, the nearby group of about 30 Romany started towards the police officers with cries and screams. Gradually, a mob of about 200 Romany formed. More police cars arrived at the scene and were surrounded by the mob. The tension increased, the Romany started throwing stones. The police officers took out their weapons and started firing in the air. The mob pushed women and children ahead. Some of the police officers were wounded. In the clash, one of the Romany got a bullet wound but his life was not in danger. At the place of the incident, major police backups arrived and dispersed the mob. Then, by order of the regional director who received oral permission by the Ministry, the police officers moved to the Romany neighborhood, where they started massive check of individuals and homes. A plan was quickly drawn up for the checks, signed by the regional prosecutor. Stolen property was found and criminals in hiding were found and detained. In response to that, about 100 Romany held a demonstration in the center of the town the next day, requiring a meeting with the mayor, the regional prosecutor and the regional director. They were denied such meetings.

Questions:

- Are human rights violated in this case?
- For police chiefs:
 - Do you think there are mistakes and omissions in the training of the police officers that may be of importance for their actions in such cases?
 - Do you believe the police officers acted correctly?
 - Do you believe that if police officers of Romany origin were in the police teams, this would had have a calming effect on the tension and no excesses would have happened?
 - what measures would have you taken for not allowing the spreading of the incident?

Exercise 3

The investigation service in the town of N had opened an investigation case for committed crime. Besides the one, there were another 30 investigation cases and 50 correspondences, with 42 incriminated persons and 75 persons in different correspondences. Most of those people did not appear when subpoenaed. It was established that most of them were hiding in the Romany neighborhood of town. This required a large police operation for their apprehension to be planned in the Regional Police Department. The Director of the Regional Directorate of the Interior approved the plan of the operation. The mayor of the town and the regional prosecutor was informed of the operation and they had given their oral agreement. For the performance of the operation, police officers from neighboring towns were engaged. Some of the police officers were wearing camouflage. The operation started at 6:00 and almost all houses in the Romany neighborhood were searched. As a result of that, 39 searched persons were brought to the Regional Police Department, 14 of which were detained on remand. A physician examined all detainees, and no one complained about physical violence to him. Later, residents of the neighborhood filed many complaints to state bodies and justice organizations stating facts and circumstances of violation of their human rights.

Questions:

- Is some of the following rights violated in this case:
 - prohibition of torture and inhuman or derogatory treatment and punishment
 - right to freedom and security
 - prohibition of discrimination
- For police chiefs:
 - Was the decision of the police chiefs of the Regional Police Department for finding and detaining the searched persons correct?
 - If you were commanding such operation, how would you organize it?

4. APPEAL AGAINST ILLEGAL POLICE ACTIONS

The chapter *Appeal against Unlawful Police Actions* is aimed at acquainting trainees with the responsibilities born by the police and the state in the event of possible violations of human rights. In order to achieve this aim, the following will be examined below:

- The national means of appeal
- The international responsibility of Bulgaria in regards to the European Court of Human Rights in Strasbourg

The present chapter provides practical solutions to the trainee – solutions, that have been adopted internationally for supervision and control over police practice, as well as the interior means existing in our country. At the same time, an attempt is made to explain the usefulness of assessment and control of police actions.

Police officers' duties are of such nature that their legal performance limits the rights of the citizens, and instances where violation of these rights occurs are not few. This fact justifies the implementation of supervision and control over police practice.

A paradox exists: The main task of police officers is to defend and respect human rights and freedoms, and at the same time they are potential offenders of these same rights that they were called upon to keep and support. This is a result of the scope of the legal powers delegated to police officers, in view of the performance of their tasks and functions.

Police officers have to be aware of the fact that their actions will be subject to supervision and control. The perfect execution of their duties will reduce the attacks on their actions, and should a claim for offense arise, such execution would provide them the possibility to prove the lawfulness and correctness of their decisions and actions.

As it will become clear from the present chapter, citizens' claims are first of all directed to the interior authorities (through filing petitions or instigating legal civil or criminal proceedings). After the possibilities to remedy the consequences of police action and to receive compensation have been depleted, citizens are in the position to resort with their petitions to the European Court of Human Rights.

4.1. National Means of Appeal

After reading this text you will have the answer to the following questions:

- Which are the main principles of the correct law-abiding practice
- What is the aim when assessing the performance of individual police activity
- What is the role of police public relations
- What is included in the concepts of “responsiveness” and “accountability” in police activity
- What is the mechanism of appeal
- Which means exist for investigation of human rights violations
- What is included in the right of “efficient means of defense before a national authority”, guaranteed by art. 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms

4.1.1. Which are the Main Principles of Correct Law-abiding Practice

Police officers are expected to respect human dignity and to protect the human rights of all people (Art. 2 of the UN Code of conduct of officials responsible for keeping the legal order). This goal may be achieved subject to observance of the four principles that the correct law-abiding practice is based upon:

- Lawfulness
- Necessity
- Proportionality
- Ethics

4.1.2. What is the Aim when Assessing the Performance of Individual Police Activity

The most important aim when assessing the performance is the provision of a permanently high quality of police activity.

The level of individual performance activity related to the application of the law is determined by the concrete decisions taken by the individual police officer when performing his or her duties and by his or her personal qualities and qualification.

Another reason for assessing the individual performance is the need for motivating the individual police officers to perfect their abilities. Regular analyses of performance, professional planning of operations and extended training form only a part of the means for achieving this goal.

Besides, regulatory requirements exist that make it necessary to monitor, register and assess police practice. For example, when police officers have used arms against a person, they have to submit a report on the case to their chiefs.

4.1.3. What is the Role of Police Public Relations

Police is called upon to serve society. This justifies the expectations of the public with reference to the police institution, as well as the need for such activity and its adequacy. The kind and quality of police activity are determined by the capacity of the police to find out and analyze the requirements of the society it serves. The availability of telephone lines for emergency calls from people in distress does not exhaust the nature of the relation police-public. It is necessary to have access to all categories of population, to have connection with all segments of society and to provide easy ways to contact the police office.

4.1.4. What is Included in the Concepts of 'Responsiveness' and 'Accountability' in Police Activity

'*Responsiveness*' means the capacity of police officers to react adequately and exhaustively to the needs and expectations of the public.

The police have to increase its capacity for anticipating actions ahead of external changes in society, so that its capacity for adequate reactions may be expanded.

Police is accountable to society and to authorities as a whole. This requires and makes it mandatory to have transparency in its activity.

4.1.5. Mechanisms of Appeal

Application of the law is based on the assumption that all citizens in a society observe and obey them. This leads to situations where individual persons are not content with a particular decision or action made by a police officer, even if it is in accordance with the principles of lawfulness, necessity and proportionality. In such cases, petitions may be filed.

Important

Petitions relating to police activity must be investigated immediately, in detail and impartially.

In some countries, this requirement has led to the creation of a mechanism for independent civil control, which has the investigation of such petitions as the subject of its activity. The exertion of civil control over

the police activities when investigating petitions does not interfere with the possibility for citizens to instigate civil or criminal proceedings.

The regulatory basis of the Republic of Bulgaria is contained in:

- The Propositions, Signals and Petitions Act
- Instruction I-261/02.08.1983 on processing of propositions, signals, petitions and requests in the system of the Ministry of the Interior

In accordance with the regulatory basis, each citizen has the right to reveal any shortcomings within the operation of state and public authorities and of the individual officers, as well as to propose measures for the perfection of the social management. With reference to this, no one can be prosecuted because of a proposition, signal, petition or request. State authorities, including the police, are obliged to examine and to decide on the propositions, signals, petitions and requests within the specified terms, objectively and in accordance with the law.

For establishing the facts and circumstances, all legal methods and means may be used. No proceedings may be instigated base on anonymous signals.

The Minister of the Interior and the vice-ministers receive citizens and officers of the Ministry of the Interior periodically, at days announced in advance, and they hear and decide on their propositions, signals, petitions and requests.

Citizens and officers of the Ministry of the Interior are given a hearing every day by an official at the reception-room of the Ministry of the Interior. The chiefs of regional police offices, the heads of the national and territorial offices of the Ministry of the Interior and their deputies have reception days and hours and they receive citizens and officers of the Ministry of the Interior once a week. Reception days and hours are announced at places accessible for the public. On holidays and beyond the regular work hours, the officers on duty, who report to their chiefs on the next day, receive citizens and officers of the Ministry of the Interior.

Officers of the Ministry of the Interior who are assigned the task of making checks on propositions, signals, petitions and requests, are obliged to:

- Investigate all problems posed by the materials
- Talk with the persons that have filed them in and take the information supplied by them into consideration
- Talk with the witnesses pointed out by the petitioners
- Collect information for complete clarification of the factual situation
- Request assistance and information from state authorities and public organizations
- Take written explanations from the Ministry of the Interior officers against whom the petitions have been made and to acquaint them with the information from the check

At the Ministry of the Interior, the Directorate of the Police National Service and the regional directorates of the Ministry of the Interior, structural Petitions Units have been created to implement reception of citizens. The structural Petitions Units may perform official investigation of a particular case and may take measures to sanction the guilty persons.

The management of the structural units of the Ministry of the Interior examines and analyzes the overall work done with regard to the propositions, signals, petitions and requests at least once every month and take measures for the improvement of this work.

The Prosecutor's Office performs supervision in terms of lawfulness when examining the propositions, signals, petitions and requests and it takes measures to remedy the rights infringed upon and to protect the legal interests of the organizations and the citizens, as well as for prosecuting the guilty persons.

4.1.6. What Mechanisms exist for the Investigation of Human Rights Violations

Some countries have adopted the practice of implementing the protection of human rights by a national Ombudsman or committees on the human rights.

The Ombudsman (a single person or a group of persons) is usually assigned by the Parliament. The function of this institution is to protect the rights of people who believe they have been victims of the state administration.

The Ombudsman receives petitions from members of the public and investigates these petitions. In the course of investigation, it has access to the documents of the relevant state authorities. Based on the data obtained from the investigation, the Ombudsman prepares a recommendation, which is then submitted to the petitioner and the authority against which the petition had been directed. If the recommendation remains without consequences, the Ombudsman may prepare a report to the Parliament.

In other countries, it has been the practice to create committees for provision of effective application of the law and for the protection of human rights. Most committees exist in the form of bodies independent of other state authorities, although they have to report regularly to the Parliament. A regulatory instrument regulates the competence and powers of these committees.

The human rights committees accept and investigate petitions by individual persons related to claims for infringement upon their rights as guaranteed by the national legislation. In order to perform their powers, the committees gather evidence on the case. After completion of investigation, the committee invites the parties to settle the matter and should that prove to be impossible, they proceed to arbitration. After hearing the parties of the dispute, the committee rules out.

The officers and sergeants bear disciplinary, proprietary, administrative-penal or criminal responsibility. Any non-compliance with the provisions of the regulatory basis of the Ministry of the Interior, the orders and the instructions of the chiefs of the ministry or the chiefs of offices, as well as any act by which the established public peace has been disturbed, represents a breach of office discipline. The police officers bear disciplinary responsibility for any breach of office discipline.

The disciplinary offenses are established by the immediate chiefs of those who have committed them, after their oral or written explanations have been accepted.

In cases of serious disciplinary offenses pursuant to the Ministry of the Interior Act, an office inspection is performed. The relevant chief commences the office inspection with a written order, after receiving information on the disciplinary offense committed.

Information on the disciplinary offenses committed pursuant to Art. 206, Par. 1 of the Regulation on the Application of Ministry of the Interior Act is:

- Notices to the Ministry of the Interior offices by state authorities, organizations, officials and citizens
- Publications and rubrics in the mass-media
- Reports and memoranda by officers of the Ministry of the Interior
- Immediate finding out, on the part of the relevant chief, of signs that a disciplinary offense has been committed

Should the perpetrator of a disciplinary offense not be specified in the information, the chief issues an order to make an official check in order to recover out his/her identity. No official check may be ordered subject to anonymous signals.

The official check results in a transcript. The officer or the sergeant is made acquainted with the content of the transcript by attaching his/her signature to it and may give further explanations and objections.

A disciplinary sanction is administered by a motivated written order, which is subject to appeal in the administrative order before the higher institution.

4.1.7. What is Included in the Right of “Efficient Means of Defense Before a National Authority”, Guaranteed by Art. 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms

According to Art. 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, it is required of the national legislation to provide effective means to protect the citizens before a national authority.

Let's define the terms

The right of efficient means of defense before a national authority implies that when a person has a defensible claim stating he is the victim of a violation of the rights and freedoms as provided for by the European Convention on the Protection of Human Rights and Fundamental Freedoms, the person should have a mean of defense before a national authority at his/her disposal for the purpose of having his/her claim ruled upon and if necessary, to receive compensation.

When a person claims that his/her guaranteed rights and freedoms have been infringed, the state has to perform an effective official investigation. It should be kept in mind that the lack of any element of the investigation may lead to a breach of the European Convention on the Protection of Human Rights and Fundamental Freedoms even if there are no grounds to accept that the acts of police officers have been illegal. Therefore, it is essential to gather all evidence related to the police acts committed in the course of the investigation.

The aim of the effective official investigation performed by the state is not to punish police officers but to uncover the actual events, to place the responsibilities and take measures for removal of the causes that have lead to the offenses, and in more serious cases, to punish the guilty officers.

4.2. The International Responsibility of Bulgaria Before the European Court of Human Rights In Strasbourg

After reading this text you will have the answer to the following questions:

- What are the functions of the European Court of Human Rights
- What does the right of individual petition include

4.2.1. Functions of the European Court of Human Rights

Bulgaria accepted and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1992 and its provisions have become a part of the national law of the country, having direct application. This means that the legal regulations of the Convention and its supplementary protocols have priority to the regulations of our legislation that may be in conflict with them. The grounds for limiting rights and freedoms of ECHR are completely and clearly stated in the convention itself and the authorities implementing the law in Bulgaria (the Court, the Prosecutor's Office, the judicial inquiry offices, the police, administrative bodies, etc.) cannot limit the rights and freedoms guaranteed by the Convention and the supplementary protocols for a purpose other than the one that they have been intended to implement.

Police officers have to know and protect the rights and freedoms established by the Convention in their everyday work. Each citizen who gets in contact with the police and the police officers is under the protection of the Convention, including the citizens of third countries who temporarily reside on the territory of the Republic of Bulgaria, irrespective of whether their state is or is not signatories to the Convention.

Illegal police acts violating the rights and freedoms accepted by the Convention (the right of life, of freedom and security, respect to the personal and family life, prohibition of torture) may lead to engagement of the international responsibility of the state before the European Court of Human Rights.

The European Court of Human Rights is an international institution created by the ECHR with delegated powers to investigate, under particular circumstances, petitions for claimed violations of the rights subject of the Convention and the supplementary protocols. The seat of the European Court of Human Rights is in Strasbourg, France. The Court is constantly in session and all petitioners have direct access to it.

The European Court is not a next instance for appellation of the national courts' decisions and judgments and it has no powers to change or repeal them.

The role of this Court is to establish through its decision whether any rights under the Convention have been violated and to rule that the defendant state compensate the victim of such violations.

Sometimes the Court decision may rule that national law is in contradiction with the Convention and an amendment of the national legislation or the passing of other legislative acts is necessary.

4.2.2. The Right to Individual Petition

Bulgaria, being a signatory to the Convention, has acknowledged the right of individual petition and the competence of the Court in Strasbourg to hear cases on claimed violations of rights and freedoms as stipulated in the Convention or in the supplementary protocols.

The necessary prerequisites for admissibility of the petition are:

- Each person irrespective of his/her citizenship, claiming to have been the victim of a violation on the part of any of the negotiating parties of the rights proclaimed in the Convention or in the supplementary protocols to it, may seize the Court with an individual petition
- Before filing the petition, it is required that the petitioner has exhausted all national legal means of defense (observing the procedures of national courts of justice)
- The petitioner has to file the petition within 6 months of the date of the final decision of the national instance. This term is considered to start upon receipt of the decision by the petitioner or his/her representative

The petitioner is not obliged to prove that he or she is victim of the claimed violation, but he or she may be just a person 'claiming to have been a victim' of an offense of human rights and freedoms as guaranteed by the Convention and the supplementary protocols. The violation of the Convention must have been committed on a territory under the jurisdiction of a member-state of the Convention; must affect the petitioner and the said act or failure to act must have violated his or her rights and freedoms.

In case the petition is pronounced admissible, the case thus instigated is sent to one of the chambers of the Court for consideration. The chamber holds a public session with the participation of the parties affected – the petitioner and the defendant state and their representatives.

The Court then considers all facts and evidence on the case, undertakes an investigation, if necessary, hears the positions of the parties, the testimony of any witnesses and opinions of experts that may help the Court in the performance of its functions.

Then the Court proposes friendly settlement of the case based on respect of human rights as proclaimed in the Convention and the supplementary protocols. If no friendly settlement of the dispute may be achieved, the Court pronounces its judgment whether the petitioner is or is not a victim of the claimed violation.

Each party to the case may in exceptional circumstances request within a period of three months of the date of the decision of a given chamber, to bring the case for consideration before the Great Chamber, whose decision is final.

The final Court decision takes effect and is promulgated in the official Court bulletins and the parties to the case are bound to obey the Court decision on the dispute. The Court decision is forwarded to the parties to the case and to the Committee of Ministers of the Council of Europe, which follows for its enactment.

The state against which the Court decision has been stipulated has to inform the Committee of Ministers on the action taken with regard to its implementation.

When the Court decision provides for a monetary compensation, the defendant state must inform the Committee whether it has paid the compensation to the affected party to the case. If the state does not comply with the Court decision for payment of just compensation or a change in its national legislation, the Committee of Ministers may, when necessary, exert political pressure onto the said state, including suspension of its membership or even putting forth a proposal for its expulsion from the Council of Europe.

5. RIGHTS OF POLICE OFFICERS

The present chapter will present the answers to the following questions:

- What is the status of police officers
- What are the rights of police officers
- What are the obligations of police officers
- What are the restrictions on the work of police officers
- What kind of incentives exists for police officers

Police officers have all rights and freedoms guaranteed to the individual person. The issue of human rights standards and the activities of the police have often resulted in sharp reactions from the police officers. Often an impression is made, that all people outside the institution have protected rights and freedoms. Such a split between two poles – on the one hand each individual, whose rights must be respected and protected, and on the other hand the police officers who have no rights but only obligations – is incorrect.

5.1. Questions on the rights and obligations of police officers

5.1.1. What is the Status of Police Officers

The status of police officers comprises their rights and obligations. The restrictions on these rights that arise as a result of the specificity of police work are also included here. The status of police officers emerges with their coming into office. It lasts continuously until the termination of their employment relations.

5.1.2. What are the Rights of Police Officers

Police officers have all the rights and freedoms inherent to all human individuals (the right of life, of freedom and of security, of personality, of just legal proceedings, of respect to their personal and family life, freedom of thought, of conscience and religion, of association in syndicates and trade-unions, etc.)

The social rights of police officers include:

- The right of a remuneration
- The right of legally provided leave
- The right of obligatory insurance

- The right of compensation in the event of non-material damages suffered, both for the police officer and for the spouse, children, parents of perished officers
- The right of organizing and defending their professional rights
- The right of assembly in out-of-office hours, including while wearing the uniform
- The right of organizing for support and protection of the professional and socioeconomic rights of police officers to enter into agreements for guaranteeing their members
- The right of granting a part of the expenses for rest, medical treatment and health recreation of police officers

Also, police officers have special rights regulating the interaction of police officers with other state authorities, organizations and citizens. This category of rights provides the police officers with certain advantages compared to other state officials. This corresponds with their special relations with the citizens.

The following rights are designed for the police:

- The right of inviolability
- The right of judgment on the part of the police officer as to the lawfulness of an order by the police chief or if its performance constitutes a crime
- The right of use of means for personal protection, in accordance with the activity performed
- The right of fee-free travel in the public municipal transport
- The right to use state-owned, public and personal vehicles for purposes as provided by the law
- The right of cooperation with state authorities, organizations and citizens
- The right of food allowance which is exempted from tax
- The right of free food and antidote for the performance of activities having harmful effect on health
- Right of a one-time monetary compensation when being moved to work in other settlements, both for the police officers and for the members of their families
- The right of health insurance of police officers during their service and after they retire by the Ministry of the Interior
- The right to carry arms
- The right to traveling expenses born by the Ministry for the travel of police officers and their families on the way to and back from their paid annual leave on the territory of the country once a year

5.1.3. What are the Obligations of Police Officers

Police officers have the following obligations:

- Loyalty to the institutions of the political system of the Republic of Bulgaria
- When exercising their rights and performing their obligations, to protect the life, health, rights and freedoms of citizens and to respect human dignity
- Compulsory character of chiefs' orders
- Compulsory character of work-hours
- Obligation to keep official and state secret

Police officers also have some specific obligations, such as:

- Obligation to perform the service in out-of-office hours as well as when on duty
- Obligation to keep in touch with the chief when performing official duties in out-of-office hours
- Obligation to return a vehicle to its owner immediately after its use by a police authority for purposes as specified by the law

5.1.4. What are the Restrictions to Police Officers

The restrictions to police officers arise due to the uninterrupted nature of police service. A result of this fact is the restriction upon their right to hold strikes.

Such restrictions are also:

- The prohibition to take part in assemblies, meetings and manifestations of political parties and syndicate organizations while wearing the uniform, including during out-of-office hours
- The prohibition to perform propaganda activity for or against political parties and candidates for elective offices
- The prohibition to be members of other syndicate organizations, as well as to accept as members in their organizations citizen and employees from outside the Ministry
- The prohibition to perform strike actions
- The prohibition to take another state office, save when so provided by law
- The prohibition to perform commercial activity
- The prohibition to participate in managerial and control bodies of trade companies, save when it has been assigned to them as an official task
- The prohibition to work under a labor agreement or a civil contract, except for teaching, scientific-research or other creative work.

5.1.5. What kinds of Incentives Exist for Police Officers

Rewarding the police officers constitutes an assessment of their contribution to the performance of official tasks and other activities related to the Ministry's functions. Currently, police officers may be rewarded for high results achieved while performing their official duties and for particular contribution and long-lasting service to the Ministry of the Interior.

The highest professional award in the Ministry of the Interior is the 'badge of honor'. The Minister of the Interior awards this badge to servants who have displayed heroism, courage and self-denial, for particular and substantial contribution and high professionalism in the performance of their functions.

Police officers are awarded 'Firearms' for showing heroism, courage and self-denial as well as high professionalism.

Police officers and police teams are awarded 'a monetary or material reward' for the professional execution of important official tasks, as well as for lasting professional results.

Police officers and police teams who have shown initiative and have achieved high professional results while performing their functions are rewarded with 'announcement of gratitude'.

Police officers who have substantial contribution in the execution of a particular task are rewarded by a 'written commendation'.

6. DIRECTIONS TO POLICE TRAINERS IN THE FIELD OF HUMAN RIGHTS

- Intended as a help for practical training.

Each police officer has to be acquainted with the normative acts that regulate the protection of human rights. This, however, is not enough. Theoretical knowledge has to be supported by practical experience and development of skills.

The police officer has to learn to assess his or her behavior. Besides, he or she has to take correct and motivated decisions.

The task of the issues and methods discussed below is to help police chiefs and trainers in the field of human rights in the organization and implementation of training without suspending work. The main goal of this training is to have active discussions that may prompt to meditation of the police officers.

The role of the chief and the trainer is to lead the discussion and thus provide an opportunity to each police officer to be an active participant in his or her own training. Research in countries with well-developed democracies shows that changes in the way of thinking and the attitudes are more easily reached as a result of discussions than of lectures.

The trainer should create such an atmosphere that will encourage the free expression of opinions and standpoints. During the training, each police officer should feel free to express his or her personal position. In this sense, not all discussions may end up with a single true answer, since multiplicity is a feature inherent to the police profession.

It is recommended that discussions should be held in small groups consisting of 10 to 15 participants, in order for everyone to participate.

Each chief or trainer has to individually organize and hold the discussions. His or her knowledge on human rights, individual professional experience and personal views and convictions should be a basis to perform this.

6.1. Instructions for Human Rights Teachers in the Police (In addition to the practical training)

The police officer must learn to evaluate his behavior. He must also take correct and motivated decisions.

The purpose of the themes and methods listed below is to help police chiefs and trainers on human rights in the organization and holding of the training without hindering the work. The main purpose of this training must be to carry out active discussions in order to make police officers think.

The role of the chief and the trainer is to direct the discussion, and in this way to give a chance to each officer to be an active participant in his own training.

The trainer must create an atmosphere that helps the free expression of thoughts and opinions. During the training, each police officer must feel free to express his personal position. In this sense not every discussion may end with only one correct answer, because the diversity is characteristic for the police profession.

6.2. Main Themes and Methods for Discussions in the Training of Police Officers on Human Rights

The training cannot and must not contain only the three specified themes. The purpose of these themes is merely to provide a fundament for the process of gathering knowledge and skills. The two specified methods will be of help for achieving better efficiency, but other methods may be used when they are of help in specific situations.

6.2.1. Theme 1 – Place and Role of the Police in Society

The discussion on this theme has the following main purposes:

- to make the trainees speak their opinion on the main tasks of the police, and from this point of view to formulate its place and role in society
- to review the specific functions of police officers by discussion on the power they are delegated. To review the reasons for their delegation, and whether their abuse may lead to human rights violation

The discussion must reach the conclusion that the main obligations of the police are to perform the following:

- protect the public order
- prevent, uncover and investigate crimes
- cooperate for keeping the peace and public stability
- according to its competency and capabilities, to render help to citizens in need, etc.

Through the police powers, the police officers have a significant power (for example to use weapons, force, to search and detain individuals, etc.) They cannot use this power when they have no legal grounds for it. The public trusts the police officers not to abuse this power.

According to the modern democratic opinion, the police are not a violent, repressive structure, but a body for rendering a specific service to the society. This service springs from the tasks of the police and it is realized through its powers.

During the discussions, the participants may be asked the following exemplary questions:

- What are the legal tasks of the police
- State and explain the main police powers
- Is the police a repressive body, or must it serve the citizens
- What makes police officers different from other citizens
- The police officers have less or more rights and obligations than the rest of the citizens

6.2.2. Theme 2 – Essence of the Human Rights and Their Importance in Police Work

In order to have a discussion on this theme, the trainees must have theoretical knowledge in the main human rights. The main purpose here is:

- to overcome the negative attitude of police officers (if any) towards observing human rights
- to stimulate an understanding that the effective police work is not possible without strict observance of human rights
- to connect the problems of human rights in an easy and understandable way with the daily professional work of the police officers

The conclusions resulting from the discussion, may be the following:

- The human rights are in force for everyone
- The human rights limit the police work within the law. As a rule, only the legal regulations direct police work
- Human rights are not only rules on paper. They are related to the daily practice of police officers

To stimulate the discussion, the following exemplary questions may be asked:

- Are human rights an obstacle in your specific work
- The perpetrators have less or more rights than the rest of the citizens

- Is it difficult to respect human rights of a criminal who does not respect yours
- When you hear of human rights, what is your first thought
- Do you think training in human rights is useful
- Do you think that there are people with more special human rights (depending, for example, on their race, sex, religion, profession, etc.)
- Do you think that you must treat the citizens the way you would like you and your family to be treated
- Would you be able to work efficiently if the public does not trust you
- Are your rights more than those of the other citizens

6.2.3. Theme 3 – Reasons for Human Rights

Violations and ways of overcoming them.

The discussions on this theme will require, aside from theoretical knowledge, also some practical experience from the trainees. The main purpose here is:

- For the trainees to think of the reasons for human rights violation (based on their own experiences) and to discuss them
- to stimulate the trainees to have their own position and to defend it
- to formulate effective preventive measures that do not allow any human rights violations

The main conclusions from the discussions on this theme must be:

- The reasons for human rights violation might be of any nature. They cannot be underestimated. Everyone must work for their uncovering and removal
- One of the best ways to avoid human rights violation is to create an atmosphere of professionalism in the police team. The police officers and their chiefs must understand that they are responsible for their own actions
- The police work must be transparent and opened, and the public must be able to evaluate and control it
- The police work must not be evaluated only by quantitative criteria (the number of uncovered and prevented crimes, the number of established administrative violations, the number of participations in police operations, etc.) An important moment in the evaluation is the quality of the work, which includes the behavior and culture of the police officer, and his attitude to the citizens' rights

- The complaints and information on human rights violations must be checked quickly and qualitatively. The results of the checks have to become known to the public. The offenders must be subjected to strict measures

The discussion on the theme may be stimulated with the following exemplary questions:

- What do you think are the most important reasons for violations of human rights - political, personal, economic, social-cultural or other? Please, state the reasons for your opinion
- How are the reasons for human rights violation overcome in your practice
- Is it possible to limit the use of force and weapons in the police work
- Do you work in one and the same way with perpetrators from different ethnic groups
- Do you think that, as in the countries of developed democracy, the complaints against unlawful actions of police officers must be reviewed by an external and independent body
- What do you think is the meaning of the terms openness and transparency of police
- Do you believe that in the practice there are situations where the police officer might allow himself to violate the human rights

6.2.4. Method 1 - Sharing Individual Practical Experience

The purpose of this method is for the trainees to share cases from their own practice and speak of the conditions in which they work. It is recommended to use a more advanced stage of the training, when relations of mutual trust have been created between the trainees and trainers.

The leader of the discussion must explain that the purpose is to share and exchange opinions in different human rights violations, and not to establish who did this and sanction him. In this way, all participants will achieve better and more realistic understanding of the diversity of the police practice.

In some moments the discussion may be turned in the opposite direction, and the police officers can be encouraged to speak of cases where a high degree of human rights respect was shown.

During the review of the specific cases, the following questions may be asked:

- What human rights are violated in the cases you spoke of
- How your superiors reacted when they learned of the case
- What was your colleagues reaction
- Are such cases frequent in your police work
- How would you react now in such a case
- Is there a way to prevent such a case

6.2.5. Method 2 – Use of Cases in the Training

The case is an example from practice, adapted for the purposes of the training. The main purpose of this method is to help the trainees to understand the specific practical problems they will meet in their daily practice, as well as to be offered possible ways of solving them.

It is recommended that the cases are used during the whole duration of the training. For this purpose, the cases from Chapter III of this Handbook will be useful, causes invented by the trainer, as well as the following short exemplary practical situations.

6.3. Cases

CASE 1

You have stopped a motor vehicle, which have exceeded the speed limit. The driver is a foreigner who do not speak Bulgarian, and you do not understand the language he speaks. He takes out a 100 dollars banknote and gives it to you with a gesture meaning he asks you to let him go.

What will you do?

Possible answers:

- I will take the money and let him go
- I will refuse the money and let him go
- I will detain him and report that he has offered me a bribe

CASE 2

You are interrogating a minor who has committed a robbery of an elderly woman by hitting her hard on the head with a solid object. The perpetrator is behaving badly, swears instead of answering the questions, and demonstratively refuses to speak.

What will you do?

Possible answers:

- I will tell him that if he does not cooperate voluntarily, I have other means to make him do that
- I will call his parents
- I will leave him and continue gathering other evidence

CASE 3

You notice that the citizens do not trust the police team you are in. The police team does make many mistakes, works roughly, and colleagues and superiors are covering serious cases.

What will you do?

Possible answers:

- I don't care what others do. I will continue to work as I did before
- I will find a way to inform the superiors responsible for our work
- I will leave the police

CASE 4

There was a soccer match in town between teams known for their aggressive fans. A few hours after the end of the match, you return home from work. You see a small group of soccer fans, obviously drunk, who are creating confusion and disorder on one of the streets. Observing how the situation develops, you believe that it may start a serious scandal or beating very soon.

What will you do?

Possible answers:

- approach them with a gun and try to detain them
- try to contact the duty officer at the Regional Police Department and warn him
- pass them – you are not on duty

CASE 5

You have learned that one of your colleagues, who is a friend of yours, is behaving indecently with women you both know. He subjects them to harassment by offering them sex, making dirty jokes, threatening them.

What will you do?

Possible answers:

- not interfere, it is none of your business
- talk to him and make him change his behavior
- report the incidences to the superior officer

CASE 6

You are interrogating a person who knows important information on a case you are working on. However, he admits he is afraid to speak what his knowledge, because people involved will revenge it.

What will you do?

Possible answers:

- let him go
- warn him, that if he does not tell the truth, he will bear responsibility
- try to convince him to trust you and to entrust you with his information. In exchange you will not use his name in the uncovering of the case

CASE 7

A suspect of a crime is being brought before you. He refuses to speak. You are convinced that he is the perpetrator, but you lack evidence of that.

What will you do?

Possible answers:

- If possible, fake that evidence
- Release the suspect. There are so many cases to work on
- Try to discover a way to prove the crime

APPENDIX 1 – THE EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Ratified with an Act, adopted by the National Assembly on 31st July 1992 (OJ No.66/1992); in force in the Republic of Bulgaria since 7th Sept. 1992; Published in OJ No.80/02.10.1992, amend. & suppl. No.137/1998.

The governments signatory hereto, being members of the Council of Europe,
Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948; Considering that this Declaration aims at securing the universal and effective recognition and observance of the rights therein declared;
Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms;
Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;
Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,
Have agreed as follows:

Obligation to respect human rights /Amend. OJ No.137/1998/

Article 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I

Rights and Freedoms /Amend. OJ No.137/1998/

Right to life /Amend. OJ No.137/1998/

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a/ in defense of any person from unlawful violence;
 - b/ in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c/ in action lawfully taken for the purpose of quelling a riot or insurrection.

Prohibition of Torture //Amend. OJ No.137/1998/

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of Slavery and Forced Labor /Amend. OJ No.137/1998/

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labor.
3. For the purpose of this article the term "forced or compulsory labor" shall not include:
 - a/ any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b/ any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
 - c/ any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d/ any work or service which forms part of normal civic obligations.

Right to Freedom and Security /Amend. OJ No.137/1998/

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a/ the lawful detention of a person after conviction by a competent court;
 - b/ the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
 - c/ the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so;
 - d/ the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e/ the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f/ the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall

be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Right to a Fair Trial /Amend. OJ No.137/1998/

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offense has the following minimum rights:
 - a/ to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b/ to have adequate time and facilities for the preparation of his defense;
 - c/ to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d/ to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e/ to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Non Imposition of a Penalty Not Governed By Law

/Amend. OJ No.137/1998/

Article 7

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Right to Respect of Private and Family Life

/Amend. OJ No.137/1998/

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. 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.

Right to Freedom of Thought, Conscience and Religion

/Amend. OJ No.137/1998/

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of Expression /Amend. OJ No.137/1998/

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of Assembly and Association /Amend. OJ No.137/1998/

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Right to Marry /Amend. OJ No.137/1998/

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Right to Effective Remedy /Amend. OJ No.137/1998/

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Prohibition of Discrimination /Amend. OJ No.137/1998/

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Derogation under Emergency Circumstances

/Amend. OJ No.137/1998/

Article 15

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It

shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Restrictions on the Political Activity of Aliens

/Amend. OJ No.137/1998/

Article 16

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Prohibition to Misuse Rights /Amend. OJ No.137/1998/

Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Conditions for Restriction of the exercise of Rights

/Amend. OJ No.137/1998/

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II European Court of Human Rights

/Amend. OJ No.137/1998/

Creation of the Court /Amend. OJ No.137/1998/

Article 19

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention and the protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It will be a permanently active court.

Number of Judges /Amend. OJ No.137/1998/

Article 20

The European Court of Human Rights shall consist of a number of judges equal to the number of High Contracting Parties.

Conditions for Holding Office /Amend. OJ No.137/1998/

Article 21

1. The members of the Court shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.

2. The members of the Court shall sit on the Court in their individual capacity.
3. During their term of office they shall not hold any position which is incompatible with their independence and impartiality as members of the Court or the demands of this office /full working day/; any dispute that may arise out of the execution of this paragraph shall be settled by the Court.

Election of Members of the Court /Amend. OJ No.137/1998/

Article 22

1. The members of the Court shall be elected by the Parliamentary Assembly by a majority of the votes cast from a list of three persons nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the admission of new members of the Council of Europe, and in filling casual vacancies.

Term of Office /Amend. OJ No.137/1998/

Article 23

1. The members of the Court shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election the terms of half of the members shall expire at the end of three years.
2. The members whose terms are to expire at the end of the initial periods of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.
3. In order to ensure that, as far as possible, half of the membership of the Court shall be renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General of the Council of Europe, immediately after the election.
5. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The term of office of the members of the Court shall expire at their 70th anniversary.
7. The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

Dismissal /Amend. OJ No.137/1998/

Article 24

No member of the Court can be dismissed unless the remaining members decide with a majority of two-thirds that he is longer complying with the terms and conditions of this office.

Secretariat and Juridical Secretaries /Amend. OJ No.137/1998/

Article 25

The shall have a Secretariat whose functions and structure shall be determined by the Court's Rules. It shall be assisted by the juridical secretaries.

Plenary session of the Court /Amend. OJ No.137/1998/

Article 26

The Court at its plenary session shall:

- a/ elect its President and one or two Vice-Presidents for a period of three years. They may be re-elected;
- b/ set up Chambers for a definite term;
- c/ elect the Presidents of the Court's Chambers; They may be re-elected;
- d/ adopt the Court's Rules; and
- e/ elect a Secretary and one or several Vice-Secretaries.

Memberships, Chambers and great Chambers

/Amend. OJ No.137/1998/

Article 27

1. For the consideration of each case brought before it the Court shall sit in Memberships of three judges, in Chambers of seven judges and in a Great Chamber of seventeen judges. The Chambers of the Court shall form memberships for a definite term.
2. There shall sit as an ex officio member of the Chamber and of the Great Chamber the judge who is a national of any State party concerned, or, if there is none or if such is not able to sit, a person of its choice who shall sit in the capacity of judge;
3. The Great Chamber shall also consist of the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges, elected in conformity with the Court's Rules. In the event that a case has been referred for consideration to the Great Chamber, pursuant to article 43, none of the judges of the Chamber which ruled on that case, cannot sit in the Great Chamber, save for the President of the Chamber and the judge who sit in the name of the State party concerned.

Inadmissibility Declared by Memberships

/Amend. OJ No.137/1998/

Article 28

A membership may, with a majority of the votes, declare inadmissible or strike off the list an individual petition, filed pursuant to article 34, whenever such a decision may be taken without further discussion. Such a decision shall be final.

Decisions of the Chambers on the Admissibility and on the Merits

/Amend. OJ No.137/1998/

Article 29

1. If no decision has been taken pursuant to article 28, the Chamber shall pronounce on the admissibility and on the merits of the individual petitions lodged on the grounds of article 34.
2. A Chamber shall pronounce on the admissibility and on the merits of the international petitions, lodged on the grounds of article 33.
3. The decision on the admissibility shall be pronounced separately unless otherwise decided by the court as an exception.

Referring The Case To the Great Chamber

/Amend. OJ No.137/1998/

Article 30

If a pending case in any of the chambers arises a serious question related to the interpretation of the Convention or of the Protocols thereto, or if the decision of a certain matter by the Chamber may lead to contradiction with the previous decision of the court, the Chamber may, before pronouncing a ruling, refer the case for consideration to the Great Chamber, unless any of the parties to the case has objections.

Powers of the Great Chamber /Amend. OJ No.137/1998/

Article 31

The Great Chamber shall:

- a/ rule on petitions filed pursuant to article 33 or article 34 when the case has been referred from another chamber pursuant to article 30 or if it was referred pursuant to article 43; and
- b/ consider the petitions for obtaining advisory opinions, filed pursuant to article 47.

Jurisdiction of the Court /Amend. OJ No.137/1998/

Article 32

1. The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention, and the protocols thereto, referred to the Court in conformity with Article 33, 34 and 47.

1. In case of a dispute regarding the jurisdiction of the Court, the case shall be settled by the Court.

International Cases /Amend. OJ No.137/1998/

Article 33

Any High Contracting Party may refer to the Court any violation of the provisions of the Convention and the Protocols thereto, made, in its opinion, by another High Contracting Party.

Individual Petitions /Amend. OJ No.137/1998/

Article 34

The Court may receive petitions from any person, non-governmental organization or group of persons claiming to be a victim of a violation of the rights, by any of the High Contracting Parties, proclaimed in the Convention or in the Protocols thereto. The High Contracting Parties shall not in any way put obstacles before the effective exercise of such right.

Conditions of Admissibility /Amend. OJ No.137/1998/

Article 35

1. The Court may consider a case only after exhausting all internal legal procedures of defense, in accordance with the generally recognized standards of international law and within 6 months of the date of the final judgment of the national instance.
2. The Court shall not consider an individual petition filed pursuant to Article 34, if:
 - a) it is anonymous; or
 - b) represents to its merits a petition which has already been considered by the Court or in the process of another procedure of international investigation or of solving disputes and does not contain new information.
3. The Court shall pronounce inadmissible any individual petition filed pursuant to Article 34 if it considers the petition incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of petition.
4. The Court shall reject any petition referred to it which it considers inadmissible under this Article. It may do this at any stage of the procedure.

Third Party Entering the Case /Amend. OJ No.137/1998/

Article 36

1. On any case before a Chamber or a Great Chamber, any High Contracting Party whose citizen is the Petitioner, shall have the right to submit written opinions and take participation in the hearings.
2. For the purpose of correct proceedings, the President of the Court may invite any High Contracting Party which is not a party to the case, or any concerned person which is not a petitioner, to submit written opinions or participate in the hearings.

Striking a Petition off the List of Cases /Amend. OJ No.137/1998/

Article 37

1. At any stage of the procedure the Court may decide to strike a petition off the list of cases if circumstances give grounds to believe that:
 - a) the Petitioner has no intention to maintain it any longer;
 - b) the case has already been solved;
 - c) the further consideration of the petition is groundless for any other reason established by the Court.

Nevertheless, the Court shall continue the review of the petition if the respect of human rights guaranteed by the Convention and the Protocols thereto requires so.

2. The Court may decide to include again a petition in the list if it considers that circumstances justify such action.

Hearing a Case and Procedure for Amicable Settlement of the Dispute /Amend. OJ No.137/1998/

Article 38

1. If the Court declares a petition admissible, it shall:

- a) continue the hearing of the case with the representatives of the parties and if necessary undertake investigation, for the effective realization of which the concerned states must provide for all necessary conditions;
- b) be at the disposal of the concerned parties in order to achieve amicable settlement of the dispute by respecting human rights as defined in the Convention and the Protocols thereto.

2. The procedure conducted as per para 1.b) is confidential.

Amicable Settlement of a Dispute /Amend. OJ No.137/1998/

Article 39

If the Court succeeds in effecting an amicable settlement of the dispute, the Court shall strike the case off the list by a judgment which is restricted to a brief statement of the facts and of the solution reached.

Open Hearing and Access to Documents /Amend. OJ No.137/1998/

Article 40

1. The hearing is open unless otherwise decided by the Court due to extraordinary circumstances.
2. The documents filed with the Secretariat shall be accessible to the public unless otherwise decided by the President of the Court.

Just Satisfaction /Amend. OJ No.137/1998/

Article 41

If the Court finds that there is a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party allows only partial reparation to be made for the consequences of this violation, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

Decisions of the Chambers /Amend. OJ No.137/1998/

Article 42

The decisions of the Chambers shall become final in conformity with the provisions of Article 44, Paragraph 2.

Article 43

1. Within 3 months of the date of the decision of the Chamber, any party to the case may in extraordinary circumstances require the review of the case by a Great Chamber.
2. A membership of 5 judges of the Great Chamber shall receive the petition if the case raises a serious matter related to the interpretation or application of the Convention or the Protocols thereto, or a serious problem of general importance.
3. If the membership receives the petition, the Great Chamber shall deliver a ruling on the case.

Final Decisions /Amend. OJ No.137/1998/**Article 44**

1. The decision of the Great Chamber shall be final.
2. The decision of a Chamber shall become final:
 - a. When the parties declare that they will not require the review of the case by a Great Chamber; or
 - b. Three months after delivering the ruling if no review of the case by the Great Chamber has been required; or
 - c. When the members of the Great Chamber rejects a petition for review, filed pursuant to Article 43.
3. The final decision shall be published.

Grounds for the Decisions and Conclusions**/Amend. OJ No.137/1998/****Article 45**

1. The decisions and conclusions by which the petitions are declared admissible or inadmissible, should be well grounded.
2. If a decision as a whole or any part of it does not reflect the unanimous opinion of the members of the Court, any of them shall have the right to express their individual opinion.

Compulsory Force and Execution of the Decisions**/Amend. OJ No.137/1998/****Article 46**

1. The High Contracting Parties shall execute the final decisions of the Court on any case to which they are a party.
2. The final decision of the Court shall be sent to the Committee of Ministers which shall monitor for its execution.

Advisory Opinions /Amend. OJ No.137/1998/

Article 47

1. At the request of the Committee of Ministers, the Court may give advisory opinions on legal matters regarding the interpretation of the Convention and the Protocols thereto.
2. These opinions shall not concern issues referring to the contents or scope of the rights and freedoms defined in Section One of the Convention, and the Protocols thereto, nor any other issue which could have been heard by the Court or the Committee of Ministers during the Procedure provided for by the Convention.
3. The decision of the Committee of Ministers to require an advisory opinion from the Court shall be taken with a majority of the votes of the representatives entitled to sit in the Committee.

Advisory Jurisdiction of the Court /Amend. OJ No.137/1998/

Article 48

The Court shall decide whether the request of the Committee of Ministers for an advisory opinion is within its competency as defined in Article 47.

Grounds for the Advisory Opinions /Amend. OJ No.137/1998/

Article 49

1. The advisory opinion of the Court should be well grounded.
2. If the advisory opinion as a whole or any part of it does not reflect the unanimous opinion of the members of the Court, any of them shall have the right to express their individual opinion.
3. The advisory opinion of the Court shall be sent to the Committee of Ministers.

Expenses Incurred by the Court /Amend. OJ No.137/1998/

Article 50

The expenses of the Court shall be borne by the Council of Europe.

Privileges and Immunities of the Members of the Court

/Amend. OJ No.137/1998/

Article 51

The members of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made there under.

Section III. Miscellaneous (previous Section V, amend. OJ № 137/1998)

Requests by the Secretary General (Amend. OJ ¹ 137/1998)

Article 52

(previous Article 57, OJ ¹ 137/1998)

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Protection of Guaranteed Human Rights /Amend. OJ No.137/1998/**Article 53**

(previous Article 60, OJ ¹ 137/1998)

Nothing in this Convention shall be construed as limiting or derogating any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Powers of the Committee of Ministers /Amend. OJ No.137/1998/**Article 54**

(previous Article 61, OJ ¹ 137/1998)

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Rejecting Other Ways to Solve Disputes /Amend. OJ No.137/1998/**Article 55**

(previous Article 62, OJ ¹ 137/1998)

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Territorial Application /Amend. OJ No.137/1998/**Article 56**

(previous Article 63, OJ ¹ 137/1998)

1. (Suppl. OJ ¹ 137/1998) Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that under the conditions of Paragraph 4 of the present Convention, this Convention shall extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. **(amend. OJ ¹ 137/1998)** Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive petitions from individuals, non-governmental organizations or groups of individuals in accordance with Article 34 of the present Convention.

**Reservations /Amend. OJ No.137/1998/
Article 57**

(previous Article 64, OJ ¹ 137/1998)

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

**Denunciation /Amend. OJ No.137/1998/
Article 58**

(previous Article 65, OJ ¹ 137/1998)

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. **(amend. OJ ¹ 137/1998)** The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Signatures and Ratifications /Amend. OJ No.137/1998/

Article 59

(previous Article 66, OJ ¹ 137/1998)

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

APPENDIX 2 - EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Ratified with an act adopted by the National assembly on 16th March 1944 – OJ №25/1994, in force in the Republic of Bulgaria since 1st September 1994, published OJ №71/02.09.1994.

The member States of the Council of Europe, signatory hereto, having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recalling that, under Article 3 of the same Convention, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”;

Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;

Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

Have agreed as follows:

Chapter I

Article 1

There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Committee”). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

Article 2

Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

Article 3

In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall cooperate with each other.

Chapter II

Article 4

- 1 The Committee shall consist of a number of members equal to that of the Parties.
- 2 The members of the Committee shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.
- 3 No two members of the Committee may be nationals of the same State.
- 4 The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

Article 5

- 1 The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.
- 2 The same procedure shall be followed in filling casual vacancies.
- 3 The members of the Committee shall be elected for a period of four years. They may be reelected once. However, among the members elected at the first election, the terms of three members shall expire at the end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

Article 6

- 1 The Committee shall meet in camera. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present, subject to the provisions of Article 10, paragraph 2.
- 2 The Committee shall draw up its own rules of procedure.
- 3 The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

Chapter III

Article 7

- 1 The Committee shall organize visits to places referred to in Article 2. Apart from periodic visits, the Committee may organize such other visits as appear to it to be required in the circumstances.
- 2 As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

Article 8

- 1 The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.
- 2 A Party shall provide the Committee with the following facilities to carry out its task:
 - a access to its territory and the right to travel without restriction;
 - b full information on the places where persons deprived of their liberty are being held;
 - c unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
 - d other information available to the Party which is necessary for the Committee to carry out its task.

In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.

- 3 The Committee may interview in private persons deprived of their liberty.
- 4 The Committee may communicate freely with any person whom it believes can supply relevant information.
- 5 If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned.

Article 9

- 1 In exceptional circumstances, the competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defense, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.
- 2 Following such representations, the Committee and the Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, the Party shall provide information to the Committee about any person concerned.

Article 10

- 1 After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.
- 2 If the Party fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 11

- 1 The information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential.
- 2 The Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
- 3 However, no personal data shall be published without the express consent of the person concerned.

Article 12

Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and made public.

Article 13

The members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions

Article 14

- 1 The names of persons assisting the Committee shall be specified in the notification under Article 8, paragraph 1.
- 2 Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Convention and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.
- 3 A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction.

Chapter IV

Article 15

Each Party shall inform the Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint.

Article 16

The Committee, its members and experts referred to in Article 7, paragraph 2 shall enjoy the privileges and immunities set out in the Appendix to this Convention.

Article 17

- 1 This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for persons deprived of their liberty.
- 2 Nothing in this Convention shall be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.
- 3 The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

Chapter V

Article 18

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

- 1 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 18.
- 2 In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 20

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21

No reservation may be made in respect of the provisions of this Convention.

Article 22

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification by the Secretary General.

Article 23

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, or approval;
- c any date of entry into force of this Convention in accordance with Articles 19 and 20;
- d any other act, notification or communication relating to this Convention, except for action taken in pursuance of Articles 8 and 10.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Convention.

Done at Strasbourg, the 26 November 1987, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Privileges and immunities

(Article 16)

- 1 For the purpose of this Appendix, references to *members of the Committee* shall be deemed to include references to experts mentioned in Article 7, paragraph 2.
- 2 The members of the Committee shall, while exercising their functions and during journeys made in the exercise of their functions, enjoy the following privileges and immunities:

- a immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
 - b exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.
- 3 In the course of journeys undertaken in the exercise of their functions, the members of the Committee shall, in the matter of customs and exchange control, be accorded:
 - a by their own Government, the same facilities as those accorded to senior officials traveling abroad on temporary official duty;
 - b by the Governments of other Parties, the same facilities as those accorded to representatives of foreign Governments on temporary official duty.
- 4 Documents and papers of the Committee, in so far as they relate to the business of the Committee, shall be inviolable.

The official correspondence and other official communications of the Committee may not be held up or subjected to censorship.

- 5 In order to secure for the members of the Committee complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.
- 6 Privileges and immunities are accorded to the members of the Committee, not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Committee alone shall be competent to waive the immunity of its members; it has not only the right, but is under a duty, to waive the immunity of one of its members in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

APPENDIX 3 - CONSTITUTION OF THE REPUBLIC OF BULGARIA

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MAIN RIGHTS AND DUTIES OF CITIZENS

Article 25.

- (1) A Bulgarian citizen shall be anyone born of at least one parent holding a Bulgarian citizenship, or born on the territory of the Republic of Bulgaria, should he not be entitled to any other citizenship by virtue of origin. Bulgarian citizenship shall further be acquirable through naturalization.
- (2) A person of Bulgarian origin shall acquire Bulgarian citizenship through a facilitated procedure.
- (3) No one shall be deprived of a Bulgarian citizenship acquired by birth.
- (4) No citizen of the Republic of Bulgaria shall be expatriated, or extradited to another state.
- (5) Any Bulgarian citizen abroad shall be accorded the protection of the Republic of Bulgaria.
- (6) The conditions and procedure for the acquiring, preservation or loss of Bulgarian citizenship shall be established by a law.

Article 26.

- (1) Irrespective of where they are, all citizens of the Republic of Bulgaria shall be vested with all rights and obligations proceeding from this Constitution.
- (2) Foreigners residing in the Republic of Bulgaria shall be vested with all rights and obligations proceeding from this Constitution, except those rights and obligations for which a Bulgarian citizenship is required by this Constitution or by another law.

Article 27.

- (1) Foreigners residing legally in the country shall not be expelled or extradited to another state against their will, except in accordance with the provisions and the procedures established by a law.
- (2) The Republic of Bulgaria shall grant asylum to foreigners persecuted for their opinions or activity in the defense of internationally recognized rights and freedoms.
- (3) The conditions and procedure for the granting of asylum shall be established by a law.

Article 28.

Everyone shall have the right to life. Any attempt upon a human life shall be punished as a most severe crime.

Article 29.

- (1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation.

(2) No one shall be subjected to medical, scientific or other experimentation without his voluntary written consent.

Article 30.

- (1) Everyone shall be entitled to personal freedom and inviolability.
- (2) No one shall be detained or subjected to inspection, search or any other infringement of his personal inviolability except on the conditions and in a manner established by a law.
- (3) The state authorities shall be free to detain a citizen only in the urgent circumstances expressly stipulated by a law, and shall immediately advise the judicial authorities accordingly. The judicial authorities shall rule on the legality of a detention within the next 24 hours.
- (4) Everyone shall be entitled to legal counsel from the moment of detention or from the moment of being charged.
- (5) Everyone shall be entitled to meet his legal counsel in private. The confidentiality of such communication shall be inviolable.

Article 31.

- (1) Anyone charged with a crime shall be brought before a court within the time established by a law.
- (2) No one shall be forced to plead guilty, and no one shall be convicted solely by virtue of a confession.
- (3) A defendant shall be considered innocent until proven otherwise by a final verdict.
- (4) The rights of a defendant shall not be restricted beyond what is necessary for the purposes of a fair trial.
- (5) Prisoners shall be kept in conditions conducive to the exercise of those of their fundamental rights which are not restricted by virtue of their sentence.
- (6) Prison sentences shall be served only at the facilities established by a law.
- (7) There shall be no limitation to the prosecution and the execution of a sentence for crimes against peace and humanity.

Article 32.

- (1) The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any illegal interference in his private or family affairs and against encroachments on his honor, dignity and reputation.
- (2) No one shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are permitted by a law

Article 33.

- (1) The home shall be inviolable. No one shall enter or stay inside a home without its occupant's consent, except in the cases expressly stipulated by a law.
- (2) Entry or stay inside a home without the consent of its occupant or without the judicial authorities' permission shall be allowed only for the purposes of preventing an immediately impending crime or a crime in progress, for the capture of a criminal, or in extreme necessity.

Article 34.

- (1) The freedom and confidentiality of correspondence and all other communications shall be inviolable.
- (2) Exceptions to this provision shall be allowed only with the permission of the judicial authorities for the purpose of discovering or preventing a grave crime.

Article 35.

- (1) Everyone shall be free to choose a place of residence and shall have the right to freedom of movement on the territory of the country and to leave the country. This right shall be restricted only by virtue of a law in the name of national security, public health, and the rights and freedoms of other citizens.
- (2) Every Bulgarian citizen shall have the right to return to the country.

Article 36.

- (1) The study and use of the Bulgarian language shall be a right and an obligation of every Bulgarian citizen.
- (2) Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language.
- (3) The situations in which only the official language shall be used shall be established by a law.

Article 37.

- (1) The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The state shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers.
- (2) The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.

Article 38.

No one shall be persecuted or restricted in his rights because of his views, nor shall be obligated or forced to provide information about his own or another person's views.

Article 39.

- (1) Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way
- (2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

Article 40.

- (1) The press and the other mass media shall be free and shall not be subjected to censorship.
- (2) An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours.

Article 41.

- (1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.
- (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.

Article 42.

- (1) Every citizen above the age of 18, with the exception of those placed under judicial interdiction or serving a prison sentence, shall be free to elect state and local authorities and vote in referendums.
- (2) The organization and procedure for the holding of elections and referendums shall be established by a law.

Article 43.

- (1) Citizens shall have the right to peaceful and unarmed assembly for meetings and manifestations.
- (2) The procedure for the organizing and holding of meetings and manifestations shall be established by a law.
- (3) No permission shall be required for organizing meetings held indoors.

Article 44.

- (1) Citizens shall be free to associate.
- (2) No organization shall act to the detriment of the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence.
- (3) The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the state.

Article 45.

Citizens shall have the right to lodge complaints, proposals and petitions with the state authorities.

Article 46.

- (1) Matrimony shall be a free union between a man and a woman. Only a civil marriage shall be legal.
- (2) Spouses shall have equal rights and obligations in matrimony and the family.
- (3) The form of a marriage, the conditions and procedure for its conclusion and termination, and all private and material relations between the spouses shall be established by a law.

Article 47.

- (1) The raising and upbringing of children until they come of legal age shall be a right and obligation of their parents and shall be assisted by the state.
- (2) Mothers shall be the object of special protection on the part of the state and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance.
- (3) Children born out of wedlock shall enjoy equal rights with those born in wedlock.
- (4) Abandoned children shall enjoy the protection of the state and society.
- (5) The conditions and procedure for the restriction or suspension of parental rights shall be established by a law.

Article 48.

- (1) Citizens shall have the right to work. The state shall take care to provide conditions for the exercising of this right.
- (2) The state shall create conditions conducive to the exercise of the right to work by the physically or mentally handicapped.
- (3) Everyone shall be free to choose an occupation and place of work.
- (4) No one shall be compelled to do forced labor.
- (5) Workers and employees shall be entitled to healthy and non-hazardous working conditions, to guaranteed minimum pay and remuneration for the actual work performed, and to rest and leave, in accordance with conditions and procedures established by a law.

Article 49.

- (1) Workers and employees shall be free to form trade union organizations and alliances in defense of their interests related to work and social security.
- (2) Employers shall be free to associate in defense of their economic interests.

Article 50.

Workers and employees shall have the right to strike in defense of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by a law.

Article 51.

- (1) Citizens shall have the right to social security and welfare aid.

(2) The state shall provide social security for the temporarily unemployed in accordance with conditions and procedures established by a law.

(3) The elderly without relatives and unable to support themselves, as well as the physically and mentally handicapped shall enjoy the special protection of the state and society.

Article 52.

(1) Citizens shall have the right to medical insurance guaranteeing them affordable medical care, and to free medical care in accordance with conditions and procedures established by a law.

(2) Citizens' medical care shall be financed from the state budget, by employers, through private and collective health-insurance schemes, and from other sources in accordance with conditions and procedures established by a law.

(3) The state shall protect the health of citizens and shall promote the development of sports and tourism.

(4) No one shall be subject to forcible medical treatment or sanitary measures except in circumstances established by a law.

(5) The state shall exercise control over all medical facilities and over the production and trade in pharmaceuticals, biologically active substances and medical equipment.

Article 53.

(1) Everyone shall have the right to education.

(2) School attendance up to the age of 16 shall be compulsory.

(3) Primary and secondary education in state and municipal schools shall be free. In circumstances established by a law, the higher educational establishments shall provide education free of charge.

(4) Higher educational establishments shall enjoy academic autonomy.

(5) Citizens and organizations shall be free to found schools in accordance with conditions and procedures established by a law. The education they provide shall meet the requirements of the state.

(6) The state shall promote education by opening and financing schools, by supporting capable school and university students, and by providing opportunities for occupational training and retraining. It shall exercise control over all kinds and levels of schooling.

Article 54.

(1) Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.

(2) Artistic, scientific and technological creativity shall be recognized and guaranteed by the law.

(3) The state shall protect all inventors' rights, copyrights and related rights.

Article 55.

Citizens shall have the right to a healthy and favorable environment corresponding to the established standards and norms. They shall protect the environment.

Article 56.

Everyone shall have the right to legal defense whenever his rights or legitimate interests are violated or endangered. He shall have the right to be accompanied by legal counsel when appearing before an agency of the state.

Article 57.

- (1) The fundamental civil rights shall be irrevocable.
- (2) Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.
- (3) Following a proclamation of war, martial law or a state of emergency the exercise of individual civil rights may be temporarily curtailed by a law, except for the rights established by Article 28, Article 29, Article 31 para 1, 2 and 3, Article 32 para 1, and Article 37.

Article 58.

- (1) Citizens shall observe and implement the Constitution and the laws. They shall respect the rights and the legitimate interests of others.
- (2) Obligations established by the Constitution and the law shall not be defaulted upon on grounds of religious or other convictions.

Article 59.

- (1) To defend the country shall be a duty and a matter of honor of every Bulgarian citizen. High treason and betrayal of the country shall be treated as crimes of utmost gravity and shall be punished with all the severity of the law.
- (2) The carrying out of military obligations, and the conditions and procedure for exemption therefrom or for replacing them with alternative service shall be established by a law.

Article 60.

- (1) Citizens shall pay taxes and duties established by a law proportionately to their income and property.
- (2) Any tax concession or surtax shall be established by a law.

Article 61.

Citizens shall assist the state and society in the case of a natural or other disaster, on conditions and in a manner established by a law.

APPENDIX 4 - Declaration on the Police by the Parliamentary Assembly of the Council of Europe Parliamentary Assembly of the Council of Europe

Resolution 690 (1979) on the Declaration on the Police

Preamble

The Assembly,

1. Considering that the full exercise of human rights and fundamental freedoms, guaranteed by the European Convention on Human Rights and other national and international instruments, has as a necessary basis the existence of a peaceful society which enjoys the advantages of order and public safety;
2. Considering that, in this respect, police play a vital role in all member states, that they are frequently called upon to intervene in conditions which are dangerous for their members, and that their duties are made yet more difficult if the rules of conduct of their members are not sufficiently precisely defined;
3. Being of the opinion that it is inappropriate for those who have committed violations of human rights whilst members of police forces, or those who have belonged to any police force that has been disbanded on account of inhumane practices, to be employed as policemen;
4. Being of the opinion that the European system for the protection of human rights would be improved if there were generally accepted rules concerning the professional ethics of the police which take account of the principles of human rights and fundamental freedoms;
5. Considering that it is desirable that police officers have the active moral and physical support of the community they are serving;
6. Considering that police officers should enjoy status and rights comparable to those of members of the civil service;
7. Believing that it may be desirable to lay down guidelines for the behavior of police officers in case of war and other emergency situations, and in the event of occupation by a foreign power;
8. Adopts the following Declaration on the Police, which forms an integral part of this resolution;
9. Instructs its Committee on Parliamentary and Public Relations and its Legal Affairs Committee as well as the Secretary General of the Council of Europe to give maximum publicity to the declaration.

Declaration on the Police

A Ethics

[Parts A and B of the declaration cover all individuals and organizations, including such bodies as secret services, military police forces, armed forces or militias performing police duties, that are responsible for enforcing the law, investigating offenses, and maintaining public order and state security.]

1. A police officer shall fulfill the duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law.
2. A police officer shall act with integrity, impartiality and dignity. In particular he shall refrain from and vigorously oppose all acts of corruption.

3. Summary executions, torture and other forms of inhuman or degrading treatment or punishment remain prohibited in all circumstances. A police officer is under an obligation to disobey or disregard any order or instruction involving such measures.
4. A police officer shall carry out orders properly issued by his hierarchical superior, but he shall refrain from carrying out any order he knows, or ought to know, is unlawful.
5. A police officer must oppose violations of the law. If immediate or irreparable and serious harm should result from permitting the violation to take place he shall take immediate action, to the best of his ability.
6. If no immediate or irreparable and serious harm is threatened, he must endeavor to avert the consequences of this violation, or its repetition, by reporting the matter to his superiors. If no results are obtained in that way he may report to a higher authority.
7. No criminal or disciplinary action shall be taken against a police officer who has refused to carry out an unlawful order.
8. A police officer shall not co-operate in the tracing, arresting, guarding or conveying of persons who, while not being suspected of having committed an illegal act, are searched for, detained or prosecuted because of their race, religion or political belief.
9. A police officer shall be personally liable for his own acts and for acts of commission or omission he has ordered and which are unlawful.
10. There shall be a clear chain of command. It should always be possible to determine which superior may be ultimately responsible for acts or omissions of a police officer.
11. Legislation must provide for a system of legal guarantees and remedies against any damage resulting from police activities.
12. In performing his duties, a police officer shall use all necessary determination to achieve an aim which legally required or allowed, but he may never use more force than is reasonable.
13. Police officers shall receive clear and precise instructions as to the manner and circumstances in which they should make use of arms.
14. A police officer having the custody of a person needing medical attention shall secure such attention by medical personnel and, if necessary, take measures for the preservation of the life and health of this person. He shall follow the instructions of doctors and other competent medical workers when they place a detainee under medical care.
15. A police officer shall keep secret all matters of a confidential nature coming to his attention, unless the performance of duty or legal provisions require otherwise.
16. A police officer who complies with the provisions of this declaration is entitled to the active moral and physical support of the community he is serving.

B Status

1. Police forces are public services created by law, which shall have the responsibility of maintaining and enforcing the law.
2. Any citizen may join the police forces if he satisfies the relevant conditions.
3. A police officer shall receive thorough general training, professional training and in-service training, as well as appropriate instruction in social problems, democratic freedoms, human rights and in particular the European Convention on Human Rights.
4. The professional, psychological and material conditions under which a police officer must perform his duties shall be such as to protect his integrity, impartiality and dignity.
5. A police officer is entitled to a fair remuneration, and special factors are to be taken into account, such as greater risks and responsibilities and more irregular working schedules.
6. Police officers shall have the choice whether to set up professional organizations, join them and play an active part therein. They may also play an active part in other organizations.
7. A police professional organization, provided it is representative shall have the right:
 - to take part in negotiations concerning the professional status of officers;
 - to be consulted on the administration of police units;
 - to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer.
8. Membership of a police professional organization and playing an active part therein shall not be detrimental to any police officer.
9. In case of disciplinary or penal proceedings taken against him, a police officer has the right to be heard and to be defended by a lawyer.

The decision shall be taken within a reasonable time. He shall also be able to avail himself of the assistance of a professional organization to which he belongs.
10. A police officer against whom a disciplinary measure has been taken or penal sanction imposed shall have the right of appeal to an independent and impartial body or court.
11. The rights of a police officer before any courts or tribunals shall be the same as those of any other citizen.

C. War or other emergency situations – the occupation by a foreign power

[This chapter does not apply to the military police]

1. A police officer shall continue to perform his tasks of protecting persons and property during war and enemy occupation in the interests of the civilian population. For that reason he shall not have the status of "combatant", and the provisions of the Third Geneva Convention of 12 August 1949, relative to the treatment of prisoners of war, shall not apply.
2. The provisions of the Fourth Geneva Convention of 12 August 1949, relative to the protection of civilian persons in time of war, apply to the civilian police.
3. The occupying power shall not order police officers to perform tasks other than those mentioned in Article 1 of this chapter.

4. During occupation a police officer shall not:

- take part in measures against members of resistance movements;
- take part in applying measures designed to employ the population for military purposes and for guarding military installations.

5. If a police officer resigns during enemy occupation because he is forced to execute illegitimate orders of the occupying power which are contrary to the interests of the civilian population, such as those listed above, and because he sees no other way out, he shall be reintegrated into the police force as soon as the occupation is over without losing any of the rights or benefits he would have enjoyed if he had stayed in the police force.

6. Neither during nor after the occupation may any penal or disciplinary sanction be imposed on a police officer for having executed in good faith an order of an authority regarded as competent, where the execution of such an order was normally the duty of the police force.

7. The occupying power shall not take any disciplinary or judicial action against police officers by reason of the execution, prior to the occupation, of orders given by the competent authorities.

APPENDIX 5 - CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

Adopted by General Assembly Resolution 34/169 of 17 December 1979

Article 1

Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

(a) The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendering of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows: ". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgment of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

APPENDIX 6 - BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas the work of law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the

importance of their qualifications, training and conduct, The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offense under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programs and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counseling available to law enforcement officials who are involved in situations where force and firearms are used.

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f).

For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependents accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defense if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.