

**GUIDELINES FOR DEALING WITH PERSONS DEPRIVED OF LIBERTY IN CLOSED ENVIRONMENT**

This document has been produced using funds of a Joint Programme between the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe

All rights reserved. No part of this publication may be translated, reproduced or transmitted, in any form or by any means, electronic (CD-Rom, Internet, etc.) or mechanical, including photocopying, recording or any information storage or retrieval system, without prior permission in writing from the Directorate of Communications (F-67075 Strasbourg Cedex or [publishing@coe.int](mailto:publishing@coe.int)).

**CONTENTS**

**FRAMEWORK TRAINING PROGRAMME FOR THE LAW ENFORCEMENT OFFICERS ON HUMAN RIGHTS SAFEGUARDS ..... 11**

**FOREWORD ..... 12**

**NOTES ..... 13**

**SHARED DEFINITIONS ..... 14**

**INTERNATIONAL STANDARDS AND NORMS ..... 15**

Basic concepts ..... 15

Purpose and aim ..... 15

Legal Framework<sup>1</sup> ..... 16

European Convention for the Protection of Human Rights and Fundamental Freedoms ..... 17

What rights are protected under the European Convention and its Protocols? ..... 18

What do the Convention and its Protocols prohibit? ..... 18

What does the European Court of Human Rights do? ..... 18

How does the European Court of Human Rights apply the European Convention? ..... 19

What are the positive obligations as per the Convention? ..... 19

What are the negative obligations under the Convention? ..... 20

What does the “autonomous” concept of a right from the Convention mean? ..... 20

The right to life (Article 2, ECHR) ..... 20

Prohibition of Torture (Article 3 ECHR) ..... 22

What is the negative obligation of the state according to Article 3? ..... 23

What is the positive obligation of the state according to Article 3? ..... 23

What is torture? ..... 23

What is inhuman conduct or treatment? ..... 24

What does degrading treatment mean? ..... 24

Detention in itself does not constitute a violation of Article 3 of the ECHR. However, suffering and humiliation must not exceed the accepted threshold ..... 26

The most common forms of violation of human rights of persons deprived of liberty are the following ones: ..... 27

The right to liberty and security of person (Article 5 ECHR) ..... 27

When does deprivation of liberty commence? ..... 29

What does the word “lawful” mean (Article 5.1 a-f)? ..... 29

When is deprivation of liberty unlawful under the Convention? ..... 29

Competence assessment form: International standards and norms ..... 31

Questions and answers: International standards and norms ..... 31

**EUROPEAN CODE OF POLICE ETHICS AND EUROPEAN CODE OF ETHICS FOR PRISON STAFF . 32**

Basic concepts ..... 32

Purpose and aim ..... 32

European Convention for the Protection of Human Rights and Fundamental Freedoms ..... 32

Case law of the European Court of Human Rights ..... 32  
 Competence assessment form: European Code of Police Ethics and European Code of Ethics for Prison Staff ..... 33  
 Questions and answers: European Code of Police Ethics and European Code of Ethics for Prison Staff. 33

**CULTURAL SIMILARITIES AND DIFFERENCES ..... 34**

Basic concepts ..... 34  
 Purpose and aim ..... 34  
 European Convention for the Protection of Human Rights and Fundamental Freedoms ..... 35  
 Case law of the European Court of Human Rights ..... 35  
 Recommendations of the Committee of Ministers of the Council of Europe to member states ..... 36  
 European Prison Rules ..... 36  
 Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards) ..... 37  
 Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities ..... 38  
 Guidelines for managing persons deprived of liberty in closed environment with respect for their cultural specifics ..... 38  
 Competence assessment form: Cultural similarities and differences ..... 39  
 Questions and answers: Cultural similarities and differences ..... 39

**EFFICIENT COMMUNICATION ..... 40**

Basic concepts ..... 40  
 Purpose and aim ..... 40  
 Recommendations of the Committee of Ministers to member states ..... 40  
 European Prison Rules ..... 41  
 Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards) ..... 41  
 Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities ..... 42  
 Guidelines for efficient communication in closed environment ..... 42  
 Competence assessment form: Efficient communication ..... 44

**CONFIDENTIALITY OF PERSONAL DATA ..... 45**

Basic concepts ..... 45  
 Purpose and aim ..... 45  
 European Convention for the Protection of Human Rights and Fundamental Freedoms ..... 45  
 Case law of the European Court of Human Rights ..... 46  
 Recommendations of the Committee of Ministers of the Council of Europe to member states ..... 47  
 European Prison Rules ..... 47  
 Excerpts from the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities ..... 47  
 Guidelines for protecting confidentiality of personal data ..... 48

Competence assessment form: Confidentiality of personal data .....	48
Questions and answers: Confidentiality of personal data .....	48
<b>SEARCH .....</b>	<b>49</b>
Basic concepts.....	49
Purpose and aim .....	49
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	49
Case law of the European Court of Human Rights.....	49
European Prison Rules .....	50
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	50
Guidelines for searching persons deprived of liberty .....	51
Competence assessment form: Searching persons deprived of liberty .....	52
Questions and answers: Searching persons deprived of liberty .....	52
<b>ESCORTING .....</b>	<b>53</b>
Basic concepts .....	53
Purpose and aim .....	53
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	53
Case law of the European Court of Human Rights .....	53
European Prison Rules.....	54
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	54
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	55
Guidelines for escorting persons deprived of liberty .....	55
Competence assessment form: Escorting of persons deprived of liberty .....	56
Questions and answers: Escorting persons deprived of liberty .....	56
<b>SELF-HARM AND SUICIDE .....</b>	<b>57</b>
Basic concepts.....	57
Purpose and aim .....	57
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	57
Case law of the European Court of Human Rights .....	58
Recommendations of the Committee of Ministers of the Council of Europe to member states.....	58
European Prison Rules.....	58
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	58
Guidelines for the prevention of self-inflicted injuries and suicides .....	59
Guidelines for handling cases of attempted self-harm and suicide .....	59
Competence assessment form: Preventing self-harm and suicide.....	60
Questions and answers: Preventing self-harm and suicide.....	60

<b>CONTROL AND RESTRAINT .....</b>	<b>61</b>
Basic concepts.....	61
Purpose and aim .....	61
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	62
Case law of the European Court of Human Rights .....	62
European Prison Rules.....	64
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards) .....	64
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	65
Competence assessment form: Control and restraint .....	66
Questions and answers: Control and restraint .....	66
<b>ILL-TREATMENT .....</b>	<b>67</b>
Basic concepts.....	67
Purpose and aim .....	68
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	68
Case law of the European Court of Human Rights .....	69
European Prison Rules.....	70
Guidelines for combatting ill-treatment .....	71
Competence assessment form: Combatting ill-treatment .....	73
Questions and answers: Combatting ill-treatment .....	73
<b>IMPUNITY .....</b>	<b>74</b>
Basic concepts.....	74
Purpose and aim .....	74
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment .....	74
European Prison Rules.....	75
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	75
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	75
Guidelines for preventing impunity .....	76
Basic concepts.....	79
Purpose and aim .....	79
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	79
Case law of the European Court of Human Rights .....	80
European Prison Rules	
Criminal acts .....	80
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	80
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or	

Degrading Treatment or Punishment to BiH authorities .....	81
Guidelines for investigating allegations of ill-treatment .....	82
Competence assessment form: Investigating allegations of ill-treatment.....	83
Questions and answers: Investigating allegations of ill-treatment .....	83
<b>INVESTIGATING ALLEGATIONS OF ILL-TREATMENT INTERNALLY .....</b>	<b>84</b>
Basic concepts.....	84
Purpose and aim .....	84
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	84
UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	84
Case law of the European Court of Human Rights .....	85
European Prison Rules.....	86
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards) .....	86
Guidelines for investigating allegations of ill-treatment internally .....	88
Competence assessment form: Investigating allegations of ill-treatment internally.....	90
Questions and answers: Investigating allegations of ill-treatment internally.....	90
<b>ADMISSION TO CLOSED ENVIRONMENT .....</b>	<b>91</b>
Basic concepts.....	91
Purpose and aim .....	91
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	91
Case law of the European Court of Human Rights .....	91
European Prison Rules.....	92
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards).....	92
Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities.....	93
Guidelines for admitting persons deprived of liberty in the closed environment .....	96
Competence assessment form: Admission to closed environment .....	97
<b>QUESTIONNAIRE ON ADMISSION .....</b>	<b>98</b>
Basic concepts.....	98
Purpose and aim .....	98
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	98
European Prison Rules.....	98
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	98
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	99
Guidelines for developing questionnaire on admission.....	99
Competence assessment form: Questionnaire on admission .....	100
Questions and answers: Questionnaire on admission.....	100
Basic concepts.....	101

Purpose and aim .....	101
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	101
European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment .....	102
Case law of the European Court of Human Rights .....	102
Recommendations of the Committee of Ministers of the Council of Europe to member states .....	103
European Prison Rules .....	103
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards) .....	104
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	104
Guidelines for informing persons deprived of liberty of their rights .....	105
Competence assessment form: Informing persons deprived of liberty about their rights .....	106
Questions and answers: Informing persons deprived of liberty about their rights .....	106
<b>THE RIGHT TO INFORM A CLOSE FAMILY MEMBER OR A THIRD PERSON OF CHOICE ABOUT DEPRIVATION OF LIBERTY .....</b>	<b>107</b>
Basic concepts .....	107
Purpose and aim .....	107
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	107
Standards of the European Committee for the Prevention of Torture, Inhuman or Degrading Punishment or Treatment (CPT standards) .....	107
Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities .....	108
Competence assessment form: The right to inform a close family member or a third person of choice about deprivation of liberty .....	109
Questions and answers: The right to inform a close family member or a third person of choice about deprivation of liberty .....	109
<b>THE RIGHT TO ACCESS A LAWYER .....</b>	<b>110</b>
Basic concepts .....	110
Purpose and aim .....	110
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	110
Case law of the European Court of Human Rights .....	110
European Prison Rules .....	111
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards) .....	112
Excerpts from the Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	112
Guidelines for ensuring the right to access a lawyer .....	112
Competence assessment form: The right to access a lawyer .....	113
Questions and answers: The right to access a lawyer .....	113
<b>THE RIGHT TO ACCESS A MEDICAL DOCTOR .....</b>	<b>114</b>

Basic concepts.....	114
Purpose and aim .....	114
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	114
Case law of the European Court of Human Rights .....	114
Recommendations of the Committee of Ministers of the Council of Europe to member states .....	115
Standards of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT standards) .....	115
Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities .....	116
Competence assessment form: The right to access a medical doctor .....	119
Questions and answers: The right to access a medical doctor .....	119
<b>THE RIGHT TO ACCESS A LAWYER .....</b>	<b>121</b>
Basic concepts.....	121
Purpose and aim .....	121
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	121
Case law of the European Court of Human Rights .....	121
European Prison Rules .....	122
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards).....	123
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities.....	123
Guidelines for ensuring the right to access a lawyer .....	123
Competence assessment form: The right to access a lawyer .....	124
Questions and answers: The right to access a lawyer .....	124
<b>THE RIGHT TO AN INTERPRETER .....</b>	<b>125</b>
Basic concepts .....	125
Purpose and aim .....	125
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	125
Case law of the European Court of Human Rights .....	125
European Prison Rules .....	126
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	126
Guidelines for ensuring the right to access an interpreter .....	126
Competence assessment form: The right to access an interpreter .....	127
Questions and answers: The right to access an interpreter .....	127
<b>VIOLENCE BETWEEN PERSONS DEPRIVED OF LIBERTY .....</b>	<b>127</b>
Basic concepts.....	127
Purpose and aim .....	127
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	127
Case law of the European Court of Human Rights .....	128
European Prison Rules.....	128

Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards).....	128
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities.....	129
Guidelines for handling cases of violence occurring between persons deprived of liberty .....	130
Competence assessment form: Violence occurring between persons deprived of liberty .....	131
Questions and answers: Violence between persons deprived of liberty.....	132
<b>VULNERABLE CATEGORIES OF PERSONS DEPRIVED OF LIBERTY.....</b>	<b>133</b>
Basic concepts .....	133
Purpose and aim .....	133
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	134
Recommendations of the Committee of Ministers of the Council of Europe to member states .....	134
Case law of the European Court of Human Rights .....	134
Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards).....	134
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	137
Guidelines for managing vulnerable categories of persons deprived of liberty .....	137
Competence assessment form: Managing vulnerable categories of persons deprived of liberty ...	139
Questions and answers: Managing vulnerable categories of persons deprived of liberty .....	139
<b>JUVENILES .....</b>	<b>140</b>
Basic concepts.....	140
Purpose and aim .....	140
European Convention for the Protection of Human Rights and Fundamental Freedoms .....	140
Recommendations of the Committee of Ministers of the Council of Europe to member states .....	141
United Nations Rules for the Protection of Juveniles Deprived of their Liberty .....	141
Case law of the European Court of Human Rights .....	141
Standards of the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT standards).....	142
Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities .....	144
Guidelines for managing juveniles deprived of liberty in closed environment .....	144
Competence assessment form: Managing juveniles deprived of liberty in closed environment ...	146
Questions and answers: Managing juveniles deprived of liberty in closed environment .....	146

# FRAMEWORK TRAINING PROGRAMME FOR THE LAW ENFORCEMENT OFFICERS ON HUMAN RIGHTS SAFEGUARDS

Competence area	Module	Session title	Duration
Introduction to the closed environment	International standards and norms	International standards and norms	30 min
		European Police Code of Ethics and European Code of Ethics for Prison Staff	
	Persons deprived of liberty and closed environment	Cultural similarities and differences	
Communication in the closed environment	Efficient communication and handling confidential data	Efficient communication	30 min
		Confidentiality of personal data	
Safety and security in the closed environment	Maintaining the level of security in detention	Search	3 hrs
		Escorting	
		Self-harm	
		Suicide	
		Control and restraint (use of force)	
	Emergency preparedness	Ill-treatment	3 hrs
		Impunity	
		Investigating allegations of ill-treatment	
	Investigating allegations of ill-treatment internally		
Human rights in the closed environment and public safety	Treatment of persons deprived of liberty while respecting their human rights	Admission to the closed environment	3 hrs
		Questionnaire on admission	
		Informing persons deprived of liberty about their rights	
		The right to inform a close relative or a third person of choice about deprivation of liberty	
		The right to access a lawyer	
		The right to access a medical doctor	
		The right to an interpreter	
	Maintaining security and respecting human rights of persons deprived of liberty	Violence between persons deprived of liberty	2 hrs
		Vulnerable categories	
		Juveniles	

## FOREWORD

These Guidelines were prepared for the law enforcement officers in Bosnia and Herzegovina within the framework of the European Union/Council of Europe Horizontal Facility for Western Balkans and Turkey project “Enhancing human rights protection for detained and sentenced persons in BiH”.

The purpose of Guidelines and human rights standards contained herein is not to replace the good existing local practices but to complement and enrich them with recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CoE, as the implementing partner in the project, believes that this material will directly contribute to upholding human rights of persons deprived of liberty and that it will also be a valuable complement to the institutional training framework on human rights of the law enforcement agencies in BiH.

Senior managers from the Ministry of Internal Affairs of Republika Srpska (Mišel Krajišnik), Federal Police Administration (Almir Sunulahpašić), Police of Brčko District of BiH (Petar Klarić), State Investigation and Protection Agency (Boris Knežević), Border Police (Semir Pašanbegović), Service for Foreigners' Affairs (Muhamed Huskić), Court Police of Bosnia and Herzegovina (Franjo Dujo), Court Police of the Federation of BiH (Dženad Grošo and Edis Skopak), Court Police of Republika Srpska (Željko Dragojević and Veljko Spremo) and Court Police of Brčko District of BiH (Senad Hukić) made significant and highly appreciated contribution by commenting on the draft material and ensuring that it is aligned with the best current local practices and legal provisions. The drafting team benefited also from the expertise of the Working Group members appointed by the Ministry of Justice of BiH (Dragan Granzov) and Ministry of Justice of Republika Srpska (Nenad Mirkonj and Mile Mastilo).

Assistant Ministers of Justice for execution of criminal sanctions in Bosnia and Herzegovina, Mustafa Bisić, Pero Dunjić and Hidajet Trako, as well as international consultants Rod MacCowan and Jean-Pierre Devos contributed throughout the development of the Guidelines.

The drafting team:

Nermina Delibašić, Faik Fejzić, Nusret Hambo, Esad Hrustić, Redžo Kahrić  
Zlatko Ledić, Aleksandar Majdov, Miroslav Marić, Miro Prodanović, Ana Radeta  
Zoran Rajič, Vedrana Rakić, Milenko Vidović, Marica Bender, Armin Dervoz

## NOTES

Some of the material used in these Guidelines is based on the earlier prepared Training manuals on core and advanced competencies for prison officers and Guidelines for developing treatment programmes for vulnerable categories of prisoners.

The languages in which the material is drafted are Bosnian, Croatian and Serbian, in accordance with the individual preference of the authors.

All references to law enforcement officers in this material refer equally to male and female officers.

The definitions offered in this material are not quotes from legal documents but definitions jointly agreed among the authors to serve the purposes of these Guidelines.

The competence assessment form developed for individual subjects can be used by managers when preparing annual performance evaluation reports for the law enforcement officers. The questions and answers developed for individual subjects can equally be used by managers when preparing annual performance evaluation reports for the law enforcement officers.

## SHARED DEFINITIONS

### The term law enforcement officer encompasses:

**Authorised officers (BiH)** are persons with relevant authorisations within police authorities, including the State Investigation and Protection Agency (SIPA), State Border Service, court and financial police, as well as customs, tax and military police authorities in Bosnia and Herzegovina. Authorised officers also include expert associates, i.e. investigators of the BiH Prosecutor's Office investigators acting upon the Prosecutor's authorisations.

**Police officers (RS)** are persons employed with the Ministry of Internal Affairs and authorised to enforce police authorisations prescribed by the law and act as authorised persons in accordance with the Criminal Procedure Codes of Republika Srpska and Bosnia and Herzegovina and other laws falling in the competence of the Ministry.

**Police officers (FBiH)** are members of police authorities, authorised to enforce police authorisations prescribed by the Law on Police Officers and act as authorised officers in accordance with the Criminal Procedure Codes in the Federation of BiH and Bosnia and Herzegovina.

**Investigation** is the term encompassing activities aimed at establishing facts related to an event, most frequently an illegal or unauthorised conduct. These activities are usually undertaken by the special investigation authorities or independent commissions (in case of allegations of ill-treatment among police officers: Internal Control Unit, Professional Standards Unit, disciplinary commissions, etc)

**Safety** encompasses measures and actions aimed at preventing infliction of injuries to the person deprived of liberty and/or to the law enforcement officer.

**Security** comprises measures and actions that prevent the person deprived of liberty from harming, threatening or damaging third persons, as well as causing damage to the facility holding the person.

**Deprivation of liberty in the criminal justice terminology** comprises any action or procedure aimed at preventing a person or a group of persons from moving freely, while exercising legally authorised means of control and restraint.

**Deprivation of liberty** is a legal action by which the competent authority restricts free movement for the person suspected beyond reasonable doubt of committing a criminal offence.

**Person deprived of liberty** is any individual who has been referred to a premise intended for deprivation of liberty by a competent body. Authorised law enforcement officer also restricts the right to free movement for such person.

**Closed environment** is the area holding a person deprived of liberty suspected beyond reasonable doubt of having committed a criminal offence. For the purposes of this document, any place of deprivation of liberty shall be deemed detention, regardless if these are premises in which investigation takes place, premise or cell in the police station, holding premise in the Border Police unit, office space in SIPA, holding premises in the court police and pre-trial detention units in prison establishments.

**Ill-treatment comprises** any action or failure to act towards persons deprived of liberty, which can lead to torture, inhuman or degrading treatment with negative impact on their mental and physical integrity.

## INTERNATIONAL STANDARDS AND NORMS

### Basic concepts

**Human rights** are rights that belong to every person by the mere act of birth, regardless of gender, race, or ethnicity – or. belong to every human being. Human rights are, therefore, recognised as universal (applicable everywhere) and egalitarian (equal for all). The rights may exist as natural rights or as legal rights in local, regional, national or international law.

**Human rights violations** occur when the actions of state (or non-state) bodies violate, ignore or deny basic human rights (including civilian, political, cultural, social and economic rights).

### Purpose and aim

The purpose of the police treatment in line with international standards and norms in a democratic society is to provide protection and respect for fundamental human rights and freedoms of citizens contained in the national legislation and international documents.

The objective of the treatment by which human rights are respected is to diminish or completely avoid ill-treatment or other forms of torture.

In their direct and everyday contacts with persons deprived of their liberty that are under their supervision, the officer of the law enforcement agency is responsible for the respect and ensuring their human rights.

**Legal Framework<sup>1</sup>**

	<b>United Nations</b>	<b>Council of Europe</b>
<b>General instruments for the protection of human rights</b>	<ul style="list-style-type: none"> <li>• Universal Declaration on Human Rights</li> <li>• International Covenant on Civil and Political Rights</li> <li>• Optional Protocol to the International Covenant on Civil and Political Rights</li> </ul>	<ul style="list-style-type: none"> <li>• European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)</li> </ul>
<b>Instruments for the protection of human rights related to torture</b>	<ul style="list-style-type: none"> <li>• Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</li> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>• European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)</li> </ul>
<b>General standards for the treatment of persons deprived of their liberty</b>	<ul style="list-style-type: none"> <li>• Standard Minimum Rules for the Treatment of Prisoners (“The Mandela Rules”)</li> <li>• Basic Principles for the Treatment of Prisoners</li> <li>• Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</li> <li>• United Nations Rules for the Protection of Juveniles Deprived of their Liberty</li> <li>• United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)</li> </ul>	<ul style="list-style-type: none"> <li>• European Prison Rules (EPR)</li> <li>• European Rules for Juvenile Offenders Subject to Sanctions or Measures</li> </ul>

1 National laws have taken and incorporated provisions on the protection of human rights from the international instruments.

2 National laws have taken and incorporated provisions on the protection of human rights from the international instruments

	United Nations	Council of Europe
<b>International bodies monitoring the implementation of obligations</b>	<ul style="list-style-type: none"> <li>• UN Subcommittee for the Prevention of Torture (UN SPT): monitors application of the UN Convention against Torture</li> <li>• Human Rights Committee (HRC): monitors application of the International Covenant on Civil and Political Rights</li> </ul>	<ul style="list-style-type: none"> <li>• European Committee for the Prevention of Torture (CPT): monitors application of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</li> <li>• European Court of Human Rights (ECtHR): monitors application of the European Convention on Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</li> </ul>

## European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention (or European Convention on the Protection of Human Rights and Fundamental Freedoms, hereinafter referred to as ECHR) is a Council of Europe document adopted immediately following World War II with the aim of protecting civil and political rights in Europe. It was adopted in 1950 and came into force in 1953. It is the first ever binding document in the field of human rights. The creation and initial activities of the Council of Europe (with its seat in Strasbourg) were in part a response to severe human right violations during World War II. There were initially ten member states of the Council of Europe, and now there are 47. The main decision making bodies of the Council of Europe are the Committee of Ministers (executive body) and the Parliamentary Assembly.

The European Convention grants individuals the right to submit an application – the right of individuals and organisations to challenge their governments through a process in Strasbourg, submitting their applications initially to the European Commission of Human Rights, and later to the European Court of Human Rights. Court judgments are binding for states that are the signatories of the Convention.

**Bosnia and Herzegovina ratified the European Convention on Human Rights on 12 July 2002, but it is also a unique example of application of the European Convention prior to ratification, actually, in line with the Dayton Peace Agreement from 1995.**

Article II, paragraph 2 of the BiH Constitution stipulates that **“the rights and freedoms** set forth in the European Convention for the Protection of Human Rights and

Fundamental Freedoms and its Protocols ***shall apply directly*** in Bosnia and Herzegovina. ***These shall have priority over all other law.***"

This means that domestic laws (and rulebooks) should be in line with the protection provided under the European Convention, and if domestic laws do not comply with the European Convention, the Convention should be directly applicable in order to avoid violations of human rights of individuals, both nationals of BiH and foreign nationals in the territory of BiH.

## **What rights are protected under the European Convention and its Protocols?**

The Convention specifically protects:

- the right to life;
- the right to a fair hearing in civil and criminal matters;
- the right to respect for private and family life;
- the freedom of expression;
- the freedom of thought, conscience and religion;
- the right to an effective legal remedy;
- the right to the peaceful enjoyment of one's possessions; and
- the right to vote and the right to stand for elections.

## **What do the Convention and its Protocols prohibit?**

The Convention specifically prohibits:

- torture and inhuman or degrading treatment or punishment;
- arbitrary or unlawful detention;
- discrimination in enjoyment of the rights and freedoms set forth in the Convention;
- expulsion or prohibition of entry to own nationals;
- death penalty; and
- collective expulsion of foreign nationals.

## **What does the European Court of Human Rights do?**

The European Court of Human Rights monitors whether each individual state fulfils its obligations under the Convention. Individuals and states (in the case of a dispute between two member states) may submit applications to the Court. The Court applies the European Convention in its practice. When it finds that a state has breached one or more rights or guarantees, the Court issues a decision. The Court's decisions are binding for member states.

## How does the European Court of Human Rights apply the European Convention?

The Court does not deal only with special cases and violations of rights set forth in the Convention, it actively interprets the European Convention, considers in detail each specific issue of violations of guaranteed rights and expands their scope in line with the development of democratic society. Apart from that, the Court also applies customary law in its work (also known as case law, i.e. the Court's findings are used as guidance and cited in subsequent judgments and decisions). It is, therefore, not enough to be familiar only with the text of the European Convention, familiarity with the Court's case law is also necessary, which is why its decisions and judgments are often mentioned in connection with rights from the Convention. The Convention keeps evolving as the Court expands the scope of protection for individual rights in line with the development of democratic society.

Persons deprived of liberty enjoy other rights, such as:

- prisoners must not be maltreated;
- they must not be subjected to inhuman or degrading punishment or conditions contrary to Article 3 of the Convention (Kalashnikov v. Russia; Van der Ven v. The Netherlands);
- the right to life (Edwards v. UK );
- respect for family life (Ploski v. Poland; X. v. UK);
- freedom of expression (Yankov v. Bulgaria; T. v. UK);
- the right to perform religious duties (Poltoratskiy v. Ukraine);
- right to effective access to legal counsel or court (Article 6 - Campbell and Fell v. UK;
- Golder v. UK);
- respect for correspondence (Silver et al. v. UK); and
- marriage (Hamer v. UK, Draper v. UK).

## Why are proceedings against a state initiated before the European Court of Human Rights?

Simply put, because authorities (judicial, administrative, executive, police, prison administration, teachers in public schools and other institutions, etc.) who work in a state institution or body, or another body financed by the state, or in one of its organisational units are in breach of the European Convention by their actions or omissions that impact an individual.

## What are the positive obligations as per the Convention?

Positive obligations oblige state bodies and officers to uphold human rights, meaning that they are required not to violate these rights themselves.

They impose on the state bodies and officials an obligation of protection, which means that they need to protect the rights of the possessors against the interference of third parties and to punish the perpetrators thereof.

The obligation of application is mandatory, which means undertaking measures (legal and practical) for full exercise of those rights.

### **What are the negative obligations under the Convention?**

The negative obligations require the state bodies to refrain from interfering in the enjoyment of human rights by individuals, i.e. not to violate these rights.

### **What does the “autonomous” concept of a right from the Convention mean?**

This term is often used in the literature about the application of the Convention and the practice of the Court in Strasbourg. It means that the terms and concepts do not have the same meaning and understanding as defined or applied in our country.

### **The right to life (Article 2, ECHR)**

Compared to other rights and freedoms of persons deprived of liberty, violations of their right to life are less frequent.

Article 2 The Convention protects the right to life. It includes three main requirements:

- prohibition of unlawful killings by government authorities;
- the obligation to investigate a suspicious death; and
- positive obligation, under certain circumstances, to undertake steps to prevent loss of life that can be avoided.

The text of Article 2 reads:

*“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 defence 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.”*

The text of Article 2 may be divided into two sections as shown above.

The first sentence obliges (positive obligation) the state to protect the life of every person by law. The prohibition of murder pertains both to protection from natural persons and to protection from state bodies: *“Everyone’s right to life shall be protected by law.”* This means that there should be a clear and universally understandable formulation in domestic law prohibiting intentional murder and reckless endangerment of life, as well as mandating the undertaking of all protective measures to preserve life.

**In the case of deprivation of liberty, this means that the law enforcement agencies should undertake all protective measures and respond adequately when**

**a person deprived of liberty (or any other person) unlawfully kills another person deprived of liberty (or any other person) during the duration of the deprivation of liberty.** To respond adequately in this case means that the authorities are obliged to undertake an official investigation to find and criminally prosecute the perpetrator.

For example, in the case of *Edwards v. UK* a violation of Article 2 of the Convention was found because prison officers who were on duty during the night were not alerted when a prisoner was killed by his cellmate. This means that the prison did not have protective organisational measures.

Reckless endangerment of life may refer to threats to life posed by other persons, threats to the environment or protection from self-inflicted harm (suicide), e.g. undertaking all necessary measures to prevent suicide or murder of persons deprived of liberty - especially rigorous surveillance and regular controls of persons deprived of liberty and cells. Preventing suicide implies that in the situations when the authorities are aware of the risk of self-harm, they should undertake all reasonable measures to prevent suicide. In this occasion, the authorities should undertake rigorous surveillance measures.

The notion of threats to life posed by other persons may appear in connection with police protection or other protection in prisons if the administration failed to undertake measures to avoid life-threatening situations although aware or ought to have been aware of the existence of such a threat.

There is also an obligation to investigate murders and cases of death, as well as the life-threatening situations.

There is an obligation to investigate suspicious cases of death irrespective of how the authorities found out about the death, whether representatives of the state were involved and what the circumstances surrounding the death were. This obligation also pertains to killings that were not intentional. It should be clear that investigations should be conducted in full by an independent state body. To be on the safe side, competent independent investigative bodies should be immediately engaged when a person deprived of liberty dies at the establishment.

This is particularly important in all cases when the person deprived of liberty was in good health at the time of arrest. Without a sound explanation about the cause of death supported by evidence, the state is in breach of Article 2.

The death penalty has been abolished in BiH. At the same time, it should be noted that complete abolishment of the death penalty includes extraterritorial obligations of BiH in cases when the extradition of a person to another country would place that person in danger of being subject to the death penalty (extradition or deportation). Therefore, if there is a request for extradition of a person convicted of a crime for which the death penalty may be imposed, that person should not be extradited to the applicant state.

As for the use of lethal force, Article 2 imposes a test that requires that any force applied by the State must not exceed the force that is "absolutely necessary." This is a strict proportionality test, so that the force used must be strictly proportionate to the achievement of one of the objectives set out in Article 2 (2) (a) to (c).

The lethal force is defined as: (i) a force that is intended to be deadly and which has that effect; (ii) a force that results in death of a person for which it could have reasonably been predicted to cause such an effect; and (iii) use of force that results in seri-

ous injuries of a person, that might have caused death.

Article 2 “basically does not specify cases where intended murder of an individual is allowed but it [rather] describes situations where it is allowed to “use force” that can lead to the deprivation of life as an unwanted outcome.” In other words, the fact that one of the scenarios set forth in Article 2(2) (a) to (c) may happen, does not mean that the lethal force can be used. This is not a threshold that, when met, the use of lethal force is allowed. Any use of lethal force must be for legitimate purpose only. Any other approach shall be inconsistent with the requirement that the rights protected by the Convention are real and efficient.

Lethal or potentially lethal force may be used only for legal purposes. In practice, the only legal objective that may justify the use of such force is when it is absolutely necessary to protect a life of a person, irrespective of whether that is the person that uses force or another person.

Article 2(2) (b) relates to the lawful arrest or to escape of a person lawfully detained. In the case *Nachova v. Bulgaria*, the Court found that it was not absolutely necessary to use firearm for the arrest of the offenders who were not posing threat to anyone. The Court was of opinion that, under the circumstances, the use of the firearm was unlawful and the prison administration (as well as other authorities) had to bear the following in mind when it comes to the use of the lethal force:

*“...whether the operation was planned and controlled by the authorities in order to minimise, to the extent possible, the use of potentially deadly force. Authorities must devote due attention to ensure that any risk of loss of life is minimal.”*

### **Prohibition of Torture (Article 3 ECHR)**

The Article 3 of the Convention reads:

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

With its fifteen words, Article 3 is one of the briefest provisions of the Convention, and the most relevant right that comes to mind in relation to prisons. However, the brevity of this Article should not lead to its being neglected. The real substance of Article 3 can be followed through the case law of the European Court of Human Rights.

Despite the fact that reliable reports testify to the fact that torture is still widespread in the world, the prohibition of torture is not contained only in the Convention, but also in other international instruments including: from Article 5 of the Universal Declaration of Human Rights: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*; to the Rome Statute of the International Criminal Court from 1998 that proclaimed the torture, as a part of a widespread and systematic attack on civilians, a crime against humanity.

Apart from being party to the Convention, most member states of the Council of Europe are also parties to the following international treaties that prohibit torture:

- the four Geneva Conventions from 1949;
- the UN International Covenant on Civil and Political Rights from 1966, Article 7: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment or punishment”*;
- the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or
- Punishment (CAT) from 1984; and

- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or punishment.

The significance of the prohibition of ill-treatment and the attention accorded to this right has led to the creation of a special instrument, namely, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that provides for a special body, the European Committee for the Prevention of Torture (CPT), which carries out international inspection tasks and monitors the implementation of the Convention.

### **What is the negative obligation of the state according to Article 3?**

This Article includes the obligation to refrain from, i.e. not to torture, not to punish, and not to subject to inhuman treatment or punishment.

### **What is the positive obligation of the state according to Article 3?**

Conducting an investigation following a reported violation of this right, legal protection of the rights of persons not to be subjected to the prohibited treatment and ensuring acceptable detention conditions and adequate medical treatment.

In order to understand the kind of behaviour that is prohibited and what is needed to ensure this right for everyone within the competences of the state, it is necessary to understand the meaning of each term used in the Article.

The words in the Article can be divided into five elements:

- torture;
- inhumanity;
- degradation;
- treatment; and
- punishment.

### **What is torture?**

It is premeditated:

- cruel infliction of severe mental or physical pain or suffering;
- deliberate or conscious infliction of pain; and
- with a particular aim such as acquiring information, punishment or intimidation.

The first assessment where ill-treatment was described as torture was issued relatively recently, on 18 December 1996, in the case of *Aksoy v. Turkey*. This was the case of 'Palestinian hanging' when the victim was stripped, his hands were tied behind his back and he was suspended by the wrists. This caused paralysis in both his arms that lasted for a certain time. It was found that this action was clearly premeditated and seems to have been done in order to extract a confession or information from Mr. Aksoy.

Subsequently, in the case of *Aydin v. Turkey*, the Court cited the criterion of premeditated infliction of pain due to the nature of the actions committed by state officials against Ms Aydin. She was raped, subjected to a series of abhorrent and degrading

experiences: she had been beaten, blindfolded, stripped naked, hosed with pressurised water. Her age (17) and mental suffering were also taken into account.

### **What is inhuman conduct or treatment?**

This is the most frequent type of violation of Article 3 and can be described as infliction of intensive, serious physical and/or mental suffering. It mainly pertains to unjustified violence by law enforcement officers. For example, in the case of *Egmez v. Cyprus* (2000), the Court found that the beating carried out by state representatives had transpired 'over a short period of heightened tension and emotions' and had not reached the threshold of torture because other elements of torture were not present, such as for example the aim of extracting information.

### **What does degrading treatment mean?**

It is a treatment that generates a sense of fear, strong anguish, and inferiority with the victim, making the victim feel degraded or humiliated. It is also described as a treatment that involves breaking the victim's physical or moral resistance, or a treatment driving the victim to act against their own will or consciousness.

Inhuman and degrading treatment need not be intentional and need not aim at exposing someone to degrading or inhuman treatment.

One of the first cases establishing degrading treatment was the case of *Tyrer v. the UK* (1978) where a 15-year-old boy was punished by birching in the presence of his father and a doctor. He was made to take down his trousers and underpants and bend over a table, with two policemen holding him while he was being birched, and with pieces of the birch breaking at the first stroke. The boy's father lost his self-control and after the third stroke "went for" one of the policemen and had to be restrained. The birching raised, but did not cut, the boy's skin and he was sore for about a week and a half afterwards. The Court held that the authorities treated him as an object, which represented an assault on his dignity and physical integrity.

An example of degrading treatment directly related to deprivation of liberty is the case of *Price v. the UK* (2001). Although the Court found no evidence of any positive intention to humiliate or debase Mrs. Price, it considered that to detain a severely disabled person (the applicant was four-limb deficient) in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest difficulty, constituted degrading treatment.

In its case law, the Court established that one type of treatment may at the same time include both inhuman and degrading treatment. For instance, it was established in *Tomasi v. France* (1993). Within the physical assault, he was slapped, kicked, punched and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; Mr. Tomasi was also made to stand naked in front of an open window, deprived of food, threatened with a firearm. The ill-treatment lasted for two days during which he was in police custody.

The Court often finds that violation of rights is also caused by the conditions of serving a prison sentence. In the case of *Kalashnikov v. Russia* (2002) one of the main objections was the fact that the applicant had to serve his sentence of four years and ten months in difficult living conditions where one of the factors were overcrowded facilities: a cell less than 20 m<sup>2</sup> designed to accommodate 8 inmates (containing 8 bunk beds) was shared by 18 to 24 inmates. The conditions were further wors-

ened by the lack of fresh air, hygiene, and other negative factors. The Court ruled that these circumstances amounted to degrading treatment.

This case represents yet another example that inhuman or degrading treatment may be caused by actions or circumstances not necessarily aiming at exposing a person to inhuman or degrading treatment.

Inhuman treatment (sometimes combined with degrading treatment) encompasses various prohibited actions, such as the issue of medical treatment of persons deprived of liberty.

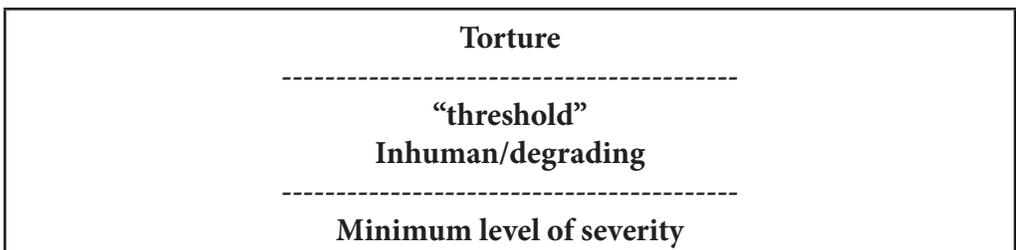
For instance, the *Greek case* (an interstate case instituted by several Western states against Greece during the Regime of the Colonels in early 1970s) was also related to inadequate medical care of the prisoners, which was considered inhuman treatment. It is now a well-founded criterion which, when not met, constitutes a violation of Article 3. The element is applied to any case requiring substantial medical care, regardless of the cause of illness. Medical treatment must be offered even if the health problems occurred prior to detention or during a forceful though lawful arrest.

In the case of *Ilhan v. Turkey*, the applicant's brother, who had sustained serious injuries during antiterrorist operations, was not brought to a hospital for treatment some thirty-six hours after the apprehension. Though there were also some other factors establishing torture, it was considered that the failure to provide urgent medical care alone constituted the essential element of violation. Poor medical treatment of prisoners, the poor level of its quality, now represents a significant element of violation established by the European Court of Human Rights (*Ostrovar v. Moldova*).

The list of established violations is very long. It should be noted that the Court in Strasbourg pays close attention to the above rights and is willing to consider various situations from this perspective.

The interpretation of the terms is now sufficiently clear, so that we can now talk about actions considered to constitute torture or other forms of violating this right.

In addition, there is a **scheme, applied by the Court, illustrating mutual relations among prohibited treatments**. With this scheme in mind, it is easier to identify possible violations. It is a triangle with torture at the top. Torture is the most severe violation among the three, which is why it is placed on the top. The base angles of the triangle are occupied by inhuman and degrading treatment. The difference is in the degree of suffering. This, however, does not mean that persons are less protected from other elements involving the prohibited degree of suffering. In the case of torture, it is extremely severe and intense.



The degree of suffering is the decisive classification criterion.

There are several degrees that can be differentiated. One differentiation separates torture from other elements of the prohibition. It is called the “threshold”.

The second one, often referred to as the “minimum degree of severity”, distinguishes violation of Article 3 from “unpleasant” or undesirable treatment that does not represent significant severity, which can therefore not be regarded as violation of Article 3.

Not all suffering or humiliation is prohibited. There are certain situations that are not severe enough to constitute inhuman or degrading treatment. Every lawful treatment or punishment includes necessary elements of suffering or humiliation. For example, measures of deprivation of liberty may often include suffering or humiliation.

**Detention in itself does not constitute a violation of Article 3 of the ECHR. However, suffering and humiliation must not exceed the accepted threshold.**

The case of *Ocalan v. Turkey* may serve as an example in this regard. The applicant was held in a special prison on the island of Imrali. He was the only inmate. He had problems in terms of being visited by his relatives, etc. The conditions resembled those of solitary confinement. The European Court of Human Rights found other violations as well, including that of Article 3, Article 6, etc. However, with regard to serving his sentence, the Court stated that such special arrangements did not include treatment inadmissible under Article 3.

There is a special emphasis on providing adequate guarantees, circumstances precluding violation of Article 3, particularly in the light of vulnerability of potential or alleged victims of torture, inhuman or degrading treatment, including persons deprived of liberty, which led the Court to establish or develop positive obligations, but without a positive obligation being explicitly stated in the text of a given article.

Generally speaking, positive obligations are similar to those defined under Article 2 of the ECHR. Therefore, circumstances precluding violation of Article 3 would be the following: conducting an investigation into a reported violation of this right, ensuring legal protection of persons against prohibited treatment (as well as obligations relating to the right to life) and ensuring acceptable detention conditions and adequate medical treatment (in accordance with the CPT findings).

The absolute nature of the prohibition of torture, which also includes inhuman or degrading treatment, is underlined in the judgment in the case of *Chahal v. the UK*. The United Kingdom wanted to deport Mr. Chahal, a Sikh separatist, to India, arguing that he was involved in terrorist activities and that he posed a threat to national security. The judgment was issued in 1996. It has since grown in importance due to the current “war on terror”. The essence of the Court’s approach can be seen from the following sentence:

*“The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct.”*

In other words, there are no arguments or reasons justifying torture and other forms of prohibited treatment.

## The most common forms of violation of human rights of persons deprived of liberty are the following ones:

- cursing;
- insulting;
- intimidation;
- debasement;
- humiliation;
- physical abuse;
- forced medical treatment;
- use of electric shocks;
- exposure to hot and cold water treatment;
- threats regarding bad behaviour;
- making a person to stand against a wall;
- placing a hood over the person's head;
- sleep deprivation;
- exposure to unbearable noise;
- food and water deprivation;
- complete isolation from the outside world with the eyes blindfolded;
- placing a severely disabled person in conditions inadequate for the degree of disability of the person deprived of liberty;
- deprivation of adequate medical help and care; and
- force-feeding.

## The right to liberty and security of person (Article 5 ECHR)

The Article 5 of the Convention reads:

*"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 fulfilment 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 offence or when it is reasonably considered necessary to prevent his committing an offence 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 unau-

thorised 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 the 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 authorised 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."*

Article 5 is one of the most complex articles of the European Convention and can be divided into three groups:

One group states reasons for deprivation of liberty, and they are given in paragraph 1.

Paragraphs 2, 3, and 4 define the procedure in case of deprivation of liberty.

Paragraph 5 foresees the right to compensation when this right is violated. Compensation is an important part of the Article; however, considering the specific nature of the training, the manual focuses only on the punitive aspects of deprivation of liberty and some of the procedural guarantees.

The main notions of "liberty" and "security of person" from the title of the Article are not separate elements. Although the title mentions security, this right is not related to protection against attacks by others (which is protected by Articles 2 and 3 of the European Convention).

Liberty and security are two elements of a single right implying physical liberty and are related to deprivation of physical liberty.

The right of a person to liberty and security can only be denied in accordance with the reasons stated in the text of Article 5, with its key words being "*save in ... cases*".

There is no formal definition of the concept of deprivation of liberty. The Court speaks about the intensity and degree of restriction. This was articulated in the judgment in the case of *Guzzardi v. Italy* (1980). Mr. Guzzardi was detained and forced to stay on a small island of 2.5 square kilometres. Despite the fact that there were other persons and that it was possible to live there with a family, the Court emphasised that the decision was imposed and that it brought to isolation from society.

In the same spirit, there is an interesting moment in a more recent case of *Lavents v. Latvia* (2002) which was, among other things, related to strict house arrest, where the applicant was prohibited to leave his flat even under police escort. It represented deprivation of liberty. Institution management sometimes resort to similar schemes and arrangements, which makes it important to note that Article 5 applies to them as well.

Civil servants are usually those arresting or otherwise detaining persons; however, natural persons may also deprive one of liberty, with official authorities encouraging, approving or permitting such arrests. This principle may be illustrated by the case of *Riera Blume and Others v. Spain* (1999). The detainees, members of a religious sect,

were kept by their relatives in a hotel in order to ensure their psychiatric and psychological treatment pursuant to the state procedure.

### **When does deprivation of liberty commence?**

It commences as of the moment when the person is made aware, by means of physical restraining, words or behaviour, that they are not free to leave the place. This moment does not depend on how national laws regulate the moment of deprivation of liberty, as in many countries the moment of deprivation of liberty is taken to be the moment when the protocol/official record on such deprivation is made. However, the Court holds that deprivation of liberty commences when a person is “not allowed” to leave the spot.

The case of *K.-F. v. Germany* (1997) is a paragon in this regard. A person was taken from their apartment to a police station, where an official record on deprivation of liberty was made an hour and 45 minutes after the arrest in the apartment. The Court took the period of one hour and 45 minutes into consideration when adjudicating on the case.

### **What does the word “lawful” mean (Article 5.1 a-f)?**

It concerns the grounds for deprivation of liberty of a person in accordance with national law that is harmonised with the Convention.

In the case of *K.-F. v. Germany* a violation of Article 5 was established because K.-F. was unlawfully deprived of liberty for 40 minutes, as German law stipulates that the maximum period of detention for suspect identification is 12 hours. This violation of the national code of criminal procedure proved sufficient for the deprivation of liberty to be declared unlawful. In addition, the case shows that even very short periods of time are important and taken into consideration.

### **Lawfulness implies that national law must be accessible, clear and predictable.**

In *Amuur v. France* (1996) violation reflected in the fact that deprivation of liberty of asylum seekers or illegal immigrants was prescribed by a secret document that was not accessible to the public. The other quality is of a less formal nature and concerns sufficient clarity and precision, reducing arbitrariness to a minimum. Any deprivation of liberty should contain one of the grounds stated in paragraph 1 a, b, f:

*“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 fulfilment of any obligation prescribed by law;*

.....

*f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”*

### **When is deprivation of liberty unlawful under the Convention?**

An example of it can be found in the case of *Jecius v. Lithuania* (2000). The applicant was deprived of liberty pursuant to provisions of a separate article of the Code of

Criminal Procedure, introduced at the time for the purpose of fighting organised crime. The provision allowed for deprivation of liberty during 60 days if it is believed that a person may commit a severe crime of a relevant category. The Court underlined that the actions were not in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority. Therefore it could not be subsumed under Item c) or any grounds offered by the article. Although the actions were in accordance with domestic legislation, they were in contravention of the Convention.

**14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.**

*European Prison Rules*

In the case of *Labita v. Italy* (2000), Mr. Labita was held in detention for ten more hours after the court judgment ordering his release was issued. The government tried to justify it referring to the fact that the registration officer who would register his release was not available. However, the Court found it inadmissible, since no such grounds are given in Article 5.

The same principle applies to initial arrest or any other periods of deprivation of liberty. Thus, in the case of *Menesheva v. Russia* (2006), the European Court of Human Rights found violation in terms of 20 hours of Ms. Menesheva's initial detention without any document or order. Furthermore, deprivation of liberty in this case did not have any grounds listed in Article 5 paragraph 1.

The following set of questions falls directly within the competence of prison authorities and is related to records on deprivation of liberty. The essence can be illustrated by the following excerpt from the judgment of the European Court of Human Rights in this case:

*"The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen... as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention."*

There is an important feature of the Convention that prison authorities may use as an argument against prison overcrowding. It is primarily related to persons held in detention.

The entire Article, including the formulation of Article 3 referring to release during trial, was understood as the "presumption of liberty." It is therefore required that all the elements justifying deprivation of liberty must always be present throughout the period of deprivation. Whenever there is no longer a 'risk' of flight or unlawful intervention in the proceedings or the 'need' to protect law and order or to prevent further crimes, detainees should be released.

In the case of *Nevmerzhitsky v. Ukraine* (2005), the applicant, formerly a bank manager, was charged with fraud and embezzlement. He was kept in pre-trial detention for 2 years and 10 months. The Court stated that the arguments for his detention due to involvement in the process lost their importance, since after this period and investigative activities such dangers were reduced to a minimum. All the witnesses were examined. There was no need for him to be kept in detention any longer.

The most intrusive interference with individual liberty is likely to be the deprivation of liberty. That the deprivation of liberty may be necessary to assist the investigation of criminal offenses or the protection of the public and the individual is self-evident, but the legitimate interests of the state cannot be used to justify unrestrained police powers. Safeguards against the use of arbitrary detention are contained in Article 5 and, although the case law generated by this provision partly reflects the various systems of criminal law which can be found throughout the continent, the basic principles of this jurisprudence show consistency in emphasising the need to ensure that the loss of liberty has to be lawful in all cases, that it should endeavour to reach the allowed end, and that it should not be longer than is necessary.

Deprivation of liberty should be applied only when it is justified by the circumstances, a detention which has ceased to be justified must be completed by releasing the person to freedom. This concern to minimise the risk of unjustified and prolonged detention of liberty complements the protection given to other safeguards, most notably in Article 3 in relation to the risk of ill-treatment during detention. The risk of ill-treatment and the risk of unjustified deprivation of liberty are of particular importance for persons detained on suspicion of having committed an offense. As a result, this causes concern, which affects the investigation of the police officers about committed criminal offenses, and now attention is logically directed to that question.

### Competence assessment form: International standards and norms

1.	Giving equal treatment to everyone, respecting their human rights	Notes
2.	Following the relevant procedure when you detect and identify violation of human rights	
3.	Recording all the activities and events during your shift	

### Questions and answers: International standards and norms

1. Q: When does violation of human rights occur?  
A: Violation of human rights occurs when actions of government (or non-governmental) bodies breach, ignore or deny fundamental human rights (including civil, political, cultural, social, and economic rights).
2. Q: When did BiH ratify the European Convention on Human Rights?  
A: The European Convention on Human Rights was ratified by BiH on 12 July 2002.
3. Q: What are the most frequent forms of human rights violations against detainees and prisoners?  
A: The most common forms of violation of human rights are the following ones:
  - cursing;
  - insulting;
  - intimidation;
  - debasement;
  - degradation;
  - physical abuse; and
  - forced medical treatment.

## EUROPEAN CODE OF POLICE ETHICS AND EUROPEAN CODE OF ETHICS FOR PRISON STAFF

### Basic concepts

**Ethics** is defined as a set of moral principles: a theory or a system of moral values.

**Code** is a rulebook, a set of principles of professional conduct.

**Code of Ethics** is the system of formal and informal rules, schemes, regulations and good practice in business behaviour. The Code of Ethics serves as a framework within which it should be moved and thus facilitates the treatment of persons deprived of liberty.

**European Code of Police Ethics**<sup>3</sup> and **Code of Ethics for Prison Staff**<sup>4</sup> is a set of principles on moral and ethical standards that expresses the will and desire for a lawful, professional, fair, competent, correct and humane treatment of persons deprived of liberty.

### Purpose and aim

The purpose of the Code of Ethics is harmonisation of practices and treatment of all officers of law enforcement agencies against persons deprived of liberty.

The Code highlights the commitment of the officers of law enforcement agencies, to respect basic human rights and freedoms in the performance of their duties, and in particular to act lawfully, professionally, and in tolerant, just and fair manner in exercising their powers.

The objective of the application of the Code of Ethics is to preserve, promote and improve the dignity and reputation of the officers of law enforcement agencies, and strengthen public confidence in the work of law enforcement agencies.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 - Obligation to respect human rights

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

### Case law of the European Court of Human Rights

In the case of *Gorovenky and Bugara v. Ukraine*, the Court reiterated that the "States are expected to set high professional standards within their law enforcement systems and ensure that the persons serving in these systems meet the requisite criteria ..."

**Guidelines for the treatment by the officers of law enforcement agencies of persons deprived of liberty in line with the European Code of Police Ethics and the European Code of Ethics for Prison Staff**

**The law enforcement officers at any level are personally responsible and bear the consequences of their own actions.**

3 Recommendation Rec (2001)10 on the European Code of Police Ethics

4 Recommendation Rec (2012)5 of the Committee of Ministers to Member States on the European Code of Ethics for Prison Staff

The basic elements of the Code of Ethics for the officers of the law enforcement agencies (police and prison staff) are the following:

1. Respect of the physical and psychical integrity and cultural specifics of each person deprived of liberty;
2. Protection and confidentiality of personal data;
3. Zero tolerance to any kind of abuse of authority and position;
4. Preserving the reputation and credibility of the public service to which they belong; and
5. Execution of the law delegated powers to the highest standards.

### **Competence assessment form: European Code of Police Ethics and European Code of Ethics for Prison Staff**

1.	Treat equally all persons deprived of liberty, taking into account their specific features	Notes
2.	Respect the fundamental rights and freedoms of a person deprived of liberty	
3.	Communicate with the persons deprived of liberty respecting their personality and status	

### **Questions and answers: European Code of Police Ethics and European Code of Ethics for Prison Staff**

1. Q: What do the European Code of Police Ethics and European Code of Ethics for Prison Staff represent?  
A: It is a set of principles on moral and ethical standards that expresses the will and desire for a lawful, professional, fair, competent, correct, and humane treatment.
  
2. Q: What are the basic elements of the Code of Ethics for the officers of the law enforcement agencies?  
A: Basic elements of the Code of Ethics are the respect of specifics and differences of persons deprived of liberty, equal treatment of all, maintaining the integrity of the profession, lawful execution of powers and tasks, protection of confidential personal data.

## CULTURAL SIMILARITIES AND DIFFERENCES

### Basic concepts

**Diversity** is involvement of different types of people (of different races or cultures) in a group or organisation.

**Discrimination** is the way of treatment of people that causes harm to them.

Within the context of a closed environment, diversity is a mosaic composed of people who bring with them their heritage, styles, perspectives, values and beliefs as the capital to the groups they belong to and the collectives with whom they enter into mutual relations.

**Minority group**, in the broadest sense of that word, means a group of people that has ethnical, religious or any other attributes different from the majority. Therefore, this group has an unequal position in society.

**Foreign national prisoners** refer to prisoners who do not carry the passport of the country in which they are imprisoned. This term therefore covers “prisoners who have lived for extended periods in the country of imprisonment, but who have not been naturalised, as well as those who have recently arrived.”<sup>5</sup>

**Everybody we live and work with has something to offer to the society in which we live. Respect and value their contribution to the society – even if it differs from yours.**

**Persons deprived of liberty should not be discriminated against on the ground of their belonging to any minority group (race, ethnicity, social origin, cultural background, religious affiliation, sexual orientation, language or nationality).**

### Purpose and aim

The purpose of the appreciation of cultural specifics and differences is just and fair treatment of all persons deprived of liberty, based on the same standards that are tailored to their specific cultural needs.

The objective of such treatment is the law enforcement officers to be able to:

- Recognise the most common forms of discrimination in the closed environment;
- Respond properly to observed forms of discrimination against the minority categories in the prison; and
- Respond properly to requests of members of the minority population in the closed environment, before it amounts to discrimination.

**No public service in the world tolerates any form of discrimination officially.**

<sup>5</sup> Handbook on Prisoners with special needs. United Nations Office on Drugs and Crime, UN, New York, 2009

## European Convention for the Protection of Human Rights and Fundamental Freedoms

### Article 3

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

### 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.”*

## Case law of the European Court of Human Rights

### Nusret Kaya and Others v. Turkey (2014)

During their stay in the prison, the prison authorities prevented the applicants to conduct telephone conversations with their relatives in Kurdish. Their complaints against these limitations were rejected. Based on the application that related to violation of Article 8 of the Convention, the Court found that there was violation of the Convention:

*“The Court took the view that the restriction imposed on the applicants’ telephone communications with their relatives, on the ground that they wished to conduct their conversations in Kurdish, could be regarded as an interference with their right to respect for their family life and their correspondence for the purposes of Article 8, paragraph 1 of the Convention. A disputable issue does not concern the freedom of the applicant to use the language as such, but their right to maintain meaningful communication with their families. As recommended in the European Prison Rules, it is very important that prison authorities assist inmates to maintain contact with their close relatives. In this specific case, according to the national law, inmates are enabled to maintain contacts with the outside world by phone. However, for safety reasons, the prison authorities could supervise those talks, and in order to provide effective supervision, they required the inmates to conduct these talks only in Turkish. However, the Turkish law stipulated exemptions from this rule, since it does not contain any provision that bans the use of any other language except Turkish. Such a possibility was, however, conditioned by certain formal requests such as the procedure in which the prison authorities confirm that the person with whom the inmate wants to talk really does not understand Turkish. In addition, the rules applicable at that time, as well as the decisions of domestic authorities, show that the costs of this procedure for such determining were borne by the inmates concerned.*

*The Court has, however, previously held that certain security concerns - preventing the risk of flight - can justify the application of certain prison regime, which entails a ban on correspondence between prisoners and their families in the language of their choice, when it is determined that an inmate may can one of the*

*approved languages. In this regard, in the circumstances of this case, the regulation at issue is applied generally and without distinction to all inmates, regardless of the individual assessment of the security requirements that could be justified by the personality of the prisoner or the type of crime for which he was detained. In addition, the national authorities were aware, when they discussed the applicants' requests to conduct the telephone conversations in Kurdish, that it is one of the most common languages in use in Turkey and that some prisoners use it when communicating with their families. Nevertheless, it seems that they did not provide for a translation system. It was essential, in terms of respect for family life, that prison authorities assist prisoners to maintain ties with their close relatives. In this regard, the claim of the prisoners asking to communicate with their families in the Kurdish language and that it was the only language that their relatives understand could not be called into question. The Court considered that his fact was very important in this case.*

*Thus, the practice according to which the applicants who expressed a desire to conduct telephone conversations with their families in Kurdish were subjected to a preliminary proceedings in which it was determined whether they really did not speak Turkish was not based on relevant and sufficient reasons in the context of constraints that were imposed on the applicants in their contacts with their families. Interference with the applicants' right to have telephone conversations with their family members in the Kurdish language, therefore, cannot be considered necessary. This is confirmed by the fact that subsequently Article 88/2 p) of the Rules was amended, which also amended the conditions for applying to conduct telephone conversations in a language other than Turkish. From the amendment of that rule onwards, only a signed statement in which the prisoner confirms that he or his family members do not speak Turkish has been sufficient."*

## **Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>6</sup>**

*"3. Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs."*

### **European Prison Rules<sup>7</sup>**

*"38.1 Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.*

*38.2 As far as practicable the cultural practices of different groups shall be allowed to continue in prison.*

*38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison."*

<sup>6</sup> Recommendation Rec. (2012)12 of the Committee of Ministers to member states concerning foreign prisoners

<sup>7</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

### CPT/Inf/E (2002) 1

*“29. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.”*

### Excerpts from the 19<sup>th</sup> General Report CPT/Inf (2009) 27

*“81. The CPT considers that detained irregular migrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or a third party of one’s choice about the detention measure.*

.....

*84. It is essential that newly arrived irregular migrants be immediately given information on these rights in a language they understand. To this end, they should be systematically provided with a document explaining the procedure applicable to them and setting out their rights in clear and simple terms. This document should be available in the languages most commonly spoken by the detainees and, if necessary, recourse should be had to the services of an interpreter.”*

### Excerpts from the 13<sup>th</sup> General Report CPT/Inf (2003) 35

*“42. The proper conduct of deportation operations depends to a large extent on the quality of the staff assigned to escort duties. Clearly, **escort staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum.** This was often far from being the case in the States Parties visited. In some countries, however, special training had been organised (methods and means of restraint, stress and conflict management, etc.). Moreover, certain management strategies had had a beneficial effect: the assignment of escort duties to staff who volunteered, combined with compulsory rotation (in order to avoid professional exhaustion syndrome and the risks related to routine, and ensure that the staff concerned maintained a certain emotional distance from the operational activities in which they were involved) as well as provision, on request, of specialised psychological support for staff.”*

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf (2016) 17

*“The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their rights as from the outset of their deprivation of liberty.”*

### CPT/Inf (2013) 25

*“The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner. Moreover, the information on rights should be properly explained to detained persons to ensure that they are in a position to understand their rights and to exercise them effectively.*

## **Guidelines for managing persons deprived of liberty in closed environment with respect for their cultural specifics**

1. All persons in a closed environment are fully informed in the language they understand about their possibilities, rights and obligations at the very outset of their deprivation of liberty to ensure that they understand their rights and exercise them effectively.
2. The law enforcement agencies draft special protocols that will meet the specific needs of persons deprived of liberty who belong to ethnical or linguistic minorities.
3. As far as practicable, cultural practices of different groups are allowed in a closed environment to a foreign persons deprived of liberty.
4. Persons deprived of liberty who belong to ethnic or linguistic minorities are provided meals that respect their cultural and religious requirements.
5. Lodging of complaints and appeals on decisions and treatment of an officer of the law enforcement agency are enabled.
6. Always try to remain neutral.

**Competence assessment form: Cultural similarities and differences**

1.	Treat equally all persons deprived of liberty, paying regard to their cultural differences	Notes
2.	Enable that all members of a minority group meet their specific urgent needs in an appropriate manner	
3.	Enable lodging of complaints against decisions and treatment of vulnerable categories of persons deprived of liberty	

**Questions and answers: Cultural similarities and differences**

- Q: List several types of belonging to minority groups, which in practice can be the reason for discrimination.
- A: Race, ethnicity, social origin, status, religious affiliation, sexual orientation, language or nationality.
- Q: What are the obligations of the officers of the law enforcement agency in relation to respecting diversity?
- A: The obligations of the officers of the law enforcement agency in relation to the respect of diversity are:
- Fairness
  - Openness
  - Humanity
  - Dignity
  - Respect
  - Value
  - Support

## EFFICIENT COMMUNICATION

### Basic concepts

**Communication** is a social skill and implies transmission and understanding of information and messages, ideas and feelings, and exchange of experience through interaction with one or more persons.

**To communicate** means to mutually understand each other in a spoken, written manner, or by signs, with or without the use of technical means and methods of communication (telephone, fax, internet, etc.).

Communication usually gives answers to the questions: **who, what, where, when, how, whom, and why.**

The basic elements of communication are speech, tone of voice, body language, observation, and active listening.

The communication can be:

- Verbal communication that includes not only speech but active listening as well.
- Nonverbal communication that implies observation, interpretation, and response to emotional and interpersonal signals, and includes a series of means such as: facial expression, way of looking, position of the body and arms.

Communication processes in a closed environment are often more complicated because of the actual, observed, or assumed relations between the staff, persons deprived of liberty and others, and the hierarchical way of communication between the staff.

### Purpose and aim

The purpose of good communication is to build a good rapport between officers of the law enforcement agencies and persons deprived of liberty in order to reduce tension, create a secure environment, and reduce the possibility of human rights violations.

The goal of good communication in a closed environment is to maintain or improve the relationship between persons deprived of liberty and the staff, reduce tensions and possibility of conflict occurrence, strengthen the authority of the staff, and enable better flow of information within the closed environment.

### Recommendations of the Committee of Ministers to member states

#### **Recommendation Rec (2012)5 of the Committee of Ministers to member states on the European Code of Ethics for Prison Staff**

*"14. Prison staff shall at all times treat prisoners, colleagues and all other persons entering prison with politeness and respect."*

#### **Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics**

*“44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.”*

### **European Prison Rules<sup>8</sup>**

*“83. The prison authorities shall introduce systems of organisation and management that:*

...

*b) facilitate good communication between prisons and between the different categories of staff in individual prisons and proper co-ordination of all the departments, both inside and outside the prison, that provide services for prisoners, in particular with respect to the care and reintegration of prisoners.”*

### **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)**

Excerpts from the 2<sup>nd</sup> General Report CPT/Inf (92)3

*“60. In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.”*

Excerpts from the 11<sup>th</sup> General Report CPT/INF (2001)16

*“The following practices frequently witnessed by the CPT are symptomatic of such an approach: obliging prisoners to stand facing a wall whilst waiting for prison staff to attend to them or for visitors to pass by; requiring prisoners to bow their heads and keep their hands clasped behind their back when moving within the establishment; custodial staff carrying their truncheons in a visible and even provocative manner. Such practices are unnecessary from a security standpoint and will do nothing to promote positive relations between staff and prisoners.*

*The real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. In this regard prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to behave themselves properly. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding.”*

---

8 Recommendation Rec. (2006)2 of the Committee of Ministers to member states on the European prison rules

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2016) 17

*“The CPT reiterates its recommendation that the Ministers of Interior and Police Commissioners actively promote a clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty. Law enforcement officials should be continuously reminded, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons – including verbal abuse, racist behaviour, threats, and psychological ill-treatment – constitutes a criminal offence and will be prosecuted accordingly.”*

### **Guidelines for efficient communication in closed environment**

1. To avoid potential obstacles in communication, always strive at the beginning of the conversation to:
  - a. *Understand and be aware who you are talking to* – take into account whether the person is familiar with the subject of the conversation and try:
    - for the message and the sentences to be short, simple, understandable and concrete;
    - for the vocabulary to be adjusted to the interlocutor – during the communication with a person deprived of liberty, avoid use of ambiguous, vague, abstract, incomprehensible, foreign and complex words, jargon or codes;
    - to avoid buzzwords (well, sort of, as);
    - to talk calmly;
    - to avoid unnecessary and superfluous details;
  - a. *Select the best method of communication for sending a message* – take into account whether the person you are talking to can hear you well if you are talking by phone or whether the noise in the room is too loud for him/her to hear you; if you are sending a written message, use words that the person who the letter is addressed to understands. Printed text is more legible than the handwritten text.
  - b. *Listen actively* – active listening is the ability to hear and understand what the other person is saying. Therefore, when you listen actively, take into account:
    - to listen with interest and attention, maintain the eye contact, not to show signs of boredom or repulsion;
    - to let the person deprived of liberty express his/her emotions;
    - to give the person deprived of liberty time to tell what he/she wants and not to interrupt the interlocutor;
    - not to react emotionally during the conversation and to maintain professional conduct;
    - to always have in mind that your role is to listen and solve the problem or to forward it to the ones that can solve it;

- to look the interlocutor in the eyes in order to show that you are listening and paying attention to the said;
  - to confirm that you are listening by occasional nodding, mimic, or simple words like “I understand”, “yes”;
  - if necessary, to summarise what the person deprived of liberty said;
  - to advise the person deprived of liberty to take a deep breath and count to 10 and back in order to calm down if he/she has not been able to talk;
  - to offer the interlocutor to sit can often be effective.
2. Ask for a feedback – if the person you are talking to misunderstands the message, try to find out why the message was received and interpreted incorrectly:
- repeat or rephrase occasionally what you have heard and ask questions in order to clarify to yourself, it shows that you understand what was said and helps a person explain the situation to himself/herself, so that that the conversation could go in the right direction;
  - clarify your communication with corresponding examples, comparisons, and explanations, without superfluous statements;
  - repeat the messages in other words in order to be understandable, if some of the participants in the communication do not understand;
  - Use aids in the conversation and if a need for writing a statement occurs – offer a pen.

**Always avoid careless speech, and all that goes beyond the professional relationship.**

**DO NOT TALK to new persons deprived of liberty without careful consideration of what and how much you want to say.**

**DO NOT TALK with the persons deprived of liberty about your personal life or the personal life of your colleagues, and do not complain about the working conditions, problems within the department, etc.**

**NEVER MAKE FAVOURS to persons deprived of their liberty, no matter how insignificant they seem, in order to avoid the risk of future conditioning and because later it would be difficult to say NO!**

**TREAT all persons deprived of liberty equally, without discrimination.**

**DO NOT discuss the security issues in the presence of others.**

**BE CAREFUL with the information, strictly confidential documents and share them only with those who are entitled to know it.**

3. Avoid bad communication with a person deprived of liberty:
- Do not close your eyes for a problem, talk (always ask yourself what the motives of the person deprived of liberty are, what is in the background of the conversation);

- If you are uncertain about something or if you do not know – ask for advice;
- Be loyal to your colleagues and your employers;
- Admit your prejudice and leave it aside;
- Have a friendly disposition, but avoid making friends;
- Keep your feelings under control, because they can reveal your weaknesses;
- Be consistent in communicating, do not work on a “hot-cold” basis;
- Do not accept favours, they may be offered with a condition;
- Do not allow for the support of the person deprived of liberty and his/her affection for you to affect your evaluation.

**4. Change your bad habits:**

- Be honest, open, and dedicated to your work;
- Do not manifest your own emotions;
- Listen actively, even when the issues seem familiar, already seen, too simple, not important or boring, or if they sound too complicated to be understood.
- Maintain professional approach during the work with persons deprived of liberty and according to your duties.

**5. In the communication with persons deprived of liberty, official staff should use the four “step by step” techniques to be able to:**

- Recognise and respond to the said content (feedback)
- Recognise and respond to emotions of the person deprived of liberty (feedback)
- Recognise and respond to the meaning of what the person deprived of liberty feels (feedback)
- Apply contemporary (non-intimidating) skills and techniques of asking questions.

**Competence assessment form: Efficient communication**

1.	You recognise properly and react to the content of the message that the person deprived of liberty transfers to you	Notes
2.	You ask a person deprived of liberty meaningful questions to get to the essence of the problem	
3.	You communicate with persons deprived of liberty and colleagues in a way that contributes to increasing the level of security in a closed environment.	

## CONFIDENTIALITY OF PERSONAL DATA

### Basic concepts

**Confidentiality of personal data** includes the obligation for keeping any information related to a natural person, in the manner that enables identification of that natural person (medical data, name and surname, place of residence, date of birth, Unique Personal Identification Number, numbers of identification documents like identity card, passport and alike).

**Processing of personal data** implies any activity that is made with the personal data of a person deprived of liberty, e.g. collecting, use, change, disclosure or destruction of collected data and the obligation of informing the person deprived of liberty thereof.

**Protection of personal confidential data** is guaranteed to every natural person in Bosnia and Herzegovina, regardless of race, sex, skin colour, origin, sexual orientation, political affiliation or ethnicity.

**Medical data** includes information on the health status of a person deprived of liberty, data from the medical records on the history and type of diseases (HIV status, infectious diseases, etc.), psychical state, mental diseases, etc.

**Third parties** are other officials and the personnel of the law enforcement agency who do not treat a person deprived of liberty, members of the close family or close friends, representatives of the media, citizens who happen to be in the premises of the law enforcement agency, other persons deprived of liberty, parties damaged with the crime, witnesses of the crime, and alike.

### Purpose and aim

Confidential personal data may be subject to processing for official purposes during the deprivation of liberty in the law enforcement agencies.

The purpose of protection of personal data is protection of private life and fundamental human rights and freedom in collecting, processing and use of personal data.

The aim is to prevent deliberate or accidental misuse of confidential personal data by authorised or unauthorised official persons or third parties.

The protection of personal data should differ from the protection of secret data that is governed by the provisions of the law on protection of secret data. A special difference is in that the protection of personal data is governed by the European Convention on the Protection of Human Rights and Fundamental Freedoms.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 8

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

1. *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 wellbeing 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."*

## **Case law of the European Court of Human Rights**

Leander against Sweden (1987)

The Applicant was a Swedish national who wrote to the Supreme Commander of the Navy requesting to be notified about the reasons for his inability to be employed in the Maritime Museum. Among other things, the Supreme Commander explained that the museum possessed several storage depots within the navy base and that the person employed for that position should have freedom of movement within that zone, which was subject of special limitations with regard to access. It was for this reason that check of the staff was requested and from the security point of view it was decided that the applicant was not admitted.

Within his CV, the Applicant declared that he had been a member of the Swedish Communist Party. He was also a member of an association that published a radical magazine. He was active in a military association while he was in the army and was also active in the Association of Swedish Construction Workers.

The Applicant complained that the procedure of checking the staff, as applied in his case, led to violation of Article 8 of the European Convention on Human Rights. The Court stated that it was indisputable that the information in the secret police register referred to the private life of the Applicant. Further, it was clear that keeping and giving this information to the Applicant's employer (the Navy) along with the fact that the Applicant was not notified, represented interference in the right to the respect of private life.

It is clear that the interference had justifiable purpose, i.e. protection of the national security. The European Court of Human Rights went on to explore whether the interference was in line with the law. It found that the procedure of checking had a basis in the national law available to the client, the Decree on Checking the Personnel. The predictability requirement in the special context of the secret security control could not be the same as in many other fields. Nevertheless, the law had to be sufficiently clear to point to a citizen to the circumstances and conditions under which the authorities have the power to resort to such interference. After reviewing the Swedish law, the Court ruled that it satisfied this requirement.

Next, the Court examined whether the interference was necessary in a democratic society. The State's interest in protecting the national security had to be tailored according to the seriousness of the interference with the Applicant's right to respect of his private life. There is no doubt that it is necessary that States, in order to protect its national security, have laws that authorise competent national authorities to collect and keep information not available to the public. They also have the right to use this information when assessing the suitability of candidates for employment in areas of importance to the national security.

However, a democratic society must have adequate and effective guarantees against abuse. In reviewing the Swedish law the Court had attributed special importance to the presence of experts for parliamentary rules on the Board of the National Police and in the supervision performed by the Chancellor of Justice and the Parliamentary Ombudsman, as well as the Parliamentary Committee of Justice. The fact that the information given to the military authorities was not communicated to the Applicant did not in its own right justify a conclusion that the interference was not necessary in a democratic society, because the lack of such communication ensured the effec-

tiveness of the procedure for checking of personnel. Therefore, the Court found that there was no violation of Article 8 of the European Convention.

### **Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>9</sup>**

*“13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.”*

### **European Prison Rules<sup>10</sup>**

*“Duties of the medical practitioner*

*42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:*

*a. observing the normal rules of medical confidentiality*

*.....”*

### **Excerpts from the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2016)17

*“The CPT calls again upon the authorities to adopt specific legal provisions on access to a doctor during police custody. Further, medical confidentiality both during examinations of detained persons and of medical documentation must be guaranteed. The time has come for the BiH authorities to ensure that these rights are effectively implemented throughout the country.”*

CPT/Inf (2013) 25

*“The CPT calls upon the authorities to adopt specific legal provisions on access to a doctor during police custody, stipulating inter alia that:*

*....*

*- all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police officers;*

*- the results of every examination, as well as any relevant statements by the person in custody and the doctor’s observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.”*

CPT/Inf (2012) 15

*“The CPT reiterates its recommendation to adopt specific legal provisions on access to a doctor during police custody, stipulating inter alia that:*

*.....*

*- all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and – unless the*

<sup>9</sup> Recommendation R(98)7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison

<sup>10</sup> Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules

*doctor concerned expressly requests otherwise in a given case – out of the sight of police officers;*

*- the results of every examination, as well as any relevant statements by the person in custody and the doctor’s observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.”*

**Guidelines for protecting confidentiality of personal data**

1. Personal data of a person deprived of liberty collected, processed or in any way contained in the documentation related to the treatment of persons deprived of liberty in a law enforcement agency is protected from unauthorised access.
2. Officers of the law enforcement agency, whether in direct contact with the persons deprived of liberty or not, shall not disclose confidential personal data to third persons or other officials who are not authorised for access or processing of this data.
3. Officers of the law enforcement agency shall not modify, destroy, transfer without permission, process unlawfully or misuse confidential personal data of persons deprived of liberty.
4. All data of medical nature is confidential and they cannot be accessed or given to third parties without prior approval.
5. Results on destroying of collected confidential personal data are notified to the person deprived of liberty in accordance with the applicable procedures of the law enforcement agency.

**Competence assessment form: Confidentiality of personal data**

1.	Complete the templates on the confidentiality of personal data of the person deprived of liberty in due time	Notes
2.	Follow the applicable procedures of the law enforcement agency in dealing with collected personal data	
3.	Protect against unauthorised access all personal data of a person deprived of liberty that you have obtained in the normal course of work	

**Questions and answers: Confidentiality of personal data**

- Q: What is considered misuse of personal data?
- A: Misuse of personal data is modification, destroying, transfer without permission and unlawful processing of personal data of persons deprived of liberty?
- Q: Who is entitled to access to medical data of a person deprived of liberty?
- A: The access to medical data of a person deprived of liberty is permitted only to the medical personnel and the person deprived of liberty himself. An officer of the law enforcement agency is entitled to the access to data of medical na-

ture only if this data is given to him by the medical personnel (through official channels and in stipulated cases) or the person deprived of liberty himself.

## SEARCH

### Basic concepts

Search is an organised action taken by an officer of the law enforcement agency in order to search a person deprived of liberty as a possible perpetrator of a crime or to find a smuggled object, traces relevant to criminal proceedings, and to prevent any attempt for escape.

There are two types of search:

- **Standard** that does not involve stripping of clothes of the person deprived of liberty; and
- **Detailed** that involves stripping of the person deprived of liberty, as well as the search of the clothes and belongings.

### Purpose and aim

The purpose of search is maintenance of the necessary level of personal and general safety with the protection of integrity and human rights of the person that is searched, with no exception.

The aim of the lawful search is protection of the integrity and dignity of the officer of the law enforcement agency from the allegations about violating human rights of persons deprived of liberty. Standardised search is at the same time a guarantee for protection against arbitrary, chaotic and unorganised way of work that ultimately results in the violation of human rights and safety procedures.

## European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3

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

### Case law of the European Court of Human Rights

Jalloh v. Germany (2006)

Plainclothes officers spotted the applicant (street vendor) taking out a plastic bag from his mouth and selling it for money. The plainclothes officers, suspecting that the applicant sells drug, went to arrest him. At that moment, the applicant swallowed the bag that was in his mouth. Given that the police officers did not find drug during the search, the public prosecutor ordered that a doctor administer emetics to the applicant in order to provoke regurgitation of the bag.

*"77. ...However, in the present case it was clear before the impugned measure was ordered and implemented that the street dealer on whom it was imposed had been storing the drugs in his mouth and could not, therefore, have been offering drugs for sale on a*

large scale... The Court accepts that it was vital for the investigators to be able to determine the exact amount and quality of the drugs that were offered for sale. However, the Court is not satisfied that the forcible administration of emetics was indispensable in the instant case to obtain the evidence. The prosecuting authorities could simply have waited for the drugs to pass through his system naturally. It is significant in this connection that many other member States of the Council of Europe use this method to investigate drugs offences...

82. Having regard to all the circumstances of the case, the Court finds that the impugned measure attained the minimum level of severity required to bring it within the scope of Article 3. The authorities subjected the applicant to a grave interference with his physical and mental integrity against his will. They forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out was liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand (diseases). Although this was not the intention, the measure was implemented in a way which caused the applicant both physical pain and mental suffering. He was therefore subjected to inhuman and degrading treatment contrary to Article 3 of the Convention."

### **European Prison Rules<sup>11</sup>**

"54.1 There shall be detailed procedures which staff have to follow when searching:

- a. all places where prisoners live, work and congregate;
- b. prisoners;
- c. visitors and their possessions; and
- d. staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this."

### **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

11 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

CPT/Inf (2016) 17

*"The delegation found out that inmates and visitors at Zenica Prison were being subjected to systematic full strip-searches by staff prior to and after a visit. First, such searches should be intelligence-driven and not routine-based. Second, every reasonable effort should be made to carry out such searches while respecting the dignity of the individuals. The CPT considers that persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed before removing further clothing. In addition, more than one officer of the same sex as the person being searched should, as a rule, be present during any strip-search as a protection for detained persons and staff alike. The CPT recommends that the management of Zenica Prison take the necessary steps to comply with the above mentioned requirements in respect of searches."*

CPT/Inf (2013) 25

*"In the CPT's view, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria as well as supervision, and they should be carried out in a manner respectful of human dignity. In this connection, the Committee can see no justification for strip searching prisoners after a closed visit. Further, those inmates who are strip searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing."*

**Guidelines for searching persons deprived of liberty**

1. The room where the search is performed must meet hygiene requirements. During search the officer of the law enforcement agency should use gloves to protect the health of the person being searched, and his own health.
2. In principle, search is usually carried out by two officers of the law enforcement agencies of the same gender as the person who is the subject of the search.
3. The officer of the law enforcement agency who is performing the search, without exception protects the dignity and human rights of the person that is being searched by not using inappropriate words, without exposing the person deprived of liberty that is being searched to the views of third parties or a premises under video surveillance and, in the case of a detailed search, does not leave the person that is being searched without clothes longer than is absolutely necessary.
4. Throughout the search the officer talks to the person deprived of liberty in a professional and calm manner, thus reducing the tension in a person being searched.
5. Detailed search is always carried out by two officers of the law enforcement agency of the same gender as the person who is the subject of the search, thus reducing the possibility for eventual complains and appeals for unlawful conduct.
6. Strip-search in principle constitutes humiliation and violation of the physical and psychological integrity of persons deprived of liberty. Therefore, the person who is being searched is not left without clothes longer than is absolutely necessary.
7. The person deprived of liberty removes and disposes all the by himself. The

persons deprived of liberty gives all the items in his possession or in his bag to the officer of the law enforcement agency for inspection thus keeping a sense of security and respect.

8. Religious head covers (hijab, turban, religious caps, etc.) are treated with respect, without any comments that fall outside of the context of professional conduct.
9. Each law enforcement agency develops its own protocol for searching persons deprived of liberty who do not cooperate. These protocols are based on the following principles: proportionality to the level of resistance, only the absolutely necessary length of time and respect for the person’s threshold of pain.
10. Lodging of complaints and appeals by persons deprived of liberty is enabled according to procedures of the law enforcement agency.
11. Every search is noted in the records or reported according to the existing procedures of the law enforcement agency.

**Competence assessment form: Searching persons deprived of liberty**

1.	Introduce the person deprived of liberty with the searching procedure	Notes
2.	Select and use a technique and equipment that are appropriate to the given circumstances	
3.	During the search protect your health and safety of other persons in the vicinity	

**Questions and answers: Searching persons deprived of liberty**

- Q: How is the searching activity explained to the person deprived of liberty?
- A: The officer of the law enforcement agency explain verbally the activity of the search to the person deprived of liberty in a language that the person understands.
- Q: Where is the search carried out?
- A: The search is carried out in a room out of the sight of third parties.
- Q: How is the search of sick persons and persons with physical disabilities or special needs carried out?
- A: The search of sick persons and persons with physical disabilities or special needs in principle is carried out in the presence of medical staff.

## ESCORTING

### Basic concepts

**Persons deprived of liberty** are escorted by the law enforcement agency officers with the purpose of relocating the person deprived of liberty from one place to another. The escorting is carried out after taking the necessary security measures, taking into account not to violate the fundamental human rights of persons deprived of liberty (preservation of physical and mental integrity).

**A special police vehicle for the transport of persons deprived of liberty** must meet certain requirements so that a stay in it, no matter how short, is safe and that it does not lead to physical and/or mental suffering that could be considered inhuman or degrading treatment.

### Purpose and aim

The purpose of escorting performed by officers of law enforcement agencies is the implementation of a legal procedure in a safe way.

The objective of the escorting is to exclude any possibility of violating the psychological and physical integrity of persons deprived of liberty, or violation of their fundamental rights.

**Escorting of a person from the place of arrest to the official premises is a *critical period* during which violation of human rights of persons deprived of liberty may occur.**

## European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3 - Prohibition of torture

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

### Case law of the European Court of Human Rights

Rebok v. Slovenia (1995)

The European Court of Human Rights found violation of Article 3 of the Convention, related to the treatment by the police officers of the Republic of Slovenia of the applicant during his arrest and escorting.

*"The Court recalls that the applicant suffered double fracture of the jaw as well as facial contusions. Having regard to the serious nature of the injuries and notwithstanding the conclusions set out in the aforementioned report, the Court considers that the Government have not furnished convincing or credible arguments which would provide a basis to explain or justify the degree of force used during the arrest operation. Accordingly, the force used during arrest was excessive and unjustified in the circumstances. Such use of force had as a consequence injuries that undoubtedly caused serious suffering to the applicant, of a nature amounting to inhuman treatment. There has therefore been violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected during his arrest."*

## European Prison Rules<sup>12</sup>

*“32.1. While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.*

*32.2. The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.*

*32.3. The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.”*

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

CPT Standards require the right to access to a doctor if there are allegations on injuries or violation of human rights during escort made by officers of the law enforcement agencies.

Excerpts from the 12<sup>th</sup> General Report [CPT/Inf (2002) 15]

*“42. Persons in police custody should have a formally recognised right of **access to a doctor**. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).”*

The recent CPT Standards also pay attention to the escort of foreign nationals during the deportation process.

Excerpts from the 7<sup>th</sup> General Report [CPT/Inf (97) 10]

*“36. The CPT recognises that it will often be a difficult task to enforce an expulsion order in respect of a foreign national who is determined to stay on a State’s territory. Law enforcement officials may on occasion have to use force in order to effect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for persons subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so. Further, the Committee must emphasise that to gag a person is a highly dangerous measure.”*

Excerpts from the 13<sup>th</sup> General Report [CPT/Inf (2003) 35]

*“32. At the outset it should be recalled that it is **entirely unacceptable for persons subject to a deportation order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so**. The CPT welcomes the fact that this rule is reflected in many of the relevant instructions in the countries visited. For instance, some instructions which the CPT examined prohibit the use of means of restraint designed to punish a foreigner for resisting or which cause unnecessary pain.*

---

12 Recommendation Rec. (2006)2 of the Committee of Ministers to member states on the European Prison Rules.

33. Clearly, one of the key issues arising when a deportation operation is carried out is the use of force and means of restraint by escort staff. The CPT acknowledges that such staff are, on occasion, obliged to use force and means of restraint in order to effectively carry out the deportation; however, **the force and the means of restraint used should be no more than is reasonably necessary**. The CPT welcomes the fact that in some countries the use of force and means of restraint during deportation procedures is reviewed in detail, in the light of the principles of lawfulness, proportionality and appropriateness."

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf (2016) 17

*"The CPT reiterates its recommendation that the police officers charged with escorting a detained person for medical examination are not the same ones against whom the allegations of ill - treatment are directed. More generally, in the entire Bosnia and Herzegovina, the task of escorting detained persons to the medical institution concerned should be entrusted to the judicial police."*

### CPT/Inf (2013) 25

*"The CPT reiterates its recommendation that the Minister of Interior of Republika Srpska delivers a strong message that all forms of ill - treatment of detained persons, whether at the time of apprehension or transportation or during subsequent questioning, are illegal and unprofessional and will be the subject of severe sanctions. This message should be repeated at appropriate intervals by the Director of Police.*

*The CPT reiterates its recommendation that the police officers charged with escorting the detained person for medical examination should not be the same ones against whom the allegations of ill - treatment are brought. In such cases, the task of escorting detained persons to the medical institution concerned should be entrusted to judicial police officers."*

### CPT/Inf (2012) 15

*"The CPT also recommends that the police officers charged with escorting the detained person to the doctor are not the same ones against whom the allegations of ill-treatment are directed. In such cases, the duty of escorting detained persons to a medical clinic should be entrusted to the judicial police officers."*

## **Guidelines for escorting persons deprived of liberty**

1. Before the transport, the officers of the law enforcement agencies make a plan of escorting of the person deprived of liberty on order to protect the life and health of the person that is escorted.
2. The identity of the person deprived of liberty is protected from third parties in order to minimise the risk of an attack of the transport vehicle and protect the life and health of the persons being escorted and their right to privacy.
3. Escorting officers respect the mental and physical integrity of the escorted person deprived of liberty (they ensure access to water, food, toilet, etc.).
4. A person deprived of liberty is entitled to file appeals and complaints concerning

the treatment by the escorting officers according to the existing procedures of the law enforcement agency.

5. The access to doctor is enabled without delay in all cases where the health of the person deprived of liberty is at risk or at their request in case of allegations of ill-treatment during escorting.
6. The report on the escort is made in line with applicable procedures of the law enforcement agency in case of allegation of ill-treatment presented by the person deprived of liberty, as confirmation of the extradition to the authorities of another country about the unimpaired physical or mental health.

**Competence assessment form: Escorting of persons deprived of liberty**

1.	You treat the person deprived of liberty humanely during the escorting	Notes
2.	You ensure medical aid to the person deprived of liberty without delay, either on their request or as needed	
3.	You enable the person deprived of liberty to file complaints to the treatment by the escorting officers	

**Questions and answers: Escorting persons deprived of liberty**

**1. Q:** What constitutes the importance of human treatment of persons deprived of liberty that are escorted?

**A:** Human treatment:

- reduces aggression and tension with the person deprived of liberty that we are escorting;
- with our conduct, we show professionalism in performing our official duties;
- we reduce the possibility of complaints; and
- we act preventively to incident situations.

**2. Q:** What are the rights of the person deprived of liberty that is being escorted and how to ensure that they are respected?

**A:** The rights of the person deprived of liberty that is being escorted are the following:

- provision of food and water during the escorting;
- fulfilment of physiological needs;
- conveyance planned for this purpose secures dignified and safe travel;
- ensure breaks in the escort that will be realised in the premises of law enforcement
- agencies (police stations, stations of the judicial police, prisons).

## SELF-HARM AND SUICIDE

### Basic concepts

**Suicide and self-harm** represent self-inflicted injuries or suicide or attempted suicide.

**World Health Organisation**<sup>13</sup> considers suicide a form of violence against oneself and classifies suicide, attempted suicide, planning or just thinking about suicide under this type of violence.

### Purpose and aim

The purpose of preventing self-inflicted injuries and suicide in a closed environment is protection of the right to life of persons deprived of liberty under the circumstances when the freedom of movement of those persons is limited. Apart from this, their exposure to the reactions of public servants has influence on the physical, legal, social, psychological and any other aspect of their lives and may influence their comprehension and attitudes, including a desire or intention to cause harm to themselves or to attempt suicide.

The aim is to enable the law enforcement officers to learn how to recognise the symptoms that indicate possible self-harm or attempted suicide, to acquire knowledge and skills necessary for undertaking steps in order to prevent self-harm, attempted suicide or suicide.

**Protection of life and mental and physical health of persons deprived of liberty is a priority!**

### European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 2 prescribes protection of the fundamental right of every human and that is the right to life.

*“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.”*

The basic purpose of Article 2 is the protection of individuals from unlawful deprivation of life. Apart from protecting the right to life, its provisions stipulate the circumstances in which deprivation of life may be justified. This Article of the Convention imposes positive obligations of the state, which includes the obligation to protect the life of persons deprived of liberty. The state also has a special responsibility to undertake measures for protection of those who are known to be at risk to take their own lives. In addition, the state has a specific obligation to ensure that the lives of persons deprived of liberty are not endangered by acts of other persons deprived of liberty.

<sup>13</sup> The World Health Organisation, WHO

## Case law of the European Court of Human Rights

In the judgment *Tanribilir v. Turkey* (1993) that relates to suicide in detention, the Court found:

*“In this case, the Court notices that A.T. was held in detention in the gendarmerie station in Cizre. The Court reiterates that any deprivation of liberty by its very nature has the effect of mental disorder and therefore exposes the detained person to the risk of suicide. Systems of detention include measures that seek to avoid any risk, as removing all sharp objects, belts or shoelaces. The Court notes that the gendarmes took routine measures to prevent suicide of the person they held in detention:*

*They searched A.T. after the arrival to the gendarmerie station and took the belt and the shoelaces from him. According to their statements before the court authorities, they checked the persons in detention every half an hour. A.T. was calm on arriving to the station, and thus the measures of increased supervision were not considered. The mean by which he committed the suicide by cutting off the sleeves of his shirt and making a rope was difficult to predict. Preparation and the suicide were made in complete silence. The Court held that the gendarmes were not to be criticised for failing to take specific measures, by placing guards 24 hours in front of the cell or taking away his clothes. The Court notes that no evidence in the file leads to a conclusion that the gendarmes could assume that A.T. would commit a suicide or that they should set up a permanent guard in front of the cell. For the foregoing reasons, the Court concludes that there was no violation of Article 2 of the Convention on this issue.”*

## Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>14</sup>

*“58. The risk of suicide should be constantly assessed by both the medical and the supervisory custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.”*

**CPT standards require the prevention of self-inflicted injuries and suicides to be the responsibility of all who work in prison.**

## European Prison Rules<sup>15</sup>

*“47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.”*

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Excerpts from the 3<sup>rd</sup> General Report CPT/Inf (93)12

*“57. Suicide prevention is another matter falling within the purview of a prison’s health care service. It should ensure that there is an adequate awareness of this subject through-*

<sup>14</sup> Recommendation No. R(98)7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison

<sup>15</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

*out the establishment, and that appropriate procedures are in place.*

*58. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context; performed properly, it could identify at least certain of those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners. Further, prison staff, whatever their particular job, should be made aware of (which implies being trained in recognising) indications of suicidal risk. In this connection it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, involve an increased risk of suicide.*

*59. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme."*

### **Guidelines for the prevention of self-inflicted injuries and suicides**

The law enforcement officers visually checks the person deprived of liberty and confiscate any items that the person could use to inflict self-injury or attempt suicide (shoe laces, belt, etc).

1. The premises in which persons deprived of liberty are accommodated should not contain objects that can be used for self-inflicted injury, attempted suicide or suicide.
2. Officers of the law enforcement agencies communicate with a person deprived of liberty in order to, preferably, deter him from suicidal intentions.
3. If the law enforcement officers deem that there is a certain level of risk of the person deprived of liberty committing self-injury or attempting suicide, constant or increased supervision is recommended in order to reduce the risk to the minimum level.
4. The record of allegations of possible self-harm or suicide is carried out within the scope of legal authorities in order to ensure timely medical treatment.

### **Guidelines for handling cases of attempted self-harm and suicide**

1. A person deprived of liberty that has self-inflicted injuries or attempted suicide, is given first aid. Appropriate first aid kit and equipment is available to all law enforcement officers with the mandatory application of safety equipment (gloves, mask) as a measure of precaution with regard to the officer of the law enforcement agency.
2. Further medical assistance and as necessary other types of professional assistance (psychologist, social worker, pedagogue, etc) is given to the injured person without any delay, in line with the procedures of the law enforcement agency.
3. Other persons deprived of liberty are separated from the room where the self-injury happened, in order to secure the scene and protect the persons that witnessed this extraordinary situation and deter them from possible similar attempts.
4. Personal and medical data that becomes known to the officer of the law enforcement agency during treatment in such a situation are considered confidential in relation to third parties.

**Competence assessment form: Preventing self-harm and suicide**

1.	Giving first aid to a person deprived of liberty that has attempted self-injury applying necessary protective measures	Notes
2.	Moving away other persons deprived of liberty that were present at the act of inflicting self-injuries or attempted suicide.	
3.	Securing the scene in line with applicable procedures of the law enforcement agency	

**Questions and answers: Preventing self-harm and suicide**

- Q: What protective measures should be necessarily undertaken in giving the first aid?
- A: When giving the first aid, it is necessary to carry the protective gloves to prevent any possible spreading of communicable or infectious diseases.
  
- Q: What data should not be disclosed to third parties in case of self-injury or attempted suicide?
- A: Personal and medical data that the officer of the law enforcement agency becomes aware of during treatment in such a situation are considered confidential in relation to third parties.

## CONTROL AND RESTRAINT

### Basic concepts

Human right to prohibition of torture, inhuman or degrading treatment or punishment is prescribed by Article II/3.b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention for Protection of Human Rights and Fundamental Freedoms. It is the absolute right because, on the one hand, it does not foresee any possibility of any exceptions or limitations of that right, and on the other hand, prohibits the country to abolish that right.<sup>16</sup>

**Restraint of a person deprived of liberty** implies measures and activities taken by the officer of the law enforcement agency in order to put a violent person under control.

**Control of a person deprived of liberty** implies measures and actions that the officer of the law enforcement agency undertakes to influence on the violent behaviour of a person.

Control and restraint are based on the manipulation of wrists, may be used only on violent persons deprived of liberty, and only in cases where all other methods of communication have become exhausted, and for the shortest necessary duration.

### Purpose and aim

The purpose of the lawful exercise of powers in the process of control and restraint is for the officers of law enforcement agencies, with the use of appropriate skills and knowledge, to reduce the possibility of putting at risk the health and life of persons deprived of liberty to a minimum.

#### **Control and restraint must be:**

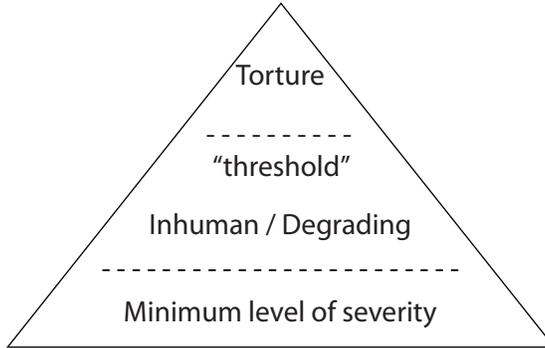
- **proportionate to the individual's level of the resistance**
- **of the shortest duration necessary**
- **respective of individual's threshold of pain.**

The aim of the proportional use of control and restraint is enabling the law enforcement officers to recognise the moment when all the possibilities of verbal communication have been exhausted and when the use force that is proportional to the resistance becomes necessary.

In addition, there is a scheme applied by the European Court of Human Rights that illustrates mutual relations among prohibited treatments. With this scheme on mind, where torture is on the top, it is easier to perceive possible violation of human rights. Torture is the most severe violation compared to the other two forms of violation of human rights, which is why it is placed on the top. The base angles of the triangle are occupied by inhuman and degrading treatment. The difference is in the degree of suffering. This, however, does not mean that persons are less protected from other

<sup>16</sup> The basic concepts of torture, inhuman and degrading treatment are explained in more detail under the heading III-treatment.

elements involving the prohibited degree of suffering. In the case of torture, it is extremely severe and intense.



The degree of suffering is the decisive classification criterion. There are several degrees that can be differentiated. One differentiation separates torture from other elements of the prohibition. It is called the “threshold”. The second one, often referred to as the “minimum degree of severity”, distinguishes violation of Article 3 by “unpleasant” or undesirable treatment that does not represent significant severity, and therefore is not violation of Article 3. Not all suffering or humiliation is prohibited. There are certain situations that are not severe enough to constitute inhuman or degrading treatment. Every lawful treatment or punishment includes necessary elements of suffering or humiliation. For example, measures of deprivation of liberty may often include suffering or humiliation.

## European Convention for the Protection of Human Rights and Fundamental Freedoms

### Article 3

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

### Case law of the European Court of Human Rights

#### Bouyid v Belgium (2009)

The police separately interrogated two brothers, the applicants, about incidents that were not connected. At the time of the incidents one of the brothers was juvenile. They both complained that they had been slapped on the face once by police officers. They filed a lawsuit in a private capacity, but with no success. In order to recognise that the act really happened, persons that claim that they are victims of the violation of Article 3 of the Convention must provide evidence on the traces of ill-treatment, since they were previously under the competence of the police or a similar authority.

Medical findings submitted by the applicant, immediately after leaving the police station, evidence on the redness and contusions that could be the result of slapping. In addition, the fact that the applicants did not have the above symptoms before entering the police station was not disputed.

On the other hand, the police officers consistently denied that they had slapped the applicants. In addition, the investigation procedure had significant deficiencies, and it was not possible to establish the veracity of statements of the police officers. Also, there was no evidence to support the assumption of the Government, which was presented at the hearing and not before the national courts, according to which the applicants slapped themselves with a view to file a lawsuit against the police.

Therefore, the Court found that there was sufficient evidence that the redness described in the medical reports submitted by the applicants occurred while they were in the hands of the police, that is, in the police station.

The Government was satisfied with denying the existence of slaps. From the rest of the case it appeared that it was an impulsive act, as a reaction to the attitude perceived as disrespect, which is certainly not enough to justify the need for such use of physical force. From this, it can be concluded that there was violation of the dignity of the applicants, and therefore violation of Article 3 of the Convention.

*“With this in mind, the Court wants to note that the slapping by a member of the public order authority of a person who is entirely under his control represents a serious violation of the dignity of that person.*

*The impact that one slap has on the person who receives it has a great effect. Hitting his face, he touches him on the part of the body that not only expresses his individuality but marks his social identity, and support the senses, vision, hearing and voice – which he uses to communicate with others.*

*Knowing that it is sometimes sufficient that a victim is humiliated in their own eyes, so that treatment amounts to degrading treatment within the meaning of Article 3, a slap – even if it is only one and is deprived of predetermination or severe or permanent effect on the slapped person – this person can experience it as humiliation.*

*When the members of the public order forces slap persons who are under their control, the slap highlights the existence of relation of superiority and subordination. The fact that the victim knows that such an action is unlawful, that it represents violation of moral and professional conduct by these police officers, and that it is unacceptable, can produce with him an additional sense of arbitrariness, injustice and powerlessness.*

*In addition, persons taken into police custody or just brought or summoned to the police station for identity checks or interrogation – as was the case with the applicants, and persons who are in the hands of police or similar government bodies, are in a situation of vulnerability. In this case, the authorities that are obliged to protect them disregarded this duty, and humiliated them by slapping.*

*In the present case, the fact that the police officer slapped the victim without thinking, annoyed by her behaviour that showed disrespect or was provocative, is of no importance. The Convention absolutely prohibits torture and punishment and inhumane or degrading treatment, regardless of the behaviour of the person concerned. In a democratic society, ill-treatment can never be an adequate response to the problems that the governments face. Specifically the police “is not permitted to carry out, incite or tolerate torture or any other inhuman or degrading treatment or punishment, whatever the circumstances” (European Code of Police Ethics). In addition, Article 3 of the Convention puts the positive obligation to the member states to train the members of the law enforcement agencies in the way that shall provide a high level of competence with regard*

*to their professional conduct, so that no one would be exposed to treatment opposite to the noted provision.*

*Finally, the first applicant was minor at the time of this event, and it is of ultimate importance that, when the law enforcement officers get into contact with minors within their professional tasks, they must duly take into account the vulnerability inherent to the young age of the said persons. Certain actions on their part, in relation to minors, can, for the reason that it is about minors, be incompatible with the requirements of this Article of the Convention, although they could pass as acceptable if it is done on adults. So that the forces of the public order and peace must be especially careful and show enhanced self-control when dealing with minors.*

*In conclusion, the slap that police inflicted on the applicants while they were under their control at the police station, which did not correspond to the necessary use of force caused by their behaviour, constitutes violation of their dignity."*

## **European Prison Rules<sup>17</sup>**

*"68.1 The use of chains and irons shall be prohibited.*

*68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:*

*a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or*

*b. by order of the director, if other methods of control fail, in order to protect a prisoner from selfinjury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.*

*68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.*

*68.4 The manner of use of instruments of restraint shall be specified in national law."*

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)**

Excerpts from the 2<sup>nd</sup> General Report [CPT/Inf (92) 3]

*"53. Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards. A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner. In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under con-*

<sup>17</sup> Recommendation Rec. (2006)2 of the Committee of Ministers to member states on the European Prison Rules.

*stant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against prisoners."*

Excerpts from the 13<sup>th</sup> General Report [CPT/Inf (2003) 35]

*"34. The CPT has made it clear that the use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned. "*

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2012) 15

*"The CPT recommends that the Ministers of Interior and Police Commissioners deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of severe sanctions. This message should be reiterated at appropriate intervals by the Chiefs of Police. Further, the relevant authorities should ensure that an investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities. Further, the CPT recommends that an independent inquiry be carried out into the methods used by crime inspectors at police stations when detaining and interviewing suspects.*

*However, no more force than is strictly necessary should be used when effecting an arrest and, once arrested persons have been brought under control, there can never be any justification for striking them. Police officers should be reminded regularly, and in an appropriate manner, of these basic principles."*

### **Guidelines for exercising control and restraint**

**Three principles are key in the lawful use of the control and restraint:**

- **Proportionality to the resistance**
- **Duration to the extent absolutely necessary**
- **Consideration of the pain threshold**

1. The techniques of the control and restraint are based on the three pain thresholds:
  - no pain;
  - bearable pain;
  - unbearable pain.
2. The pain threshold is directly proportional to the resistance, i.e. the force that causes pain always has to be proportional to the resistance. The weaker the resistance, the lower the pain threshold. If the person gives stronger resistance, the technique of control and restraint that causes stronger pain is used.
3. The use of the measures of control and restraint ceases the moment the person deprived of liberty stops to resist. The measures for control and restraint are used only to the extent that is absolutely necessary. If the use of force is

greater than the resistance, the officer of the law enforcement agency may be charged of excessive use of force.

4. The person deprived of liberty that was subjected to the use of control and restraint or a physical force is ensured without delay medical examination with a purpose of protecting his health and life and the protection of the law enforcement officer from eventual complaints or grievances.
5. Family or close friends of the person deprived of liberty are notified without delay in case of him being injured.
6. The report on the use of physical force or other control and restraint measures is accurate and grammatically correct, based on facts, short, clear and written without jargons.
7. The person deprived of liberty can lodge a complaint or grievance regarding his treatment by the law enforcement officer during the control or restraint.

**Competence assessment form: Control and restraint**

1.	Select the approved techniques for the control and restraint that are appropriate for the individual, situation and available means and use them correctly	Notes
2.	Without delay, refer the person deprived of liberty who was subjected to the use of measures for control and restraint to medical examination	
3.	Make a credible report on the use of control and restraint	

**Questions and answers: Control and restraint**

Q: What is a report?

A: The report is presentation of facts, written for a specific reader (the superior) and it is kept within the legally stipulated period of time.

Q: When is a report on the use of means of control and restraint written?

A: The report on the use of means of control and restraint is written immediately after the restraint, and until the end of the shift at latest.

Q: Is it allowed to use the baton when an individual is restrained by two or more officers of the law enforcement agency?

A: It is not allowed to use the baton when two or more police officers are restraining one person, except by the order of the superior who is present.

Q: What parts of the body must be targeted/avoided by the officers of the law enforcement agency when using the baton?

A: When using the baton the police officers should always hit on the arm (the upper arm) and the legs (the thigh), since these parts of the body are the least susceptible to serious injuries. Hitting the head with the baton shall be avoided whenever possible.

## ILL-TREATMENT

### Basic concepts

**Ill-treatment** includes any actions or failures to undertake action with regards to the persons deprived of liberty that can lead to torture, inhuman or degrading treatment and adversely affect their mental and physical integrity.

**Torture** is the premeditated, cruel infliction of severe mental or physical pain or suffering, deliberate or purposeful infliction of pain in order to extract information or as a means of punishment or intimidation.

**Inhuman treatment** is the infliction of intense, severe physical and/or mental suffering.

**Humiliation** is any action that creates a sense of fear, restlessness and inferiority in the victim so that the victim feels humiliated or degraded. It also refers to the treatment aimed at breaking down victim's physical or moral resistance and treatment that forces the victim to act against his own will or conscience.

Characteristics of ill-treatment: occurs over a prolonged period of time, the action is repeated, directed against the same person, there is an intention to hurt another, disproportionate power relationship.

The most common forms of ill-treatment are:

**Physical ill-treatment** – use of physical force, regardless of whether it results in bodily injury or not (e.g. pushing, hitting, slapping, choking, drowning, physical restraint, pressing, pinching, preventing movement by using physical force, scratching, shaking, cigarette burning, tearing clothes off a person, throwing things at a person, throwing or destroying things in the house, etc.).

**Mental or emotional ill-treatment** – includes the use of means of psychological coercion that in another person engenders feelings of fear, vulnerability, anxiety or affront to dignity. This form of violence includes verbal abuse, verbal assaults, insults, cursing, name-calling, ignoring, intimidation, threats, prohibitions, blaming the victim for one's own violent behaviour, sleep deprivation, exposure to a direct beam of light, exhaustion, absurd or degrading instructions, arbitrary detailed searches, etc.

**Sexual ill-treatment** – includes any sexual act or attempt to perform a sexual act without the consent of the other person, unwanted sexual comments or advances directed against a person's sexuality, which can be committed by another person regardless of their relationship with the victim or a situation in which they find themselves (carrying out a detailed body cavity search without the presence of medical personnel, sexist remarks, etc.).

**Cultural ill-treatment** – includes insults based on national, religious, racial and socio-economic background, or gender of the person deprived of liberty.

**Negligence** – failure to allow a person deprived of liberty to satisfy his basic needs, such as adequate accommodation, food, water, hygiene, etc.

**The most common forms of human rights violations against persons deprived of liberty are:**

- **cursing;**
- **insults;**
- **intimidation;**
- **belittlement;**
- **humiliation;**
- **physical abuse;**
- **forced medical treatment;**
- **use of electric shocks;**
- **use of treatment with hot and cold water;**
- **making threats to the effect of what would happen in case of misbehaviour;**
- **forcing persons to stand against the wall;**
- **hooding;**
- **sleep deprivation;**
- **exposure to intolerable noise;**
- **deprivation of food and liquids;**
- **full isolation from the outside world with blindfolding;**
- **placement of a severely disabled person deprived of liberty in conditions that are not appropriate to the severity of his/her disability;**
- **denial of adequate medical assistance and care; and**
- **forced feeding.**

**Purpose and aim**

Acting in a manner that avoids giving rise to allegations of ill-treatment creates public trust in law enforcement agencies and their officers.

The purpose of treating persons deprived of liberty in a manner that respects their human rights is to comply with national legal regulations and international conventions, as well as encourage their reintegration into society upon release.

**European Convention for the Protection of Human Rights and Fundamental Freedoms**

Article 3

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

With its fifteen words, Article 3 is one of the shortest provisions of the Convention and sets forth the most important right that comes to mind when it comes to prisons. The brevity of this article, however, belies its significance. The actual content of Article 3 is reflected in the case law of the European Court of Human Rights.

Regardless of the fact that reliable reports indicate that torture continues to be inflicted around the world, the prohibition of torture is not only contained in the Convention, but also other international instruments, from Article 5 of the Universal Declaration of Human Rights

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

to the 1998 Rome Statute of the International Criminal Court, which declares that torture, when committed as part of a widespread or systematic attack directed against any civilian population, constitutes a crime against humanity.

In addition to the Convention, the majority of member states of the Council of Europe are also parties to the following international treaties prohibiting torture:

- four Geneva Conventions of 1949;
- UN International Covenant on Civil and Political Rights of 1966, Article 7
- "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.";
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984; and
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The importance of the prohibition of ill-treatment and the attention given to this right led to the development of a special instrument, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which established a special body – the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee undertakes visits to places of detention in countries that have ratified this Convention and oversees its implementation.

### Case law of the European Court of Human Rights

Use of force, the case of *Nachov v. Bulgaria* (2005)

*In this case, the Court found that it had not been absolutely necessary to use firearms to arrest offenders who posed no threat to anyone. The Court held that, under those circumstances, the use of firearms had been unlawful and urged prison administrators (and other authorities) to keep in mind whenever there is recourse to lethal force:*

*"... whether the operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care to ensure that any risk to life is minimised."*

The meaning and importance of the prohibition of torture, the case of *Aksoy v. Turkey* (1996)

*"The first judicial determination where ill-treatment was characterised as torture was made quite recently, namely on 18 December 1996, in the case of **Aksoy v. Turkey**, where the victim had been subjected to "Palestinian hanging"; in other words, he was stripped naked, with his arms tied together behind his back, and suspended by his arms. This led to a paralysis of both arms which lasted for some time. The seriousness and cruelty of this treatment led it to be described as torture by the Court.*

The meaning and importance of the prohibition of torture, the case of *Aydin v. Turkey* (1997)

*"Subsequently, in the case of **Aydin v. Turkey**, the Court stated the criterion of deliberate infliction of pain because of the nature of actions committed by officials of the State against Miss Aydin. She was raped, subjected to a series of particularly terrifying and humiliating experiences: beatings, blindfolding, forced to parade naked, being hosed with water from high-pressure jets. Her age (17) and mental suffering were also taken into account."*

The meaning and importance of the prohibition of torture, the case of *Tyrer v. UK* (1978)

*“One of the first cases where the applicant was found to have been subjected to humiliation is the case of **Tyrer v. UK** (1978), in which a 15-year-old boy was punished by birching in the presence of a doctor and his father. He was made to take down his trousers and underpants and bend over a table; he was held by two policemen whilst a third administered the punishment, pieces of the birch breaking at the first stroke. The applicant’s father lost his self-control and after the third stroke “went for” one of the policemen and had to be restrained. The birching raised, but did not cut, the applicant’s skin and he was sore for about a week and a half afterwards. The Court held that he had been treated as an object in the power of the authorities and that the birching had constituted an assault on his dignity and physical integrity.”*

Degrading treatment, the case of *Price v. UK* (2001)

*“One example of degrading behaviour that is directly related to the deprivation of liberty is the case of **Price v. UK** (2001). Although there was no evidence of any positive intention to humiliate or debase Ms Price, the Court held that that to detain a severely disabled person (the applicant is four-limb deficient) in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment.”*

Inhuman and degrading treatment, the case of *Tomasi v. France* (1993)

*“In its practice the Court found that one type of behaviour can constitute both inhuman and degrading treatment. For example, this was found in **Tomasi v. France** (1993). Physical assault in this case consisted of slapping, hitting, kicking, punches to the upper arm, being forced to stand for long periods without support with his hands handcuffed behind his back, being forced to stand naked in front of an open window, deprived of food and threatened with a firearm. Ill-treatment lasted throughout the two days of police custody.”*

## European Prison Rules<sup>18</sup>

*“1. All persons deprived of their liberty shall be treated with respect for their human rights.”*

The European Prison Rules apply to everyone who is in prison, regardless of the legal basis of their detention, and should be applied *“impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Extract from the 14<sup>th</sup> General Report [CPT/Inf (2004) 28]

*“The authorities should not hesitate to deliver, through a formal statement at the highest political level, the clear message that there must be “zero tolerance” of torture and other forms of ill-treatment.”*

<sup>18</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

## Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities

### CPT/Inf(2016) 17

*“The CPT reiterates its recommendation that the Ministers of Interior and Police Commissioners actively promote a clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty. Law enforcement officials should be continuously reminded, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons – including verbal abuse, racist behaviour, threats, and psychological ill-treatment – constitutes a criminal offence and will be prosecuted accordingly.”*

### CPT/Inf(2012) 15

*“No more force than is strictly necessary should be used when effecting an arrest and, once arrested persons have been brought under control, there can never be any justification for striking them. Police officers should be reminded regularly, and in an appropriate manner, of these basic principles. The CPT would also like to receive confirmation that all unauthorised items have now been removed from interview rooms (i.e. the offices of crime inspectors).”*

## Guidelines for combatting ill-treatment

In contact with persons deprived of liberty, the law enforcement officer:

1. At all times introduces himself using his full name, using the formal form of address for any person older than 18 years.
2. Explains his official role in a way that is adjusted to the intellectual, educational and socio-cultural level of the person deprived of liberty. He uses follow-up questions to check the level of understanding of the person deprived of liberty and accordingly provide the necessary clarification.
3. Shows good faith and provides the person deprived of liberty with food, water and use of toilets.
4. Pays due regard to the mode (speed of speech, voice level) and style of expression (shouting and swearing are not allowed) to allow the person deprived of liberty to understand what was being said and feel respected and invited to cooperate.
5. During conversation, he does not chew gum or food, hold a cigarette, make phone calls, etc.
6. Respects the personal space of the person deprived of liberty and keeps a distance of about one metre from the interlocutor.

**An individual’s personal space extends about one metre around them as violations of personal space may increase fear, anxiety and aggressiveness in the individual.**

7. Not make any sudden body movements that the convicted person may interpret as threatening or as “triggers” to adverse reactions.
8. Shows respect for the personality and dignity of persons deprived of liberty:
  - he does not humiliate them or call them names;

## GUIDELINES FOR DEALING WITH PERSONS DEPRIVED OF LIBERTY IN CLOSED ENVIRONMENT

- he does not ignore their demands and needs (food, water, sleep, clean bed-covers, hygiene...);
  - he does not use threats or intimidation, not even jokingly; and
  - he does not express his own views about the private life, personality, appearance, behaviour, attitudes and opinions of persons deprived of liberty.
9. Each procedural action taken against a person deprived of liberty is explained in advance.
  10. In dealing with persons deprived of liberty, the presumption of innocence is observed at all times.
  11. Be guided by the principle of impartiality in law enforcement, without discrimination on national, ethnic, racial, linguistic, or social grounds.
  12. Adequate premises are provided for the accommodation of persons deprived of liberty (appropriate temperature, lighting, ventilation, clean bedcovers, necessary furniture – for sitting, lying, etc.).
  13. Statutory rights of persons deprived of liberty are respected (the right to an interpreter, the right to counsel, the right to health care, the right to inform the family or a third party of their detention, etc.).
  14. When applying control and restraint, these measures are used only if it is absolutely necessary, pose minimum risk to the life and health of the person against whom the measure is being used, i.e. one which successfully overcomes the resistance and is commensurate with the level of danger involved.
  15. Law enforcement officer is not allowed to engage in physical violence against persons deprived of liberty (hitting, kicking, slapping, scalding, hair pulling, pinching...).

**The law does not permit persons deprived of liberty to be tied to pipes, radiators, benches, tables, banisters, etc.**

16. The law enforcement officer removes from the interrogation room all unauthorised items (truncheons, handles, belts/straps, pieces of hoses and cables, gloves, balaclavas and other objects that can be used for physical ill-treatment and intimidation of persons deprived of liberty).
17. Detailed searches are conducted in accordance with the already existing procedures of the law enforcement agency, with phased removal of clothing (the person is never left to stand completely naked).
18. In accordance with already existing procedures of the law enforcement agency, the officer provides persons deprived of liberty with an option to lodge requests or complaints about officers' conduct and treatment of persons deprived of liberty.

**Competence assessment form: Combatting ill-treatment**

1.	Treat persons deprived of liberty with respect	Notes
2.	Respond without delay to the needs of persons deprived of liberty	
3.	Pay due regard to your mode and style of expression	
4.	Apply control and restraint measures in accordance with the legal authorities	
5.	Conduct detailed searches in accordance with procedures	
6.	Give an advance explanation of each procedural action	

**Questions and answers: Combatting ill-treatment**

Q: What are the most common forms of ill-treatment?

A: The most common forms of ill-treatment are physical, psychological, sexual and cultural ill-treatment, and negligence.

Q: What are the basic rules when using control and restraint?

A: The basic rules for the use of control and restraint are:

- use C&R measures only when it is absolutely necessary,
- use C&R measure that involves minimal risk to the life and health of the person against whom it is being used,
- use a measure that successfully overcomes the resistance,
- use a measure that is commensurate with the level of danger involved.

Q: What international instruments provide guidelines for preventing ill-treatment of persons deprived of liberty?

A: Guidelines for the prevention of ill-treatment of persons deprived of liberty are provided in the European Convention for the protection of human rights and fundamental freedoms, the European Prison Rules, the recommendations of the European Committee for the prevention of torture (CPT), etc.

Q: Name a few forms of misconduct that constitute violations of human rights in the custodial environment?

A: The most common forms of misconduct that constitute violations of human rights in the custodial environment include: verbal abuse, forced medical treatment, slapping, forcing a person to stand against a wall, sleep deprivation, deprivation of food and fluids, etc.

## IMPUNITY

### Basic concepts

**Impunity** is a situation where an officer who has concealed an offence or crime is not brought to account or remains exempt from criminal or other legal proceedings for various reasons.

**Reaction** is an action made in response to a stimulus (external or internal).

**Report** is a narrative account of an event or process. A report always refers to events between people (colleagues) and contains details of the conversations made, action taken and possible conclusions.

#### Basic steps in preventing impunity:

- 1. Warning    2. Stopping    3. Reporting    4. Recording    5. Notifying**

### Purpose and aim

Professional conduct and integrity imply recognising situations in which law enforcement officers violate human rights of persons deprived of liberty and adequate reaction in such situations – prevention and reporting such actions.

Professional exercise of powers entrusted to law enforcement officers requires that in performing their everyday tasks they refrain from ill-treatment, discrimination or any other violation of the human rights of persons deprived of liberty.

#### Reasons leading to violations of the human rights of persons deprived of liberty:

- a) **ignorance of the laws and other regulations (staff receiving insufficient training)**
- b) **deliberate (intentional) commission of illegal acts against a person deprived of liberty**
- c) **failure to report allegations of ill-treatment.**

Failure to report allegations of ill-treatment carries equal weight in terms of misconduct.

The failure to sanction observed ill-treatment leads to impunity, which undermines the reputation of the service itself, but ultimately also of the public function performed by law enforcement officers.

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

Article 8(4)

*“The Committee may communicate freely with any person whom it believes can supply relevant information.”*

This provision implies that CPT may also communicate with law enforcement officers who witnessed possible violations of the human rights of persons deprived of liberty by their fellow officers.

Similarly, Article 10(2) provides:

*“If the Party fails to co-operate 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.”*

## **European Prison Rules<sup>19</sup>**

*“55. An alleged criminal act committed in a prison shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law.”*

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)**

Extracts from the 12<sup>th</sup> General Report [CPT/Inf (2002) 15]

*“45. The CPT has stressed on several occasions **the role of judicial and prosecuting authorities** as regards combatting ill-treatment by the police.*

*For example, all persons detained by the police whom it is proposed to remand to prison should be physically brought before the judge who must decide that issue; there are still certain countries visited by the CPT where this does not occur. Bringing the person before the judge will provide a timely opportunity for a criminal suspect who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person’s general appearance or demeanour).*

*Naturally, the judge must take appropriate steps when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.*

*The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officers and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officers minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.”*

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2016) 17

*“The CPT recommends that the authorities of Bosnia and Herzegovina (including the Entities and Cantons) establish fully independent police complaints bodies which are adequately resourced and would ensure that allegations of police ill-treatment being inves-*

<sup>19</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

*tigated effectively. Until this occurs, the Committee recommends that prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the police internal control units. It goes without saying that such units should not be under the responsibility of the Director of Police or housed within a police building. Further, such units should be appropriately staffed with qualified persons."*

CPT/Inf (2013) 25

*"The CPT recommends that, for the time being, prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the Internal Control Unit. Of course, it would be far preferable for prosecutors to have at their disposal their own operational investigators."*

CPT/Inf (2012) 15

*"The CPT recommends that the Ministers of Interior and Police Commissioners deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of severe sanctions. This message should be reiterated at appropriate intervals by the Chiefs of Police. Further, the relevant authorities should ensure that an investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities."*

### **Guidelines for preventing impunity**

1. If a law enforcement officer observes in person or becomes aware that persons deprived of liberty have been ill-treated, he is legally bound to immediately warn the law enforcement officer who violates human rights to desist from such violations.
2. If the warned law enforcement officer persists in ill-treating persons deprived of liberty, the law enforcement officer who has witnessed the ill-treatment or become aware of such treatment is legally bound to take measures and actions to prevent further ill-treatment of persons deprived of liberty in accordance with the already existing procedures of the law enforcement agency.
3. The law enforcement officer, without delay, reports to his immediate superior that ill-treatment of a person deprived of liberty has occurred and communicates all the circumstances of the incident known to him (place, time, information on persons involved in the event, consequences, information on witnesses).
4. The superior to whom the matter has been reported should satisfy themselves that the ill-treatment has stopped and will require to make a decision on whether to take immediate action (such as transferring person deprived of liberty subject to ill-treatment or suspending the law enforcement officer(s) responsible) if necessary.
5. If the person deprived of liberty was injured, the law enforcement officer has duty to enable medical assistance in accordance with the already existing procedures of the law enforcement agency.
6. The good practice has it that the person deprived of liberty is not escorted to a health care facility in the community by those law enforcement officers who were directly or indirectly involved in the violation of human rights.
7. The law enforcement officer draws up a written report to be submitted to the

competent manager of the law enforcement agency, in which he details all the circumstances of the incident known to him and submits all the available supporting evidence.

8. The competent senior manager has an obligation to undertake measures and actions to ensure a full and efficient investigation into the allegations of ill-treatment immediately upon receiving report in oral or in writing on the alleged violation of human rights of persons deprived of liberty.
9. The law enforcement officer to whom a case of ill-treatment has been reported shall protect the data on the identity of the reporting person and the contents of the report from unauthorised access by third parties.
10. If the law enforcement officer who has received a report of alleged ill-treatment or witnessed ill-treatment committed by his/her fellow officer suspects that there are elements of a criminal offence, he/she shall, without delay, inform the competent prosecutor and follow up on the case in accordance with the already existing procedures of the law enforcement agency.

### **Main steps in preventing impunity:**

**1. Warning 2. Stopping 3. Reporting 4. Making a record 5. Notifying**

### **Competence assessment form: Preventing impunity**

1.	You recognise the signs of ill-treatment of persons deprived of liberty	Notes
2.	You respond appropriately and without delay to all forms of ill-treatment of persons deprived of liberty observed in person	
3.	You carefully listen to allegations of ill-treatment communicated by persons deprived of liberty and respond accordingly	
4.	You keep a careful record of all allegations of ill-treatment of persons deprived of liberty	

### **Questions and answers: Preventing impunity**

1. Q: What does impunity mean?

A: Impunity is a situation where a person who has committed a violation of human rights or a criminal offence is not brought to account or remains exempt from criminal or other legal proceedings for various reasons.

2. Q: What situations usually give rise to impunity?

A: Impunity usually occurs:

- when there is a deliberate intention on the part of a fellow officer or manager to exempt a law enforcement officer from being brought to account for intimidating or threatening a person who wanted to report ill-treatment or a violation of human rights,
  - due to untimely, incomplete or improperly prepared written report on allegations of ill-treatment to be submitted to the competent institutions.
3. Q: What does one need to do if he/she notices that his/her fellow officer is ill-treating a person deprived of liberty?
- A: The main steps to be taken without delay are:
- warn
  - stop
  - report
  - make a record
  - inform.
4. Q: Who is to be informed if a person deprived of liberty complains about the actions of a fellow officer or if one has witnessed ill-treatment of a person deprived of liberty?
- A: Upon receiving allegations or eyewitness account of ill-treatment, one shall, without delay, notify this to his immediately superior law enforcement officer.

## INVESTIGATING ALLEGATIONS OF ILL-TREATMENT

### Basic concepts

#### *“Police officers and allegations of wrongdoing*

*...[The] positive obligation on the State to carry out an effective investigation arises whenever there is a credible claim or other indications that an individual has been subjected to ill-treatment falling within the scope of Article 3. This is the so-called ‘procedural aspect’ or ‘procedural limb’ of Article 3, but the obligation can also arise under other provisions of the European Convention on Human Rights. The result is that a violation of a Convention guarantee may be established if any subsequent State investigation of a credible assertion that ill-treatment has taken place is deemed inadequate. The procedural ‘limb’ of a guarantee thus seeks to render the guarantee effective in practice. To this end, the investigation must be sufficiently thorough to be capable of establishing the facts and also of leading to the identification and punishment of those responsible. It is important to note, however, that ‘an obligation to investigate’ is not an obligation of result, but of means’: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible”.*

**For investigations into allegations of ill-treatment to be effective, it is essential that all law enforcement agencies have easily understandable and reliable complaints handling procedures in place for persons deprived of liberty, as well as for officers.**

### Purpose and aim

Experience shows that the greatest risk of ill-treatment exists in the first hours and days following deprivation of liberty, while the person deprived of liberty remains under the control of law enforcement officers.

A culture that encourages investigation into allegations of ill-treatment must be created and actively promoted in order to impartially establish the facts and verify the credibility of the ill-treatment allegations. An effective investigation into allegations of ill-treatment allows an unambiguous identification of those responsible for the ill-treatment and their sanctioning in accordance with national law. The failure to sanction ill-treatment before the domestic courts results in the submission of applications to the Court of Human Rights, which ultimately undermines public confidence in the police and their management.

## European Convention for the Protection of Human Rights and Fundamental Freedoms

### Article 3

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

## Case law of the European Court of Human Rights

In *Paduret v. Moldova* (2010), a police officer was found to have seriously assaulted a member of the public. However, the treatment of the applicant was severe and should, according to the Strasbourg Court, have been classified as torture. The officer should, it said, have been charged with the more serious offence of torture, under Article 101 paragraph 1 of the Criminal Code. The failure to do so, and the fact that the officer was allowed to continue working as a police officer even after his conviction, meant that there had been a violation of Article 3. The Strasbourg Court was particularly concerned by the Moldovan Government's assertion that torture was "considered an average-level crime", to be distinguished from more serious forms of crime and thus warranting reduced sentences'. It said that "such a position is absolutely incompatible with the obligations resulting from Article 3 of the Convention, given the extreme seriousness of the crime of torture".

### European Prison Rules<sup>20</sup>

Criminal acts

*"55. An alleged criminal act committed in a prison shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law."*

### Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Extracts from the General Report [CPT/Inf (2004) 28]

*"27. In many States visited by the CPT, torture and acts such as ill-treatment in the performance of a duty, coercion to obtain a statement, abuse of authority, etc. constitute specific criminal offences which are prosecuted ex officio. The CPT welcomes the existence of legal provisions of this kind.*

*Nevertheless, the CPT has found that, in certain countries, prosecutorial authorities have considerable discretion with regard to the opening of a preliminary investigation when information related to possible ill-treatment of persons deprived of their liberty comes to light. In the Committee's view, even in the absence of a formal complaint, such authorities should **be under a legal obligation to undertake an investigation** whenever they receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred. In this connection, the legal framework for accountability will be strengthened if public officials (police officers, prison directors, etc.) are formally required to notify the relevant authorities immediately whenever they become aware of any information indicative of ill-treatment.*

*28. The existence of a suitable legal framework is not of itself sufficient to guarantee that appropriate action will be taken in respect of cases of possible ill-treatment. Due attention must be given to **sensitising the relevant authorities** to the important obligations which are incumbent upon them.*

*When persons detained by law enforcement agencies are brought before prosecutorial and judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of an express complaint, these authorities will be in a position to take action in good time if there are other indicia (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred."*

<sup>20</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf (2016) 17

*“To avoid any perception of impunity, it is crucial that effective action is taken whenever any information indicative of possible ill-treatment comes to light in line with the procedural obligations under Article 3 of the European Convention on Human Rights.*

*The CPT recommends that these obligations be strictly observed by the authorities. It would like to be informed of the steps taken to ensure that this is the case.*

...

*The CPT recommends that the authorities of Bosnia and Herzegovina (including the Entities and Cantons) establish fully independent police complaints bodies which are adequately resourced and would ensure that allegations of police ill-treatment are investigated effectively. Until this occurs, the Committee recommends that prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the police internal control units. It goes without saying that such units should not be under the responsibility of the Director of Police or housed within a police building. Further, such units should be appropriately staffed with qualified persons.”*

### CPT/Inf (2013) 25

*“The CPT reiterates its recommendation that the police officers charged with escorting the detained person for a medical examination are not the same ones against whom the allegations of ill-treatment are brought. In such cases, the task of escorting detained persons to the medical institution concerned should be entrusted to judicial police officers. Further, the confidentiality of medical examinations should be respected and the results of the examination made available to the detained person and upon request to his or her lawyer. Of course, it is also essential that the Forensic Institute is able to provide all the support required by the criminal justice system, including in relation to the investigation of cases of possible police ill-treatment. In the short term, steps should be taken to provide training to doctors in emergency hospital clinics on how to describe injuries in a competent manner.*

....

*The CPT recommends that, for the time being, prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the Internal Control Unit. Of course, it would be far preferable for prosecutors to have at their disposal their own operational investigators.”*

### CPT/Inf (2012) 15

*“The CPT reiterates its recommendation that, whenever criminal suspects brought before a prosecutor or judge allege ill-treatment by law enforcement officers, the prosecutor/judge record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible*

*external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment. The Chief Prosecutors in both Entities should recall firmly that prosecutors should act in accordance with the above principles.*

*The CPT also recommends that the police officers charged with escorting the detained person to the doctor are not the same ones against whom the allegations of ill-treatment are directed. In such cases, the duty of escorting detained persons to a medical clinic should be entrusted to judicial police officers. Further, the confidentiality of medical examinations should be respected and the results of the examination made available to the detained person."*

## **Guidelines for investigating allegations of ill-treatment**

1. Any law enforcement officer who becomes aware of, or holds a reasonable suspicion of any form of ill-treatment being committed against persons deprived of liberty is legally bound to submit a report thereof to his immediate superior.
2. Along with the report, the law enforcement officer submits all the information and evidence that he might be in possession of.
3. The law enforcement officer may submit the report, along with the information and evidence. If reported orally good practice would be to follow up with a written report which then becomes a record.
4. The law enforcement officer to whom a case of ill-treatment has been reported keeps confidential the identity of the reporting person and the contents of the report. This information is not to be disclosed to anyone except the immediate superior.
5. Immediately upon receiving a report of ill-treatment, and without delay, the person deprived of liberty who was subjected to ill-treatment is escorted to a health care facility for medical examination and determination and documentation of physical injuries.
6. The duty of escorting the person deprived of liberty to a health care facility is not to be entrusted to the law enforcement officers who have participated in or been indirectly involved in the alleged ill-treatment.
7. The competent manager of the law enforcement agency arranges the analysing of the collected evidence to verify whether it supports the report of ill-treatment and accordingly initiate disciplinary proceedings, or rejects the report of the alleged ill-treatment in accordance with the already existing procedures of the law enforcement agency.
8. The complaint is processed in accordance with the already existing procedures of the law enforcement agency.

## Competence assessment form: Investigating allegations of ill-treatment

1.	You correctly recognise the signs of ill-treatment of persons deprived of liberty	Notes
2.	Your report allegations of ill-treatment to the competent manager	
3.	You submit any collected evidence along with the report of alleged ill-treatment	

### Questions and answers: Investigating allegations of ill-treatment

1. Q: What is meant by an investigation into allegations of ill-treatment?

A: An investigation implies a positive obligation on the State to carry out effective investigative measures whenever there is a credible claim or other indications that an individual has been subjected to ill-treatment falling within the ambit of Article 3 of the European Convention on Human Rights.

The investigation must be sufficiently thorough to be capable of establishing the facts and also of leading to the identification and punishment of those responsible.

2. Q: Who is obliged to submit a report of ill-treatment and to whom?

A: Any law enforcement officer who becomes aware of, or holds a reasonable suspicion of any form of ill-treatment being committed against persons deprived of liberty has an obligation to submit a report thereof to his immediate superior.

3. Q: To whom is the identity of the person who reported the alleged ill-treatment revealed?

A: The law enforcement officer to whom a case of ill-treatment has been reported keeps confidential the identity of the reporting person and the contents of the report. This information is not disclosed to anyone except the immediate superior.

4. Q: Who escorts the person who was subjected to the alleged ill-treatment to a health care facility?

A: The duty of escorting the person deprived of liberty to a health care facility is not to be entrusted to the law enforcement officers who have participated in or been indirectly involved in the alleged ill-treatment.

## INVESTIGATING ALLEGATIONS OF ILL-TREATMENT INTERNALLY

### Basic concepts

**Processing**<sup>21</sup> (N.T. investigating internally) means to subject a person for whom there are reasonable grounds or reasonable suspicion of having committed illegal action or act to proceedings by the competent body performing an internal investigation.

**Law enforcement officers at all levels are personally held to account and bear the consequences of their own actions containing elements of ill-treatment or orders given to their subordinates.**

---

### Purpose and aim

It is essential to ensure that purposeful action be taken in cases of possible ill-treatment in order to maintain public confidence in the rule of law in the country. Law enforcement officers are servants of the state and are legally bound to discharge their duties in accordance with the state constitution. The Constitution of any state that has ratified the European Convention on Human Rights and Fundamental Freedoms, including Bosnia and Herzegovina, strictly prohibits ill-treatment and any form of torture.

The Criminal Codes of Bosnia and Herzegovina provide for the criminal liability and legal sanctioning of perpetrators of ill-treatment. A prerequisite for an impartial determination of criminal liability is quick and effective action based on information indicating possible ill-treatment.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 3

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

### UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>22</sup>

*"... all acts of torture are offences. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."*

---

21 Processing (internal to an agency) is not a synonym to prosecuting (which is in competence of judicial authorities)

22 Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987

## Case law of the European Court of Human Rights

The case of Trajkoski v. The Former Yugoslav Republic of Macedonia (2002)

The applicant, accompanied by his wife and another person, went to the Prilep police station to report the possibility of a fire and explosion at a petrol station as a result of alleged improper handling of petrol stocks at the time. Upon their arrival, they had parked their car in front of an access ramp on the street in front of the police station. At the warden's request, the applicant had moved his car to a car park situated behind a nearby hotel. After the applicant had entered the police station, the same officer had pushed him backwards. In his initial submission, the applicant stated that he had also pointed a gun at his head. A number of other police officers had arrived at the scene and had assaulted him, grabbing him by his arms, legs and hair and pushing him down the stairs. They had continued beating him all over his body, using offensive language.

*"The Government submitted that the applicant had parked his car in front of the entrance of the Prilep police station on a street on which no traffic and parking had been allowed. They further maintained that he had failed to move his car despite having been ordered to do so by the police officers on duty. The applicant had then entered the police station without identifying himself. He had ignored the officers' verbal order that he leave the building. He had actively resisted when police officers took him out of the station.*

*In the subsidiary criminal proceedings the applicant reiterated his allegations of having been beaten by the police. He provided the identity of one of the police officers involved and left it to the court to identify the remaining four. The Court accepts that the identities of all the perpetrators could have been unknown to him. It further considers the trial court's insistence that the applicant discover the identity of the other accused himself to be an excessive formalism. Their identity could easily have been discovered, as argued by the applicant, from the official police records. Instead, the trial court rejected the applicant's complaint as incomplete without taking any further action. Moreover, this is no explanation why the trial court did not continue the proceedings at least against Mr P.R. However, it took no steps to hear witnesses, although put forward by the applicant, including the doctor who had examined him. The applicant's complaints remained therefore without a judicial consideration on the merits. Against this background, the Court concludes that the investigation into the applicant's claim that he had sustained injuries at the hands of the police was not thorough and effective. Thus, the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention (...)"*

The European Court of Human Rights in this case declared the applicant's complaint admissible and held that there had been a violation of Article 3 of the Convention under its substantive and procedural limbs and the respondent State was obliged to pay monetary compensation to the applicant.

## European Prison Rules<sup>23</sup>

*“13. The European Prison Rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Excerpts from the 14<sup>th</sup> General Report [CPT/Inf (2004) 28]

*“25. The raison d’être of the CPT is the “prevention” of torture and inhuman or degrading treatment or punishment; it has its eyes on the future rather than the past. However, assessing the effectiveness of action taken when ill-treatment has occurred constitutes an integral part of the Committee’s preventive mandate, given the implications that such action has for future conduct.*

*The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity. All efforts to promote human rights principles through strict recruitment policies and professional training will be sabotaged. In failing to take effective action, the persons concerned – colleagues, senior managers, investigating authorities – will ultimately contribute to the corrosion of the values which constitute the very foundations of a democratic society.*

*Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims.*

*26. Combating impunity must start at home, that is within the agency (police or prison service, military authority, etc.) concerned. Too often the esprit de corps leads to a willingness to stick together and help each other when allegations of ill-treatment are made, to even cover up the illegal acts of colleagues. Positive action is required, through training and by example, to **promote a culture** where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment, where it is considered as correct and professionally rewarding to belong to a team which abstains from such acts.*

*An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues; there must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring and fails to act to prevent or report it. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures.”*

<sup>23</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

## Excerpts from the Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities

### CPT/Inf (2016) 07

*“...It is essential that effective investigations into allegations of ill-treatment must be undertaken to demonstrate that criminal acts by the police will be punished and to counter the current culture of impunity that pervades parts of the various police forces within the country. This will also back up any message of zero tolerance.*

*The CPT wishes to reiterate that the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. Therefore, it is self-evident that prosecutors and judges should take appropriate action when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination should be immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should adopt a proactive approach; for example, whenever there are other grounds to believe that a person brought before him or her could have been the victim of ill-treatment, a forensic medical examination should be ordered.*

*The CPT recommends that the Chief Prosecutors and the Presidents of the Supreme Courts of both Entities and of the Cantons recall firmly that prosecutors and judges should act in accordance with the above principles.”*

### CPT/Inf (2004) 28

*“Disciplinary proceedings provide an additional type of redress against ill-treatment, and may take place in parallel to criminal proceedings. Disciplinary culpability of the officials concerned should be systematically examined, irrespective of whether the misconduct in question is found to constitute a criminal offence.*

*The CPT has recommended a number of procedural safeguards to be followed in this context; for example, adjudication panels for police disciplinary proceedings should include at least one independent member. Inquiries into possible disciplinary offences by public officials may be performed by a separate internal investigations department within the structures of the agencies concerned.*

*Nevertheless, the CPT strongly encourages the creation of a fully-fledged independent investigation body. Such a body should have the power to direct that disciplinary proceedings be instigated. Regardless of the formal structure of the investigation agency, the CPT considers that its functions should be properly publicised. Apart from the possibility for persons to lodge complaints directly with the agency, it should be mandatory for public authorities such as the police to register all representations which could constitute a complaint; to this end, appropriate forms should be introduced for acknowledging receipt of a complaint and confirming that the matter will be pursued.*

*If, in a given case, it is found that the conduct of the officials concerned may be criminal in nature, the investigation agency should always notify directly – without delay – the competent prosecutorial authorities. Great care should be taken to ensure that persons who may have been the victims of ill-treatment by public officials are not dissuaded from*

*lodging a complaint. For example, the potential negative effects of a possibility for such officials to bring proceedings for defamation against a person who wrongly accuses them of ill-treatment should be kept under review. The balance between competing legitimate interests must be evenly established. Reference should also be made in this context to certain points already made in paragraph 28. Any evidence of ill-treatment by public officials which emerges during civil proceedings also merits close scrutiny.*

*For example, in cases in which there have been successful claims for damages or out-of-court settlements on grounds including assault by police officers, the CPT has recommended that an independent review be carried out. Such a review should seek to identify whether, having regard to the nature and gravity of the allegations against the police officers concerned, the question of criminal and/or disciplinary proceedings should be (re)considered. It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate.*

*When ill-treatment has been proven, the imposition of a suitable penalty should follow. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only engender a climate of impunity. Of course, judicial authorities are independent, and hence free to fix, within the parameters set by law, the sentence in any given case. However, via those parameters, the intent of the legislator must be clear: that the criminal justice system should adopt a firm attitude with regard to torture and other forms of ill-treatment. Similarly, sanctions imposed following the determination of disciplinary culpability should be commensurate to the gravity of the case.*

*Finally, no one must be left in any doubt concerning the commitment of the State authorities to combating impunity. This will underpin the action being taken at all other levels. When necessary, those authorities should not hesitate to deliver, through a formal statement at the highest political level, the clear message that there must be “zero tolerance” of torture and other forms of ill-treatment.”*

## **Guidelines for investigating allegations of ill-treatment internally**

1. The officer to whom alleged ill-treatment by other officers has been reported is bound by law to notify the allegations to his immediate superior.
2. When there is suspicion that a particular officer has allegedly ill-treated a person deprived of liberty, an internal procedure/investigation is launched. Determining the grounds for suspicion and launching an internal investigation is done in accordance with the already existing procedures of the law enforcement agency.
3. If there is reasonable doubt that an officer has ill-treated a person deprived of liberty, he is subject to disciplinary proceedings conducted in accordance with the existing procedures of the law enforcement agency.
4. The law enforcement officer who is alleged to have committed ill-treatment:
  - receives and responds to the summons issued by the disciplinary committee which should detail the allegation(s) being made against the officer,
  - provides a testimony about the incident,
  - refrains from interfering with/exerting pressure on the victim or witnesses.
5. The law enforcement officer who witnessed the ill-treatment:
  - receives and responds to the summons issued by the disciplinary committee,

- provides a testimony about the incident without concealing the facts,
  - reports to the competent manager any instances of pressure to which he has come under from the officer who is alleged to have committed ill-treatment or other officers.
6. The law enforcement officer who is alleged to have committed ill-treatment has the right:
- to acquaint himself with the allegations levelled against him in accordance with the standard procedures of the law enforcement agency,
  - to legal counsel when testifying before a person in charge of the internal procedure and during disciplinary proceedings,
  - to hear the testimony given by witnesses and the victim, and to question them,
  - to access the case file maintained in the case against him,
  - to present his defence and to call relevant witnesses in the course of disciplinary proceedings,
  - to respond to the evidence presented by the disciplinary committee,
  - to be notified of the decision of the disciplinary committee, which is to be delivered to him in the form of a decision,
  - to appeal to the second instance authority.
7. If investigative procedures into alleged ill-treatment indicate that there are elements of a criminal offence, the manager of the law enforcement agency, immediately upon becoming aware and without delay, submits a report on the committed criminal offence to the competent prosecutor's office.
8. The law enforcement officer charged with having committed the ill-treatment in question is treated in accordance with the already existing procedures of the law enforcement agency.

**Law enforcement agencies are required to develop among their officers a culture of behaviour where every form of ill-treatment of persons deprived of liberty will be considered unprofessional and unacceptable.**

**The law enforcement officer is obliged to:**

1. refrain from carrying out any instruction or command that contains elements of ill-treatment of persons deprived of liberty, and reports them without a fear of sanctions.
2. strives to provide a positive model of behaviour in a group (he is courteous and polite, promotes honesty and respect for the dignity of persons deprived of liberty, and protects the lives of persons deprived of liberty at all times).
3. fosters a spirit of cooperation, support and mutual trust among colleagues, while taking a strong zero-tolerance approach to violence ("there is no justification for violence").

**Competence assessment form: Investigating allegations of ill-treatment internally**

1.	Takes appropriate action when there are indications that ill-treatment has been committed against persons deprived of liberty by law enforcement officers	Notes
2.	Acts conscientiously in the event of witnessing violence against persons deprived of liberty by law enforcement officers	
3.	Does not show loyalty to law enforcement officers who commit ill-treatment	
4.	Does not conceal wrongful acts committed by his colleagues	

**Questions and answers: Investigating allegations of ill-treatment internally**

1. Q: Why is it important to prosecute law enforcement officers who have acted as alleged perpetrators of ill-treatment?  
 A: Prosecuting those responsible sends a message to the public that such behaviour will not be tolerated. Also, the knowledge that the persons responsible for ill-treatment have been brought to justice will have a positive impact on the victim.
  
2. Q: What kind of behaviour culture should be developed among law enforcement officers?  
 A: Among law enforcement officers one should develop a culture of behaviour where every form of ill-treatment of persons deprived of liberty will be considered unprofessional and unacceptable. A clear and unequivocal message must be sent that all perpetrators of ill-treatment will be criminally prosecuted.
  
3. Q: What types of proceedings are in place for law enforcement officers who commit ill-treatment?  
 A: Law enforcement officers who are alleged to have committed ill-treatment are subject to disciplinary and criminal proceedings.

## ADMISSION TO CLOSED ENVIRONMENT

### Basic concepts

**A suspect** is a person suspected beyond reasonable doubt of having committed a criminal offence.

**Injured party** is a person whose personal or property rights were breached or violated by criminal offence.

**Notes and files** are letters, words or numbers or their equivalent, hand-written, typed on a typewriter, printed, photocopied, photographed and recorded by magnetic impulses, mechanically or electronically or by other method of collection.

### Purpose and aim

The purpose of guidelines is to harmonise practices and standardise tasks during admission of persons deprived of liberty in all law enforcement agencies' offices, thereby ensuring equality of treatment for all persons deprived of liberty. Shared guidelines also serve as a practical tool and safeguard against complaints and allegations of inappropriate treatment of persons deprived of liberty.

These guidelines ensure appropriate relations between the law enforcement officers and persons deprived of liberty, creating safe environment and reducing possibilities for violation of human rights of persons deprived of liberty.

The guidelines aim to address the need to protect human rights of persons deprived of liberty guaranteed in the national laws and international standards.

In performing tasks arising from the law enforcement officers' legal authorities, all legal requirements and universal principles must be met during admission of persons deprived of liberty to be confident that their human rights have been observed.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 3

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

### Case law of the European Court of Human Rights

The meaning and importance of torture prevention was prominent in the case of *Aksoy vs. Turkey* (1996)

*"63. The court, having decided to accept the committee findings about factual state, is of the opinion that, when an individual has been detained by the police in good health condition and with no injuries and there are injuries visible upon release, it is the duty of the state to offer plausible explanation about the nature of those injuries and if it fails to do so, there is clear breach of Article 3 of the Convention."*

## European Prison Rules<sup>24</sup>

*"1. All persons deprived of liberty shall be treated with respect for their human rights.*

*2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody."*

## Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards)

Excerpts from the 2<sup>nd</sup> General Report [CPT/Inf (92) 3]

*"36. The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).<sup>25</sup>"*

They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).

*"38. Access to a lawyer for persons in police custody should include the right to contact and to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of their discussions) as well as, in principle, the right for the person concerned to have the lawyer present during interrogation.*

*39. Turning to the interrogation process, the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address inter alia the following matters: the informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview.*

*The CPT would add that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police).*

*40. The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them;*

24 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

25 This right has subsequently been reformulated as follows: the right of access to a doctor, including the right to be examined, if the person detained so wishes, by a doctor of his own choice (in addition to any medical examination carried out by a doctor called by the police authorities).

when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record.

42. Custody by the police is in principle of relatively short duration. Consequently, physical conditions of detention cannot be expected to be as good in police establishments as in other places of detention where persons may be held for lengthy periods. However, certain elementary material requirements should be met.

All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (eg. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.<sup>26</sup>

43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling. "

## **Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf (2012)15

- *the authorities of Bosnia and Herzegovina to ensure that all detained persons are granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police;*
- *the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer, as defined in paragraph 18, is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty;*
- *the authorities to bring to the attention of the Bar Associations the concerns of the Committee as regards the quality of the advice provided by ex officio lawyers;*
- *specific legal provisions to be adopted on the subject of access to a doctor, stipulating inter alia that:*
  - *a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination. Further, even in the absence of such a request, the above-mentioned action must be taken if a person in police*

<sup>26</sup> The CPT also advocates that persons kept in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.

*custody is in apparent need of medical treatment;*

- *a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;*
  - *all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;*
  - *the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, should be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer;*
- the authorities to take the necessary steps to ensure that the custody registers are scrupulously filled out and that a register is maintained for every detention facility where persons are deprived of their liberty.
  - confirmation that the 24 hour period of deprivation of liberty by the police runs from the moment the person concerned is apprehended and not from the time he arrives at a police station."

CPT/Inf(2013)25

- the authorities of Bosnia and Herzegovina to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation, as provided for by law. This right should apply as from the very outset of the deprivation of liberty (that is, from the moment when the person concerned is obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor, and to require the approval of a prosecutor or judge) and strictly limited in time (paragraph 24);
- whenever the notification of custody is carried out by police officers, the detained person to be provided with feedback on whether it has been possible to inform a close relative or other person of the fact of his or her detention;
- the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer, as defined in paragraph 25, is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty;
- all law enforcement officials to be reminded that detained persons may exercise their basic rights at any stage of their custody (even if they have initially chosen not to avail themselves of those rights at the time of their arrest and detention);
- all ex officio lawyers to be reminded, through the appropriate channels, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police;
- the authorities to adopt specific legal provisions on access to a doctor during

*police custody, stipulating inter alia that:*

- *a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination;*
  - *a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;*
  - *all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;*
  - *the results of every examination, as well as any relevant statements by the person in custody and the doctor's observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer;*
- the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner;
  - the information on rights to be properly explained to the detained persons to ensure that they are in a position to understand their rights and to exercise them effectively;
  - the authorities to take all the necessary steps to ensure that the custody registers are scrupulously filled out and that a single and comprehensive record is maintained in each law enforcement establishment of every person detained at any given time on its premises;
  - steps be taken to ensure that whenever a person is deprived of his or her liberty by a law enforcement agency, for whatever reason (even for a short period of time), this fact is formally recorded without delay."

#### CPT/INF(2016)17

*"The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all detained persons are granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police.*

*The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty. Further, persons detained by the police should be able to talk to a lawyer in private and the lawyer should be present during the police interview. Moreover, all law enforcement officials should be reminded that detained persons may exercise their rights at any stage of their custody.*

*As regards juveniles, they should never be subjected to police questioning or be requested to make a statement or to sign any document concerning the offence he/she is suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person.*

*The CPT calls again upon the authorities to adopt specific legal provisions on access to a doctor during police custody. Further, medical confidentiality both during examinations of the detained persons and of medical documentation must be guaranteed. The time has come for the BiH authorities to ensure that these rights are effectively implemented throughout the country.*

*The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their rights as from the outset of their deprivation of liberty."*

## **Guidelines for admitting persons deprived of liberty in the closed environment**

**Person deprived of liberty shall never be bound to fixed objects (radiators, benches, bars, rails, etc.), have their face covered by hoods or eyes covered or gagged.**

**The law enforcement officers shall not extort confession or any other statement from the suspect as courts cannot base their decisions on the pieces of evidence obtained through violations of human rights and freedoms guaranteed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on the pieces of evidence obtained through serious violations of law.**

1. Person deprived of liberty is without delay informed in his mother tongue or in the language he understands about reasons for his deprivation of liberty.
2. Person deprived of liberty is offered with water, food or warm drink and he is allowed to use the toilet.
3. Official record of the deprivation of liberty is issued without delay with the exact time of the start of deprivation of liberty recorded in the appropriate files.
4. Bars, holders, straps, pieces of pipe, pieces of cable, gloves, balaclavas and other items which could be used for beating and intimidating persons deprived of liberty are removed from the interviewing rooms in accordance with the existing procedures of the law enforcement agency.
5. Law enforcement officers give their name to the person deprived of liberty in a calm voice. They explain their role and the legal authorities vested in them as well as in which capacity the person deprived of liberty would be questioned.
6. Person deprived of liberty is provided with services of an interpreter free of charge in accordance with the existing procedures of the law enforcement agency.
7. Person deprived of liberty is informed of the right to a lawyer (chosen or ex officio/assigned by the court) in accordance with the existing procedures of the law enforcement agency.
8. He is informed of the right to inform his close family member, consular representative of his country of origin or the third person of his choice about his deprivation of freedom in accordance with the existing procedures of the law enforcement agency.
9. Person deprived of liberty is informed about the criminal offence he has been charged with and grounds for suspicion during the first questioning and that his

statement can be used as evidence during further proceedings.

10. He is provided with an opportunity to give statement about any facts and evidence against him or those that speak in his favour.
11. Person deprived of liberty can file a complaint or grievance about the treatment he has been subjected to by the law enforcement officer at any time. These complaints are dealt with in accordance with the existing procedures of the law enforcement agency.
12. Person deprived of liberty is protected from persons who have no legal authorities to question him (members of the victim's family, other suspects, colleagues, etc) in accordance with the existing procedures of the law enforcement agency.

### Competence assessment form: Admission to closed environment

1.	You properly inform the person deprived of liberty of his rights	Notes
2.	You communicate with person deprived of liberty in a manner contributing to mutual trust and respect	
3.	You protect person deprived of liberty from third persons (colleagues who are not authorised to question him, victims, other suspects deprived of liberty)	

### Questions and answers: Admission to closed environment

1. Q: How does a law enforcement officer communicate with a person deprived of liberty?  
A: He communicates with the person deprived of liberty in a manner contributing to the mutual respect and trust, in calm voice, without unnecessary gestures and intimidation.
2. Q: From whom should the law enforcement officer protect the person deprived of liberty?  
A: The person deprived of liberty is to be protected from:
  - Colleagues who are not authorised to question him
  - Victims
  - Other suspects deprived of liberty.

## QUESTIONNAIRE ON ADMISSION

### Basic concepts

**Questionnaire** is a pre-formulated set of questions that are used to collect data or information.

### Purpose and aim

Questionnaires allow law enforcement officers to obtain information on possible human rights violations, which will also be used later in handling possible allegations of ill-treatment. The significance of the data collected is to increase awareness of the need to respect the human rights of persons deprived of their liberty, thereby reducing the possibility of their violation.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 5 (1)

*“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in accordance with a procedure prescribed by law.”*

### European Prison Rules<sup>27</sup>

*“13. These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

### Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

#### Extracts from the General Report [CPT/Inf (92) 3]

*“40. The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person’s possession, the fact of being told of one’s rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee’s lawyer should have access to such a custody record.”*

#### Extracts from the 6<sup>th</sup> General Report [CPT/Inf (96) 21]

*“14. The CPT also emphasised in the 2<sup>nd</sup> General Report the importance of persons taken into police custody being expressly informed without delay of all their rights.*

*In order to ensure that this is done, the CPT considers that a form setting out those rights in a straightforward manner should be systematically given to persons detained by*

<sup>27</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

*the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.*

*The above-mentioned measures would be easy to implement, inexpensive and effective.”*

### **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

#### CPT/Inf (2016) 17

*“Most persons met by the delegation claimed that they had neither been informed of their rights verbally upon apprehension nor in the police station.”*

#### CPT/Inf (2013) 25

*“The CPT calls upon the authorities to take all the necessary steps to ensure that the custody registers are scrupulously filled out and that a single and comprehensive record is maintained in each law enforcement establishment of every person detained at any given time on its premises.”*

#### CPT/Inf (2012) 15

*“The CPT recommends once again that the authorities take the necessary steps to ensure that the custody registers are scrupulously filled out and that a register is maintained for every detention facility where persons are deprived of their liberty. Further, it wishes to receive confirmation that the 24 hour period of deprivation of liberty by the police runs from the moment the person concerned is apprehended and not from the time he arrives at a police station.”*

### **Guidelines for developing questionnaire on admission**

The registers kept by law enforcement agencies relating to the deprivation of liberty and handling of persons deprived of liberty and their detention should include answers to the following questions:

1. Were you informed of the reasons for the deprivation of liberty in a language that you understand?
2. Were you informed of the right to a lawyer?
3. Was your family or a third party of your choice notified that you had been deprived of liberty<sup>28</sup>?
4. Who notified your family that you had been deprived of liberty and in what way?

<sup>28</sup> It is good practice that person deprived of liberty should be given an opportunity to contact a close family member or a third person of his choice about the deprivation of liberty unless there are compelling reasons not to do so.

**GUIDELINES FOR DEALING WITH PERSONS DEPRIVED OF LIBERTY IN CLOSED ENVIRONMENT**

5. Was the consular office notified that you had been deprived of liberty (if the person is a foreign national)?
6. Do you have any physiological needs?
7. Were you informed that you did not have to answer any questions in connection with the suspicion on which you were deprived of liberty?
8. Did you sustain any bodily injuries while you were being deprived of liberty?
9. Were you subjected to any physical ill-treatment while you were being deprived of liberty; if so, in what way?
10. Were you seen by a nurse or doctor or were you offered the opportunity to be seen by either?
11. Do you have any bodily injuries; if so, how were they caused?
12. Were you subjected to insults, disparagement or threats by law enforcement officers while you were being deprived of liberty? If so, in what way?
13. Do you have any health problems, or do you suffer from specific medical conditions (high blood sugar, heart diseases, kidney diseases, respiratory diseases – asthma and the like, epilepsy or other chronic diseases)?
14. Have you in the last 24 hours consumed or used alcohol, narcotics or other opiates? If so, do you require medical assistance?
15. When did you last consumed any food, i.e. are you hungry?
16. When did you last drink any liquid, i.e. are you thirsty?
17. Do you have on your person any items with which you could inflict bodily harm to yourself or others?
18. Do you have any requests or needs that were not mentioned in our questionnaire?

**Competence assessment form: Questionnaire on admission**

1.	You ask the person deprived of liberty questions in accordance with the principles of efficient communication	Notes
2.	You respond to his/her immediate needs and requests for help	
3.	You keep a proper record of all the circumstances indicating a possible violation of human rights of the person deprived of liberty	

**Questions and answers: Questionnaire on admission**

1. Q: When is the questionnaire for persons deprived of liberty filled in?  
A: Immediately upon admission in the official premises of the law enforcement agency.
2. Q: What questions warrant particular attention?  
A: Particular attention should be given to responses containing allegations of human rights violations.

3. Q: Who do the provisions of the European Prison Rules apply to?  
 A: The provisions of the European Prison Rules apply to all prisoners, regardless of gender, race, education, etc.

## INFORMING PERSONS DEPRIVED OF LIBERTY ABOUT THEIR RIGHTS

### Basic concepts

**Human rights are universal and all human beings, including persons deprived of liberty, are entitled to them by the mere fact of having been born.**

**Rights of a person deprived of liberty** are a form of a guarantee that his best interests will be fulfilled and that integrity of his body and soul will be preserved. These rights also enable a person to be equal in any proceedings undertaken against him by public authorities.

**Exercising rights implies** fulfilment of the law enforcement officers' duties towards a person deprived of liberty. The rights of persons deprived of liberty are prescribed by international and domestic norms governing their treatment.

### Purpose and aim

Persons deprived of liberty stay at the custodial premises where their freedom of movement is limited or where they are prevented from exercising their right to free movement. In dealings with persons deprived of liberty violation of their fundamental human rights occurs for several reasons:

- the lack of knowledge of legal provisions which constitute the basis for the law enforcement officers' authorities,
- personal prejudices,
- physical limitations of the premises where persons deprived of liberty are kept and other material shortcomings.

The basic purpose of protecting human rights of persons deprived of liberty is to reduce the possibility or completely avoid allegations of ill-treatment, thus reducing the number of applications before the European Court of Human Rights and domestic courts, as well as increasing the level of professional integrity among the law enforcement officers and reducing the possibility of violation of procedures related to the deprivation of liberty.

The law enforcement officers are responsible for lawful treatment, respecting and ensuring fundamental human rights of persons deprived of liberty. This responsibility arises from their status of public officials and authorisations given to them by law.

According to international norms, the law enforcement officers can only restrict the person's right to free movement. They cannot be deprived of any other right (e.g. right to language, right to a lawyer, right to primary health care, right to fulfilment of basic physiological needs etc.)

## European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 5 paragraph 2

*"Everyone who is arrested shall be informed promptly, in a language which he under-*

*stands, of the reasons for his arrest and of any charge against him."*

Article 6 paragraph 3

*"Everyone charged with a criminal offence 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*

*..."*

## **European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

Article 8 paragraph 3

*"The Committee may interview in private persons deprived of their liberty."*

It is considered that a person deprived of liberty is not obliged to contact the Committee, while the Committee has to be given an opportunity to satisfy itself that this is the free choice of a person in question.

## **Case law of the European Court of Human Rights**

In case Fox, Campbell and Hartley against the United Kingdom, the plaintiffs complained about "not being given correct and comprehensive information about reasons for their arrest at the moment of apprehension". The court in its verdict (1990), provides the following interpretation of Article 5 paragraph 2:

*Paragraph 2 of Article 5 (art. 5-2) contains the basic guarantee that each person should know why (...). Although such information has to be given "immediately" (as soon as possible), it does not have to be provided by arresting officer at the moment of arrest. Whether the content and promptness of information was sufficient depends on the special characteristics of each separate case.*

In this case, the Court had an opinion that plaintiffs were informed about the reasons for arrest, with reference to the facts. Therefore the court considers that the requirements from Article 5 paragraph 2 were fulfilled:

When they were taken into custody, Mr. Fox, Mrs. Campbell and Mr. Hartley were told by the police officer who arrested them that they are under arrest according to Section 11, paragraph 1 of the 1978 law under suspicion of terrorism. This bare indication of the legal basis for apprehension, taken in on its own, is not enough for the purpose of 5, paragraph 2, (art. 5-2), which the government agrees upon.

*However, after arresting them, the police questioned all three applicants about the suspicions of their involvement in concrete criminal offenses and affiliations with forbidden organisations. There are no reasons to assume that these interrogations made the applicants realise why they were arrested. The reasons why they were under suspicion of being terrorists were known to them during interrogation.*

The court finally concluded that there was no violation of Article 5, paragraph 2 (art. 5-2) against any of the applicants.

## Recommendations of the Committee of Ministers of the Council of Europe to member states

### Recommendation Rec (2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

#### *“Rule 25*

*1. The intention to seek remand in custody and the reasons for so doing shall be promptly communicated to the person concerned in a language which he or she understands.”*

### Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners

*“15.1. At admission and during detention, foreign prisoners shall be provided with information, in a language they understand, about:*

- a. their rights and duties as prisoners including regarding contacts with their consular representatives; b. the main features of the prison regime and the internal regulations; c. rules and procedures for making requests and complaints; and d. their rights to legal advice and assistance.*

.....

*15.3. As soon as possible after admission, foreign prisoners shall be provided with information, in a language they understand, orally or in writing, of international transfer possibilities.*

.....

*21.2. Foreign prisoners shall be informed about possible legal aid and, where necessary, assisted in accessing such legal aid.”*

## European Prison Rules<sup>29</sup>

#### *“Rule 2*

*Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody .*

#### *Rule 15.2*

*At admission, all prisoners shall be given information in accordance with Rule 30 .*

#### *Rule 30*

*30.1 At admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison*

<sup>29</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

30.2 Prisoners shall be allowed to keep in their possession a written version of the information they are given.

30.3 Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.”

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards)**

Extracts from the 2<sup>nd</sup> General Report [CPT/Inf(92)]

“36. According to the opinion of the CPT, three fundamental guarantees against maltreatment of detainees should be applied since the beginning of detention. Regardless of the way the legal system in question specified the detention (arrest, retention, etc.)”

37. Persons arrested and detained by the police must, without delay, be informed of their rights, including the right of said person to inform a third person of their own choice about being taken into custody (family member, friend, their consular representative of-fice), the right to an attorney and the right to medical care of a doctor of their choice (besides the medical examination performed by a doctor summoned by the police).”

## **Excerpts rom the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf(2016)17

“The Committee invites authorities of Bosnia and Herzegovina to ensure that all detainees are granted the right to inform a close relative or a third person of their choice about their situation from the begging of their detention.

Besides that, all law enforcement officers should be reminded that detainees can exercise their rights in any stage of their detention.

The Committee invites authorities in BiH to ensure that all persons in police detention for whatever reason are to be informed about their rights from the begging of their detention in the language they understand.”

CPT/Inf(2013)25

“CPT invites authorities of BiH to ensure that all persons who deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation, as provided for by law.

This right should apply from the outset of the deprivation of liberty (that is, from the moment when the person concerned is obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor, and to require the approval of a prosecutor or judge) and strictly limited in time.

Furthermore, whenever the notification of custody is carried out by police officers, the detained person to be provided with feedback on whether it has been possible to inform a close relative or other person of the fact of his detention. “

CPT/Inf(2012)15

*“CPT repeats its recommendation for the authorities in Bosnia and Herzegovina to ensure all detained persons are granted the right to notify a close relative or a third party of their choice of their situation as from the very outset of their deprivation of liberty by the police.”*

## **Guidelines for informing persons deprived of liberty of their rights**

**Deprivation of liberty starts from the moment when the person is notified by physical restraint, words spoken or conduct that he is prevented from exercising his right to freedom of movement or that he is prevented from leaving that place<sup>30</sup>.**

1. The law enforcement officer informs the person deprived of liberty of his rights without delay upon deprivation of liberty, before the questioning starts.
2. If the person deprived of liberty requests to meet his basic physiological needs (food, water or toilet), he cannot be left unsupervised.
3. The law enforcement officer provides information about the rights entitlements verbally in mother tongue or in the language that person deprived of liberty understands.
4. If the person deprived of liberty requires an interpreter after being informed about the right to an interpreter, providing further information is suspended until the interpreter arrives. The detainee remains in that room under supervision or transferred to another room in accordance with the existing procedures of the law enforcement agency.
5. Information about the reasons for deprivation of liberty and the offence the person is charged with committing is given verbally/in writing in accordance with the existing procedures of the law enforcement agency.
6. If the person react to the provided information with a request to exercise a right (for example, to contact a lawyer), the officer suspends further procedure. The law enforcement officer organises access to a lawyer in accordance with the existing procedures of the law enforcement agency. The person deprived of liberty cannot be left unsupervised.
7. If the law enforcement officer notices visible physical injuries on the person deprived of liberty while providing information about his rights, or the person complains on its own, the officer informs him about the right to medical assistance. Medical assistance is provided in accordance with the existing procedures of the law enforcement agency.
8. The person deprived of liberty is informed of his right to notify a close relative or a third person of his choice about his situation. The information about this right does not affect providing further information about the remaining rights.
9. The person deprived of liberty is notified about the right to state his defence and that he is under no obligation to answer any questions. He is also notified of his right to have dry and clean clothes delivered to him to change, but this information does not affect the course of providing further notice about the remaining rights.
10. Information about the right to inform a consular representative about the

30 Jurisprudence of the European Court on Human Rights in the case of K-F v. Germany (1997)

situation of the person deprived of liberty is given in the language that the person understands or in his mother tongue. Providing further information about his remaining rights continues.

11. The law enforcement officer verbally informs the person deprived of liberty that the interview is being recorded and of premises being under video surveillance. In accordance with the existing law, any premise under video surveillance must have a prominently displayed warning about it being under video surveillance at the entrance.
12. Provision of information on the rights entitlements is recorded in accordance with the existing procedures of the law enforcement agency.

**Competence assessment form: Informing persons deprived of liberty about their rights**

1.	You inform the person deprived of liberty about his rights immediately upon deprivation of liberty	Notes
2.	You respond to the request to exercise rights in timely manner	

**Questions and answers: Informing persons deprived of liberty about their rights**

1. Q: What are the consequences of failing to respect the rights of persons deprived of liberty?  
 A: The consequences might be: abuse of legal authorities, violation of procedures, domestic court lawsuits, applications before the European Court of Human Rights against state authorities.
2. Q: What are the basic rights that a person deprived of liberty has to be informed about immediately after being deprived of liberty?  
 A: Every person deprived of liberty must be immediately notified about the right to inform a close relative or a third person of choice, the right to a lawyer, to medical care and to an interpreter.
3. Q: In what language should a person deprived of liberty be informed of his rights?  
 A: The information is provided in the language he understands.

## THE RIGHT TO INFORM A CLOSE FAMILY MEMBER OR A THIRD PERSON OF CHOICE ABOUT DEPRIVATION OF LIBERTY

### Basic concepts

**Close family members are:** spouse, blood relatives, siblings, step-children, adopted children, children without parents supported by detainees, step-parents and persons which detainee is obliged to support by law, common-in-law partners.

### Purpose and aim

The purpose of informing close relatives or third person of choice about someone's deprivation of liberty is to prevent desperation, worries and pain of close family members of a person deprived of liberty, who can be unintentionally exposed to suffering.

The law enforcement officers have an obligation to inform without delay a close family member or a third person of choice of the person deprived of liberty, but no later than 24 hours from the moment when someone has been deprived of liberty. This ensures lawful exercise of legal authorities and prevents violation of this fundamental human right. An exception may occur only if the person deprived of liberty specifically chooses not to do so.

The relevant social welfare body is informed about the deprivation of liberty if providing for children and other family members for whom the person deprived of liberty is responsible for becomes necessary.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### 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."*

### Standards of the European Committee for the Prevention of Torture, Inhuman or Degrading Punishment or Treatment (CPT standards)

Excerpts from the 2<sup>nd</sup> General Report [CPT/Inf (92) 3] 36

*"CPT gives particular importance to three rights of persons detained by the police:*

- a)** *Person's right to inform third person of choice (family member, friend, consular office) about his/her detention,*
- b)** *Right to attorney and*

- c) *Right to medical examination by doctor of his/her choice (besides medical examination carried out by a doctor invited by police authorities)."*

These are, according to the CPT, the three basic safeguards against ill-treatment of persons deprived of liberty that should be applied from the very beginning of deprivation of liberty, no matter which type of deprivation of liberty is in question (pre-trial detention, holding in custody, etc.)

## **Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf(2016)17

*"The Committee invites authorities of Bosnia and Herzegovina to guarantee all detainees the right to inform close relative or third person of choice about his/her situation from the beginning of detention."*

### CPT/Inf (2013)25

*"CPT invites the authorities of Bosnia and Herzegovina to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation, as provided for by law.*

*This right should apply as from the very outset of the deprivation of liberty (that is, from the moment when the person concerned is obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor, and to require the approval of a prosecutor or judge) and strictly limited in time.*

*Further, whenever the notification of custody is carried out by police officers, the detained person to be provided with feedback on whether it has been possible to inform a close relative or other person of the fact of his or her detention."*

### CPT/Inf (2012)15

*"The CPT reiterates its recommendation that the authorities of Bosnia and Herzegovina ensure that all detained persons are granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police."*

## **Guidelines for ensuring the right to inform a close family member or a third person of choice about deprivation of liberty**

**Person deprived of liberty is entitled to inform a close family member or a third person of his choice that he has been apprehended by the law enforcement officers and that he has been placed in custody.**

1. The law enforcement officer informs the person deprived of liberty without delay about his fundamental rights (informing family and friends, consulate, right to a lawyer and right to medical examination).
2. The person deprived of liberty is enabled to inform a close family member

or a third person of his choice about his deprivation of liberty and the place where he is being held in accordance with the existing procedures of the law enforcement agency. If the person deprived of liberty does not want to do it personally, the law enforcement officer does so on admission to the custodial premises.

3. The family is not informed if the person deprived of liberty is explicitly against it. His wish for the family or a third person not to be informed about his deprivation of liberty is recorded in official note in accordance with the existing procedures of the law enforcement agency.
4. The relevant social welfare body is informed about deprivation of liberty on the first working day following the apprehension, if the person is the provider for his children or other family members in accordance with the existing procedures of the law enforcement agency.

### **Competence assessment form: The right to inform a close family member or a third person of choice about deprivation of liberty**

1.	Person deprived of liberty is informed about his basic rights	Notes
2.	Close family members or common-in-laws of the person deprived of liberty are informed about his deprivation of liberty	
3.	The competent social welfare body is informed about deprivation of liberty, if the person is the provider for his children or other family members	

### **Questions and answers: The right to inform a close family member or a third person of choice about deprivation of liberty**

1. Q: Whom is the law enforcement officer obliged to inform about the person's deprivation of liberty?  
A: The law enforcement officer is obliged to inform:
  - close family members
  - common-in-laws
  - the competent social welfare body if the person deprived of liberty is the provider for children and other family members.
2. Q: What is the deadline for informing the person's family?  
A: The family is informed without delay but no later than 24 hours from the moment of deprivation of liberty.
3. Q: Can a person request for his family not to be informed?  
A: The family is not informed about deprivation of liberty if the person explicitly wishes so. His wish not to inform the family is recorded in an official note.

## THE RIGHT TO ACCESS A LAWYER

### Basic concepts

**A lawyer is** an authorised legal representative and an equal party in the proceedings defending the interests of his defendant and takes measures in the best interest of the person deprived of liberty.

The lawyer provides the power of attorney for prison staff's inspection and he can be either chosen or assigned. The person deprived of liberty will be assigned a lawyer on his request if he cannot afford the expenses of the defence due to his financial situation. A person deprived of liberty can hire several lawyers to represent him in legal matters.

**Unhindered access to a lawyer** implies conversations held in a premise specifically intended for that purpose, out of the law enforcement officers' hearing range. The premise assigned for this purpose can be under video surveillance, but the notification thereof has to be visibly prominent at the entrance.

### Purpose and aim

Unhindered and timely access to a lawyer ensures that no one innocent is convicted and that criminal offender is sentenced under the conditions regulated in the criminal legislation of Bosnia and Herzegovina.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6 paragraph 3

*"Anybody charged with a criminal offense has the following minimal rights:*

*a) to be informed, in the shortest possible time period, thoroughly and in the language he/she understands, of the nature and the reasons for the accusations against him/her;*

*b) to have enough time and possibilities for preparing a defence;*

*c) to defend personally or through an attorney of his/her choice or*

*in case of insufficient funds for legal aid, a right to get this assistance free of charge when the interests of justice demand so;*

*d) to question witnesses for the prosecution or to accomplish for them to be questioned and to ensure the presence and a hearing of witnesses for the defence under the same conditions that refer to the witnesses for the prosecution;*

*e) to obtain free assistance from an interpreter if he/she does not understand or speak the language used in court."*

### Case law of the European Court of Human Rights

In the John Murray versus the United Kingdom verdict (1996), the Court stated that this right can appear at the beginning of police investigation. The court emphasised:

*“The court thinks that it is of great importance for the right to a defence that the defendant has access to an attorney in the initial stages of police interrogation. In that context, it is noticeable that with a warrant at the beginning of police interrogation the defendant faces a thorough dilemma regarding his/her defence. If he/she decides to remain quiet, negative conclusions can come up against him/her in accordance with the warrant stipulation. On the other hand, if during the interrogation the defendant decides to end the silence, he/she is exposed to the risk of inflicting damage to his/her own defence without removing the possibility of coming to negative conclusions concerning him/herself.*

*Under such conditions, the justice concept embodied in Article 6 (art. 6) demands that the defendant should use legal aid in the beginning stages of police interrogation.”*

This right to access an attorney, which is not explicitly determined by the Convention of human rights and fundamental freedoms, can for valid reasons be the subject of limitation. The question in every case is if the limitation in the lights of the whole case deprives the defendant of a civil trial.

The manner in which Article 6, paragraph 3 (art.6-3) is applied in the preliminary investigation depends on the special characteristics of the said process as well as on the circumstances of the case itself. Domestic regulations may include consequences on the stand of the defendant in the initial stage of police interrogation which may be the deciding factor regarding the possibilities of the defence in later criminal proceedings.

In some of the cases that appeared in front of the Court, a period of twenty-four hours was granted before the defendant was allowed to get access to an attorney. In those cases, the right to an access an attorney was limited, based on the current laws of the state and on the fact that the police had reasonable grounds for thinking that exercising that right of the defendant would among all interfere with gathering information about perpetration of criminal acts of terrorism or make it difficult to prevent such an offense.

## **European Prison Rules<sup>31</sup>**

### *“Legal advice*

*23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.*

*23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.*

*23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.*

*23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.*

*23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and*

31 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings. "

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards)**

Excerpts from 21<sup>st</sup> General Report [CPT/Inf (2011)28]

18. *The possibility of the persons detained by the police to have access to an attorney is a fundamental harassment protection. Existence of such possibility will result in discouragement of the staff who might intend to mistreat detainees. Furthermore, the attorney will be in the right position to take certain measures in case of harassment.*

24. *The right to access an attorney should also include the right to the presence of the attorney during any kind of police interrogation and the attorney should have the possibility to intervene during interrogation. Of course, this should not prevent the police from immediately starting the interrogation of the detainee who exercised his/her right to access an attorney even before the attorney arrives if it is justified by the urgency level of the case itself. Also, this should not exclude the replacement of the attorney who disrupts a proper interrogation conduct. It should be underlined that in a situation like this the police should be responsible for their own actions.*

25. *Finally, for the right to access an attorney during police detention to be fully effective in practice, it is necessary for certain regulations that predict solutions for the persons who are not capable of paying the services of an attorney to exist in an early stage of the criminal proceedings."*

## **Excerpts from the Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf(2016)7; CPT/Inf(2013)25; CPT/Inf(2012)15

*"The Committee invites authorities of Bosnia and Herzegovina to secure the right to accessing an attorney explicitly regulated by the law to be effectively exercised in practice for anybody detained by the authority for law enforcement from the begging of detention. Also, the police detainees should have the possibility to talk to an attorney in private and for the attorney to be present during police interrogation. Besides that, all law enforcement officers should be reminded that detainees can exercise their rights in any stage of their detention. "*

## **Guidelines for ensuring the right to access a lawyer**

---

**The person deprived of liberty can exercise the right to access a lawyer at any given moment of his deprivation of liberty.**

---

1. Person deprived of liberty is verbally informed in his mother tongue or a language he understands about the reasons for his deprivation of liberty without delay. At the same time, he is notified that he is not obliged to make any statements before the first interview, nor reply to the questions asked.

2. Person deprived of liberty is also notified of his right to request a lawyer at any moment, a lawyer of his own choosing. He is also verbally informed that he is entitled to a lawyer assigned by the court if he cannot afford one. The law enforcement officer follows the existing procedures of the law enforcement agency in ensuring access to a lawyer.
3. The law enforcement officer enables unhindered communication between the lawyer and his client in the premises specifically intended for that purpose, out of the law enforcement officer's hearing range. Warning of the premises being under video surveillance must be prominently displayed at the entrance.
4. The law enforcement officer enables the lawyer's access to his client for as long as the preliminary proceedings judge, the preliminary hearing judge, judge or the court council do not revoke the lawyer's representation rights. The updated information is processed in accordance with the existing procedures in the law enforcement agency.

### Competence assessment form: The right to access a lawyer

1.	You inform the person deprived of liberty about his right to access a lawyer without delay upon deprivation of liberty	Notes
2.	You respond to the request for a lawyer without delay	

### Questions and answers: The right to access a lawyer

1. Q: At what moment is a person deprived of liberty informed about the right to a lawyer?  
A: A person is informed about the right to access a lawyer without delay after being notified about the reasons for his deprivation of liberty.
2. Q: Up until what moment does the authorised lawyer have the right to access the person whom he represents?  
A: The law enforcement officer gives the authorised lawyer access to the person deprived of liberty until the preliminary proceedings judge, the preliminary hearing judge, the judge or the court council relieves the lawyer of his rights and duties.

## THE RIGHT TO ACCESS A MEDICAL DOCTOR

### Basic concepts

**Confidential medical data** is any medical data occurring in the work of medical staff and can be accessed only by that staff and that person deprived of liberty.

**Health care facilities** include outpatient clinics, health care centres, hospitals and other treatment facilities in the community.

### Purpose and aim

The core purpose of ensuring timely access to a doctor is to reduce the possibility or completely avoid allegations of ill-treatment. Law enforcement officers in their direct and daily contact with persons deprived of liberty under their supervision are responsible for upholding and safeguarding their human rights, which also include the right to medical assistance. Persons deprived of freedom belong to the group of the most vulnerable persons since their very position influences physical, legal, social, psychological and all other aspects of their lives. Such persons completely depend on a long chain of public officials, starting from police officers to public authorities. All these separate elements solicit additional measures for the protection of persons deprived of liberty.

Timely access to a doctor can also mean a saved human life. Law enforcement officer's role is huge and priceless: his duty is to undertake any measure and action in his competence to protect the life or health of a person deprived of liberty.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 8.1

*"Everyone has the right to respect for their private and family life, home and correspondence."*

### Case law of the European Court of Human Rights

All representatives of public authorities have an obligation to care for and protect health of persons deprived of liberty. The lack of adequate medical care and access to a doctor can constitute conduct contrary to the provisions of Article 3 of the ECHR.

In the case of *Hutardo v. Switzerland* (1994), the applicant was not allowed to see a doctor six days upon making a request, i.e. about eight days from deprivation of liberty. Upon taking him to see a doctor, an X-ray examination performed showed a broken rib. The Court determined violation of Article 3 of the Convention, due to the fact that the applicant had not been seen by a doctor for eight days upon arrest.

Article 8 of the Convention is particularly relevant for the protection of personal data. In the case of *Z v. Finland* (1997), confidential medical data of the applicant were published in the criminal proceedings against her husband without her previous consent.

*“In this connection, the Court will take into account that the protection of personal data, not least medical data, is of fundamental importance to a person’s enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention (art. 8). Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.*

*Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community (see Recommendation no. R (89) 14 on “The ethical issues of HIV infection in the health care and social settings).*

*The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention.”*

## **Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>32</sup>**

### *“A. Access to a doctor*

*1. When entering prison and later on while in custody, prisoners should be able at any time to have access to a doctor or a fully qualified nurse, irrespective of their detention regime and without undue delay, if required by their state of health. All detainees should benefit from appropriate medical examinations on admission. Special emphasis should be put on the screening of mental disorders, of psychological adaptation to prison, of withdrawal symptoms resulting from use of drugs, medication or alcohol, and of contagious and chronic conditions.”*

## **Standards of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT standards)**

### *“Access to a doctor*

*33. When entering prison, all prisoners should without delay be seen by a member of the establishment’s health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.<sup>33</sup>*

<sup>32</sup> Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison

<sup>33</sup> This requirement has subsequently been reformulated as follows: every newly-arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission; save for in exceptional circumstances, that interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.

*It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.*

34. *While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime (as regards more particularly access to a doctor for prisoners held in solitary confinement, see paragraph 56 of the CPT's 2nd General Report: CPT/Inf (92) 3). The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay.*

*Prisoners should be able to approach the health care service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor."*

### **Excerpts from the reports of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2016)17

*"The CPT calls again upon the authorities to adopt specific legal provisions on access to a doctor during police custody. Further, medical confidentiality both during examinations of the detained persons and of medical documentation must be guaranteed. The time has come for the BiH authorities to ensure that these rights are effectively implemented throughout the country."*

CPT/Inf (2013)25

*" The authorities to adopt specific legal provisions on access to a doctor during police custody,*

*stipulating inter alia that:*

- a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination;*
- a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;*
- all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;*
- the results of every examination, as well as any relevant statements by the person in custody and the doctor's observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.*

The authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for

whatever reason, are fully informed in a language they understand of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner.”

CPT/Inf (2012)15

“Specific legal provisions to be adopted on the subject of access to a doctor, stipulating inter alia that:

- a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination. Further, even in the absence of such a request, the above-mentioned action must be taken if a person in police custody is in apparent need of medical treatment;
- a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;
- all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers.

The results of every examination, as well as any relevant statements by the person in custody and the doctor’s conclusions, should be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.”

**Guidelines for ensuring the right to access a medical doctor**

How to recognise signs of illness or weakness?

Visual check	Check by touch <sup>34</sup>	Check by smelling
Breathing	Wetness of palms	Breath
Deformities	Pulse	Sweating
Swelling	Swelling	Familiar smells
Face colour	Deformities	Glue
Reactions	Weakness	Alcohol
Wounds		
Cuts		
Reflexes		
Vomiting		
Body side		

34 Caution should be exercised in touching with the bare hand due to the possibility of infection

**Emergency and accidents medical service in Bosnia and Herzegovina is called by dialling 124!**

**The person administering first aid always wears gloves!**

**Always bear in mind that air ways are the priority and that they must be monitored and observed all the time!**

**Try talking to the injured or unconscious person!**

Access, in accordance with the existing procedures of the law enforcement agency, to a doctor is necessary when a person deprived of liberty:

- asks for medical help
  - loses consciousness
  - was injured during control and restraint
  - was injured during his arrest and escort to the place of detention
  - inflicted a self-injury prior to the control and restraint
  - was injured while committing a criminal offence
  - is causing or participating in a traffic accident as participant in traffic, on which occasion third parties were killed or seriously injured
  - uses psychoactive substances
  - has mental disorders
  - has a chronic illness (epilepsy, hearth condition, diabetes, invalidity, paraplegics...)
  - is pregnant
  - is a juvenile, elderly, weak or physically impaired.
1. The law enforcement officer is obliged to provide clear and understandable information and lawful orders to the person deprived of liberty about the procedures to be followed during escort to the doctor.
  2. The law enforcement officer uncuffs the person deprived of liberty before bringing him in front of a doctor. The law enforcement officer should not be present during the examination unless there is an explicit request of the doctor. The law enforcement officer, based on his own assessment, informs the doctor about the specific circumstances requiring enhanced security measures with an aggressive/destructive person deprived of liberty. If the safety of medical staff cannot be guaranteed, the law enforcement officer may propose for the person deprived of liberty to remain in handcuffs.
  3. Questioning can be carried out during the stay in the medical facility, provided the doctor has confirmed that there are no medical or psycho-physical obstacles.

4. Person deprived of liberty is not, in principle, escorted to a doctor by the same officers who restrained him, in his arrest or escort to detention premises. The main reason being to prevent possible influence on the doctor and medical findings or reports.
5. Data collected from the medical documentation are confidential. The law enforcement officers handle medical files and other confidential data pertaining to the health issues in accordance with the existing procedures of the law enforcement agency.
6. The law enforcement officer protects person deprived of liberty from any third persons during his escort to a doctor in accordance with the existing procedures of the law enforcement agency.
7. Means of control and restraint during escort to a doctor are used in cases and manner foreseen in the existing legal procedures in the law enforcement agency.
8. The law enforcement officer escorts person deprived of liberty to a doctor by using a separate entrance door, if possible.

**Competence assessment form: The right to access a medical doctor**

1.	You identify and perform tasks in accordance with the health care needs of a person deprived of liberty	Notes
2.	You organise escort to a doctor, in timely and safe manner, maintain security during medical examination and escort back to the custody	
5.	You treat the third persons politely and ensure respecting their rights as well	

**Questions and answers: The right to access a medical doctor**

1. Q: Why communicating clearly with colleagues during escort is important?  
 A: Clear communication with colleagues during escort:
  - ensures understanding of work tasks and colleagues know what they are expected to do;
  - prevents inappropriate actions which may endanger the officer and the person deprived of liberty being escorted.
2. Q: What is the significance of confidentiality – types of information that can be confidential, to whom they could be revealed and to whom not?  
 A: Confidential information is significant because of:
  - organisation of safe escort;
  - safety of the escorting officers;
  - keeping all information referring to the escort safe from unauthorised access;
  - confidentiality of personal data and health data of a person deprived of liberty. Confidential information cannot be shared with the third or unauthorised persons.

3. Q: Which are the basic principles in providing emergency assistance?

A: Basic principles are:

- to preserve life;
- to prevent the condition from deteriorating;
- to assist recovery of a person to whom emergency assistance is provided.

## THE RIGHT TO ACCESS A LAWYER

### Basic concepts

**A lawyer is** an authorised legal representative and an equal party in the proceedings defending the interests of his defendant and takes measures in the best interest of the person deprived of liberty.

The lawyer provides the power of attorney for prison staff's inspection and he can be either chosen or assigned. The person deprived of liberty will be assigned a lawyer on his request if he cannot afford the expenses of the defence due to his financial situation. A person deprived of liberty can hire several lawyers to represent him in legal matters.

**Unhindered access to a lawyer** implies conversations held in a premise specifically intended for that purpose, out of the law enforcement officers' hearing range. The premise assigned for this purpose can be under video surveillance, but the notification thereof has to be visibly prominent at the entrance.

### Purpose and aim

Unhindered and timely access to a lawyer ensures that no one innocent is convicted and that criminal offender is sentenced under the conditions regulated in the criminal legislation of Bosnia and Herzegovina.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6 paragraph 3

*"Anybody charged with a criminal offense has the following minimal rights:*

*a) to be informed, in the shortest possible time period, thoroughly and in the language he/she understands, of the nature and the reasons for the accusations against him/her;*

*b) to have enough time and possibilities for preparing a defence;*

*c) to defend personally or through an attorney of his/her choice or*

*in case of insufficient funds for legal aid, a right to get this assistance free of charge when the interests of justice demand so;*

*d) to question witnesses for the prosecution or to accomplish for them to be questioned and to ensure the presence and a hearing of witnesses for the defence under the same conditions that refer to the witnesses for the prosecution;*

*e) to obtain free assistance from an interpreter if he/she does not understand or speak the language used in court."*

### Case law of the European Court of Human Rights

In the John Murray versus the United Kingdom verdict (1996), the Court stated that this right can appear at the beginning of police investigation. The court emphasised:

*“The court thinks that it is of great importance for the right to a defence that the defendant has access to an attorney in the initial stages of police interrogation. In that context, it is noticeable that with a warrant at the beginning of police interrogation the defendant faces a thorough dilemma regarding his/her defence. If he/she decides to remain quiet, negative conclusions can come up against him/her in accordance with the warrant stipulation. On the other hand, if during the interrogation the defendant decides to end the silence, he/she is exposed to the risk of inflicting damage to his/her own defence without removing the possibility of coming to negative conclusions concerning him/herself.*

*Under such conditions, the justice concept embodied in Article 6 (art. 6) demands that the defendant should use legal aid in the beginning stages of police interrogation.”*

This right to access an attorney, which is not explicitly determined by the Convention of human rights and fundamental freedoms, can for valid reasons be the subject of limitation. The question in every case is if the limitation in the lights of the whole case deprives the defendant of a civil trial.

The manner in which Article 6, paragraph 3 (art.6-3) is applied in the preliminary investigation depends on the special characteristics of the said process as well as on the circumstances of the case itself. Domestic regulations may include consequences on the stand of the defendant in the initial stage of police interrogation which may be the deciding factor regarding the possibilities of the defence in later criminal proceedings.

In some of the cases that appeared in front of the Court, a period of twenty-four hours was granted before the defendant was allowed to get access to an attorney. In those cases, the right to an access an attorney was limited, based on the current laws of the state and on the fact that the police had reasonable grounds for thinking that exercising that right of the defendant would among all interfere with gathering information about perpetration of criminal acts of terrorism or make it difficult to prevent such an offense.

## **European Prison Rules<sup>35</sup>**

### *“Legal advice*

*23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.*

*23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.*

*23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.*

*23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.*

*23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and*

<sup>35</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings. "

## **Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards)**

Excerpts from 21<sup>st</sup> General Report [CPT/Inf (2011)28]

"18. The possibility of the persons detained by the police to have access to an attorney is a fundamental harassment protection. Existence of such possibility will result in discouragement of the staff who might intend to mistreat detainees. Furthermore, the attorney will be in the right position to take certain measures in case of harassment.

24. The right to access an attorney should also include the right to the presence of the attorney during any kind of police interrogation and the attorney should have the possibility to intervene during interrogation. Of course, this should not prevent the police from immediately starting the interrogation of the detainee who exercised his/her right to access an attorney even before the attorney arrives if it is justified by the urgency level of the case itself. Also, this should not exclude the replacement of the attorney who disrupts a proper interrogation conduct. It should be underlined that in a situation like this the police should be responsible for their own actions.

25. Finally, for the right to access an attorney during police detention to be fully effective in practice, it is necessary for certain regulations that predict solutions for the persons who are not capable of paying the services of an attorney to exist in an early stage of the criminal proceedings."

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf(2016)7; CPT/Inf(2013)25; CPT/Inf(2012)15

"The Committee invites authorities of Bosnia and Herzegovina to secure the right to accessing an attorney explicitly regulated by the law to be effectively exercised in practice for anybody detained by the authority for law enforcement from the begging of detention. Also, the police detainees should have the possibility to talk to an attorney in private and for the attorney to be present during police interrogation. Besides that, all law enforcement officers should be reminded that detainees can exercise their rights in any stage of their detention. "

## **Guidelines for ensuring the right to access a lawyer**

**The person deprived of liberty can exercise the right to access a lawyer at any given moment of his deprivation of liberty.**

5. Person deprived of liberty is verbally informed in his mother tongue or a language he understands about the reasons for his deprivation of liberty without delay. At the same time, he is notified that he is not obliged to make any statements before the first interview, nor reply to the questions asked.
6. Person deprived of liberty is also notified of his right to request a lawyer at

any moment, a lawyer of his own choosing. He is also verbally informed that he is entitled to a lawyer assigned by the court if he cannot afford one. The law enforcement officer follows the existing procedures of the law enforcement agency in ensuring access to a lawyer.

7. The law enforcement officer enables unhindered communication between the lawyer and his client in the premises specifically intended for that purpose, out of the law enforcement officer’s hearing range. Warning of the premises being under video surveillance must be prominently displayed at the entrance.
8. The law enforcement officer enables the lawyer’s access to his client for as long as the preliminary proceedings judge, the preliminary hearing judge, judge or the court council do not revoke the lawyer’s representation rights. The updated information is processed in accordance with the existing procedures in the law enforcement agency.

**Competence assessment form: The right to access a lawyer**

1.	You inform the person deprived of liberty about his right to access a lawyer immediately upon deprivation of liberty	Notes
2.	You respond to the request for a lawyer in timely manner	

**Questions and answers: The right to access a lawyer**

1. Q: At what moment is a person deprived of liberty informed about the right to a lawyer?  
  
A: A person is informed about the right to access a lawyer immediately after being notified about the reasons for his deprivation of liberty.
2. Q: Up until what moment does the authorised lawyer have the right to access the person whom he/ represents?  
  
A: The law enforcement officer gives the authorised lawyer access to the person deprived of liberty until the preliminary proceedings judge, the preliminary hearing judge, the judge or the court council relieves the lawyer of his rights and duties.

## THE RIGHT TO AN INTERPRETER

### Basic concepts

**An interpreter** is an authorised court interpreter for foreign languages.

### Purpose and aim

Exercising the right to communicate in the mother language enables the person deprived of liberty to fully understand his rights and what he is being charged with.

It also enables him to follow the instructions of the law enforcement officers and to understand the information about the rights given to him by the officer.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6 paragraph 3

*“Anybody who is charged with a criminal offense at least has the following rights:*

- a) to in the shortest period of time get detailed information and in the language he/she understands on the nature and the reasons of the charge brought up against him/her*

....

- e) to gain free interpreter assistance if he/she does not understand nor speak the language used in court.”*

### Case law of the European Court of Human Rights

In the case of *Kaminsky against Austria* (1982), the Court reminded about its earlier words about the content of the rights to free interpreter assistance:

*As it is said in the paragraph 3.e Article 6 (art. 6-3), the right to free interpreter assistance is applied not only to the verbal statements given in court, but to documents and the pre-trial proceedings as well. Paragraph 3.e (art. 6-3) implies that the person „charged with a criminal offense “who does not understand or speak the language used in court has the right to free interpreter assistance for verbal and written translation of all the documents or statements in the case against him/her that are necessary to understand and to be presented in the language of the court so he/she could have a fair trial.*

However, paragraph 3.e (art.6-3) does not go so far to demand a written translation of all the elements of written evidences or official case documentation. Translating assistance should be such to enable the defendant to be well acquainted with the case against him/her and to defend him/herself first and foremost by being able to tell the court his/her version of the event.

## European Prison Rules<sup>36</sup>

### Information

*"30.1 At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison."*

### Ethnic or language minorities

*38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison."*

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf(2016)17

*"The CPT calls upon the authorities of BiH to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their rights as from the outset of their deprivation of liberty."*

## **Guidelines for ensuring the right to access an interpreter**

### **A person deprived of liberty can exercise the right to access an interpreter at any given moment of his detention.**

1. The person deprived of liberty is verbally notified about the reasons for his deprivation of liberty and all the corresponding rights (right to medical care, a lawyer, etc.) in his mother tongue or in a language he understands without delay.
2. The person deprived of liberty is without delay also informed about his entitlement to an interpreter if he is a foreign citizen and does not understand the languages spoken in Bosnia and Herzegovina. Enforcement of this right proceeds in accordance with the existing procedures of the law enforcement agency.
3. If possible, persons deprived of liberty are allowed to keep in their possession written version of the information provided.

---

<sup>36</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

## Competence assessment form: The right to access an interpreter

1.	You inform the person deprived of liberty about his right to an interpreter without delay following deprivation of liberty	Notes
2.	You respond to the request for an interpreter without delay	
3.	You check the documentation provided by the interpreter	

### Questions and answers: The right to access an interpreter

1. Q: At what moment is a person deprived of liberty informed about his right to an interpreter?

A: Information about the right to an interpreter is provided without delay, immediately after being informed about the reasons for detention.

2. Q: Based on what the interpreter can be identified?

A: The interpreter provides the law enforcement officer with an excerpt from the registry of court interpreting for the language that the person deprived of liberty cited.

## VIOLENCE BETWEEN PERSONS DEPRIVED OF LIBERTY

### Basic concepts

**Violence** is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation<sup>37</sup>.

This definition emphasises that for an act to be classified as violence, a person or group must have the intention to use force or power against another person or group.

### Purpose and aim

Persons deprived of liberty are in a vulnerable position by virtue of the very fact that they are deprived of freedom of movement. Therefore, law enforcement officers have a legal obligation to prevent any threat to their mental and physical integrity resulting from commission of violence.

## European Convention for the Protection of Human Rights and Fundamental Freedoms

### Article 3

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

<sup>37</sup> Source: World Health Organisation (WHO)

## Case law of the European Court of Human Rights

The case of Pantea v. Romania (2003)

In the case of Pantea v. Romania a prisoner claimed that he had been beaten by other prisoners at the instigation of prison staff and then had been made to lie underneath his bed while immobilised with handcuffs for nearly 48 hours. Thereafter, he had been held in a railway wagon crammed with other prisoners for several days while suffering from multiple fractures. No medical treatment, food or water had been provided.

*“While not all his allegations were deemed to have been established, medical reports had attested to the number and severity of blows suffered. These had been sufficiently serious to constitute inhuman and degrading treatment. This ill-treatment had been aggravated both by the handcuffing of the applicant while he continued to share a cell with his assailants and also by the failure to provide him with necessary medical treatment.*

*The authorities could reasonably have been expected to foresee that the applicant’s psychological condition had made him vulnerable, and further that his detention had been capable of exacerbating his feelings of distress and his irascibility towards his fellow-prisoners. This had rendered it necessary to keep him under closer surveillance.”*

### European Prison Rules<sup>38</sup>

*“52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.”*

*“52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.”*

### Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT standards)

Extracts from the 11<sup>th</sup> General Report [CPT/Inf (2001) 16]

*“Inter-prisoner violence*

*27. The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to uncoined intimidation and serious physical attacks.*

---

<sup>38</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

*Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners.*

*Prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners. Preventing such acts will always pose a difficult challenge. The solution that is often adopted is to separate such prisoners from the rest of the prison population. However, the prisoners concerned may pay a heavy price for their – relative – security, in terms of much more limited activities programmes than those available under the normal prison regime. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. If such an approach is to succeed, the necessary environment for the proper integration of such prisoners into ordinary cell blocks must be guaranteed; in particular, the prison staff must be sincerely committed to dealing firmly with any signs of hostility or persecution. A third approach can consist of transferring prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the decision on which policy to apply will mainly depend on the particular circumstances of each case.”*

### **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf (2012) 15

*“The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.*

*Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills.”*

## **Guidelines for handling cases of violence occurring between persons deprived of liberty**

### **Guidelines to be followed upon becoming aware of the possibility of violence**

1. If, in his communication with persons deprived of liberty, informants, employees etc., a law enforcement officer becomes aware that there is a possibility of violence in the custodial environment (extortion of cigarettes, food and other items, forcing a person to clean the rooms on a daily basis, sexual violence, humiliation on ethnic, religious or racial grounds, belittlement, etc.), he communicates the collected information about the place and time of possible violence to his seniors in accordance with the already existing procedures of the law enforcement agency.
2. Further actions by law enforcement officers against those who participate in possible violence between persons deprived of liberty is regulated by the already existing procedures of the law enforcement agency, while having in mind that the observance of the basic principles of using control and restraint measures is a legal obligation.
3. If an officer becomes aware of credible allegations of possible violence, he notifies this to his immediate superior, prepares an official report and record the incident in the proper log in accordance with the already existing procedures of the law enforcement agency.
4. If the person subjected to violence suffers any consequences to his health, he is escorted for a medical examination without delay.
5. The law enforcement officer interviews the person perpetrating the violence and possible witnesses, taking their statements.
6. If the person deprived of liberty commits a disciplinary offence, internal disciplinary procedures apply.
7. Should there be reasonable doubt that a criminal offence was committed, the law enforcement officer reports it to the competent prosecutor's office.

### **Guidelines to be followed in cases of directly observed violence**

1. If a person deprived of liberty engages in violence (cursing, verbally abusing, humiliating and physically attacking another person, intentionally and violently destroying property, offending others on ethnic, racial or religious grounds, etc.), a verbal order to desist from further violence is issued immediately.
2. The immediate supervisor is without delay informed about the event by the most convenient means (portable radio device/talkie walkie, telephone, alarm, etc).
3. The supervisor immediately arrives to the scene of violence and if needed engages one or more law enforcement officers.
4. In the meanwhile, the law enforcement officer present at the scene makes an assessment whether to intervene or not.
5. The law enforcement officer who is at the scene of violence talks to the perpetrator, but without engaging in aggressive dialogues, trying to calm the perpetrator down. All the while, the officer must pay due attention not to endanger his or

security of the establishment. While waiting assistance of other officers, the law enforcement officer exercises his authorities as per his assessment and in accordance with the law.

6. The law enforcement officer would not normally engage alone in calming down the perpetrator of violence or his control and restraint by entering the premise where the violence occurred. On the arrival of the immediate supervisor or other officers, they will again issue a verbal warning to end violence.
7. If persons deprived of liberty do not cease with perpetrating violence after they were given a verbal order, officer restrain them in accordance with the already existing procedures of the law enforcement agency. Due attention must be paid to the principles of duration and proportionality.
8. The person subjected to control and restraint is mandatorily examined by the doctor.
9. Persons deprived of liberty involved in conflict are separated and escorted to different premises.
10. If means of control and restraint were used, a report on their use is prepared and processed without delay in accordance with the already existing procedures of the law enforcement agency. Medical report on injuries is an integral part of the report on the use of C&R.
11. Persons deprived of liberty (both the perpetrator and victim) are escorted for medical examination in accordance with the already existing procedures of the law enforcement agency.
12. The law enforcement officer who witnessed the violence makes an official report and record the incident in the proper log in accordance with the procedure prescribed by the law enforcement agency.
13. If there is reasonable doubt of a criminal offence being perpetrated, the law enforcement officer reports it to the competent prosecutor's office.

### **Competence assessment form: Violence occurring between persons deprived of liberty**

1.	You recognise signs that can possibly lead to violence between persons deprived of liberty	Notes
2.	After observing and discovering violent behaviour among persons deprived of liberty, you act in accordance with the guidelines	
3.	Your refer persons deprived of liberty for medical examination without delay	
4.	You properly record all events related to violent behaviour among persons deprived of liberty	

## Questions and answers: Violence between persons deprived of liberty

1. Q: Name some of the causes of violent behaviour among persons deprived of liberty.  
A: The causes of violent behaviour among persons deprived of liberty may include previous experiences, cramped rooms, struggle for power between persons deprived of liberty, defence against bullies, etc.
  
2. Q: What should a law enforcement officer do if the victim confirms that violence has occurred?  
A: The law enforcement officer should notify this to his immediate superior, make an official report and record the incident in the proper log.
  
3. Q: In which situation of violence occurring between persons deprived of liberty should a law enforcement officer intervene and get personally involved in activities of physical restraint?  
A: In the event of inter-prisoner violence, a law enforcement officer intervenes and gets personally involved in activities of physical restraint only if the life of a person deprived of liberty is directly threatened.
  
4. Q: What is the obligation of the law enforcement officer if violence occurring between persons deprived of liberty contains elements of a criminal offence?  
A: If he suspects elements of criminal offence in an act of violence between persons deprived of liberty, the law enforcement officer is under an obligation to report it to the competent prosecutor's office.

## VULNERABLE CATEGORIES OF PERSONS DEPRIVED OF LIBERTY

### Basic concepts

**Vulnerable categories of persons deprived of liberty**, due to their specific psychological and physical characteristics require a special approach by the officers of the law enforcement agencies. These categories include:

- Minors – due to their age and personality that is still developing
- Older people – due to their poor health status, limited possibility for movement and the like
- Persons with physical disabilities
- Persons with mental disorders
- Women – due to the special needs of motherhood and meeting of their physiological needs in the closed environment
- Foreign nationals – due to the lack of knowledge of the language, culture and the customs of the country where they are deprived of liberty
- Sexual minorities – due to possible contempt, provocation, and abuse by others.
- Persons with chronic illnesses – due to the need for continued medical therapy and treatment
- Persons belonging to national minorities – due to any special diet, practice of religious rites, marking national holidays, etc.

Additional reasons that classify the persons deprived of liberty into the category of the vulnerable population are:

- unequal ratio of the power between the persons deprived of liberty and the officers of the law enforcement agencies,
- almost full dependence of the persons deprived of liberty on the institutions that have deprived them of liberty or limited their movement,
- temporarily weakened social bonds, and
- stigmatisation related to the deprivation of liberty.

### Purpose and aim

**“Vulnerable” does don’t mean “less dangerous” since it is not connected to the degree of danger, the risk of reoffending, violence, etc. However, it is understood that the failure to meet the needs of vulnerable people may in certain cases amount to ill-treatment.**

The purpose is that treatment of persons deprived of liberty is adjusted to their specific needs, that they are treated in a humane and dignified manner, that their human rights are respected and there is no discrimination against them.

The objective of the adjusted treatment of vulnerable categories of persons deprived of liberty is equal treatment of all citizens before the law, taking into account the specific needs of vulnerable categories.

## European Convention for the Protection of Human Rights and Fundamental Freedoms

### 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, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

### Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>39</sup>

*“49.1 Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.*

### Case law of the European Court of Human Rights

In the case *Peers v. Greece (2001)*, the prisoner, a foreign national, was kept in the segregation wing for at least two months, where he was mainly locked in a cell without ventilation or windows, which is why occasionally it became unbearably hot. The applicant was also forced to use a toilet in the cell in the presence of another prisoner (and also to be present while the prisoner that he shared the cell with used the toilet).

These facts were sufficient for the Court to conclude that his human dignity was compromised sufficiently in order to amount to violation of Article 3 of the Convention: these conditions caused the feeling of suffering and inferiority that could humiliate and belittle the applicant and break his physical or moral resistance. Thus, it is considered that the fact that the authorities did not take any steps to improve the conditions in which the applicant was held constitutes degrading treatment.

### Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards)

Excerpts from the 7<sup>th</sup> General Report [CPT/Inf (97) 10]

*“29. In the view of the CPT, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens’ legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel. The Committee is pleased to note that such an approach is increasingly being followed in Parties to the Convention. Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved... The longer the period for which persons are detained, the more developed should be the activities which are offered to them. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of*

<sup>39</sup> Recommendation CM Rec (2008)11 of the Committee of Ministers of the Council of Europe to member states on the European Rules for juvenile offenders subject to sanctions or measures

tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

30. Immigration detainees should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them. The CPT has observed that these requirements are met in some countries, but not in others. In particular, visiting delegations have on many occasions met immigration detainees who manifestly had not been fully informed in a language they understood of their legal position. In order to overcome such difficulties, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.

31. The right of access to a lawyer should apply throughout the detention period and include both the right to speak with the lawyer in private and to have him present during interviews with the authorities concerned. All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of asylum seekers, some of whom may have been tortured or otherwise ill-treated in the countries from which they have come. The right of access to a doctor should include the right - if a detainee so wishes - to be examined by a doctor of his choice; however, the detainee might be expected to cover the cost of such a second examination. More generally, immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations."

#### Excerpts from the 24<sup>th</sup> General Report [CPT/Inf (2015) 1]

"97. Bearing in mind its preventive mandate, the CPT's priority during visits is to seek to establish whether juveniles deprived of their liberty have been subjected to ill-treatment. Regrettably, deliberate ill-treatment of juveniles by law enforcement officials has by no means been eradicated and remains a real concern in a number of European countries. CPT delegations continue to receive credible allegations of detained juveniles being ill-treated. The allegations often concern kicks, slaps, punches or blows with batons at the time of apprehension (even after the juvenile concerned has been brought under control), during transportation or subsequent questioning in law enforcement establishments. It is also not uncommon for juveniles to become victims of threats or verbal abuse (including of a racist nature) whilst in the hands of law enforcement agencies.

99. The CPT considers that nobody should be held in law enforcement establishments for prolonged periods as such establishments normally do not provide suitable conditions and an appropriate regime. Moreover, experience has shown that persons in police custody are more vulnerable and often run a higher risk of being subjected to torture or other forms of ill-treatment. It follows that even greater efforts should be made to keep

*the detention in law enforcement establishments to a minimum for juveniles.*

*101. The CPT has long advocated that all detained juveniles who are suspected or convicted of a criminal offence should be held in detention centres specifically designed for persons of this age, offering a non-prison-like environment and regimes tailored to their needs and staffed by persons trained in dealing with the young...*

*104. A well-designed juvenile detention centre should provide positive and personalised conditions of detention for young persons, respecting their dignity and privacy. All rooms should be appropriately furnished and provide good access to natural light and adequate ventilation.*

*111. The CPT also wishes to stress that female juveniles should under no circumstances receive less care, protection, assistance and training than male juveniles, despite the fact that their numbers are much lower and that detention centres are nearly always designed for male inmates. If necessary, additional measures should be taken to ensure equal treatment.*

*117. Particular attention should always be paid to the health-care needs of female juveniles: access to gynaecologists and education on women's health care should be provided. Pregnant juvenile girls and juvenile mothers in detention should receive appropriate support and medical care; as far as possible, alternatives to detention should be imposed.*

*130. Upon admission, all juveniles should be given a copy of the rules governing everyday life in the institution and a written description of their rights and obligations in a language and manner they can understand. Juveniles should also be given information on how to lodge a complaint, including the contact details of the authorities competent to receive complaints, as well as the addresses of any services which provide legal assistance."*

Excerpts from the 10<sup>th</sup> General Report [CPT/Inf (2000) 13]

*"23. As the CPT stressed in its 9th General Report, mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this context, the CPT wishes again to emphasise that persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.*

*24. ... As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held at the same establishment. That said, some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised.*

*25. Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport etc.) on an equal footing with their male counterparts. As the Committee mentioned in its last General Report, CPT delegations all too often encounter women inmates being offered activities which have been deemed "appropriate" for them (such as sewing or handicrafts), whilst male prisoners are offered training of a far more vocational nature. In the view of the CPT, such a discriminatory approach can only*

serve to reinforce outmoded stereotypes of the social role of women. Moreover, depending upon the circumstances, denying women equal access to regime activities could be qualified as degrading treatment.

26. Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.

27. ... Nevertheless, from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.

28. Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment.<sup>40</sup>

31. The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment."

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

### CPT/Inf (2016)17

"The CPT recommends that all staff working with juveniles receive such training and external support. Particular attention should be given to staff training in the management of violent incidents.

.....

The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their rights as from the outset of their deprivation of liberty."

## **Guidelines for managing vulnerable categories of persons deprived of liberty**

1. Exercise of the rights and freedoms acknowledged by international standards on human rights is ensured without discrimination on any ground.
2. Deprivation of liberty is used only for the purpose for which it is imposed and in a manner not to worsen the suffering of a person deprived of liberty.
3. Persons deprived of liberty who are chronically ill should be provided, without delay, access to the doctor, prescribed medications, or medical aids (aerosol pumps, glasses, lenses, prostheses, crutches, walking frames, stomas, and alike).
4. Persons deprived of liberty that are foreign nationals must be accommodated in a closed environment that employs qualified staff and that provides material conditions and activities that are appropriate for their culture and

<sup>40</sup> Cf. also Recommendation 1469 (2000) of the Parliamentary Assembly of the Council of Europe on the subject of mothers and babies in prison.

tradition.

5. Difficulties in communication due to a language barrier between the persons deprived of liberty and the officers of the law enforcement agency have to be overcome by learning the domestic or foreign languages.
6. The risk of creating tension between detainees of different nationalities or ethnic groups will be reduced if employees are carefully selected and have appropriate training in the field of interpersonal communication and are familiar with different cultures.
7. The staff should be trained to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic reactions or those induced by socio-cultural changes) and to take appropriate action in order to protect human rights.
8. These persons deprived of liberty should, in the same way as other categories of persons deprived of liberty, be enabled to inform a person of their choice of their situation and to have access to a lawyer and a doctor. They should be explicitly informed, without delay and in a language they understand, of all their rights and of the procedure conducted in their case.
9. Persons deprived of liberty should be provided in a language they understand with a document (guide) explaining the procedure applicable to them and explaining their rights. Upon request or where necessary, the services of an interpreter should be provided.
10. Persons deprived of liberty maintain contact with the outside world, have access to the phone, and receive visits of the family, consular officer, and the representative of competent institutions.
11. The duration of the stay in the closed environment for juveniles should be as short as possible.
12. Female juveniles should under no circumstances receive less care, protection, assistance and training than male juveniles.
13. Females deprived of liberty should be provided the access to gynaecologists and education on women's health care. Pregnant juvenile girls and juvenile mothers in detention should receive appropriate support and medical care.
14. Persons deprived of liberty should be given information without delay on how to lodge a complaint, including the contact details of the authorities competent to receive complaints, as well as the addresses of any services that provide legal assistance and institutions that are engaged in the protection of human rights.
15. Use of the staff of both genders enables appropriate deployment of the staff to work assignments when sensitive assignments related to gender, like personal searches, are to be performed.
16. Women in pre-trial detention enjoy access to meaningful activities (work, education, sport etc.) on an equal footing with their male counterparts in the pre-trial detention.
17. Without delay, lodging of complaints and grievances on the treatment of officers should be enabled.

18. The law enforcement officer never assesses whether the complaints and appeals are justified or not because the society is sensitive to their complaints.

### Competence assessment form: Managing vulnerable categories of persons deprived of liberty

1.	Treat equally all persons deprived of liberty, without discrimination on any ground, respecting their rights and specific needs	Notes
2.	Without delay provide access to a doctor upon request of a vulnerable person deprived of liberty	
3.	Enable lodging of complaints and appeals to a person deprived of liberty on the treatment of the officer of the law enforcement agency in line with the applicable procedures of the law enforcement agency	

### Questions and answers: Managing vulnerable categories of persons deprived of liberty

Q: How are vulnerable categories of persons deprived of liberty defined?

A.: These are categories that due to the specific psychological and physical characteristics require a special approach of the officer of the law enforcement agency, in line with their specific needs.

2. Q: What categories of persons deprived of liberty are particularly vulnerable?

A: Juveniles, older persons, persons with physical disabilities, persons with mental disorders, persons with chronic diseases, women/mothers, members of sexual minorities, foreign nationals.

3. Q.: What is the way of improving the work of the officers of the law enforcement agencies with vulnerable categories of persons deprived of liberty?

A.: Treatment of vulnerable categories is improved through a sensible approach of the law enforcement officers, in the absence of repression and physical pressure.

## JUVENILES

### Basic concepts

**A juvenile** is a person who has reached the age of criminal responsibility (14 years old), but is not yet legal of age (18 years old).

**Legal representation** implies a parent, guardian or an adoptive parent.

### Purpose and aim

Juvenile should be deprived of liberty only as a measure of last resort and the deprivation should last for the shortest period of time.

Juveniles belong to a vulnerable category because of their age and personality that is still evolving, as well as because of the family situation they grew up in.

Primarily that means that while deprived of liberty a juvenile should not be put in an inferior position because of his race, skin colour, gender, language, religion, political and other beliefs, national or social descent, financial state, education or any other similar trait. During deprivation of liberty, the juvenile should be treated in a manner adequate for his age, degree of maturity, and other personality traits with respect for his dignity. There are two fundamental reasons for treating a juvenile in a way that is specially adjusted to his needs: their age puts them in a position inferior to older persons, therefore comes greater probability that because of their age the juvenile deprived of liberty might react differently to deprivation.

Treatment of juveniles should aim at deprivation of liberty that does not violate his human rights and achieves prosperity and the best interests of a juvenile deprived of liberty at the same time.

### European Convention for the Protection of Human Rights and Fundamental Freedoms

#### 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 offence shall be presumed innocent until proved guilty according to law.*

*3. Everyone charged with a criminal offence 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.”

## **Recommendations of the Committee of Ministers of the Council of Europe to member states<sup>41</sup>**

“49.1 Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.”

## **United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>42</sup>**

These Rules represent a collection of minimal rules, rights and procedures that should guide any case of deprivation of liberty of juveniles.

“11. (b) *The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.*”

These Rules apply to juveniles deprived of liberty as a result of application of criminal legislation, as well as on juveniles deprived of liberty in health care and social welfare institutions. This document generates a set of standards aimed at avoiding damaging effects of deprivation of liberty, by ensuring that human rights of juveniles are upheld.

## **Case law of the European Court of Human Rights**

In the judgement in *Tyrer v. UK* (1978), the Court found that corporal punishment inflicted on a juvenile delinquent, i.e. three strokes of the birch, constitutes degrading punishment within the meaning of Article 3 of the Convention.

As opposed to that, in the case of *Costello-Roberts v. UK* (1993), the Court found that corporal punishment as “disciplinary punishment measure” imposed by the principal of the school (three “strokes” with the soles of the shoe over the backside of the student’s trousers) did not constitute “degrading punishment” in all the circumstances of the case has not reached the required minimum threshold of severity required by Article 3 of the Convention.

In the judgement in the case of *Singh and Hussain v. UK* (1996), the Court suggested that life-long imprisonment without the possibility of an earlier release, imposed on a minor, could lead to issues with respect of Article 3 of the Convention.

An excerpt from the judgement *Bouamar v. Belgium* (1988), determining the length

<sup>41</sup> Recommendation CM Rec (2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures

<sup>42</sup> Adopted by the UN General Assembly of the UN, Resolution 45/113 December of 1990, also referred to as the “Havana Rules”

of pre-trial detention, in which the Court found violation of Article 5 of the Convention:

*“ The Court notes that the confinement of a juvenile in a remand prison does not necessarily contravene sub-paragraph (d) (art. 5-1-d), even if it is not in itself such as to provide for the person’s “educational supervision”. As is apparent from the words “for the purpose of” (“pour”), the “detention” referred to in the text is a means of ensuring that the person concerned is placed under “educational supervision”, but the placement does not necessarily have to be an immediate one. Just as Article 5 § 1 recognises - in sub-paragraphs (c) and (a) (art. 5-1-c, art. 5-1-a) - the distinction between pre-trial detention and detention after conviction, so sub-paragraph (d) (art. 5-1-d) does not preclude an interim custody measure being used as a preliminary to a regime of supervised education, without itself involving any supervised education. In such circumstances, however, the imprisonment must be speedily followed by actual application of such a regime in a setting (open or closed) designed and with sufficient resources for the purpose.*

51. *In the instant case the applicant was, as it were, shuttled to and fro between the remand prison at Lantin and his family. In 1980 alone, the juvenile courts ordered his detention nine times and then released him on or before the expiry of the statutory limit of fifteen days; in all, he was thus deprived of his liberty for 119 days during the period of 291 days from 18 January to 4 November 1980.*

52. *... The Belgian State chose the system of educational supervision with a view to carrying out its policy on juvenile delinquency. Consequently it was under an obligation to put in place appropriate institutional facilities that met the demands of security and the educational objectives of the 1965 Act, in order to be able to satisfy the requirements of Article 5 § 1 (d) (art. 5-1-d) of the Convention.*

*Nothing in the evidence, however, shows that this was the case. At the time of the events in issue, Belgium did not have - at least in the French-speaking region in which the applicant lived - any closed institution able to accommodate highly disturbed juveniles (see paragraph 28 above). The detention of a young man in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training cannot be regarded as furthering any educational aim.*

53. *The Court accordingly concludes that the nine placement orders, taken together, were not compatible with sub-paragraph (d) (art. 5-1-d). Their fruitless repetition had the effect of making them less and less “lawful” under sub-paragraph (d) (art. 5-1-d), especially as Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him.”*

## **Standards of the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT standards)**

Excerpts from 24th General Report [CPT/Inf (2015)1]

„98. *It is the period immediately following apprehension when persons are most at risk of ill-treatment. Therefore, the CPT has advocated three fundamental safeguards (namely the rights of detained persons to notify a close relative or another person of their detention and to have access to a lawyer and a doctor), which should apply from the very*

outset of deprivation of liberty (i.e. from the moment a person is first obliged to remain with a law enforcement agency). Given their particular vulnerability, the CPT considers that juveniles held in police custody should always benefit from the following additional safeguards against ill-treatment:

- law enforcement officials should be under a formal obligation to ensure that a relative or another adult person trusted by the juvenile is notified of the fact that a juvenile has been detained (regardless of whether the juvenile requests that this be done);
- a detained juvenile should never be subjected to police questioning or be requested to make any statement or to sign any document concerning the offence(s) he/she is suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person (the option "does not wish to see a lawyer" should not apply to juveniles);
- a specific information sheet setting out the above-mentioned safeguards should be given to all juveniles taken into custody immediately upon their arrival at a law enforcement establishment. The information sheet must be child-friendly, written in simple and clear language and available in a variety of languages. Special care should be taken to ensure that juveniles fully understand the information.

99. The CPT considers that nobody should be held in law enforcement establishments for prolonged periods as such establishments normally do not provide suitable conditions and an appropriate regime. Moreover, experience has shown that persons in police custody are more vulnerable and often run a higher risk of being subjected to torture or other forms of ill-treatment. It follows that even greater efforts should be made to keep the detention in law enforcement establishments to a minimum for juveniles. In some countries, juveniles continue to be held in police stations for periods of ten days or more; such practices are unacceptable. The CPT considers that, as a rule, juveniles should not be held in a law enforcement establishment for more than 24 hours. Further, every effort should be made to avoid placing juveniles in ordinary police cells but rather to hold them in a juvenile-friendly environment. To this end, it would be highly desirable for separate police units for juveniles to be established so that juveniles can be removed as quickly as possible from the general population of persons in police custody and accommodated in a specialised holding facility.

Regrettably, the Committee continues to find juveniles in police custody being accommodated together with adults in the same cells. Such a state of affairs is not acceptable. The vulnerability of juveniles means that as a matter of principle they should be accommodated separately from adults.

100. Further, law enforcement officials who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile delinquency should receive specialised initial and ongoing training."

## **Excerpts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to BiH authorities**

CPT/Inf(2016)17

*“The CPT recommends that all staff working with juveniles receive such training and external support. Particular attention should be given to staff training in the management of violent incidents.”*

### **Guidelines for managing juveniles deprived of liberty in closed environment**

#### **Juveniles in custody should be what they are – young persons who should be looked at as juveniles first and only then as potential offenders.**

Presence of a parent, adoptive parent or guardian and a lawyer is mandatory during every conversation with a minor, especially with a juvenile deprived of liberty. When a minor is interviewed in capacity of an offender, presence of a defence counsel is necessary.

During his stay in police premises, the juvenile deprived of liberty is verbally informed about the reasons for his deprivation and about the rights he has during questioning in the law enforcement agency.

Particular care must be taken that the juvenile fully understands why he is being deprived of liberty, especially if he has a difficulty reading and writing, speaking or in development. Conversation with a juvenile is conducted in a language and manner he can understand. Presence of a psychologist or a social worker is preferable.

Special consideration is necessary in case of a juvenile who is a victim or a witness to a criminal offence.

If the minor does not have parents or a guardian, interview is done in the presence of a competent social welfare authority (psychologist, social worker, speech impairment specialist), with a mandatory use of audio-visual resources for conversation recording.

The legally prescribed deadlines must be respected when dealing with juveniles deprived of liberty. During the first 12 hours of deprivation of liberty, the law enforcement officers must complete all proceedings with the juvenile: notifying parents, lawyer, providing information about rights, questioning, gathering all the information and evidence that will be included in the prosecutor’s decision about further proceedings.

1. The law enforcement officer places the juvenile deprived of liberty immediately on admission to custodial facilities in a separate premise where he will not be in contact with other adults.
2. He offers the juvenile with food, water or the use of a toilet even before the arrival of a parent or a lawyer. Other conversations do not take place with the minor before the arrival of a parent or a lawyer.
3. Juvenile’s parents and lawyer are summoned in accordance with the existing procedures of the law enforcement agency.
4. The parent and the minor can state that they do not want to exercise the right to a lawyer, which is then recorded in accordance with the existing

procedures of the law enforcement agency. In that case, there are no obstacles to initiate further proceedings.

5. The defence council can be engaged subsequently, at any stage of the proceedings, even after the original decision not to engage a lawyer. In such cases, the proceeding is at rest until the arrival of the defence council.
6. Upon the lawyer's arrival, notification about other rights commences (the right to an interpreter, right to not be obligated to state your defence nor to answer any asked questions, right to medical assistance, etc.). This meets the procedural requirements for further proceedings or questioning to start.
7. During the questioning, no force may be used against the juvenile, threat, deception or any other means that can affect the freedom of decision making and expressing of will while making a statement or a confession.
8. While talking to a juvenile deprived of liberty, the law enforcement officer must:
  - Introduce himself to the juvenile
  - Clearly define his official role
  - Offer the minor some water, food or use of toilet
  - Give him the opportunity to state any concern he might have at that moment and to ask questions regarding the deprivation of liberty procedure
  - Respect the juvenile's personality and identity
  - Express benevolence
  - NOT express personal views of the juvenile's life, his personality or behaviour
  - By no means use intimidation, threats, etc., not even as a joke (for example, *"You came to the place where you belong... We will tame you... You will not do here what you used to do before,"* etc.)
  - Use clear, direct communication adjusted to the age of the minor
  - Not chew gum/food, not smoke a cigarette nor hold an unlit one in hand, not hold hands over mouth, etc. during conversation.
  - Keep eye contact during conversation (do not look sideways nor down while speaking)
  - Be aware of the officer' legal authority, his position of power that must not be abused, his ethical and legal responsibility.
  - Build the authority through respect, humanity, righteousness, impartiality and consistency.
9. During any conversation with the minor while deprived of liberty, one should avoid negative identity emphasising:
  - labelling
  - criticism
  - objection
  - pity
  - blaming
  - judging
  - intimidation
10. If in a 12-hour period of time the law enforcement officer does not notify the prosecutor of the reasons for and time of deprivation of liberty, the minor is released.

11. Any use of control and restraint as a form of harassment of a juvenile deprived of liberty is strictly forbidden by international norms and domestic legislation. Any treatment in contravention with physical and mental integrity of minor represents harassment and the law enforcement officer is subject to disciplinary and criminal responsibility.
12. The law enforcement officers must not use any means of control and restraint on minors, unless it is a last mean of self-defence, preventing an escape, direct risk of self-inflicting harm, harming others or causing serious material damage. The law enforcement officers must previously exhaust all other means and methods of control, such as advisory conversation, persuasion, encouragement, warnings, orders, etc.
13. Before referring to the use of control and restraint, the law enforcement officer must warn a person he is planning on using means of control and restraint on.
14. Control and restraint means used must be minimal and of shortest possible duration and only in accordance with the authority prescribed by the law.
15. Control and restraint must be gradual: the law enforcement officer must first use the mildest means of control and restraint for which he thinks will be successful. If there is a possibility of using different means of control and restraint, the first one used will be the one with the least consequences for the person against whom they are being used, if the use of it ensures exercise of legal authorities.
16. The minor who has been subjected to control and restraint or ill-treatment is taken to a medical examination immediately thereafter in accordance with the existing procedures of the law enforcement agency. If a minor is not referred to medical examination without delay, he has the right to request it through his legal representatives or defence council.
17. If the juvenile suffered injuries during control and restraint, existing procedures of the law enforcement agency apply.

**Competence assessment form: Managing juveniles deprived of liberty in closed environment**

1.	You ensure appropriate custodial environment for juveniles deprived of liberty	Notes
2.	You respond to the juvenile’s requests to exercise his rights without delay	
3.	You are familiar with the legal requirements and procedures in cases of the need to control and restraint a juvenile	

**Questions and answers: Managing juveniles deprived of liberty in closed environment**

1. Q: Who can be considered juvenile?  
 A: Juvenile is a person who has reached the age of criminal responsibility (14 years old), but is not yet legal of age (18 years old).

2. Q: Who can considered as legal representative of a juvenile?  
A: The legal representative of a juvenile is considered to be a parent, guardian or an adoptive parent.
3. Q: When can juvenile deprived of liberty request access to a lawyer?  
A: Juvenile or his legal representative can request a lawyer at any stage of his deprivation of liberty.
4. Q: When can a juvenile deprived of liberty be subjected to control and restraint?  
A: Juvenile can be subjected to control and restraint exceptionally in case of a life-threatening situation, the threat of self-harm or causing material damage.

















