



# HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN POLICE CUSTODY

## Ensuring justice

Strengthening human rights treatment  
of detained persons based on European standards  
and best practices in Bosnia and Herzegovina

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Funded  
by the European Union  
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## **HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN POLICE CUSTODY**

*Protection of human rights starts before the deprivation of liberty  
and does not end with the release from custody*

FIRST EDITION

# CONTENTS

Framework training programme for law enforcement agencies with human rights modules.....	7
Notes.....	8
Foreword.....	9
Terminology and Definitions.....	9
Key Terms.....	10
Purpose .....	11
The rights of persons deprived of liberty guaranteed under the European Convention of Human Rights.....	12
Guidelines for treatment based on international instruments and standards and the legal framework.....	13
European Court of Human Rights diagram depicting relationships between prohibited treatments .....	15
Diagram for (self-)assessment of violation of rights guaranteed by the Convention.....	16
Article 3: Prohibition of torture.....	18
Article 5: Right to liberty and security.....	19
Ethical conduct by the law enforcement officers.....	21
Operational procedures for ethical conduct by the law enforcement officers.....	22
Independent monitoring bodies' mandate.....	24
Operational procedures for conduct during visits by international monitoring bodies.....	26
Ill-treatment allegations in police custody.....	28
Operating procedures in case of allegations of ill-treatment.....	28
Operating procedures for conducting with the aim of impunity prevention.....	29

Operating procedures for the internal investigation of allegations of abuse.....	30
Proper recording of the time of deprivation of liberty.....	33
Operational procedures in case of suspected manipulation with the precise time of deprivation of liberty.....	33
Taking over and handing over persons deprived of liberty.....	36
Operational procedures for taking over and handing over person deprived of liberty.....	36
Escort and supervision of persons deprived of liberty.....	40
Operating procedures for escort of persons deprived of liberty.....	41
Notifying persons deprived of liberty about their rights and enabling them to exercise these rights.....	44
Operational procedures for notifying persons deprived of liberty of their rights.....	44
Placement of persons deprived of liberty in appropriate holding or detention premises.....	48
Operational procedures for placing person deprived of liberty in holding or detention premises.....	48
Efficient communication.....	53
Operational procedures for efficient communication.....	53
Protecting confidential and personal data.....	56
Operational procedures for protecting personal and confidential data.....	56
Visual check-up and searching person deprived of liberty and his belongings.....	60
Operational procedures for check-ups and searches of person deprived of liberty and their belongings.....	60
Handling temporary seized items.....	64

Operational procedures for handling temporary seized items.....	64
Use of force, control and restraint.....	67
Operating procedures for control and restraint of persons deprived of liberty.....	67
Death and self harm f a person deprived of liberty in custody.....	72
Operating procedures for conduct in case of death of a person deprived of liberty.....	72
Treatment of women deprived of liberty.....	75
Operating procedures for treatment of women deprived of liberty.....	75
Treatment od minors of deprived liberty.....	79
Operating procedures for treatment of minors deprived of liberty.....	79
Treatment of special categories deprived of liberty - migrants.....	83
Operating procedures for treatment of migrants.....	83
Appendix 1: Efficient communication.....	89
Appendix 2: Manipulating with the time of deprivation of liberty.....	90
Appendix 3: Obligation to inform person deprived of liberty on their rights.....	91
Appendix 4: Examination (visual check-up) and search of person deprived of liberty.....	95
Appendix 5: Inter-Agency Cooperation on Prevention of Ill-treatment and Impunity.....	96
Appendix 6: The Rights of Persons Deprived of Liberty.....	100

## Framework training programme for law enforcement agencies with human rights modules

Competence area	Module	Topics
<b>Human rights of persons deprived of liberty by the police</b>	Human rights and ethics in police work	Rights guaranteed by the ECHR Code of Ethics
		Code of Ethics for law enforcement officers
		Independent monitoring bodies dealing with complaints against ill-treatment
		Fight against ill-treatment
	Deprivation of liberty by the police	Proper recording of liberty deprivation periods
		Taking over and handing over persons deprived of liberty
		Escorting and supervising persons deprived of liberty
		Notifying persons deprived of liberty about their rights
		Conditions and placement of persons deprived of liberty in police custody
	<b>Communication in closed environment</b>	Efficient communication
Handling confidential data		Protection of confidential and personal data
Interviewing persons deprived of liberty		Conducting investigative interviews and questionings
<b>Safety and security in closed environment</b>	Maintaining the level of security in the closed environment	Visual check-ups and searches
		Temporary seizure of items
		Use of force, control and restraint
	Emergency preparedness	Self-injury and suicide in police custody
	Specific groups in detention	Treatment of women in police detention
		Treatment of juveniles in police detention
		Treatment of migrants in detention

## Notes

The part of the material used for drafting these procedures is based on the Guidelines for dealing with persons deprived of liberty in closed environment published within the framework of the Horizontal Facility for Western Balkans and Turkey I.

The material is drafted in Bosnian, Serbian and Croatian languages, in accordance with personal preferences of authors, as well as in Latin and Cyrillic alphabet. The original material is drafted in local languages.

All references to the law enforcement officer in this paper apply equally to both male and female.

The definitions used in this material are not definitions used in legal acts but were jointly agreed upon by the authors for the purposes of this material.

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## Foreword

These procedures are intended for the law enforcement officers in Bosnia and Herzegovina, as a part of a Joint Programme between European Union and Council of Europe Horizontal Facility for Western Balkans and Turkey II. This Action is implemented in Bosnia and Herzegovina under the title "Strengthening treatment of persons deprived of liberty based on human rights, European standards and best practices".

### These procedures aim to:

- document examples of the existing good practices and emphasize professionalism of the official personnel;
- foster the network of law enforcement agencies operating in Bosnia and Herzegovina; and
- enrich further the existing institutional training programmes with recommendations of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) and with other relevant international standards.

Procedures documented in this publication do not have and cannot have normative character. They are **practical** guidance for performing daily tasks related to persons deprived of liberty all the while applying human rights safeguards. The material also records examples of the existing good practices in dealing with persons deprived of liberty in Bosnia and Herzegovina.

Thereby, they also partly illustrate application of international standards in local practices to date.

These modules help officials with policing authorities in understanding of their legal powers and responsibilities, to make well informed decisions, identify possible violations, and apply guidelines on how to respond to human rights violations (for example, inform and report).

If torture and other forms of ill-treatment of persons deprived of liberty committed by public officers are not investigated within the criminal justice system, such conduct can easily become an accepted practice within a country. Genuine efforts to reach standards set by the judicial practice of the European Court of Human Rights and the Rule of Law will have an important dissuasive effect on those who intend to ill-treat detainees.

## Terminology and Definitions

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

For the purpose of this text the procedure means a series of steps undertaken in sequential order with the purpose of responding to a particular situation prone to human rights violations.

## Key Terms

**Respect for human rights and responsibility for compliance:** the obligation to comply may be shared between several public officers while responsibility cannot.

Moreover, the personal responsibility arises only after the task is completed or not completed. The obligation to comply may arise before and/or after the task.

**Human rights:** universal category, which is given to every person by the very act of birth, even to a person deprived of liberty.

**Breach or violation of human rights:** Violations of human rights occur when the conduct of state authority ignores, denies or does not meet basic human rights.

**Ill-treatment:** any act or failure to act towards persons deprived of liberty leading to torture, inhuman or degrading treatment with negative effect on the mental and physical integrity of the person.

**Deprivation of liberty by the police:** legal action when the movement of person, for whom it is established that he/she has committed or there are grounds for suspicion that he committed a criminal offence or misdemeanour, is restricted by the competent authority. Deprivation of liberty, in the criminal sense, implies any action or procedure aimed at preventing a person or group of persons from freedom of further movement, with the possibility of using legally permitted means of force. According to the CPT, deprivation of liberty starts from the moment when the person deprived of liberty is obliged to remain with police (for ex. arrest on the street i.e. before being brought into the police custody). Arrests during police operational activities, for ex. demonstrations, imply deprivation of liberty, but on the other hand, police operational activities aimed at controlling masses are not considered deprivation of liberty.

**Rights of a person deprived of liberty:** a guarantee for pursuing one's best interests in relation to the preservation of physical and mental integrity, dignity and also an opportunity to be equal in all proceedings conducted against him by public authorities; these rights include certain safeguards (e.g. right to notify a third party of one's arrest, right to a lawyer, right of access to a doctor) as well as the right to certain treatment and conditions of detention.

**Exercise of rights implies** the fulfilment of obligations of law enforcement officers towards a person deprived of liberty.

**Police detention** or police temporary holding premises, for the purpose of this material, is premise where persons deprived of liberty are temporarily held.

**Law enforcement officer, for the purpose of this material,** is a member of police agency authorised to apply police authorities prescribed by the law. Officers of the following agencies fall in this category: State Investigation and Protection Agency, Service for Foreigner Affairs, Border Police, Court Police(s) in BiH, Ministries of Interior in BiH and Police of Brčko District of BiH.

## Purpose

Without a common denominator in a multidisciplinary approach we lose agreed standards and have different understandings of the meaning of certain terms. We lose the ability to communicate and perform complementary tasks whose common goal is to respect the rights of person deprived of liberty, while maintaining the required level of safety and security. Without common understanding and joint action, we lack the precision required to perform the task efficiently and purposefully.

### **The context on which the common operating procedures for the conduct of law enforcement officials in Bosnia and Herzegovina is based**

The purpose of this handbook is to harmonize dealing(s) with persons deprived of liberty among various law enforcement agencies in Bosnia and Herzegovina.

Obligation of each member state of the Council of Europe is to ensure transparent work of its law enforcement officials, enabling accountability and responsibility in case of violations and breaches of human rights standards.

Respecting someone's human rights does not mean failing to comply with the operating procedures of the given agency/institution. Databases, information exchange and operating procedures already do exist in every agency. The problem arises when the cooperation protocols prove incomplete and the networking is insufficient enough.

**Equality does not mean the same treatment for every person deprived of their liberty. Equality means treating every person deprived of liberty in accordance with his or her needs.**

Persons deprived of liberty are more amenable and vulnerable to violations of basic rights because:

- there is a high pressure on the police to solve crime and be seen to be tough on crime;
- institutionalised working methods and harmful traditions have developed over the years that are hard to break;
- the police have a high "esprit de corps", which is necessary to work together, but which also shields wrongdoing from outside scrutiny;
- higher fluctuations of person deprived of liberty in the police holding premises than in prisons or forensic facilities;
- persons deprived of liberty are suspected of, charged with or sentenced for criminal offense or charged with misdemeanour;
- facilities and premises in which detainees reside are most often poorly equipped (especially police holding premises). Therefore, they often spend time in detention in worse conditions than persons detained in prisons or forensic facilities;
- disturbed family relations and difficult re-socialization due to stigmatization of society caused by (alleged or adjudicated) commission of a criminal offense.

## THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY GUARANTEED UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

### Key concepts

#### Human rights

Inalienable fundamental rights inherent to a person simply because she or he is a human being. They are therefore accepted as universal (applicable everywhere) and egalitarian (equal for everyone). They can exist as natural rights or as positive rights under local, regional, national or international law.

#### Human rights violations

They occur when the actions of state authorities violate, ignore or deny fundamental human rights (including civil, political, cultural, social and economic rights).

#### European Convention on Human Rights and Fundamental Freedoms

An international convention for the protection of human rights and fundamental freedoms in Europe. Drafted in 1950 at the Council of Europe, entered into force on 3 September 1953. The first ever binding international document in the area of human rights. All 47 Council of Europe member states are party to the Convention, and new member states are expected to ratify it at the earliest opportunity. Bosnia and Herzegovina ratified it on 12 July 2002 but the country is also a unique example of application of the Convention even before its ratification, in line with the 1995 Dayton Peace Accords. The Convention has several protocols supplementing the framework text.

Article II Paragraph 2 of the Constitution of Bosnia-Herzegovina prescribes 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.”**

The Convention established the Court of Human Rights in Strasbourg. Any person believing that a Contracting Party has violated rights guaranteed by the Convention may lodge an application with the Court. The Court’s judgements are binding on the Contracting Parties. This would mean that national laws (and rules) should be in line with the protection granted by the Convention, and if national laws are not aligned with the Convention, the Convention would then have to directly apply in order to avoid violations of human rights – both of citizens of Bosnia-Herzegovina and of foreign nationals in the territory of Bosnia-Herzegovina.

#### Positive obligation of the State

Positive obligation of the State is anything where the State has to get active to fulfil a right and not just refrain from doing something. For example:

- The obligation of the State to investigate, through independent bodies, all cases of breaches of the rights guaranteed by the Convention, and to create an environment to prevent and penalise the creation of a culture of non-reporting, non-recording, non-documenting and impunity for violations of rights from the Convention.
- to provide appropriate training to police officers,
- to build adequate custody facilities,

- to provide detainees with food and water, etc.

These obligations **require national authorities and officials to abide by the obligation to protect, meaning that they should protect those enjoying rights from interference by third parties and punish those who violate their rights.**

### Negative obligation of the State

**The obligation of the State** to prescribe and proclaim the rights from the Convention and to restrain from any interference with the rights guaranteed in the Convention, that is **not to violate the rights guaranteed by the Convention.**

### Guidelines for treatment based on international instruments and standards and the legal framework<sup>1</sup>

	United Nations	Council of Europe
<b>General instruments for protection of human rights</b>	<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights</li> <li>• International Covenant on Civil and Political Rights</li> <li>• International Covenant on Economic, Social and Cultural Rights (ICESCR)</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 protection of human rights related to torture</b>	<ul style="list-style-type: none"> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</li> <li>• Optional Protocol to the UN Convention for the Prevention of Torture on NPM<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>• European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)</li> </ul>
<b>General standards for treatment of persons deprived of liberty<sup>3</sup></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 Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules)</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>
<b>International bodies monitoring the implementation of obligations</b>	<ul style="list-style-type: none"> <li>• UN Subcommittee against Torture (UN CAT): monitors the application of the UN Convention against Torture</li> <li>• Committee for Prevention of Torture and other Cruel, Inhuman or degrading Treatment or Punishment (SPT)</li> <li>• The Human Rights Committee (HRC): monitors the application of the International Covenant on Civil and Political Rights</li> </ul>	<ul style="list-style-type: none"> <li>• The European Committee for the Prevention of Torture (CPT)</li> </ul>

<sup>1</sup> The national laws have taken over and incorporated the provisions on the protection of human rights from international instruments.

<sup>2</sup> Under the Optional Protocol, a Contracting Party has the obligation to establish a National Preventive Mechanism (NPM).

<sup>3</sup> Most of the mentioned texts rather apply to prisons and are less relevant for police custody

### Human rights in policing

Most human rights can be subject to limitations for a legitimate purpose, if foreseen in law, necessary and proportionate. Only if the right was limited disproportionately or unnecessarily we speak of a violation of human rights. These violations can be due to action or inaction by public officials.

Hence, the right to life (Art 2) or the right to liberty and security (Art 5) may be limited. But the right to prohibition of torture (Art 3) is an absolute right. For more details pls see Appendix 5.

This means that every interference with the right to prohibition of torture is at the same time also a violation, without exception. Some actions by officials authorised by the law might cause (severe) pain or suffering, such as the legitimate use of force (can be very painful, but still no violation of Art 3), legal body searches (that can be quite embarrassing but still no violation of Art 3) or the legal deprivation of liberty.

The prohibition of torture and other forms of ill-treatment are absolute, meaning that it can never be justifiable to torture someone or to treat them in an inhuman or degrading manner. The wording of Article 3 ECHR reflects this absolute nature of the prohibition by omitting any limitation within the text of the Convention, as included in most other rights.

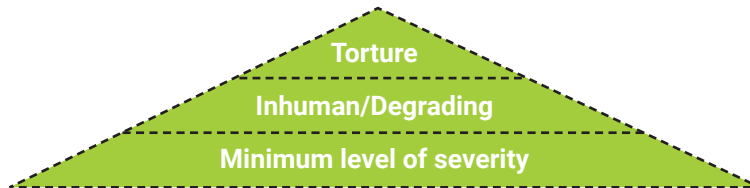
"Another example of an absolute right is the prohibition of slavery, which – similarly to torture - aims at destroying the human being as a subject and his/her dignity. It might be tempting in practice to apply "just a little bit of torture" in cases where it seems to be "necessary" and "appropriate to safeguard the lives of others", such as in the often quoted "ticking bomb scenario" or in the real-life case of Gäfgen, who had kidnapped a boy for ransom and was caught by the police while trying to collect the ransom. The police authorities had threatened him with the application of torture in order to find out about the boy's whereabouts and potentially save his life (Gäfgen v. Germany, Application no. 22978/05, 1 June 2010). However, it must be clear that torture cannot be applied only to limited cases, but that history has shown that once torture is tolerated in single cases, it spreads throughout the whole criminal justice sector and undermines society at large"<sup>4</sup>.

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<sup>4</sup> The quote used with kind permission of Dr. Julia Kozma, international consultant

## European Court of Human Rights diagram depicting relationships between prohibited treatments

Torture is the most serious of the three forms of human rights violations and this is why it is placed at the very top. Inhuman and degrading treatment are placed at the angles of the triangle base. The difference here is in the degree of suffering. This, however, does not mean that these persons are protected to a lesser extent from the other elements involving a prohibited degree of suffering. In the case of torture, the suffering is exceptionally serious and intense.



And the second one, often designated as the “minimum level of safety”, separates a violation of Article 3 from an “unpleasant” or undesirable treatment that does not represent considerable severity and therefore does not constitute a violation of Article 3.

Not all suffering and humiliation is prohibited. There are certain situations that are not serious enough to constitute inhuman or degrading treatment, or where the (intense) pain or suffering are a consequence of a legitimate action. Any form of legal treatment (such as the legal use of force) or punishment inevitably involves elements of suffering or humiliation. For instance, the measures of deprivation of liberty can often involve suffering or humiliation, and the use of force can at times cause severe pain.

### Torture

As per Article 1 UN CAT: “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

### Inhuman treatment or punishment

Inflicting pain or suffering which is not of such an intensity (or nature) as to be qualified as torture. It is not required for this treatment to have as its aim extraction of information or even punishment (although it can be linked to that). This can also occur as a result of omissions in taking certain actions, from which it is clear that it does not require the existence of intention.

### Degrading treatment

A milder form of ill-treatment consisting of gross humiliation of an individual by officials or instigation of a person to act contrary to his/her will or conscience, which causes certain psychological consequences for the person.

**Diagram<sup>5</sup> for (self-)assessment of violation of rights guaranteed by the Convention**

**ARTICLE 2**

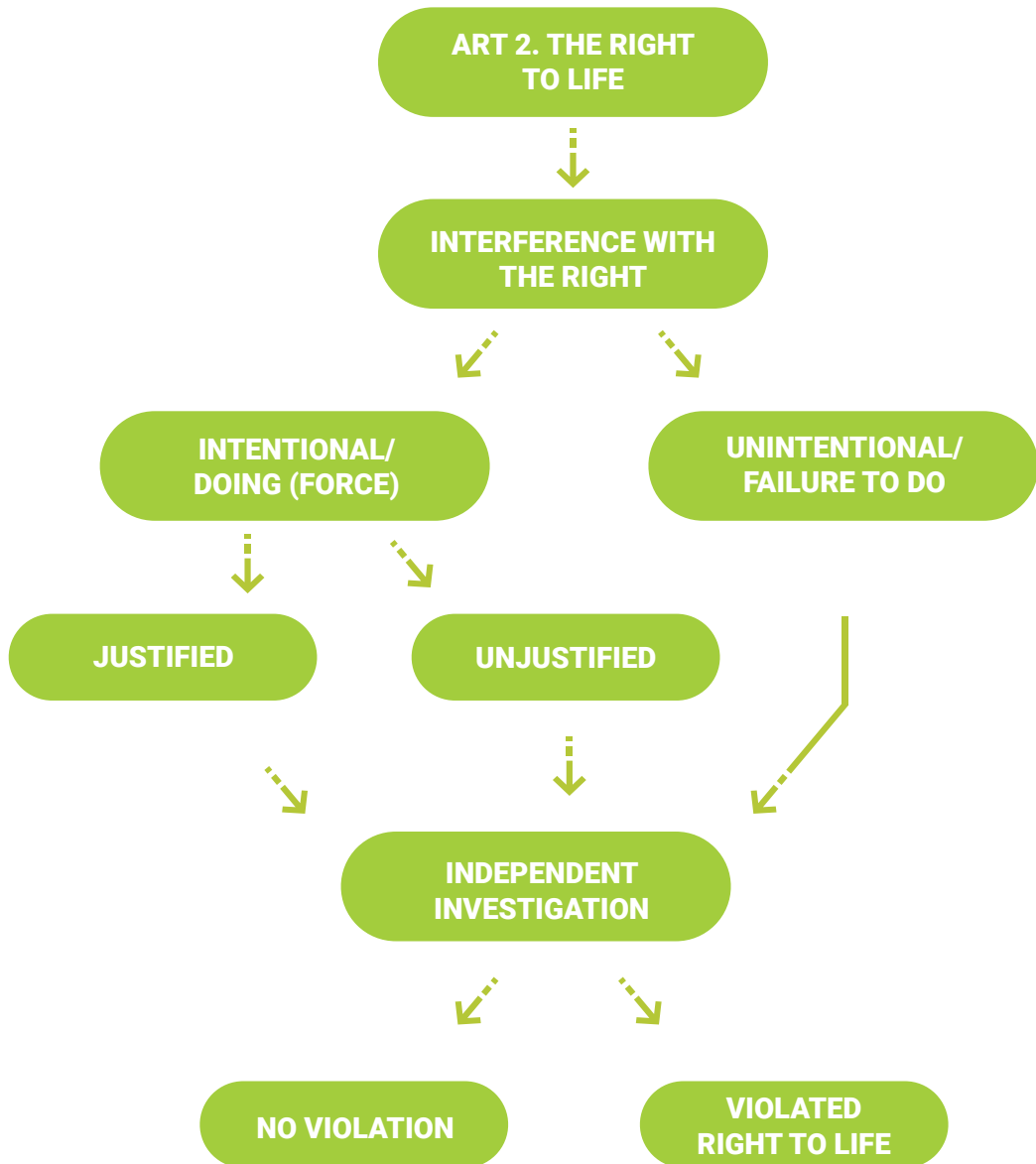
Right to life

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.

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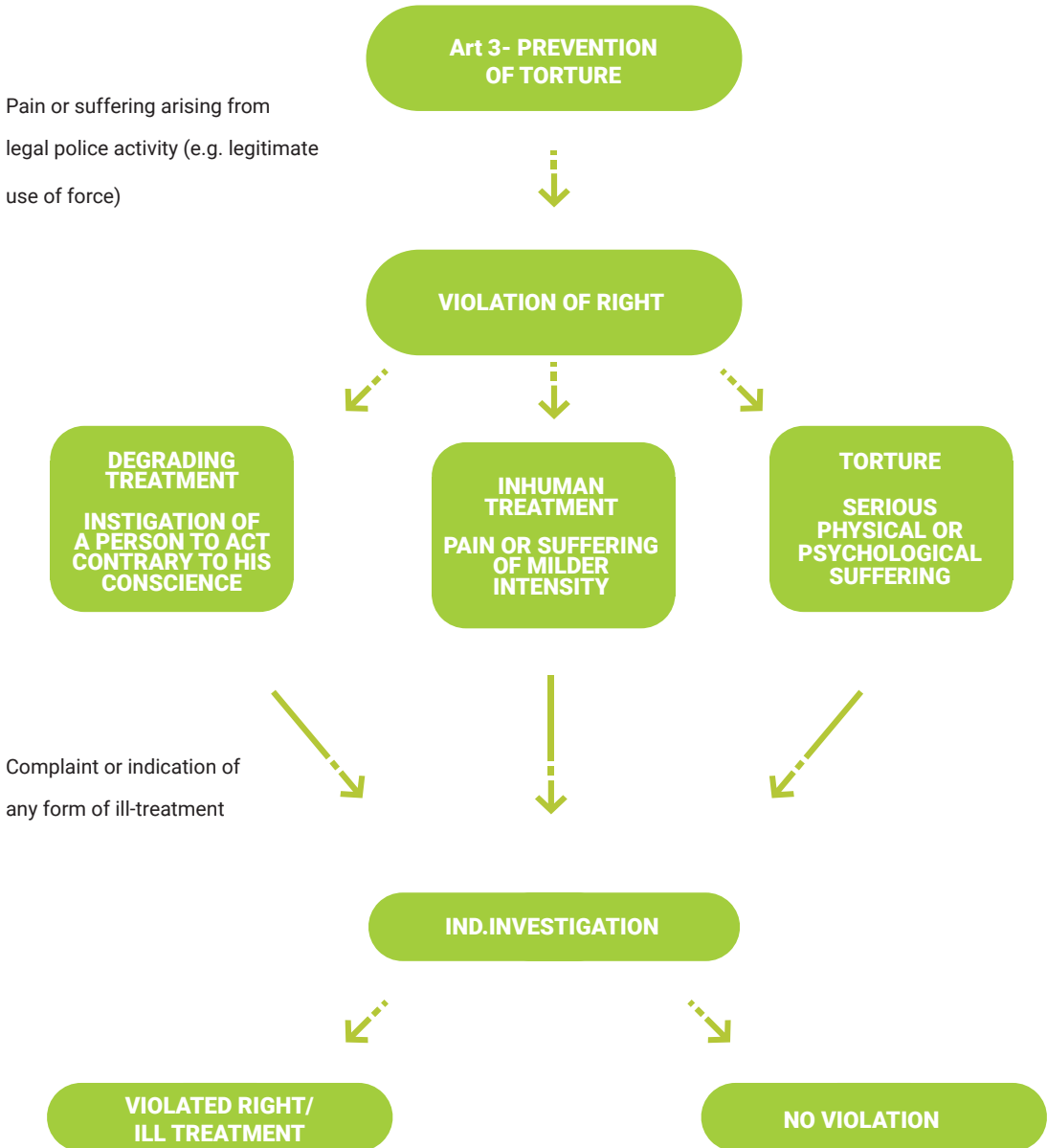
<sup>5</sup> For the purposes of this paper, the term diagram implies a finite series of defined instructions, typically for resolving a problem. Algorithms are always unambiguous and are used as specifications for, among others, automated conclusions.





### ARTICLE 3. Prohibition of torture

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



**ARTICLE 5 . Right to liberty and security**

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:

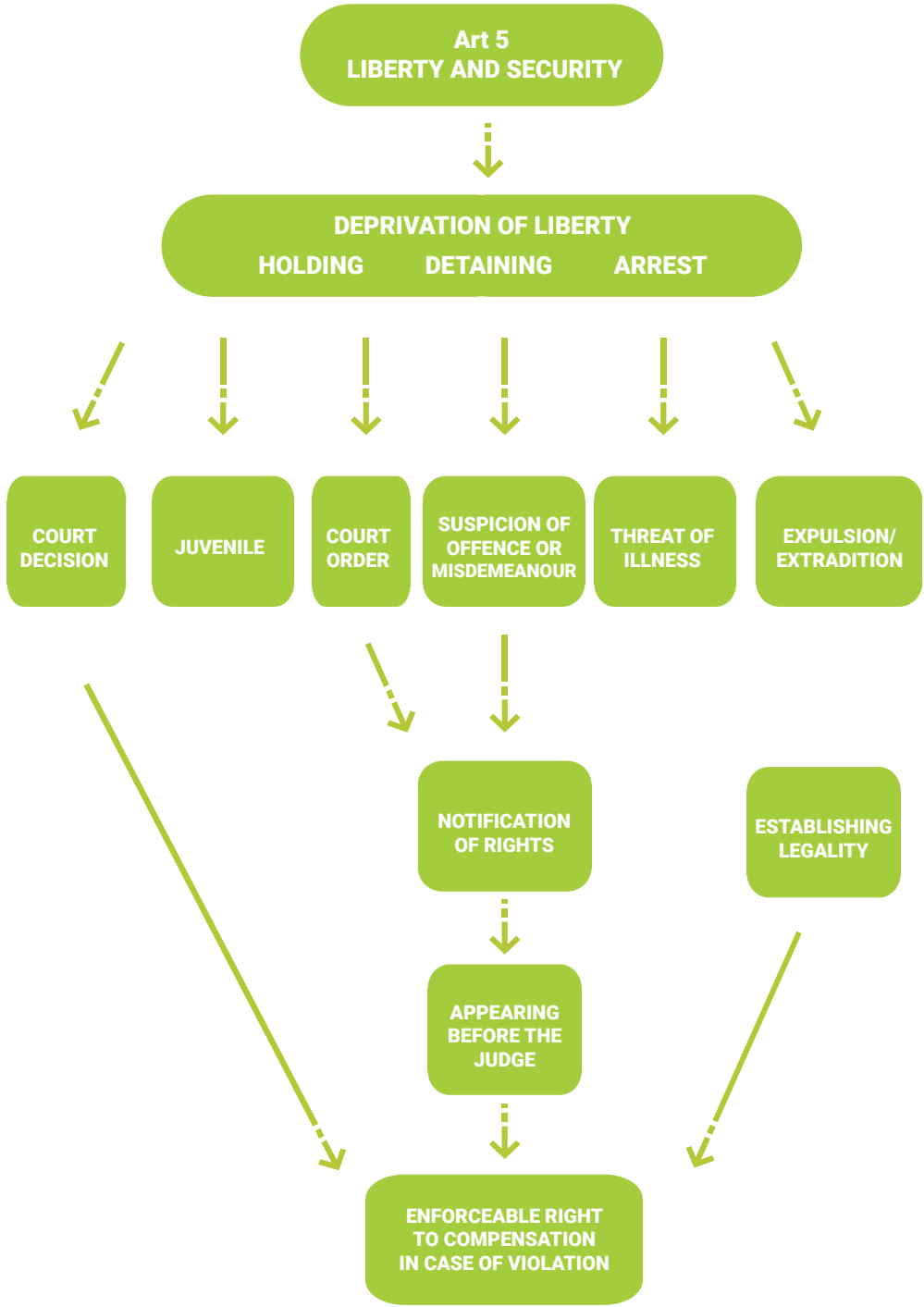
- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person 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 unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer 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.



## ETHICAL CONDUCT BY THE LAW ENFORCEMENT OFFICERS

### Key terms

#### Ethics

studies human behaviour in the frame of generally accepted moral values

#### Code

a set of principles of professional conduct.

#### Responsibility

the ability to perceive criticisms of own professional behaviour.

#### Duty

Performance of professional tasks.

#### Professionalism

Ability or skill expected of a person who is an expert in one or more fields.

### Guidelines for treatment included in international instruments and standards

- United Nations Code of Conduct for Law Enforcement Officials
- European Convention on Human Rights and Fundamental Freedoms
- European Code of Police Ethics (Recommendation of the Committee of Ministers of the Council of Europe Rec (2001)10)
- CPT standards
- Police custody CPT/Inf (92)3
- New CPT standards with reference to police custody CPT/in (2002)15-
- Access to a lawyer as a method of ill-treatment prevention CPT/In (2011)28
- Electrical discharge weapon CPT/In (2010)28
- Preventing Police Torture and other Forms of Ill-Treatment CPT/In (2019)9

### Local legal framework

- Police Code of Ethics adopted by all police agencies in Bosnia and Herzegovina

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### Operational procedures for ethical conduct by the law enforcement officers

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1. Law enforcement officer treats all person deprived of liberty in an equal manner, regardless of the crime they are suspected of, their skin colour, gender, religion, physical appearance, origin, political beliefs, sexual affiliation, education levels, etc.
2. By civilized and steady address and polite and intelligible speech to person deprived of liberty, law enforcement officer shows his respect of physical and mental integrity of a person deprived of liberty.
3. Refraining from superfluous, inappropriate and insulting comments, a law enforcement officer shows respect according to the cultural specifics of each person deprived of liberty.

For details see the chapter on Efficient communication.

4. Law enforcement officer protects from third parties or unauthorized persons all information that can be used to identify the person deprived of liberty, who is entrusted to their care. This information includes medical records, name and surname, address, date of birth, ID number, information on wages, bank account number etc.).

For more details see the chapter on Protection of personal data.

5. Law enforcement agency officer does not torture, humiliate or inhumanely treat any person deprived of their liberty.

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**Zero tolerance to any kind of abuse of power and authority means that officers treat all person deprived of liberty as they would themselves expect to be treated if, eventually, they found themselves in a similar situation.**

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For more details see the chapter on Ill-treatment.

6. Violation of the code of ethics also includes failing to warn a colleague to the risk of disclosing confidential and personal information or warning about the risk of any other illegal behaviour (e.g. ill-treatment of a detainee). The police officer warns other police officers if there is a risk of disclosure without delay.
7. Law enforcement officer is a public official. By exercising his powers legally, professionally, transparently, tolerantly, fairly and justly, he preserves the dignity of his profession. In this way, he proves his integrity and strengthens the trust of citizens in the work of the agency and its credibility. Any other (un)professional behaviour entails disciplinary or criminal liability.
8. Law enforcement officer exercises the powers entrusted by law according to the standards of the international and local legal framework.

### **Human rights checklist**

#### *Administrative and technical issues*

1. Ventilated, bright room, with temperature between 18-25 C degrees
2. No visible injuries on the person deprived of liberty
3. Satisfied basic physiological needs (food, water, toilet)
4. Efficient communication

5. Notice of rights (lawyer, doctor, informed family members)
6. Completed Questionnaire on deprivation of liberty

#### *Ethical issues and preventing procedural violations*

1. Confidentiality of personal data (not accessible to third parties)
2. No allegations of ill-treatment
3. No manipulation with liberty deprivation time (a person deprived of liberty handed over to the to the next officer in charge)

#### **Frequently asked questions**

1. What do I get from behaving ethically towards a person deprived of liberty, while he treated both victim and me, as an official person, unethically?

Law enforcement officer is legally liable for conscientious exercise of official power and may at any time be disciplined or criminally liable for the violation of Ethical code.

Official powers (such as the power to arrest and the power to use force) come with an increased responsibility. As a police officer, you are not only representing yourself but the entire law enforcement service is measured on your actions. Therefore, you have to abide to higher standards than others.

2. I know for sure that a colleague acted unethically a couple of years ago and was never held criminally liable. Who guarantees me that I will not lose my job and friends, as it happened to other whistle-blowers?

Change always starts with one man who makes the first step.

Warn                      Stop                      Notify                      Record                      Report

A differentiation has to be drawn between unethical behaviour and illegal behaviour. Not every unethical behaviour is subject to criminal liability.

It is also possible to lose the job if one keeps quiet; if the illegal act comes to light, then one might be held accountable for not reporting/aiding/abetting.

3. He was taken into custody because he killed a minor. What ethical approach he actually deserves from me?

Every suspect who had committed a crime is held accountable in court and his sentence shall be pronounced after he is found guilty. Public officials may not assume the role of a juror.

## INDEPENDENT MONITORING BODIES' MANDATE

### Key terms

#### Ratification

a confirmation given by the supreme state authorities to an international treaty concluded by the plenipotentiaries of states.

#### Convention

international agreement on a special issue.

#### European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>6</sup>

established pursuant to the Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from February 1989. The Committee is composed of 47 independent experts appointed by the Member States. It is supported by a secretariat, which has its seat in Strasbourg, France. The CPT visits places of detention in the Member States to monitor how persons deprived of their liberty are treated.

#### Subcommittee on Prevention of Torture<sup>7</sup>

established after the entry into force of the Optional Protocol to the UN Convention (OPCAT) in June 2006. The Subcommittee works directly with Member States and consists of 25 independent experts. The mandate of the SPT includes visits to places of detention in States Parties; and advise and assistance to both States Parties and National Preventive Mechanisms concerning their establishment and functioning.

#### National Preventive Mechanism

an element in the system of prevention of ill- treatment established by the Optional Protocol at the level of State Party. Its mandate includes regular visits to all places of detention and act through its recommendations on harmonisation of local practices with international standards, to propose and comment on the existing or proposed legislation. It comprises independent experts of various profiles engaged on temporary basis.

#### A place of deprivation of liberty

Cannot be defined by an exhaustive list of establishments and institutions as it would restrict and narrow the system of visits to such places, regardless of the type of the monitoring body. However, some categories by their own nature fall into the category of 'places of deprivation of liberty', for example:

- police stations
- pre-trial detention centres/pre-trial detention units in prisons
- prisons for sentenced persons
- juvenile detention centres
- premises run by border police and transit areas on the international border crossings, international ports and airports
- immigration centres and detention centres for asylum seekers

<sup>6</sup> Eng. European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT)

<sup>7</sup> Eng. Committee for the prevention of torture and inhuman or degrading treatment or punishment (SPT)



- psychiatric establishments
- premises of the security and intelligence agencies (if these have holding authorities)
- pre-trial detention units under the competence of the military police
- premises for administrative deprivation of liberty
- transportation means/transportation/escorting prisoners and detainees (police vans, etc).

### Police custody (premises - building)

a place where persons deprived of liberty are held temporarily, during the period in which police officers decide based on legal provisions on the status of a person deprived of liberty. In order to hold a person deprived of their liberty, police officers must have reasonable ground to believe that the person was involved in execution of criminal offense or a misdemeanour for which holding has been foreseen.

### Prison

establishment where person deprived of liberty are held for a longer period with the aim of enforcing the sentence of imprisonment imposed on them by the court for the criminal offense or misdemeanour they committed.

### Detention (remand) unit in prison

part of the prison where person deprived of liberty are held while the court proceedings are ongoing.

### Forensic institution

a psychiatric clinic or medical institution where the measure of security and mandatory treatment is enforced, imposed by the court on perpetrators of the crime deemed by the court partially accountable or unaccountable for their actions.

### Social care home

an institution in which an individual lives his life independently as much as possible. Depending on a degree of sanity services may include washing, bathing and dressing, feeding or assistance with the use of toilet. Considering that these institutions can also accommodate persons who are placed here by the decision of the centre for social welfare, they can be considered to be staying in the institution involuntarily, meaning that their freedom of movement is restricted.

### Guidelines for conduct on the basis of international instruments and standards

- European Convention on Human Rights and Fundamental Freedoms
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- OPCAT

## Local legal framework

- Constitution of Bosnia and Herzegovina, Annex I<sup>8</sup>

## Operational procedures for conduct during visits by international monitoring bodies

In the early 1970s, the practice of torturing person deprived of liberty was, unfortunately, widespread in all parts of the world. There were very few legal instruments to prevent such conduct. Torture mostly took place behind closed doors.

Therefore, one of the most efficient ways to prevent torture seemed to be introduction of regular, systematic, unannounced visits to places of detention by experts specialised in human rights. Currently there are two international conventions which enable a European and a universal system of visits to places of detention - European Committee and UN Subcommittee.

### Visits can be:

- Regular or periodic (approximately every four years);
  - Ad hoc, between periodic visits, if it is deemed necessary in the circumstances, for instance if there has been public unrest followed by high numbers of arrests and allegations of ill-treatment; or if the CPT wishes to check at very short notice earlier than during the next periodic visit how far a State has taken measures that were urgently recommended by the CPT at the last visit. Such visits are often focused on one specific prison or other place of detention, or on one specifically problematic area.
1. A delegation of the Committee or Subcommittee arrives at the main entrance of the police station. The members of the delegation introduce themselves by name, surname and position.
  2. The police officer returns the greeting, politely asking the members of the delegation to wait in front of the reception desk or duty office of the police station or other place of detention and requests official.
  3. The police officer at the reception checks the identity and validity of the letter of credence (authenticity of the header, stamp and signature of the competent person in the Ministry of Human Rights and Refugees of Bosnia and Herzegovina for international delegations).<sup>9</sup>
  4. The police officer at the reception, after confirming the identity and validity of the accreditations, makes a telephone call to a duty officer / station commander / head of department, etc) who gives him further instructions on how to proceed without delay.
  5. The police officer is obliged to answer specific questions of the members of the delegation regarding the treatment of person deprived of liberty accurately, honestly, precisely and with as many details as necessary.
  6. In most cases, members of the delegation come from different countries and do not speak the language of the host country where the visit takes place. If the services of interpreters are used, police officer treats interpreters in the same manner as the members of the delegation.
  7. If a member of the delegation requests access to records and written documents related to the treatment of person deprived of liberty, police officer acts accordingly.

<sup>8</sup> By ratifying the international convention listed in the annex to the Constitution of BiH, its provisions gain priority in application over all other (local) laws.

<sup>9</sup> The BiH Ministry of Human Rights and Refugees is responsible for cooperating with international monitoring bodies and appoints a liaison officer for the CPT.

8. If a member of the delegation wishes to speak in private with a person deprived of liberty, the present police officer leaves in accordance with the request made. He may be required to stay in the sight but out of a hearing area, or to withdraw completely behind the closed doors. In any case, he acts upon the request of a member of the delegation. If a person deprived of liberty presents a security risk, police officer warns members of the delegation.
9. The protocol on the departure of the delegation is determined by the senior commanding officer and the police officer acts accordingly.

## **Human rights checklist**

### *Administrative and technical issues*

1. Identification document and official accreditation requested
2. Delegation's visit reported to the commanding police officer
3. Delegation escorted from the reception to where they have requested to be brought
4. Completed visitors' log

### *Ethical issues and preventing procedural violations*

1. The answers to the delegation members' questions are honest, accurate and precise.

## **Frequently asked questions**

1. What are my duties if a CPT delegation visits my police station during my shift?

Police officers are required to fully cooperate with a CPT delegation. This includes providing them access to any place they wish to see, facilitating confidential interviews with all detainees and staff members they wish to speak to (including in the cells), and showing them any document related to deprivation of liberty they wish to consult.

2. I know my shift colleague hit person deprived of liberty yesterday because he was annoyed. He is my colleague, I understand him, and he will surely help if something like this happens to me inadvertently. They are criminals, after all, and we are only humans who make mistakes. It is not like delegation has to know everything?

In the best-case scenario, the case of ill-treatment should already have been reported through the official channels. If the CPT then requests information on possible investigations into police officers working at that particular police station, then the full information should be provided.

3. I am afraid that the interpreter will misinterpret my answers to the question of the member of the delegation. I don't speak English, but I watch a lot of movies and I understand a lot. I'm afraid the interpreter will not interpret well and then I'll be the one to blame?

The interpreters hired by the delegation are highly professional and respect the professional code. They are specialized in the issues addressed by the CPT's delegation and very often most of them use a common glossary, thus ensuring to use the same words and phrases for the key terms.

## ILL-TREATMENT ALLEGATIONS IN POLICE CUSTODY

### Key terms

#### Ill-treatment

any act or failure to act towards persons deprived of liberty leading to torture, inhuman or degrading treatment with negative effect on the mental and physical integrity of the person.

#### Impunity

the situation in which law enforcement officer who violated human right or committed some form of ill-treatment is not brought to justice and has not been held accountable for his actions.

### Guidelines for treatment based on international instruments and standard

- Universal Declaration on Human Rights
- United Nations Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment
- European Code of Police Ethics (Recommendation of the Committee of Ministers of the Council of Europe Rec (2001) 10)
- Access to a lawyer as a way to stop the ill-treatment, Excerpt from 21. General Report CPTa (CPT/Inf(2011)28-part1)
- Combating the Impunity of Torturers, Excerpt from the 14th CPT General Report, (CPT / Inf (2004) 28-part)

### Local legal framework

- Criminal Procedure Codes in BiH
- Criminal Codes in BiH
- Law on police and internal affairs of Republika Srpska
- Law on police officers of the Federation of Bosnia and Herzegovina
- Laws on Court Police in BiH
- Instructions on disciplinary proceedings in police agencies in BiH

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### Operating procedures in case of allegations of ill-treatment

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Five basic guarantees to prevent ill-treatment of PDL (lawyer, doctor, informing a family member or a third party as per choice, translator and diplomatic-consular representative) have to be applied from the first moment of liberty deprivation, regardless of how this deprivation of liberty is defined in the laws of BiH (arrest, detention, taking to custody etc.).

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1. If, during the search, officer notices physical injuries with person deprived of liberty (for example bruises, cuts, contusions, bleeding, hematoma etc.) a police officer is obliged to

enable medical assistance. The duty officer invites and organises visit of a medical doctor in the premises of the law enforcement agency or escorting of the person deprived of liberty to the emergency hospital unit. The person is issued an appropriate medical report by the medical institution authorized for issuing such reports. This report represents a confidential personal data, handling such data is explained in detail in the separate chapter of this manual.

2. A person deprived of liberty shall not be taken to a medical institution to determine the degree of injuries sustained during deprivation of liberty by police officers who have deprived the person of liberty. Officer responsible for the person deprived of liberty organises for the person to be escorted by different officers from the ones who deprived person of liberty.
3. Injuries sustained on the occasion of deprivation of liberty have to be registered in admission documentation. Every injury visible on the person deprived of liberty has to be recorded and documented together with a description of injuries in the official note on the deprivation of liberty but also photographed, provided the person deprived of liberty agrees for a photo to be taken.
4. Medical records shall be forwarded to the competent prosecutor's office/court and Professional Standards Unit. The existence of allegations of ill-treatment has to be reported without delay directly to the senior police officer and the competent prosecutor.
5. PDL shall be provided an opportunity for him/her and his/her lawyer to enter appeal, file a complaint or petition against the conduct of officers and their treatment of PDL to:
  - Any conducting police officer,
  - Head of the organizational unit whose police officers deprived person of liberty,
  - Unit (Sector) for professional standards,
  - Prosecutor,
  - Court,
  - The Human Rights Ombudsman or the NPM,
  - The parliamentary body responsible for controlling the work of the police,
  - International monitoring bodies (CPT, SPT etc.).

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### Operating procedures for conducting with the aim of impunity prevention

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Basic steps in prevention of the impunity without delay are:

warn   interrupt   declare   record   report

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1. If a police officer notices or learns that some member of police force has physically ill-treated PDL he/she shall immediately warn him/her to stop doing it.
2. The officer who has noticed signs of ill-treatment shall immediately inform a superior about all circumstances of such conduct familiar to him/her and shall make a written report subsequently (official notice).
3. A supervisor immediately stops the ill-treatment from taking place, and initiates disciplinary proceedings against the officer who was allegedly perpetrating the ill-treatment to establish his responsibility. The competent legal bodies, including a prosecutor's office, in charge of conduction of investigation, are informed without delay should the criminal responsibility be established.

4. Health care measures shall be undertaken without delay in case if person deprived of liberty is injured (suffered bodily injury) due to the ill-treatment.
5. Person deprived of liberty is transported to a health care facility for medical care. Transportation is performed by officers who were not involved in the deprivation of liberty and the disputed event.
6. The report of the ill-treatment shall be submitted to the immediate supervisor, containing all available information and evidence on the basis of which an investigation into the event can be initiated in order to determine the disciplinary and criminal responsibility of the officer who performed the ill-treatment of person deprived of liberty.
7. In the case of disciplinary and criminal proceedings, a police officer who has expressed doubts and submitted a report may be called as a witness and, in that case, he is obliged to give an honest statement.
8. Professional Standards Unit or another independent police body takes all measures and actions to ensure a lawful, complete and effective investigation of ill-treatment and human rights violations recorded in the submitted report of another police officer, or if there was a complaint (petition) received by a citizen (third party).
9. The identity of the person who submitted the report, application or complaint (petition) as well as the content of the said petition must be protected from unauthorized access by third parties.

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### Operating procedures for the internal investigation of allegations of abuse

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1. The police officer who becomes aware of the allegations of ill-treatment or witnesses ill-treatment, immediately informs the senior officer verbally, records the allegations in writing and drafts an official note thereof.
2. Upon the receipt of the written notice, report, complaint (petition) on the alleged abuse of PDL (orally for the record or in written), the supervisor immediately takes measures and actions aiming to secure evidence which may be later used in the disciplinary proceedings in order to prove the existence of disciplinary and criminal responsibility.
3. The immediate supervisor does not allow the officer against whom allegations were made any further dealings with the person deprived of liberty who made the allegations.

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International good practice is that officers of the police station/unit in which allegations against ill-treatment have been made do not participate in any examination or investigation of the alleged ill-treatment.

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4. The above-mentioned written notice, together with all accompanied documents and evidence supervisor forwards within 24 hours to his senior officer (director) and all this shall be, at later stage, forwarded to the officers in charge of internal control and they will be ordered to conduct internal processing of the written notice. Other possibility is to submit a written notice directly to the Sector for the Internal Control and Professional Standards who will conduct and internal proceeding and the senior supervisor (director) has to be informed about it.
5. Prior to all mentioned steps, the persons in question receives all medical assistance and other types of protection (transfer of PDL outside of the organizational unit, appointment of other officers to work with the person, etc.).
6. Internal control officers or officers of the unit for professional standards shall conduct internal proceedings on the basis of all submitted facts (an interview is conducted with the PDL and all other persons who have certain knowledge about the disputed event, evidence is collected, other services are involved if there are elements of a criminal offense (crime inspectors) with

- prior informing of the prosecutor, after which certain expertise is performed) and after the internal procedure, a decision on conducting disciplinary and criminal proceedings is made.
7. In some more complex case (and where there are some relevant evidence) an officer who has committed an ill-treatment gets immediately deprived of his liberty (in consultation with the prosecutor and/or immediate supervisor who immediately notifies the senior executive-director) and brings a person to the prosecutor with a report and all the evidence gathered, after which the competent prosecutor conducts procedural actions and possibly proposes detention if there are reasons for it. In such case, the employee is immediately removed from the service (gets suspended).
  8. Once the existence of disciplinary accountability for the officer reported for ill-treatment has been established, the employee may preferably be removed from service (suspension), after which a disciplinary procedure is carried out according to the binding regulations and an appropriate disciplinary measure is imposed on the officer. (A disciplinary measure "termination of employment in disciplinary proceedings" may also be imposed on an officer).
  9. An officer alleged for ill-treatment shall be immediately removed from service (suspended) if the acts he committed present a criminal offense for which an indictment was confirmed and if he was ordered to detention, or if it is a more serious professional misconduct so that his presence in the service harms the interests of the service.
  10. When conducting internal and disciplinary proceedings, the officer for whom there are allegations of ill-treatment has the right to be informed about the content of the report, complaint or petition and to give his statement. Complete disciplinary file is submitted to the officer for inspection prior to scheduling a session of disciplinary commission and the officer is called for public hearing session, leaving him a reasonable time period to prepare his defence (8-15 days) before the date set for a session of disciplinary commission. At the same time, the officer has the right to a lawyer, the right to present his defence, to propose and call his witnesses and experts, the right to a fair trial and the right to file an appeal.
  11. If the criminal responsibility is established and an indictment is filed against the officer, he is immediately suspended (if it is not already), followed by criminal procedure implemented until the criminal sanction is imposed by the court.

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After conducted investigation of the submission and credibility of allegations, police office can:

- be relieved of charges for ill-treatment;
  - be punished with disciplinary measure, even dismissed from his job;
  - be criminally sanctioned, receive a fine, or even imprisonment;
  - be punished with disciplinary measure and even be criminally sanctioned.
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## **Human rights checklist**

### *Administrative and technical issues*

1. Medical assistance was provided to the abused person.
2. The abuse report contains all available data and evidence.

### *Ethical issues and preventing procedural violations*

1. The identity of the officer who reported the ill-treatment is protected.

## **Frequently asked questions**

1. What should I do if I notice that a colleague is abusing a person deprived of liberty who was taken into custody last night?

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**warn against   interrupt   declare   record   report**

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2. What can happen to my colleague who has been found criminally liable for ill-treatment?

If he is sentenced to unconditional imprisonment of at least 6 months, the employee's employment is automatically terminated by force of law. However, the employee's employment may be terminated in disciplinary proceedings, before the end of the criminal proceedings due to the fact that these two proceedings (disciplinary and criminal) are independent (separate, i.e. do not affect each other).

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Annex 7 of this Manual contains white paper for discussion on the possibilities and manners for improving interagency cooperation in the fight against ill-treatment.

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## PROPER RECORDING OF THE TIME OF DEPRIVATION OF LIBERTY

### Key terms

#### Time of deprivation of liberty

starts with the moment of arrest and lasts until the moment of release, or handing over the person to another agency for further treatment. In CPT terminology, this is the moment from which a person is obliged to remain with the police and cannot choose to leave.

#### The moment of deprivation of liberty

the moment of the arrest

#### The act of deprivation of liberty

arrest, deprivation of the right of movement

### Guidelines for treatment based on international instruments and standards

- European Convention on Human Rights
- Police Detention, Excerpt from 2nd CPT General Report, (CPT/Inf(92)3-part1)

### Local legal framework

- Law on Police and Internal Affairs of the Republika Srpska
- Laws on internal affairs of cantons in the Federation of BiH
- Laws on cantonal police officers in the Federation of BiH
- Criminal Procedure Codes in BiH
- Law on Police Officers of BiH

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### Operational procedures in case of suspected manipulation with the precise time of deprivation of liberty

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1. Law enforcement officers deprive persons of their liberty under the following circumstances:
  - Based on written court order;
  - Without court order.
2. The court delivers a written order to the protocol of the law enforcement agency competent organizational unit. The commanding officer instructs junior officer to assess the risk and the degree of complexity of the deprivation of liberty.

Note: A suggested way to perform this assessment can be found in Appendix 1 to this Handbook.
3. Deprivation of liberty without a court order is carried out on the basis of the legal provisions and the assessment of a police officer.

Note: The police officer makes an assessment based on the parameters listed in Appendix 2 of this Handbook.

4. A person or persons deprived of liberty are immediately or as soon as objectively possible be informed of the fact that he has been deprived of his liberty (reasons for deprivation).

The moment of deprivation of liberty begins with the act of deprivation of liberty, regardless of whether the person was informed of that fact or not.

5. The fact of deprivation of liberty is recorded in writing without delay, or the latest, upon the return of the officer who has conducted deprivation of liberty to the organizational unit.
6. Deprivation of liberty shall be reported orally without delay to the shift leader or immediate supervisor by means of communication, telephone, orally or otherwise. The mode and time of oral reporting is recorded in an official note.
7. Five core safeguards against ill-treatment of persons deprived of liberty (lawyer, doctor, notification of a family member or third party by choice, access to interpreter and diplomatic-consular representative) are applied from the outset of deprivation of liberty, regardless of how the deprivation of liberty has been determined in BiH laws (arrest, holding, taking into custody, etc.).
8. A person deprived of liberty is released or handed over to another authority immediately upon the cessation of the grounds for deprivation of liberty and by order of a court or prosecutor's office, or upon the assessment of reasons for deprivation of liberty by an official and at the latest after the expiration of the period of 12/24/72 hours. The officer assesses the reasons for deprivation of liberty in agreement with the prosecutor or the court. Release is accompanied with a release certificate
9. Calculation of the time of deprivation of liberty runs from the moment of deprivation of liberty. The risk of time manipulation arises precisely from that moment - the moment of deprivation of liberty.
10. Manipulation with the time of deprivation of liberty entails disciplinary and criminal responsibility of all police officers who were aware of the manipulation of the time of deprivation of liberty.
11. If the police officer suspects that one of the colleagues is manipulating the time of deprivation of liberty, he warns the colleague that the term for deprivation of liberty has expired. He then reports to the immediate supervisor and makes an official note. An officer who suspects that there is a manipulation of deprivation of liberty time informs the person deprived of liberty of his suspicion and how to file a complaint, i.e. demand protection of their own rights.
12. In the case of investigating, disciplinary and criminal proceedings, a police officer who has expressed suspicion may be called as a witness in which case he would be obliged to give an honest statement.
13. Person deprived of liberty has a right to file a complaint to:
  - police officer releasing him from custody,
  - the head of the organizational unit whose police officers deprived the person of liberty,
  - Professional Standards Unit,
  - prosecutor,
  - court,
  - the Human Rights Ombudsman
  - parliamentary body responsible for monitoring police work

Police officers inform the person about to be released from custody about the possibilities and modalities of filing a complaint or reporting irregularities or misconduct of police officers.

If the suspicion of irregularities / misconduct is not proven, the person is not responsible for filing a complaint or report (unless it was a false report).

14. Any police officers aware of the alleged manipulation of the time of deprivation of liberty have to provide an honest statement and share the knowledge they have in relation to the time of deprivation of liberty. Dishonest or incomplete testimony entails criminal and disciplinary responsibility.

## **Human rights checklist**

### *Administrative and technical issues*

1. Deprivation of liberty is lawful, based court order or assessment of the officer.
2. Person deprived of liberty is handed over to the next acting officer without delay.

### *Ethical issues and preventing procedural violations*

1. Suspicion of manipulation of time of deprivation of liberty reported to the commanding officer without delay.
2. A person deprived of liberty instructed on the possibility of filing a complaint.

## **Frequently asked questions**

1. What are the possible ways to manipulate with the time of deprivation of liberty?

Forms of manipulations with the deprivation of liberty time:

- Failure to inform and failure to record exact time of deprivation of liberty;
- Failure to include the time the person was held in the time allowed for deprivation of liberty;
- Holding lasting longer than the statutory deadlines;
- Misuse of rights for the assessment of eligible conditions for release<sup>10</sup>;
- Deliberate stalling of the process of criminal processing of a person for the purpose of longer detention;
- Consecutive deprivation of liberty without the actual release (between organizational units and / or agencies)<sup>11</sup>.

2. How can the manipulation of the time of deprivation of liberty be prevented?

Mechanisms to prevent manipulation of the time of deprivation of liberty:

- Informing and recording the exact time of deprivation of liberty,
- Informing the person about the longest period during which he can be held,
- Taking care of the expiration of the period of detention,
- Warning other officers about the expiration of terms for deprivation of liberty,
- Handing over Notice of deprivation of liberty to a police officer responsible for the admission of a person deprived of liberty.

<sup>10</sup> For example, a police officer detains a person with over 1.5g of alcohol in his blood and does not release him after the 12-hour deadline, under the pretense that the person has not yet sobered up.

<sup>11</sup> For example, a person is released from one police station, but immediately after leaving the detention facility, he is deprived of liberty by officers of another police station or another police agency.

## TAKING OVER AND HANDING OVER PERSONS DEPRIVED OF LIBERTY

### Key terms

#### Holding person deprived of liberty in temporary police custody

the act of deprivation of liberty and holding a person in police premises for the duration of 24 hrs/72 hrs.

#### Police detention or police premises for temporary holding or police station/unit

the premise or place in which persons deprived of liberty are temporarily held during 24/72 hrs period.

#### Taking over person deprived of liberty (between the agencies)

physical act of taking over or admitting person deprived of liberty for further treatment processing from:

- an officer of another organisational unit within the same law enforcement agency,
- an officer of another agency.

#### Handing over persons deprived of liberty

physical act of handing over person deprived of liberty for further processing to:

- an officer from own organisational unit
- an officer of another organisational unit within the same agency
- an officer of another agency.

### Guidelines for treatment based on international instruments and standard

- Transport of detainees and prisoners, Information document, (CPT/Inf (2018)24)

### Local legal framework

- Criminal Procedure Codes in BiH
- Law on police officers in the Federation of BiH
- Law on police and internal affairs of Republika Srpska
- Laws on Court Police in BiH

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### Operational procedures for taking over and handing over person deprived of liberty

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Person deprived of liberty can be taken over and handed over in the police holding premises in the holding premises of the court police. They can be taken and handed over in other police agencies, Service for Foreigner Affairs, prison establishments, prosecutor offices and court premises.

Professional conduct towards a person deprived of liberty at the very beginning of the holding period or police custody is extremely important because the vast majority of people are at their most vulnerable at that very moment. The risk of self-harm or even suicide attempt is very high in this period.

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1. Takeover and handover of persons deprived of liberty is carried out on official premises specifically intended or appropriate for that purpose. These operations are conducted with the aim of holding or escort of a person deprived of liberty based on a legal order issued by a court or a prosecutor's office or at the request of a police agency.
2. Before starting admission, handover or takeover of a person deprived of liberty, the police officer introduces himself by saying his name and job title and informs the person of the place where the official tasks will be carried out. The person deprived of liberty is verbally informed about his rights and duties, as well as about the measures and actions to be taken (search, accommodation, escort).
3. Takeover or handover of a person deprived of liberty is conducted by at least two police officers, and transport of the person is carried out in official vehicles intended for transport of the persons deprived of liberty in concrete cases.
4. A police officer individually and personally takes over and hands over the persons deprived of liberty that he is responsible for. During takeover and handover, the police officer protects and prevents unauthorised access by third persons to ensure the protection of the person's personal data.

More details on ways to protect personal data can be found in a separate chapter of this Handbook.

5. When taking over a person deprived of liberty, the police officer asks the person about his potential special needs in terms of physiological needs, food, medical assistance.

*The protocol for meeting immediate needs is identical to the protocol for reception of persons.*

6. Upon takeover or handover of persons deprived of liberty, a security check or search of the persons is performed with the aim of identifying prohibited objects and potential visible injuries on the person deprived of liberty. Appropriate official documentation is issued for takeover and handover of persons deprived of liberty. During the search of a person deprived of liberty, objects that were not used to commit a criminal offence are temporarily seized.

*Searches and handling of temporarily seized objects are explained in a separate chapter of this Handbook. The records to be filled out are shown in Annex 3.*

7. Force or measures of control and restraint may be applied during takeover or handover of persons deprived of liberty only in the measure that is necessary to prevent self-harm, escape or an attack on an official or another person. The use of force must be proportionate to the resistance, of minimum necessary duration and must respect the pain threshold.
8. Before using force, all other possible forms of communication should be exhausted. A detailed report is filed on the degree of force used, including precise and accurately stated circumstances. A person deprived of liberty on whom force has been used is obligatorily examined by a doctor in order to dispel potential ill-treatment allegations. Medical findings are part of the report on use of force.
9. Upon taking over a person deprived of liberty, the police officer becomes responsible for the person, as well as for respecting his rights. This responsibility lasts until the moment of handover. The right to notify a family member of arrest also includes that the family are informed of every change of police station (in case of a handover).
10. A person deprived of liberty has the right to medical assistance, which they may request at any moment during takeover or handover.

The medical assistance protocol is the same as in the case of detention of a person deprived of liberty in the holding premises and is explained in a separate chapter of the Handbook.

11. The police officer is responsible for accurate and complete records, which include treatment of the person deprived of liberty from takeover to handover.

Examples of records kept can be found in Annex 3 of this Handbook.

12. The duty supervising official is informed without delay of the takeover or handover of a person deprived of liberty, and the police officer submits a detailed official written report as soon as possible.

It is important to respect deadlines in order to avoid allegations of manipulation with the duration of deprivation of liberty. This topic is explained in a separate chapter of the Handbook.

13. During takeover or handover, police officers inform the person deprived of liberty of the possibilities and manner of lodging complaints or making allegations of ill-treatment or negligence in the execution of duties by police officers. Complaints are recorded in the documentation on the takeover or handover of the person deprived of liberty and, together with the official report (response by police officers to allegations from the complaint), submitted to the Professional Standards Unit.
14. All police officers who have information about an alleged violation of rights during takeover or handover of a person deprived of liberty are obliged to give a truthful statement about all the information to the investigator in an internal investigation procedure. An untruthful or incomplete statement entails criminal and disciplinary responsibility.

## **Human rights checklist**

### *Administrative and technical issues*

1. Appropriate premises for takeover and handover of persons provided
2. Person deprived of liberty informed of his rights
3. Search conducted (two officials of the same gender, without violating the person's dignity)

### *Ethical issues and preventing procedural violations*

1. Confidentiality of personal data respected
2. No allegations of ill-treatment
3. No allegations of manipulation with the duration of deprivation of liberty

## **Frequently asked questions**

1. What are my obligations when taking over or handing over a person deprived of liberty given that the person has already been received and entered into records?

All prison officers dealing with persons deprived of liberty must check whether the officer dealing previously with the person deprived of liberty has informed him about his rights and must make an effort to enable the person to exercise his rights.

The police officer in charge of takeover and handover of a person deprived of liberty must:

- be professional in dealing with the person deprived of liberty, communicate efficiently without discrimination on any ground;
- know the rights of persons deprived of liberty and inform the person of those verbally, without delay;
- prevent, signal and report any unlawful treatment of a person deprived of liberty, e.g. ill-treatment;
- inform the person deprived of liberty that he has the right to lodge a complaint against his treatment by police officers at any point.

## ESCORT AND SUPERVISION OF PERSONS DEPRIVED OF LIBERTY

### Key concepts

#### Escort

Moving a person deprived of liberty from one location to another (e.g., from the police station to the prison, from one prison to another, to the court building or hospital, or from a border crossing to a detention centre for immigrants).

#### Special police vehicle for transport of persons deprived of liberty

A police vehicle meeting the conditions for those staying in it, however briefly, to be safe and not to endure physical and/or psychological suffering that could be considered as inhuman or degrading treatment.

#### Supervision of persons deprived of liberty

Visually observing and controlling person deprived of liberty held in any official premise.

### Guidelines for treatment based on international instruments and standards

The June 2018 factsheet of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) prescribes which material requirements should be met by a vehicle used to transport persons deprived of liberty. Thus, individual cubicles measuring less than 0.6 square metres should not be used for transporting a person over short distances, and for longer distances the space must be much larger, and if several persons are transported in one compartment, it must not measure less than 0.4 square metres per person for shorter distances, while for longer journeys and transport of persons over longer distances, the space should measure at least 0.6 square metres per person.

"All transport vehicles should be clean, sufficiently lit and ventilated, and heated appropriately.

The necessary arrangements should be made to provide detainees with drinking water as required and, for long journeys/distances, food at appropriate intervals.

In the context of long journeys, arrangements should be made to allow detainees to have access to sanitary facilities or to satisfy the needs of nature in conditions offering sufficient privacy, hygiene and dignity. When travelling by road, this implies the organisation of regular stops.

Detainees brought before a court following a long journey should be placed under conditions which guarantee respect for their dignity. In particular, they should be offered appropriate rest and the opportunity to wash and change their clothes."<sup>12</sup>

CPT standards also prescribe the right of access to a doctor if there are allegations of injuries or human rights violations occurring during the escort conducted by law enforcement officials.

"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)."<sup>13</sup>

<sup>12</sup> Excerpts from the CPT Factsheet, Transport of Detainees and Prisoners, CPT/Inf (2018)24

<sup>13</sup> Excerpts from the 12th General Report [CPT/Inf (2002) 15]



In more recent reports, CPT standards also devote attention to escort of foreign nationals during expulsion procedures.

"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."<sup>14</sup>

"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 the foreigner for resisting or which cause unnecessary pain.

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."<sup>15</sup>

## Local legal framework

- **Law on police and internal affairs of Republika Srpska**
- **Law on police officers in the Federation of BiH**
- **Laws on Court Police in BiH**

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## Operating procedures for escort of persons deprived of liberty

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1. Before carrying out an escort operation, law enforcement officials draw up a plan for escorting a person deprived of liberty with a view to protecting the life and health of the person escorted.

### The plan includes:

- The legal basis and a brief introduction,
- A security assessment and a situation assessment,
- Forecast as to how the escort of the person deprived of liberty might unfold,
- Measures of operational/technical and physical security,
- Traffic safety measures,
- Communications plan,

<sup>14</sup> Excerpts from the 7th General Report [CPT/Inf (97) 10]

<sup>15</sup> Excerpts from the 13th General Report [CPT/Inf (2003) 35]

- Measures of logistical security,
- Recapitulation of manpower and materials and equipment deployed,
- A sketch of the route with envisaged backup routes as well as hospitals and health centres marked on the route,
- Signature of the responsible person and approval of his senior officer.

An example of a detailed escort plan can be found in Annex 6 of this Handbook.

2. The identity of a person deprived of liberty is protected from third persons in order to reduce the risk of attack on the escort vehicle so as to protect the life of the person being escorted and his right to privacy.
3. Law enforcement officials respect the mental and physical integrity of the person deprived of liberty that they are escorting (access to water, food, toilet, etc. ensured).
4. A person deprived of liberty is entitled to lodge a complaint:
  - with the police officer releasing him,
  - with the head of the organisational unit whose police officers deprived him of liberty,
  - with the Professional Standards Unit (Department),
  - with a prosecutor,
  - with a court,
  - with the Human Rights Ombudsman,
  - with the parliamentary body responsible for oversight of police operations
  - ECtHR, Human Rights Committee, CAT.
5. Access to a doctor is provided in all the cases where the health or life of a person deprived of liberty is in danger, as well as at his request and in case of allegations of ill-treatment during escort.

In urgent cases of health problems occurring during escort, an ambulance may be called to come to the location of the escort vehicle. At the assessment by the head of the escort team, the escort route may be changed and the vehicle re-routed to the closest health care institution. If there is no head of the escort team, the communications are used to notify the commanding official directly, and a written report including all the circumstances is submitted to the senior officers without delay upon return from escort.

6. An escort report is drawn up in case of allegations of ill-treatment made by the person deprived of liberty. A certificate on person's handover to the authorities of another State in intact physical and mental state is also drawn up.

A detailed procedure for reporting on ill-treatment allegations can be found in a separate chapter of this Handbook.

## **Human rights checklist**

### *Administrative-technical framework*

1. Escort carried out in a special police vehicle
2. An escort plan drawn up with envisaged locations for satisfying physiological needs and for rest
3. Functional complaint mechanisms

### *Ethical framework and prevention of violation or abuse of procedures*

1. Excessive or disproportionate force was not used during escort
2. Access to a doctor provided without delay
3. Overly long trips and stays within the vehicle have been avoided

## **Frequently asked questions**

1. The special police vehicle is already taken and I need to urgently transport a person deprived of liberty from point A to point B. May I use a regular police vehicle for transport?

The purpose of escort conducted by law enforcement officials is implementing the legal procedure in a safe manner. Person deprived of liberty can be transported in a regular police car if it is safe for both the detainee and the escorting officers.

Due attention needs to be paid though to the possibility of self-harm, which is especially problematic in this critical period from the moment of deprivation of liberty at the place of deprivation of liberty to the arrival at official premises where admission takes place and potential special needs of the person deprived of liberty are assessed.

## NOTIFYING PERSONS DEPRIVED OF LIBERTY ABOUT THEIR RIGHTS AND ENABLING THEM TO EXERCIZE THESE RIGHTS

### Key terms

#### Notifying person deprived of liberty about the rights

safeguard of her best interests, together with preservation of physical and mental integrity and dignity; give her the opportunity to be equal in all proceedings against her conducted by public authorities.

#### Violations of human rights

arise when state bodies do not fulfil, ignore or deny basic human rights.

Most human rights can be subject to limitations (for a legitimate purpose, if foreseen in law, necessary and proportionate). Only if the right was limited disproportionately, or unnecessarily, we speak of a “violation of human rights”. These violations can be due to action or inaction by public officials.

#### Exercising rights

fulfilling obligations of the law enforcement officers towards a person deprived of liberty.

### Guidelines for treatment based on international instruments and standard

- European Convention on Human Rights and Fundamental Freedoms
- Police Detention, Excerpt from the 21st CPT General Report, (CPT / Inf (92) 3-part1

### Local legal framework

- Criminal Procedure Codes in BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers in the Federation of BiH
- Laws on Court Police in BiH

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### Operational procedures for notifying persons deprived of liberty of their rights

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1. Person deprived of liberty is notified of their rights orally, in a mother tongue, or in a tongue that person understands. If she does not understand any of the official languages used at the police station, she is informed about her right to have an interpreter. Further proceedings are suspended until the arrival of the interpreter.

Some agencies learn in advance about the arrival of a foreign national to the custody and a certified interpreter/court translator comes to the detention premises even before the foreign national deprived of liberty does. The police officer informs the chief officer in writing about the need to provide interpretation and the interpreter is hired from the list of court-sworn interpreters.

It is a good practice in more and more European countries (and in line with CPT standards) to provide persons deprived of their liberty also with written information on their rights. These information leaflets should exist in various languages and contain information on rights in simple words. Detainees should be allowed to keep a copy of these leaflets. The CPT recommended the introduction of such leaflets in reports to BiH.

2. Person deprived of liberty is informed orally immediately after deprivation of liberty of the reason for the deprivation of liberty and of charges. The notification of any charges against her is delivered in writing as soon as possible.
3. Law enforcement officer informs person deprived of liberty about the right to satisfy her physiological needs, and how to do so (food, water, toilet, etc.). The person is not to be left without supervision not for a moment, due to security reasons and protection of her life (risk of self-harm or suicide). In case of the need to use the toilet, the person is accompanied by an officer of the same sex, the toilet door remains open, but the officer stands out of sight to protect privacy.
4. Law enforcement agency officer informs a person deprived of liberty about the right to access a doctor. If the person deprived of liberty refuses medical assistance, written records thereof are mandatory. Person deprived of liberty is informed also about the right to be medically examined by a doctor of her choice (which does not represent an examination by a doctor engaged by the law enforcement agency).
5. If the medical examination is urgent, the officer calls the emergency medical services. If it becomes necessary to determine the degree of injury, regardless of the manner in which the injury occurred, the person is escorted by a police patrol to the emergency medical centre. The person is not escorted by officers suspected of inflicting injuries. The person may ask the officer to call a doctor of her choice, but in that case, she bears the costs of the treatment herself and this is emphasized to her.
6. Persons who use regular medical therapy are allowed to take therapy (prescribed medications).

In some agencies in BiH, the person is taken out of the cell/ holding premises and consumes medical therapy in the presence of a police officer.

Before the arrest, the officer checks that the person deprived of liberty took the medicine with him. The need to take medication is confirmed from the doctor's prescription. The officer takes therapy / medication from the person being deprived of liberty and brings it to the agency's premises. When a person is taken over in the detention facilities, the therapy is handed over to the competent officer, with a note on whether the person has taken the therapy or not. If the arrest is made outside the facility, in the open, a person deprived of liberty can subsequently ask a relative or some third party by her choice to bring medication / therapy to the agency's premises.

7. Law enforcement agency officer orally informs person deprived of liberty immediately after deprivation of liberty about the four fundamental rights:
  - Notification of family members,
  - Notification of consular officer or another foreign official,
  - contact a lawyer,
  - access to medical assistance.
8. In the further course of the procedure, the person signs the records (most often in the Questionnaire which is also mentioned in the chapter of this handbook on admission and taking person deprived of liberty and in Appendix 4) and confirms with her signature that she has been notified about rights.
9. Person deprived of liberty is informed that she has the right to inform her immediate family or a third person of her choice, or the consular officer of a foreign state of which she is a

national, of her deprivation of liberty.

Procedures vary, in some agency's notification is given immediately upon arrest, and in some upon apprehension.

10. Person deprived of liberty is given feedback on whether it has been possible to inform her family, consular officer of a foreign state of which she is a national or another person of her deprivation of liberty.

It is a good practice (and indeed foreseen by the EU Directive on Access to a Lawyer, which provides the right for suspects or accused deprived of their liberty not only to have a third person informed of arrest (Art. 5), but also to communicate with a third person nominated by them (Art. 6), subject to certain limitations) to let the person make a personal phone call (in the presence of the officer).

If there are doubts whether the phone call could jeopardise the investigation, the officer should immediately contact the responsible investigators or superiors to verify whether a phone call can be permitted.

11. The family and/or consular officer is not notified if the person deprived of liberty expressly objects, and the refusal to do so is duly recorded.
12. The police officer informs the competent social welfare body in writing about the deprivation of liberty if it is necessary to care for her children and/or other family members (who were in her care before the arrest).

In practice, duty officers of some law enforcement agencies are in regular telephone contact with duty officers of social welfare centres and these notifications are exchanged orally.

13. Person deprived of liberty is informed about her right to present her defence, receiving, at the same time, instructions that she is not obliged to testify or answer any questions asked. She is also informed about her right to defend herself in person, by an appointed lawyer or through a lawyer of her choice, at all stages of the proceedings. She is instructed that a lawyer would be appointed at her request if she is unable to bear the costs of her defence because of her financial situation or if the interests of justice so require.
14. The good practice is for the police officer to immediately and without delay enable person deprived of liberty to consult the list of ex officio lawyers, in order for the person deprived of liberty to call a lawyer of his own choice. Above all, it would be highly unethical for the police officer to influence detainees' choice of a lawyer in any way. All communication with lawyer on legal matters between a person deprived of liberty and their counsel shall be confidential.

Details are contained in a separate chapter of this Handbook on handing over persons deprived of liberty.

15. The officer informs the person deprived of liberty about her hearing being recorded and that the room is under video surveillance. The person is also informed that she has the right to request that the recording be reproduced to her in order to verify her statement.
16. Notice of all rights with which a person deprived of liberty is verbally informed is recorded in the Questionnaire on a person deprived of liberty (form to be completed at the time of admission).

Note: An overview of the official registries and records is in Appendix 3 of this Handbook.

## Human rights checklist

### *Administrative and technical issues*

1. Access to doctor and lawyer
2. Informed family or third party of their choice
3. Provided an interpreter and a visit by a consular representative
4. Completed registry log in accordance with applicable bylaws

### *Ethical issues and preventing procedural violations*

1. Four key rights have been exercised as a guarantee against ill-treatment

## **Frequently asked questions**

1. Why exactly these three rights - the right to a doctor, a lawyer and to inform the family - are the basic mechanisms against ill-treatment?

Persons deprived of liberty are considered a vulnerable category of the population due to limited movement and reduced ability to communicate with the outside world after deprivation of liberty. Since according to the legal system in BiH, every person is innocent until proven guilty in court, a person deprived of liberty is given an opportunity to adapt more easily to the life in closed environment.

2. Nobody picks up at the number provided; do I have to try again or let him/her call somebody else?

A police officer must allow repeated attempts to call the phone number until the contact is made, even if it means making five calls. Also, person deprived of liberty can call someone else from the pre-approved list of phone calls.

3. The person looks healthy to me, yet he/she insists on seeing a doctor. Do I have to grant this wish? Does he/she have to tell me why they need a doctor so I can better assess whether I should call one?

A police officer must comply with the detainee's request to access medical assistance. The person deprived of liberty does not need to explain why he wishes to see a doctor and the police officer has no right to assess the detainee's need to see the doctor or seek medical assistance.

4. The lawyer is late, can I still start questioning the detainee?

No!

## PLACEMENT OF PERSONS DEPRIVED OF LIBERTY IN APPROPRIATE HOLDING OR DETENTION PREMISES

### Key terms

#### Detention premises

Any official premise holding a person deprived of liberty under the supervision of a law enforcement officer.

#### Placement of a person deprived of liberty

Bringing person deprived of liberty into an official holding premise, supervision of the person during his stay and release from that premise.

### Guidelines for treatment based on international instruments and standard

Premises where person deprived of liberty are placed must meet the basic technical and hygienic requirements for the stay of person deprived of liberty in order to respect their human rights. The CPT's standards also require that the premises shall be of an appropriate size and that the placement of person deprived of liberty shall be such as not to accommodate too many persons.

"Following criteria (which should be viewed as desirable rather than minimum standards) are currently used when assessing the size of police cells intended for the placement of one user to stay longer than a couple of hours: approximately 7 square metres, 2 metres or more between the walls, 2.5 metres between the floor and ceiling<sup>16</sup>."

Police premises for the detention of person deprived of liberty must be adequately lit, preferably with daylight, and if there is no possibility of daylight provide sufficient illumination with artificial light.

"LUX level (luminous emittance) of 5-8 was measured by the delegation at the time of the visit which is very dark (equivalent to twilight) while reading in the room requires a level of 250 LUX or higher"<sup>17</sup>.

### Local legal framework

- Instructions for dealing with persons deprived of liberty in police agencies in BiH

### Operational procedures for placing person deprived of liberty in holding or detention premises

When placing a person deprived of liberty care must be taken that persons of the opposite sex cannot be accommodated in the same premises, nor minors with adults.

1. A police officer visually checks the premises intended to hold persons deprived of liberty and removes all objects suitable for inflicting self-harm or injuries on another person or officers.
2. If there is a ventilation system in the premise, the police officer starts it. If it does not exist, then the officer at least simply opens the windows and airs the premise at regular intervals so that the persons deprived of liberty have access to fresh air.
3. Similar protocol is used with regards to heating the premise. Police officer sets the thermometer, if he can access it, to a temperature that corresponds to the current weather conditions.

<sup>16</sup> Excerpt from the CPT's Second General Report, CPT / Inf (92) 3

<sup>17</sup> Excerpt from the CPT's Report to the Government of BiH, CPT (2019) 710



4. Police officer accommodates only persons deprived of liberty of the same sex in the multiple occupancy holding cells. Juveniles do not share accommodation with adults.
5. Premises are furnished with means of rest (bed, sleeping platforms and mattress), appropriate blankets and clean linen. If a person deprived of liberty is detained for more than 8 (eight) hours in police custody, the police officer provides for his night rest by obtaining clean bedding from the pantry. The holding premises are thoroughly cleaned after each stay, police officer calls for cleaners and clean bedding. It is inadmissible to keep detained persons overnight in offices but that every person who is obliged to remain with the police overnight is kept in a cell with a bed/plinth and mattress. Unfortunately, the CPT continues to find a practice in BiH of keeping detainees overnight handcuffed to fixed objects in offices.
6. Person deprived of liberty staying in detention facilities are provided with unimpeded access to the sanitary facilities if it is not already part of the holding premises. If there is no toilet in the cell – holding premises, the person is accompanied to the bathroom by an officer of the same sex for security reasons. The bathroom door does not close, but the officer remains out of sight to protect the privacy of the person deprived of liberty.
7. Hygienic products for maintaining personal hygiene are also provided to person deprived of liberty from the existing stocks. The officer simply brings the hygiene supplies from the pantry and records it. Person deprived of liberty can use his own hygiene products, should he wish so.
8. Person deprived of liberty in holding premises must be provided with three meals a day (with at least one warm meal) in regular intervals (i.e, breakfast, lunch, dinner). Most law enforcement agencies in BiH have allocated budget funds for this purpose. Detainees must be provided with drinking water throughout their stay.

Note: In practice, a police officer procures funds for this purpose and orders food or someone goes to a bakery or other similar facility. In some agencies it is possible to require a stock of ration packs. E.g. the institution that ordered the detention provides the meal by having an officer buying the meal and the invoice is delivered to the institution which ordered detention.

9. Items temporarily seized from person deprived of liberty are placed and kept in appropriate storage (lockers, cassettes, etc.).

Detailed procedure for the temporary seizure of items is in a separate chapter of this Handbook.

10. Holding premises have separate space for searches but searches can be carried out also in other premises fit for that purpose (e.g. accommodation cell), provided these are not exposed to persons who should not have access to it during the search.

The principles underlying searches in police agencies were described in more detail in the Guidelines for dealing with persons deprived of liberty in closed environment, as well as in a separate chapter of this Handbook.

11. Access to the holding premises is granted only to officials with special approval of the officers in charge of the premises, or a police officer in charge of supervision of persons deprived of liberty. The police officer verifies this approval in order to protect personal data and privacy of a person who has not yet been sentenced of a criminal offense, therefore presumed innocent. The carrying of firearms or incapacitating sprays or weapons in the custody area is not permitted and all officers have to put them in a locker before entering the area.

12. The lawyer who visits person deprived of liberty in the holding premises conducts the interview out of the hearing site of the police officer and this interview is confidential. A visit by a lawyer is ordered by a court or prosecutor's office, depending on which authority issued the arrest warrant. In some agencies, a person deprived of liberty has the right to make a telephone call to a lawyer, based on which the lawyer is granted access.
13. If necessary and based on his own assessment or immediate request, police officer places an urgent call medical assistance or medical doctor visit through the duty police officer. Based on the doctor recommendation, person deprived of liberty can be escorted to a medical facility in the community in an ambulance car. Another possibility of transport to a medical facility in the community is in a police vehicle with a doctor note and referral, under the supervision of police officers. Referral to an outside medical facility is made solely by a medical doctor.
14. Medical examination of the person deprived of liberty in a medical facility or the holding premises in the police agency takes place out of sight and hearing area of the police officer. On doctor's explicit request and in case of a security threat, police officer can remain in sight. Doctors findings are exclusively in possession of the person deprived of liberty being examined and police officers have no insight.
15. Functioning of the holding premises is documented in the records encompassing all dealings with person deprived of liberty, from his admission to his release from custody. Police officer is held accountable for accurate and proper maintenance of written records.

Detailed overview of the written records maintained are in Appendix 3 of this Handbook.

16. Only official staff with approval from the commanding officer or the officer in charge of the holding premises, or otherwise accredited monitoring bodies (NPM, CPT, SPT, Ombudsman etc) have access to these premises. This approval is granted to protect confidentiality of personal data and privacy of the persons deprived of liberty who are not yet found guilty, therefore innocent.

Detailed procedures for the protection of personal and confidential data are in the separate chapter of this Handbook.

17. The holding premises are mostly under video surveillance. The access is granted only to the authorised police official, who is in charge of supervising the persons held. Person staying in the holding premises has to have an opportunity to contact duty police officer at any given moment, at least by knocking on the cell doors.
18. Commanding officer of the holding premises or the duty officer is informed without delay in writing about the accommodation of a newly admitted person deprived of liberty. Exceptionally, information can be sent orally with a written notification sent as soon as possible.

Detailed procedures on how to avoid manipulations with the time of deprivation of liberty are in the separate chapter of this Handbook.

19. Person deprived of liberty is never left alone in the holding premises, without surveillance. They are visited every 15 minutes (suicide watch), the need for medical help, use of the toilet, etc. The visits take place even if the premise is under the video surveillance and visit is recorded in the log.

20. A person deprived of liberty or his lawyer who considers that his rights have been violated may file a complaint to:

- Police officer releasing the person from custody,
- Head of the organizational unit whose police officers deprived person of liberty
- Professional Standards Unit,
- Prosecutor,
- Court,
- Human Rights Ombudsman,
- Parliamentary bodies monitoring policing.

### **Human rights checklist**

#### *Administrative and technical issues*

1. Person deprived of liberty placed together are the same sex
2. Juveniles are not accommodated together with adults
3. Access to the toilet provided
4. The cells and other premises (toilets etc) are clean, well ventilated and of an adequate temperature
5. Personal hygiene products available
6. Notice of video surveillance in the premises prominently displayed
7. Free of charge meal provided

#### *Ethical issues and preventing procedural violations*

1. Officers in contact with a person deprived of liberty in detention facilities have an approval in order to protect personal data
2. Medical assistance provided

**Frequently asked questions**

1. A police custody facility is not a hotel; why should police officers serve suspected criminals and provide for luxury that these persons would not have in their own homes?

It is not about providing luxury conditions, but the police should provide for conditions that reflect respect for human dignity and a level of security for the persons concerned. In addition, it is also for police officers nicer to work in premises that are clean and appropriate rather than dirty and run down. Finally, the perception we have of a detainee changes with the way we hold them in detention: if somebody is kept in very poor and dirty conditions, we easily associate these conditions with the person concerned.

2. Video surveillance has become a custom - banks are under surveillance, post offices, even supermarkets. Why would special notices be needed at the police premises?

Notices of video surveillance of the premises must be prominently displayed to protect privacy and possibly prove allegations of ill-treatment. Upon admission, the police officer additionally informs the person that the premises are under video surveillance. He is obliged to prevent unauthorized access to video surveillance by other persons or officials to ensure privacy protection of the person deprived of liberty.

## EFFICIENT COMMUNICATION

### Key terms

#### Communication

social skill, conveying and understanding information and messages, ideas and feelings, exchanging experiences through interaction with one or more persons.

#### Elements of the communication

speech, tone of voice, body language, observation and listening.

#### Verbal communication

not only talking, but also active listening.

#### Non-verbal communication

perception, interpretation and response to emotional and interpersonal signals, facial expression, gaze, body and hand position.

### Guidelines for treatment based on international instruments and standard

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### Local legal framework

- Ethical codes of police agencies (each agency respectively)

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### Operational procedures for efficient communication

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1. You present yourself to a person deprived of liberty, including your function. The sentences are short, simple, understandable and concrete.
2. Vocabulary is adapted to the interlocutor. You avoid ambiguous, vague, incomprehensible words and slang.
3. In conversation with a person deprived of liberty, you avoid pronouns (they, some, them, that, it etc.).
4. Speak in a calm way, omitting unnecessary and needless details.
5. DO NOT TALK to person deprived of liberty WITHOUT PRIOR CONSIDERATION.
6. DO NOT TALK to person deprived of liberty about your or your colleagues' private lives, and do not complain about working conditions, problems within the service, etc.
7. TREAT all person deprived of liberty equally, WITHOUT DISCRIMINATION.
8. DO NOT DISCUSS about personal or general security in the presence of person deprived of liberty.
9. BE CAREFUL with information, strictly confidential documents and share them only with those who are authorized to know them.

10. You actively listen so that you can hear and understand what the other person is saying.
11. During the conversation, you do not react emotionally, but maintain professional behaviour.
12. By occasionally nodding, facial expression, or simply by saying "I understand", "Yes", confirm that you are listening.
13. Advise a person deprived of liberty to take a deep breath or count to 10 and back to calm down if having troubles to talk.
14. Be aware of your prejudices and set them aside.
15. Ask for feedback to determine if the person you are talking to understands what you said. From time to time repeat what you have heard or ask questions to clarify to yourself, but also to make the person hear himself explaining the circumstances, to ensure that conversation is going in the right direction:
  - additionally, include concrete examples in your communication, by comparing and explaining, without needless statements;
  - repeat messages in other words in order to make it more understandable, if some of the participants in the communication do not understand;
  - use available facilities in the conversation, if necessary, offer pen and paper to facilitate communication.

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Listen actively even when things sound familiar, already seen, too simple, unimportant or boring, or if they sound too complicated for you to understand.

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### **Human rights checklist**

#### *Administrative and technical issues*

1. Act in accordance to the code of ethics
2. Speak clearly, loudly, using vocabulary adapted to the interlocutor
3. Ask for feedback to ensure that the interlocutor understands you
4. Personal, confidential information and documents share only with persons authorized to know them.

#### *Ethical issues and preventing procedural violations*

1. Do not insult, discriminate or verbally abuse persons deprived of liberty
2. Respond to the content of the message sent to you by the person deprived of liberty

Note: Appendix 1 contains an interpretation of some of the most commonly used signs of nonverbal communication.

## **Frequently asked questions**

1. What is that efficient communication at all? I don't need to learn how to talk now, I have learned to talk 50 years ago, when I was a year old... I don't need someone to teach me how to talk now.

Not exactly. The majority of us can speak, but it is not that we always know how to talk to each other. Efficient communication implies that the transmitted message is understood followed by a feedback—meaning that someone has answered something meaningful to a question you have asked or that you have succeeded in expressing your position, opinion or request.

2. Now what does the efficient communication has to do with human rights? I can communicate ineffectively without violating anyone's human rights - it is not exactly as if I hit anyone....

It is the human right of every individual not to be insulted on any grounds - religious, gender, sexual, political, etc. Law enforcement officials are in the service of the people and are considered a prolonged hand of the state. Their reputation is a reflection of the state whose interests they serve.

A police officer cannot discriminate against anyone on any grounds either. Another response could highlight that persons might not be able to follow a police officer's legitimate order if they do not understand him/her or misunderstand him/her. This in turn might lead to unnecessary use of force.

## PROTECTING CONFIDENTIAL AND PERSONAL DATA

### Key terms

The forms of violation of confidential and personal data:

#### Disclosure of official information

related to the deprivation of liberty, criminal offense or suspected misdemeanour, to third parties.

#### “Taking into custody in view of the public/ public arrests”

in the premises of the law enforcement agency with prior notification of the media where and when the person shall be taken to.

#### Disclosure of medical/personal information

related to the medical condition of the person deprived of liberty to third parties

#### Disclosure of information

obtained from the conversation between the person deprived of liberty and his lawyer, for example if the officer was accidentally within the hearing range. Such information cannot be shared with anyone.

### Guidelines for treatment based on international instruments and standard

- European Convention on Human Rights and Fundamental Freedoms
- Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data
- Universal Declaration on Human Rights
- International Covenant on Civil and Political Rights

### Local legal framework

- Laws on personal data protection in BiH
- Criminal Procedure Codes in BiH
- Criminal Codes in BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers in the Federation of BiH
- Law on Court Police in BiH

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### Operational procedures for protecting personal and confidential data

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#### **“EVERYONE IS INNOCENT UNTIL PROVEN OTHERWISE”**

In the process of deprivation of liberty, during processing, conducting interviews, interrogations, contacts with a lawyer, handover to another legal body or his release from custody, law enforcement officers obtain confidential and personal information about the person they are in charge of at the moment, as well as about official actions to be taken during the process.



All this information must be **UNAVAILABLE** to unofficial and unauthorized persons.

National and international monitoring bodies (NPM, CPT, SPT, Ombudsman etc.) are authorised to access any information they deem necessary for carrying out their mandate, including arrest reports, medical reports, criminal files etc. These bodies are not considered unofficial and unauthorised.

1. If the police officer learns information about the identity of a person that is going to be deprived of liberty, including the reason for it – that is considered to be confidential information.
2. Person being deprived of liberty is being given information thereof, including reasons for the deprivation of liberty – that information is also confidential for any other unauthorised persons.
3. During the transportation or escort to the holding premises of the law enforcement agency, prosecution, or court, privacy of the escorted person is protected.
4. If possible, the person deprived of liberty is taken to the side entrances of the law enforcement agency building, prosecutor's office or court.
5. If feasible, the possibility of the person being photographed or filmed by the media or private persons is avoided.
6. Officials or any other staff who are not part of the specific case cannot access premises holding the person deprived of liberty. The person is being held in closed premise/office, other officials and staff cannot physically access these premises.
7. During the processing of person deprived of liberty, the trace and the path showing the movement of the case from the moment the file is created to its final disposal in the archive is constantly monitored. This includes movement of persons and their personal items (including illicit items in accordance with the internal act on the procedure of deprivation of liberty). Unofficial and unauthorised persons do not have access to these files.
8. During the person's stay in the holding/detention premises, unauthorized officials and staff cannot access these premises. The same applies to video surveillance equipment.
9. Any information related to the health condition and potential illnesses of the person deprived of liberty are confidential during administering of medical assistance. The possible presence of the official person can be allowed upon the request of medical personnel. Law enforcement officer can warn the medical doctor about the level of risk or expected high risk behaviour of person deprived of liberty. The police officer can only have visual control of the medical examination on the explicit request of the medical doctor.
10. The documentation compiled in this process is confidential and follows movement of the person between the law enforcement agencies (accompanies him). Again, unauthorised persons are prevented from accessing this documentation. The documentation is handed over to the officer of the law enforcement agency which is also taking over the person deprived of liberty. The best modality for transporting original documents is to put it in the sealed envelope which the person deprived of liberty carries with him. Copying of documents, or part of the documents can be done only with the permission of person deprived of liberty and exclusively for the needs of medical treatment during the time of deprivation of liberty (if the person takes specific medicine, insulin for example).
11. In case when person deprived of liberty has a contagious disease, such information may be shared only with police officers who come in contact with such contagious person.
12. Lawyer's visit take place in a specially designated premises, a separate room where they can

talk to the client non-disturbed. The presence of the law enforcement officer is out of hearing area. Any information obtained accidentally cannot be used because of its confidentiality.

13. Privacy of the person deprived of liberty is maintained also during the handover between various agencies. If possible, “exposures to public views” of persons deprived of liberty should be avoided to the extent possible (for ex. escorting arrestees through the routes pre-arranged with journalists who wish to photograph and videotape faces). The commanding officer decides which route should be used.
14. Any document, with no exception, compiled in the process of liberty deprivation, custody and handover of the persons deprived of liberty is kept safely and out of access for anyone not authorised to access it.
15. Person deprived of liberty or his lawyer, in case if they have reasonable ground to believe that rights to the protection of personal and confidential data have been violated, can file a complaint to:
  - ☒ Police officer in charge of his release,
  - ☒ Head of the organizational unit whose police officers have deprived person from liberty,
  - ☒ Unit (Sector) for professional standards,
  - ☒ Prosecutor,
  - ☒ Court,
  - ☒ Human Rights Ombudsman,
  - ☒ Parliamentary body tasked with monitoring work of the police,
  - ☒ Personal Data Protection Agency in BiH
16. Prior to the release, police officers inform a person deprived of liberty on the possibilities and manner for filing complaints or allegations of misconduct of police officers. The complaint is registered in the agency’s Complaints Log and submitted internally to the Professional Standards Unit. Person deprived of liberty is not held accountable for filing the complaint if the suspicion of irregularities is not proven (unless the complaint was proven false).
17. Any police officer who becomes aware of the alleged violation of personal and confidential data, has duty to give the investigator for internal procedures an honest statement about any information regarding the time of deprivation of liberty. Dishonest or incomplete statement entails criminal and disciplinary responsibility.

## **Human rights checklist**

### *Administrative and technical issues*

1. Duly filled and archived registry/log/files
2. Appropriate premise for lawyers’ consultations
3. Complaints avenues enables

### *Ethical issues and preventing procedural violations*

1. Information confidentiality
2. Protection of identity of the person deprived of liberty

## **Frequently asked questions**

1. I have been working with my colleague for 20 years in the same unit and we have been through a lot together. I believe I can trust at least him that he is not going to talk around about the person we detained last night? We are professionals; after all, we have the same badge.

The issue of confidentiality of personal data is not an issue of the professionalism of our colleagues, but of us. No law enforcement officer should expect other colleagues to keep a professional secret, should not be put in a position to expect it from someone at all.

2. Why are you now telling me about it and about his right on confidentiality of information? Why wasn't he thinking about confidentiality of data of his victim when he committed a criminal offense? Who is going to protect her rights now?

Law enforcement officer is a public official who is in the function of the state and its internationally accepted conventions and obligations arising from it. The BiH legal system is based on the presumption of innocence and everyone is innocent until proven otherwise before the court. Law enforcement officer does not pass or interpret the law - he enforces it. In no case does the officer render a verdict according to which he treats a certain suspect and his personal data in any possible way.

## VISUAL CHECK-UP AND SEARCHING PERSON DEPRIVED OF LIBERTY AND HIS BELONGINGS

### Key terms

#### Security visual check up

implying outside visual check-up of the person being deprived of liberty, visual check-up of the insides of his clothes and shoes, without breaching their integrity, including belongings and items person has on himself or at himself or which he carries with himself during the arrest. The check-up is carried out immediately during the arrest at the place where it is taking place (or in the near vicinity), as well as in the official premises.

#### Search

Detailed check-up of the insides of the items which breaches their integrity by forceful opening or decomposition of its substance. This represents a more serious breach of privacy compared to check-up. Police officer can search persons without an order and witnesses during, among other, deprivation of liberty. It drives that searching, as opposed to check-up, is optional and not mandatory. It is conditional upon the existence of grounds for searching which are assessed by the police officer.

Note: Detailed overview of differences and legal grounds for check-ups and searches are listed in the Appendix 4 of this Handbook.

### Guidelines for treatment based on international instruments and standards

- European Convention on Human Rights (Art 3)
- CPT reports

### Local legal framework

- Criminal procedure codes in BiH
- Laws on misdemeanour in BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers in the Federation of BiH
- Laws on Court Police in BiH

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### Operational procedures for check-ups and searches of person deprived of liberty and their belongings

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1. Law enforcement officers carry out security check-ups of the persons deprived of liberty. This official task is carried out immediately after the arrest on the spot, or in the immediate vicinity, as well as in the official premises.

Also, during the deprivation of liberty of the person, the immediate location where the person was deprived of liberty is also checked-up, together with all the places and sites where the person was moving just before the arrest.

2. Regardless of the security check-up immediately after the deprivation of liberty, person deprived of liberty is subject to detailed search upon his arrival at the official premises. This search includes all the items that the person carries on him, with him, including his belongings.
3. Searching is **as a rule of thumb** conducted by at least two police officers of the same sex as the person being searched, except in cases when it can't be done due to the danger of the situation. Commanding officer is informed of any risks preventing the search.
4. Searching persons deprived of liberty includes an insight into the external and internal contents of clothing and footwear, as well as of all items that a person carries with him. Searching is carried out by inspecting all available interiors and exteriors of the items, made freely available by the person deprived of liberty himself (it is important to preserve integrity of the items being searched, unless the person deprived of liberty wishes so as well).
5. Reports following check-ups are drafted in the official premises. The "Check-up Log" contains general information about the person deprived of liberty, with complete list of items to be seized after the search with detailed description of every single item (including damages, specific detail, serial numbers etc.), signature of the person searched, as well as a signature of the law enforcement officers who conducted the check-up.
6. If there are items on the person deprived of liberty to be seized, apart from the Check-up Log, police officer also drafts a Note of the temporary seizure of items. A copy is delivered also to the person deprived of liberty. Any seized items, not falling into the category of evidence, "follow" the person deprived of liberty until he is released from custody or handed over to another law enforcement agency.
7. If the security check-up reveals objects and traces of a criminal offense or misdemeanour, the check-up is suspended and the searching starts.
8. In addition to the above, law enforcement officers may search a person without a search warrant and without the presence of witnesses in the following situations:
  - when executing an order to bring the person into police premises,
  - during deprivation of liberty,
  - if in doubt that a person is in possession of firearms or cold weapons,
  - if there is a danger that he will hide, destroy or discard items that should be sized from him and used as evidence in criminal proceedings.
9. On the location of deprivation of liberty, conditions permitting, law enforcement officers conduct a partial search of the persons deprived of liberty, in order to find and temporarily seize items that may be used as evidence in criminal or misdemeanour proceedings.
10. Detailed search of the person deprived of liberty begins only after the arrival to the holding premises. Person's clothes and body can be searched if necessary. Two law enforcement officers of the same sex as the person deprived of liberty carry out the search. Detailed search of body orifices can only be carried out by a medical doctor. Person deprived of liberty does not have to agree to be searched by a medical doctor if deemed necessary due to security risks and if necessary officers use force in accordance with the law and the three basic principles of the CPT: proportionality to the strength of resistance, absolute necessary duration and legality. Body orifices can only be examined on the order of the court, which also specifies whether a medical doctor should attend to it.

In case the person conceals an item that is not putting his/her health at risk, the police cannot involve a doctor in a forced “security search” or search of criminal evidence. They would have to place the person under intense supervision (e.g. in a special cell, in special clothing) and wait for the item to come out naturally.

In case when the police officer suspects that a foreign object in the person’s body could endanger person’s life, the person is transported to the nearest medical facility together with Emergency Medical Unit staff. During the medical intervention, person deprived of liberty is under security supervision of the police officer<sup>18</sup>.

11. Reports on the searching are drafted in the official premises. The “Search Log” contains precise information and descriptions of seized items and documents, also recorded in the Notice of Seized Items. A copy thereof is delivered immediately upon the completion of the search also to the person deprived of liberty (all listed written notices and documents are recorder in appropriate logs).

A detailed overview of all records and reports can be found in Appendix 3 of this Handbook.

12. Law enforcement officers compile a “Report on the Search of a Person” with the above-mentioned attachments, and submit it to the prosecutor, who then informs the pre-trial judge about the contents thereof. Seized items representing evidence in the criminal proceedings are submitted to the Court or deposited with a law enforcement agency.
13. Person deprived of liberty or his lawyer who considers that his rights have been violated may file a complaint to:
- Police officer releasing him from custody,
  - Head of the organizational unit whose police officers deprived the person of liberty,
  - Professional Standards Unit,
  - Prosecutor
  - Court
  - Human Rights Ombudsman
  - Parliamentary body monitoring the police

Note: List of the most common violations of procedures when performing check-ups or searches is in Appendix 4 of this Handbook.

## **Human rights checklist**

### *Administrative and technical issues*

1. Check-up at the site of deprivation of liberty is not unnecessarily invasive
2. Two officers of the same sex as the person deprived of liberty carry out the search
3. Detailed search carried out by two officers of the same sex as the person deprived of liberty
4. Copy of the Notice on temporarily seized items delivered also to the person deprived of liberty

<sup>18</sup> Security supervision implies physical supervision (immediate presence by the side of the person deprived of liberty), visual supervision (police officer is not physically present with the person deprived of liberty but the officer is watching the person constantly from a distance or via video surveillance system) or direct supervision of the entry and exit points of the premise or facility where the medical intervention is taking place.

### *Ethical issues and preventing procedural violations*

1. Any force used during the search is proportionate, absolutely necessary and respectful of the pain threshold
2. A person deprived of liberty allowed to file a complaint

### **Frequently asked questions**

1. Why is it necessary to seize personal items that a person deprived of liberty brings with him. If I am obliged to protect personal data, am I not obliged also to leave his personal belongings in his possession? Isn't it all a part of the integrity of a person?

The purpose of security check-up is to seize items from the person deprived of liberty that could be used for assault or self-harm. These items could also make it difficult for an officer to perform his official duties (person having illicit items/ contraband while in custody).

2. If I carried out a detailed check-up of a person deprived of liberty, do I still have to search the person?

Although search is an investigation-related task and it is not prescribed in the policing laws as a form of police authority but by the Criminal Procedure Code, the person can still be searched, in addition to a check-up.

## HANDLING TEMPORARY SEIZED ITEMS

### Key terms

#### Forms of violation of the rules in the temporary seizure of items:

- Not all items are recorded;
- Superficial items description, without detailed, damages, etc.;
- No receipt issued for seized money, falling into the category of other/personal items;
- Money, valuables and perishable items from the category of other items handed over directly to a family member without recording the handover;
- Unauthorised persons get in contact with seized items;
- Officers do not keep records in the prescribed manner.

#### Guidelines for treatment based on international instruments and standard

- CPT reports

#### Local legal framework

- Criminal procedure laws in BiH
- Laws on misdemeanours in BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers in the Federation of BiH
- Laws on Court Police in BiH

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#### Operational procedures for handling temporary seized items

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### “EVERYONE IS INNOCENT UNTIL PROVEN OTHERWISE”

When depriving a person from his liberty, law enforcement officers get in contact with items which are in possession of a person deprived of liberty. These can often be connected to the criminal offense or misdemeanour, can further cause injuries to a person and are therefore temporarily seized in accordance with the law.

1. Legally speaking, the temporary seizure of items begins with the moment of issuing person deprived of liberty with a written record on the temporarily seized items.
2. Practically, temporary seizure of items starts with the moment of the law enforcement officer taking possession of the items from the person deprived of liberty. From thereon begins the duty of care over that item handling of the item through the law enforcement agency.
3. Separate procedures apply to temporarily seized items falling into the category of ‘evidence’ and other items found in his possession (category of ‘other items’):
  - Items representing **evidence** are seized based on the appropriate notice, and in accordance with the CPC and the Law on Misdemeanours. These items are delivered to the court or deposited with a law enforcement agency.



- Items falling into the category of **other / personal items** are also seized based on the appropriate notice, in accordance with the internal regulations of the law enforcement agency. These items “follow” the person deprived of liberty in the agency until their release from custody or handover to another law enforcement agency.
4. All unauthorised items are seized from the person deprived of liberty already during the deprivation of liberty, in accordance with the internal instructions of the law enforcement agency. All seized items are recorded in the Notice on temporary seized items and the person's file as soon as possible.
  5. Person deprived of liberty is visually checked-up or searched on admission to the holding premises. Unauthorised items from both categories are seized and recorded in writing.
  6. Seized items are listed legibly and accurately, with special attention paid to money and valuable items (colour, shape, purpose, etc.). Descriptions are detailed as much as possible (banknote serial numbers, specific details, damages, etc.).
  7. Money and valuables, as well as perishable items, which do not belong to the category of evidence may, with the consent of the person deprived of liberty and at his oral request, be handed over to his family. This request is recorded in the person's files. They must be temporarily seized first, recorded and only then handed over to a family member. The purpose of this procedure is to monitor movement of the items in the law enforcement agency.
  8. Notice on temporary seizure is drafted in the sufficient number of copies as prescribed by the law enforcement agency internally, to allow for a copy to be shared also with their owner/person deprived of liberty. Other copies are deposited in the person's file. Access to the person's files is allowed only to authorized officers who have a valid reason for accessing documents and the permission of the senior commanding officer. Keeping a separate registry on access allowed to these files is a strong recommendation.
  9. Seized items are handed over to the officer in charge for handling temporary seized items, accompanied with the signed Notice on temporary seized items. Seized items are kept in the place with maximum protection from harmful weather conditions and from access of unauthorized personnel. Officer in charge keeps separate records on that.
  10. Officer in charge for handling temporary seized items records every exemption of items from his possession and the return of the item (when the person deprived of liberty needs to use the item, upon the permission of officer in charge). The record on the movement of these items is entered in the Notice on temporary seized items and person's file. The officer who exempted the item confirms this exemption with his signature.
  11. While the items are under the competence of the law enforcement agency, the responsibility for protecting the items from damage and malfunction rests with the last handling officer.
  12. Person's other/personal items are handed over to another law enforcement agency together with him. This is recorded in the Notice on the handover. The receiving law enforcement officer compares the status of items with the list in the Notice and counter signs it. If the number and condition of items does not match the Notice, a corresponding note is made and the senior commanding officers of both agencies are duly notified.
  13. Other/personal items are returned to the person deprived of liberty on his release from custody with a receipt. The person being released is allowed to examine the items before signing the takeover.
  14. The officer handing over other/personal items to the person being released from custody records this handover in the Notice on temporarily seized items and in the person's file (in the register of person deprived of liberty). This concludes movement of seized items through the law enforcement agency.

15. All police officers who become aware of an alleged violation of the rules on temporary seizure of items have duty to give an honest statement to the investigator in the internal investigation procedure about all the information they have regarding the time of deprivation of liberty. Dishonest or incomplete statement entails criminal and disciplinary responsibility.

### **Human rights checklist**

#### *Administrative and technical issues*

1. Only authorized personnel have access to person's files.
2. Temporarily seized items are handled conscientiously, avoiding damage.

#### *Ethical issues and preventing procedural violations*

1. Copies of Notices on seized items are handed over either to the person deprived of liberty or to a family member.

### **Frequently asked questions**

1. A seized item is an object, not a living thing. Why does it matter if he's missing a plain piece of paper that was in his pocket and he could barely see anything on it? Well, it couldn't be that important, otherwise it wouldn't be folded over so many times and "worn out".

According to the provisions of the European Convention on Human Rights, personal property is an inalienable right of every individual. A law enforcement officer should not be in a position to assess the importance of any personal items belonging to someone. Taking care of personal items also strengthens confidence in professionalism of officers dealing with persons deprived of liberty.

2. Why do I have to make records of everything? It takes much more of my time than the job itself. I hardly have time to do my job because I have to make all kinds of records and notices.

Keeping records is the job of law enforcement agency officer. Everything that is not documented is very difficult to prove in court, in case of a later need to prove that the official duty was performed in proper manner.

3. Why can I not keep a souvenir of an arrest I made? The knuckleduster, baseball bat, butterfly knife etc. remind me of a great time. They are just lying around in the office, not doing any harm.

These items might be evidence in a criminal case, and having such items "floating" around in offices will make monitoring bodies very suspicious and prone to believe that the police are ill-treating detainees with these objects.

## USE OF FORCE, CONTROL AND RESTRAINT

### Key concepts

#### Four basic principles of use of force on persons deprived of liberty

- Legality - police officers must, at all times, exercise of police powers in line with existing laws and regulations
- Proportionality - any type of force has to be proportionate to the threat posed and/or the harm that a police officer is seeking to avoid
- Necessity – police may only use force when it is necessary to do so for a legitimate law enforcement purpose, force shall be only the minimum necessary in the circumstances and once the necessity for the use of that force has ended, the use of police force must cease
- Non-discrimination – any police power must be exercised without unjustified distinction as to sex, gender, ethnic origin, nationality, religion or belief, disability, age, political opinion, social status, etc.

#### Control and restraint

Techniques used as a last resort in order to bring a violent or refractory person under control, i.e., in order to influence his behaviour.

#### Force

Applied in the name of the State has legal character (objective and conditions for application) and is different from force that is not allowed and is punished.

#### Guidelines for treatment based on international instruments and standards

- The United Nations Code of Professional Conduct for Law Enforcement Officials
- European Convention on Human Rights and Fundamental Freedoms
- European Code of Police Ethics (recommendation of the Committee of Ministers of the Council of Europe Rec (2001)10)

#### National legal framework

- Law on police officers in the Federation of BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers of BiH
- Rulebooks on the use of force of the police agencies in BiH

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#### Operating procedures for control and restraint of persons deprived of liberty

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A law enforcement official may use force on a person deprived of liberty when it is not possible to execute an official action by issuing warnings or orders, or when, given the circumstances, measures of warning do not guarantee success. An official has at his disposal two tactical options when he finds himself in a situation in which a person deprived of liberty starts actively resisting a legal order:

- *approach* – the official himself assesses if he can approach the person with the available means and capabilities and effectively restrain resistance (protect, stop and control)
  - *step back* – the official himself assesses if he should step back from the person, regroup and call for assistance.

An exception from these options is a situation in which officials are forced to start pursuing a person only in the measure in which their safety is not in danger. This happens in case of mortal danger or danger of serious bodily injury for the person they are obliged to protect or for another law enforcement official.

1. As a rule, one person deprived of liberty is restrained by at least two officials in order for them to be able to handle the person more easily and more quickly and in order to avoid inflicting more serious injuries on the person. This almost always occurs if one official is restraining the person since one officer needs a greater amount of force/means to restrain the person. In addition, this is a kind of safeguard against ill-treatment allegations. One official may restrain one person only in exceptional situations (and this only until assistance arrives).
2. The principal official (head of team) starts communicating with the individual from a safe distance, trying to dissuade him from destructive intentions.
3. The official warns the individual that, unless he desists, the official may use his legal powers to prevent an escalation.
4. During that time, the other official informs the senior commanding officer, who assesses the safety risk and decides whether to deploy an intervention team.
5. In case the person deprived of liberty has desisted from violence and is longer offering any resistance, the envisaged procedure with him continues.
6. If a person deprived of liberty continues resisting legal orders, the official decides on the means of restraint to be potentially used based on his assessment of the level of danger the individual poses for himself and for other persons in his surroundings. As the level of danger posed by the individual increases, the official should change the mode of treatment, and vice versa. The official must at all times keep in mind the legal obligation to apply minimum physical force and to use the mildest form of means of restraint corresponding to the situation and achieving the purpose of restraint.

The level of force that a law enforcement official may apply is not determined only by the level of resistance offered by the person in question, but also by the “sum of circumstances” that could influence the situation:

- the build of the person deprived of liberty
- his age and state of health
- gender
- physical fitness
- number of persons/law enforcement officials present
- time of event, amount of light
- known information about the person, i.e. risk assessment
- possession of arms.

7. The official needs to constantly assess the situation. The very moment that the person deprived of liberty stops being aggressive or stops offering resistance, the official should stop using force. If the use of force was greater than the resistance offered or if it continued once the person had been placed under control, the law enforcement officer might be accused of excessive use of force (which could amount to inhuman treatment or under certain circumstances even torture) and held accountable in disciplinary or even criminal proceedings.
8. The pain threshold is directly proportionate to the resistance offered, i.e. the force causing the pain must always be proportionate to the resistance offered:
  - no pain
  - tolerable pain
  - intolerable pain.
9. A person deprived of liberty who was subject to use of any means of control or restraint or any force must be offered medical assistance without delay by being escorted to an emergency medical unit.
10. The person who was subject to use of force cannot be escorted to his medical examination by the same officials who used force on him. The senior commanding officer decides on the escort team.
11. The medical documentation produced during the examination after every instance of use of force is an integral part of the report on use of force and serves the purpose of subsequent evaluation of the justifiability of the degree and form of force in light of the injuries inflicted on the person on that occasion. Medical conditions and illnesses identified during the examination that did not occur during the use of force on the person cannot be part of this report since this represents confidential personal data of the person deprived of liberty. This medical examination is also a safeguard for officials in their defence against ill-treatment allegations.
12. If medical findings confirm the occurrence of any injury on the person deprived of liberty, their lawyer, family or a third person of their choice should be notified without delay. A copy of the medical documentation will be sent only to the person deprived of liberty on whom force was used and his lawyer. The medical documentation is confidential for third persons.
13. The report on control and restraint/use of force must be factually accurate, brief, clear and without jargon. The basic data it includes is as follows: the first and last name of the person deprived of liberty; a precise description of the events with all the details starting from the first contact with the individual up to the resolution of the situation (because of the potential need to reconstruct the event); a list of means of control and restraint used, by degree of force; the names of the officials who took part in restraining.
  - where force was used on several persons, a single report should be submitted, with information for each person and description of use of force on each person;
  - where several different means of force were used, a single report should be submitted on the use of the most serious means, with a list and description of the other, milder means;
  - where several officials took part in using force on one or several persons, separate individual reports should be submitted, i.e. for each individual official;

- where force was used at the order of a superior, a report should be submitted by the official who used force and the superior who ordered for it to be used;
  - if a law enforcement official who used force was injured and is incapacitated to submit a report, a report will be submitted by his immediate senior officer, and on his recovery from the injuries the official in question will submit a supplementary report on use of force.
14. This type of report is submitted immediately after the incident and not later than the end of shift.
15. A person deprived of liberty is provided with the possibility for him or his lawyer to lodge a complaint, application or an appeal against the actions of the official and their treatment of the person:
- with any police officer dealing with him at the given moment,
  - with the senior officer of the organisational unit whose police officers have deprived him of liberty,
  - with the Professional Standards Unit (Department),
  - with a prosecutor,
  - with a court,
  - with the Human Rights Ombudsman,
  - with the parliamentary body responsible for oversight of police operations,
  - with international bodies (ECtHR, UN Human Rights Committee, CAT , etc).

### **Human rights checklist**

#### *Administrative-technical framework*

1. The risk constantly assessed, posed by the person deprived of liberty to himself, others and property
2. Called for necessary assistance and properly used additional control and restraint means

#### *Ethical framework and prevention of violation or abuse of procedures*

1. Communication verbal with the person deprived of liberty in a composed and polite manner
2. Given the person enough opportunity to stop behaving in an illegal or dangerous manner
3. Respected the appropriate procedures in order to make sure that control and restraint are the only possible response to the situation at hand

## **Frequently asked questions**

1. In which situations does a law enforcement official use means of control and restraint?  

An official may use means of control and restraint in order to overcome active resistance by an individual as well as when this is necessary to prevent him from escaping, physically assaulting an official or another individual, self-harming or causing material damage.
2. Is it allowed to use force when a person deprived of liberty is being restrained by two or more officials?  

A baton must not be used when two or more prison officers are restraining one individual. A baton can be used when two or more law enforcement officers are restraining one person only if the physical strength of the person is such that two officers cannot restrain him without the use of baton or in case when the person is armed with cold weapons or other similar objects.
3. Which body parts should officials aim for/avoid when using a baton?  

When using a baton, officials should always aim for arms (upper arms) and legs (upper legs) because these body parts are the least susceptible to serious injuries. It is necessary to avoid the head, neck, throat, spine and sternum whenever possible.

## DEATH AND SELF HARM OF A PERSON DEPRIVED OF LIBERTY IN CUSTODY

### Key terms

#### Suicide or deliberate self-injury

Self-harm and taking or attempting to take one's own life<sup>19</sup>

### Guidelines for treatment based on international instruments and standards

- European Convention on Human Rights and Fundamental Freedoms
- The case law of the European Court of Human Rights

### Local legal framework

- Law on police officers in the Federation of BiH
- Law on police and internal affairs in Republika Srpska
- Law on police officers of BiH

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### Operating procedures for conduct in case of death of a person deprived of liberty

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1. A police officer removes items that can be used for self-harm, suicide attempt or suicide in the premises holding person deprived of liberty.
2. Prior to being brought into the premise where the person deprived of liberty would be staying for some time, the police officer searches the person in order to remove any unauthorised objects that may be used to cause self-harm or attempt suicide. Seized items are recorded in writing and a copy of the records is delivered to the person deprived of liberty or a member of his family.
3. The officer actively observes and monitors the behaviour of person deprived of liberty in order to timely recognize possible signs of suicide:
  - changes in behaviour (depression, withdrawal, indifference, aggression, helplessness)
  - verbalization of suicide, suicidal activities, self-harm
  - signs of withdrawal crisis
  - sudden mood swings for the better
  - positive anamnesis
  - records of ill-treatment

Visit to the cell take place every 15 minutes (suicide watch).

4. The police officer talks to the person deprived of liberty in a peaceful manner, without further upsetting the person in order to distract him or her from suicidal intentions, if possible (see section of Efficient communication). He applies verbal de-escalation techniques, if familiar with such technique.

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<sup>19</sup> Definition of the World Health Organization



5. The hearing / conversation with person deprived of liberty preferably takes place in a room with video surveillance, with the notice thereof visibly displayed („This room is under video surveillance”).
6. The hearing / conversation with person deprived of liberty is preferably conducted by two police officers in order to avoid ill-treatment allegations.
7. If a police officer is of an opinion that there is a risk for a person deprived of liberty to harm himself or attempt suicide, he informs his direct commanding officer orally without delay. A written note is drafted as soon as possible.
8. The senior commanding officer assigns additional officers to ensure reinforced monitoring and minimize the risk of suicide as much as possible. Immediate reinforced supervision of the person deprived of liberty takes place every 15 minutes (suicide watch).
9. Records of allegations of possible self-harm or suicide are made as part of the regular exercise of authority to ensure timely medical treatment.
10. A person deprived of liberty who has self-harmed or attempted suicide is provided with first aid with the obligatory use of protective equipment (protective gloves, mask) as a precautionary measure taken for the sake of the police officer himself. Appropriate first aid equipment is available to all police officers.
11. Without delay, the injured person is provided with full medical and, if necessary, other professional assistance (psychologist, social worker, pedagogue, psychiatrist, etc.). In case of emergency, an ambulance is called. If the person is fit for the escort, he is taken to the closest health institution.

Detailed escorting procedures are described in a separate chapter of this Handbook.

12. Other persons deprived of liberty are relocated from the premise in which the self-harm occurred in order to secure the site and protect the persons who witnessed the incident and to deter them from possible similar attempts.
13. Personal and medical data obtained by the acting police officer in such situations are considered as confidential data and they are not to be disclosed to third persons and unauthorized persons and officials.

## **Human rights checklist**

### *Administrative and technical issues*

1. Dangerous objects removed from the premise.
2. Search conducted.
3. Hearing / conversation in the premises under video surveillance.
4. Hearing / conversation by two police officers.
5. Immediate senior officer informed of the suicide attempt without delay.
6. Reinforced monitoring of persons deprived of liberty.

*Ethical issues and preventing procedural violations*

1. Person deprived of liberty provided with first aid / medical assistance.
2. Personal and medical data kept from third parties and unauthorized persons.
3. Communication with person deprived of liberty based on the verbal de-escalation.

**Frequently asked questions**

1. I am a police officer with 20 years of field experience, but I am not a paramedic. How can I recognize if someone is suicidal?

Nobody can recognize if somebody is suicidal for sure, very often not even a medical staff. However, there are certain indicators of suicidality that careful observers may notice, even if they are medical laymen. The person talking and dealing with the person deprived of liberty should be fully focused on the task in front of them and observe the behaviour of the person in front of him.

2. Why is it important to prevent self-harm or suicide of persons deprived of liberty?

Police officer serve to the society and general public and their code of professional conduct is specific, enriched with stronger ethical principles than many other public services' officers. Police personnel is obliged to take good care of persons deprived of liberty who are under their custody and are responsible for their lives, regardless of the crime committed or suspected of having committed.

## TREATMENT OF WOMEN DEPRIVED OF LIBERTY

### Key concepts

Threat to physical and psychological integrity immediately after apprehension may be greater for women deprived of liberty than for men. One of the reasons is separation from their children or family.

Women constitute a relatively small group among persons deprived of liberty, they are often held in facilities that were originally intended for men and need special health care.

### Guidelines for treatment based on international instruments and standards

- European Convention on Human Rights
- UN Convention on the Elimination of All Forms of Discrimination against Women – CEDAW
- Body of UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)
- Women Deprived of their Liberty, Informative Document, (CPT/Inf(2000)13-part)
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention

### National legal framework

- Gender Equality Law of Bosnia and Herzegovina
- Criminal Codes in BiH

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### Operating procedures for treatment of women deprived of liberty

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Deployment of staff of both genders ensures appropriate distribution of staff to sensitive gender-related work assignments, such as searches of persons.

1. Deprivation of liberty is used only for the purpose for which it has been imposed, under a proper warrant and in a manner that does not worsen the suffering of the women deprived of liberty. In deprivation of a woman of her liberty is planned for in advance, female police officers should be involved at the earliest possible stage.
2. Women deprived of their liberty who are chronically ill should be provided, without delay, access to a doctor, prescribed medications and medical aids (aerosol pumps, glasses, contact lenses, prostheses, crutches, walking frames, stomas and the like). If it is necessary to deprive pregnant woman of liberty for an extended period of time, the presence of a specialist may also be ensured. Referral to a specialist is requested by a general practitioner (family doctor).

Protocols on continuation of receiving the therapy after deprivation of liberty are specified in a separate chapter of the Handbook – Informing Persons Deprived of Liberty about their Rights.

3. Women deprived of liberty who are foreign nationals and accommodated for an extended period are placed in closed environment that employs qualified staff and provides material conditions and activities that are appropriate for their culture and tradition. This is extremely important due to an increased inflow of foreigners – migrants to Bosnia and Herzegovina, whose deprivation of liberty and special features of the procedure are elaborated in a separate chapter of this Manual<sup>20</sup>.
4. Police officers should particularly pay attention to recognising potential symptoms of stress reactions displayed by women deprived of liberty (whether post-traumatic stress reaction or reactions induced by socio-cultural changes). The risk of self-harm is higher immediately after deprivation of liberty.

Suicide watch for persons deprived of liberty who are accommodated in holding facilities takes place every 15 minutes and it is described in a separate chapter of this manual dealing with accommodation of persons deprived of liberty.

5. As from the outset of their deprivation of liberty, women are entitled to inform a person of their choice of the situation and to have access to a lawyer and a doctor. They are explicitly informed, without delay and in the language they understand, of all their rights and of the procedure applicable to them.
6. Police officers pay particular attention to the women they deprive of liberty following commission of criminal offences resulting from domestic violence. Women victims of domestic violence are particularly sensitive to the way male police officers treat them. Therefore, the team must also include female police officers.
7. If a woman is deprived of liberty or apprehended in the household in which children live with her, and her children would stay alone following the apprehension, a person who is close to the woman is called without delay to stay with the children. Another possibility is to call or inform the guardianship authority or a social welfare centre.
8. A search of a woman deprived of liberty is conducted solely by female police officers, if possible two of them (of whom one is a witness) in order to avoid any allegations of ill-treatment. Male police officers may not be present during the search. Male police officers may be present during security check.
9. In the official holding premises, women deprived of liberty must be separated from men deprived of liberty. Duty of care by the State for the persons deprived of liberty includes duty of the State to protect them from others who may wish to cause them harm. Allegations of ill-treatment of women deprived of liberty, and of sexual harassment including verbal abuse with sexual connotations, arise more frequently if the State fails to provide separate accommodation for women from men with a preponderance of female staff supervising such accommodation.

The protocols on supply of toiletries are described in a separate chapter of the Handbook – Admission of Persons Deprived of Liberty.

10. Women deprived of liberty placed in holding cells/premises must be granted easy access to toilet facilities and bathrooms. Failure to ensure cleaning of facilities (removal of blood-stained items) and to supply tampons and sanitary pads may be deemed as degrading treatment.
11. Pregnant women deprived of liberty are granted access to gynaecologists and specialists if they make such a request and will be taken to external health care facilities. Based on such

<sup>20</sup> This point is relevant also for longer-term detention in the Immigration Detention Centre.

a request, in case of deprivation of liberty by the police, the appropriate health care facility is contacted in order to ensure referral to an appropriate specialist. If they are taken to a health care facility in the community, the escort team plans to stop more frequently during longer rides.

12. When admitted to the holding premises, women deprived of liberty are given information on how to lodge a complaint, including the contact details of the authorities competent to receive complaints, as well as the address of any services which provide legal assistance, if possible, and of institutions protecting human rights.
13. Women may request information on how to lodge a complaint at any time. A law enforcement official never makes assessment of whether complaints and appeals are justified or not, particularly regarding women deprived of liberty.
14. When using means of control and restraint against women deprived of liberty, police officers follow the basic principles also applicable to men: respect for the pain threshold, absolutely necessary duration, and proportionality of means to the level of resistance.
15. Force may be used against women; however, the standard for using physical force or a police baton is higher than what is customary – whereby the ratio between the physical power of a woman (if the woman is unarmed) and that of police officers (regardless of their gender) must play a crucial role and, as a rule, is on the side of police officers.
16. Physical force, police baton or fire arms may be used against a woman deprived of liberty only if the woman who is being deprived of liberty poses an imminent threat to the lives and bodily integrity of police officers, third persons or to her own life.

Manipulation of joints is a general recommendation when it comes to the use of force against women, while other means of force may be used under the same conditions only if the person poses imminent threat to the life of the police officer, other persons or her own life. Any other means of control and restraint against women deprived of liberty is used only EXCEPTIONALLY.

Equivalence of care and custody requires that a woman's right to bodily integrity is respected in places of detention in the same way as in the outside community.

### **Human rights checklist**

#### *Administrative-technical framework*

1. Toiletries provided
2. Medical assistance provided (with a specialist for pregnant women)
3. Search conducted by female police officers
4. Accommodated separately from men

#### *Ethical framework and prevention of violation or abuse of procedures*

1. Social welfare centre or guardianship authority informed (in case of children)
2. Special consideration given to the risk of self-harm immediately after deprivation of liberty

### **Frequently asked questions**

1. Is it necessary for women to be deprived of liberty by female police officers?

No, women may be deprived of liberty by either, male or female police officers. However, female police officers should be involved in planned arrests of women or in operations foreseeing arrests of women. **A search may be conducted solely by female police officers.**

2. If women are equal to men, why should we consider them a vulnerable category in detention?

Women are particularly vulnerable in detention due to the following reasons:

- special motherhood needs in a closed environment
- different physiological needs
- unequal balance of power between persons deprived of liberty and police officers
- temporarily weakened ties and due to the stigma linked to deprivation of liberty.

## TREATMENT OF MINORS DEPRIVED OF LIBERTY

### Key concepts

#### Minor

A person who has reached the age of criminal responsibility (14 years) but has not become an adult yet (18 years).

#### Legal representative

A parent, guardian or adoptive parent.

### Guidelines on treatment based on international instruments and standards

- European Convention on Human Rights
- UN Convention on the Rights of the Child
- 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
- Havana Rules, adopted at the UN General Assembly, Resolution 45/113 of December 1990
- CPT standards, excerpts from the 24th General Report, [CPT/Inf (2015) 1].

### National legal framework

- laws governing protection and treatment of children and minors in criminal procedures of the Republic of Srpska and Federation of Bosnia and Herzegovina
- Criminal Procedure Codes in Bosnia and Herzegovina

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### Operating procedures for treatment of minors deprived of liberty

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#### **Minors placed in detention should be what they are – young people who should be first considered as minors and then as potential criminal offenders.**

Presence of a parent, adoptive parent or guardian and a lawyer is mandatory during every conversation with a minor, especially with a minor deprived of liberty. When a minor is interviewed in capacity of an offender, the presence of a lawyer is mandatory.

During his stay on police premises, the minor deprived of liberty is verbally informed about the reasons for his deprivation of liberty and of his rights during the questioning at the law enforcement agency.

Particular care should be taken that the minor fully understands why he is being deprived of liberty, especially if he has difficulty writing or reading, speech or developmental difficulties. Conversation with a minor is conducted in a language and manner he understands. Presence of a psychologist or social worker during this conversation is preferable.

Special consideration is necessary in case of a minor who is a victim of or a witness to a criminal offence.

If the minor does not have parents or a guardian, the interview is done in mandatory presence of a competent social welfare authority (psychologist, social worker, speech impairment specialist), with mandatory use of audio-visual resources for conversation recording.

The legally prescribed deadlines must be respected by law enforcement officials when dealing with minors deprived of liberty. During the first 12 hours of deprivation of liberty, the law enforcement officials must complete all proceedings: notifying parents and lawyer; providing information about rights; questioning; gathering all the information and evidence that will be included in the prosecutor's decision on further proceedings.

1. The law enforcement official places a minor immediately after deprivation of liberty on separate premises where he will not be in contact with adults.
2. The law enforcement official may offer food, water or use of toilet and medical assistance 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. Upon arrival of a parent to the detention facility, the parent and the minor may declare that they do not want to exercise the right to a lawyer, which is then recorded. In that case, there are no obstacles to initiate further proceedings.
4. A lawyer may be engaged subsequently, at any stage of the proceedings, and after the original decision not to engage a lawyer. In such cases, the proceedings are at rest until the arrival of the lawyer.
5. Upon the lawyer's arrival, notification about other rights commences (right to an interpreter, right not to be obligated to state your defence nor to answer any asked questions, right to medical assistance etc.). This meets the procedural requirements for the start of further proceedings or questioning.
6. During the questioning, the minor must not be subjected to force, threat, deception or any other means that can affect his freedom of decision-making and expression of will while making a statement or a confession.
7. While talking to a minor deprived of liberty, the law enforcement official must:
  - Introduce himself to the minor deprived of liberty
  - Clearly define his official role
  - Offer the minor some water, food or use of toilet
  - Give the minor a possibility to state any concern he might have at that moment and to ask questions regarding the deprivation of liberty procedure
  - Respect minor's personality and identity
  - Demonstrate benevolence
  - NOT express personal views of the minor's life, his personality or behaviour
  - By no means use intimidation, threats etc., not even as a joke (e.g. "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 the hand, not hold hands over mouth etc. during conversation.
  - Keep eye contact during the conversation (do not look sideways nor down while speaking)



- Be aware of his/her legal authority, his position of power, which must not be abused, his ethical and legal responsibilities.
  - Build authority through respect, humanity, righteousness, impartiality and consistency.
8. During any conversation with a minor and during deprivation of liberty, one should avoid emphasis on negative identity should be avoided:
    - labelling
    - criticising
    - objection
    - pity
    - blaming
    - judging
    - intimidation.
  9. If within a period of 12 hours the law enforcement officer fails to notify the prosecutor of the reasons for and time of deprivation of liberty, the minor is released. Any use of force as a form of ill-treatment of a minor deprived of liberty is strictly forbidden by international standards and national legislation. Any treatment that causes harm to the bodily and mental integrity of the minor represents ill-treatment and the law enforcement official is subject to disciplinary and criminal responsibility.
  10. Law enforcement officials must not use any means of control and restraint on a minor, except as last resort in case of self-defence, preventing an escape, direct risk of self-harm, harming others or causing serious material damage. Law enforcement officials must previously exhaust all other means and methods of control such as advisory conversation, persuasion, encouragement, warning, order etc.
  11. Before resorting to use of control and restraint, the law enforcement official must warn the person against whom he intends to use means of control and restraint.
  12. Control and restraint means used must be minimal and of shortest possible duration and only in accordance with the powers prescribed by the law.
  13. Control and restraint must be gradual, which means that the law enforcement official should first use the mildest means of control and restraint which he believes 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 its use ensures exercise of official duty.
  14. A minor who has been subjected to control and restraint or ill-treatment is taken to a medical examination immediately thereafter. If the minor is not referred to medical examination without delay, he has the right to request it through his legal representative or lawyer.
  15. If the minor suffered injuries during control and restraint, a report with medical findings will be compiled. The official honestly and accurately states the course of events that preceded the use of means of control and restraint, as well as the way in which the means were used.

## **Human rights checklist**

### *Administrative-technical framework*

1. Parents, social welfare centre and guardianship authority are informed
2. Deprivation of juvenile of liberty is recorded
3. Juvenile deprived of liberty is separated from adults

### *Ethical framework and prevention of violation or abuse of procedures*

1. Vocabulary that is appropriate to the age and psychosocial level of development of the juvenile has been used
2. Complaints may be lodged

## **Frequently asked questions**

1. Is it mandatory that a child is apprehended and dealt with during deprivation of liberty only by police officers who are specially trained and equipped to work with children?

It is desirable that a juvenile is deprived of liberty is dealt with only by the police officers who are specially trained to work with juveniles; however, this is not mandatory. It is mandatory that a specially trained police officer takes actions of procedural nature, while other actions during deprivation of liberty may be taken by other police officers as well.

2. May a juvenile deprived of liberty stay on specially furnished official premises together with adult persons deprived of liberty who are his/her family members or even parents?

As a rule, a juvenile may not be placed together with adults on specially furnished premises and this is an explicit provision set out in the Instruction. However, some believe that juveniles deprived of liberty may be allowed to stay in a room together with adults deprived of liberty in order to avoid harmful consequences of loneliness and stigma, if that serves their interests, or if that is what they wish. This particularly refers to the accommodation of juveniles deprived of liberty who stay on premises together with persons deprived of liberty who are close to them, or whom they know, regardless of whether they are family members or not.

3. Can a minor refuse to have her parents informed of the arrest?

CPT recommends that detained juveniles are not questioned, do not make any statements or sign any document related to the offence of which they are suspected without the benefit of a lawyer and in principle, of another trusted adult being present and assisting the juvenile.

## TREATMENT OF SPECIAL CATEGORIES DEPRIVED OF LIBERTY – MIGRANTS

### Key concepts

#### Migrant

Human being – foreigner who travels, alone or with his family, from his country, through or to another country, for economic reason or any other reason that is vital for his life. Their human rights are much easier to violate because simply – they do not understand the language of the host country. Other factors that could contribute to a greater vulnerability of migrants are the lack of knowledge of the system and the culture, the lack of strong family ties in the country, etc.

#### Irregular migrant<sup>21</sup> or migrant in an irregular situation is a person:

- who has violated entry requirements with his unauthorised entry,
- whose visa has expired,
- who lacks legal status of the country he transits or country of destination,
- who has entered legally the country of transit or country of destination, but has stayed there longer than permitted or has found employment illegally.

#### Guidelines for treatment based on international instruments and standards

- Foreign nationals detained in accordance with laws on foreigners, excerpt from the CPT 7th General Report, (CPT/Inf(97)10-part)
- Safeguard mechanisms for irregular migrants deprived of liberty, excerpt from the CPT 19th General Report, (CPT/Inf(2009)27-part)

#### National legal framework

- Law on the Service for Foreigner Affairs
- Law on Foreigners of BiH
- Rulebook on operating standards and other matters relevant for the operation of the Immigration Centre

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#### Operating procedures for treatment of migrants

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Deprivation of liberty of irregular migrants is an administrative procedure, not a criminal one. This means that irregular migrants are not suspects in criminal cases, and should be treated differently from suspects.

#### **MIGRANT = HUMAN BEING**

During deprivation of liberty of a person with migrant status in our country, law enforcement officials take measures and actions in relation to him that are **EQUAL** to those taken in relation to nationals of Bosnia and Herzegovina. This person has **EQUAL** rights as the nationals of Bosnia and Herzegovina.

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21 The term “irregular” is preferred because the term “illegal” or “unlawful” carries a criminal connotation.

1. In addition to the standard procedure and if security conditions so permit, during deprivation of liberty the police officer seeks to provide an interpreter or at least an informal notification on paper in which he states, in a language the person understands, that the person is being deprived of liberty, the reason for deprivation of liberty, the place where he will be taken and the contact phone number of the law enforcement agency. This notification may also be given to family members of the person deprived of liberty.
2. If a person deprived of liberty leaves behind family members without custody, and if the conditions so permit, the presence of an officer/employee of the Service for Foreigner Affairs, Ministry of Security of BiH needs to be ensured, as well as social welfare officers to take over care of them. Family members cannot be placed in the premises intended for persons deprived of liberty in the police agency while awaiting their takeover by other services.

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In addition to the standard procedure conducted on admission, a person deprived of liberty is treated in a cautious and professional manner. Bear in mind that these persons come from different cultures and that they can react strongly to laughter or mockery, for which they do not need an interpreter to understand what is going on.

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3. Immediately on admission, migrants are given "Questionnaire – Rights of Persons Deprived of Liberty". This document must be written in their language, otherwise an interpreter is hired.
4. Following deprivation of liberty, migrants can exercise all rights exercised by nationals of Bosnia and Herzegovina (lawyer, medical assistance, informing family member or another person).

Informing persons deprived of liberty is elaborated in a separate chapter of this Handbook. These persons most often have poor health which is why it is recommended that they see a doctor upon reception. They have the right to inform family member or another person of their choice, as well as a consular representative of their country. Such rights must be exercised even if contact has to be established with another country. Law enforcement agencies have protocols on contacting consular representative offices in Bosnia and Herzegovina, which managerial staff is familiar with.

5. Prior to placement in holding/detention unit, and if you have to place several persons together, separate foreigners from the nationals of Bosnia and Herzegovina and then again assess all the foreigners to see whether they can stay in the same room. This is because persons who up until recently were on opposite sides in a war very often end up at the same location.
6. An officer removes from the premise holding migrants any object that might be used to inflict self-harm or injuries to another person or to officers.
7. Premises holding migrants are comfortable in terms of temperature, fresh air and day light. If there is a ventilation system in the room, the police officer turns it on. If there is no such system, the police officer only airs the room at regular intervals so that the person deprived of liberty has access to fresh air.
8. The protocol is similar for heating the room; immigration officers adjust the thermometer, if they can access it, to the temperature that is appropriate for the weather conditions.

9. The premises also include rest areas (bed, sleeping platforms, mattresses), appropriate covers, clean bedding. If a person deprived of liberty spends more than 8 (eight) hours at the immigration detention centre, an immigration officer brings clean bedding from the storage room and instructs cleaning staff to do the cleaning after each stay.
10. Persons deprived of liberty staying in holding facilities must have access to toilet facilities if these are not part of the holding cell. If there is no toilet in the cell/holding premises, the person is escorted to the bathroom by a police officer of the same gender for security reasons. Bathroom doors are not closed, but the officer stays out of sight so that the person has privacy. The person, if necessary, should be given an explanation, at least by gesticulating, on how to use the toilet.
11. Migrants are provided with sanitary supplies from the existing stock; the officer brings supplies from the storage room and makes a record of it.
12. Expect that in the case of collective placement in a holding cell/premises there might be a person who makes a request for an isolated area for prayer and, if security reasons so permit, this is made possible, under supervision, in order to ensure exercise of religious rights.
13. Migrants are given three meals per day, with necessary nutritional and calorific values. Particular consideration is given to the food which is common in the country the person comes from. Persons may not be forced to eat food which is prohibited to them for various reasons.
14. Items temporarily seized from persons deprived of liberty are stored in proper places (closets, lockers, etc.). Likewise, migrants are given explanations in a language they understand about the procedure of temporary seizure of items: why the items are seized from them, where they will be stored and when and if they will have them back. As in the case of our nationals, these persons can have their items which do not have to be seized delivered to their family members, if they so wish.

The detailed procedure for temporary seizure of items is the same like in other police agencies and is explained in a separate chapter of this Handbook.

15. A separate search room is arranged on admission of migrants. A search may be carried out in another room suitable for such purposes (e.g. room for accommodation) if it is out of sight of third persons. An officer first explains the search procedure. If the officers do not speak the migrant's language, they can use pictures or paper which describe the search procedure in a language that the migrant understands.

The principles followed during searches conducted at an immigration centre are described more thoroughly in the Guidelines for Dealing with Persons Deprived of Liberty in a Closed Environment, as well as in a separate chapter of this Handbook related to police agencies.

16. Holding premises in which persons deprived of liberty are placed may be accessed only by persons authorised by the detention premises manager. A police officer checks whether there is an access authorisation in order to ensure protection of personal data and privacy of persons who have not yet been convicted of a criminal offence, and are therefore presumed innocent.
17. As a result of various traumas, they have suffered in their countries of origin or in the countries of transit, a closed environment is expected to cause challenges and psychological health problems among these persons. The officer in charge of the

persons deprived of liberty supervises these persons with increased frequency, mainly by visiting the holding premises, and looks for signs that might indicate that a person has suicidal tendencies.

18. A lawyer visits a person deprived of liberty at the holding cell and the conversation is conducted in a way that prevents the officers from hearing it. The lawyer's visit is made upon order by the court or prosecutor's office, depending on which authority issued the arrest warrant. In some agencies, person deprived of liberty is entitled to a phone call to a lawyer, based on which the lawyer is granted access to the holding cell/premises.
19. A migrant who believes that his rights have been violated may lodge a complaint with the Detention Centre manager or the Service director. Complaints are most often lodged in writing, and the only responsibility of the immigration officer is to deliver complaint to the addressee without delay. The standard procedure is adjusted so that the person is given an explanation in a language he understands on how complaints are lodged and what further instances would consider it.

### **Human rights checklist**

#### *Administrative-technical framework*

1. Presence of interpreter and visit by a consular representative
2. Ensured access to doctor, lawyer, toilet facilities
3. Family or third person of own choice informed
4. Records filled out in accordance with valid rulebooks in the language the migrant understands

#### *Ethical framework and prevention of violation or abuse of procedures*

1. Juvenile family members of the person deprived of liberty are left without care, with the other persons in the group. These minors often become victims of human trafficking.
2. Requested medical assistance not been ensured
3. Appropriate food not been provided
4. Force used unlawfully because "baton speaks a thousand languages"

### **Frequently asked questions**

1. Is there a difference between the terms refugee and migrant?

Yes, there is indeed a difference which is not negligible. These two words carry different meanings and confusion over their use leads to problems for both of these groups. Even though the concepts "refugee" and "migrant" are often used interchangeably in the media and public speech, there is a key difference between the two. Using these terms interchangeably might cause misunderstandings in the discussion on asylum and migration.

Refugees are defined in the international law as persons who are out of their country of origin and who are unable to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Refugees legally have certain rights also on protection from forced return to their countries of origin.

Irregular migrant is a person who, due to unauthorised entry in the country has breached entry requirements or his visa expired or lacks legal status of the country through which he is transiting or the country of destination, as well as persons who have legally entered the country of transit or the country of destination, but have remained there longer than legally entitled to or have found irregular employment.

2. Who are asylums-seekers?

Asylum seekers are individuals who have requested international protection and whose applications for refugee status have not been approved yet. In Bosnia and Herzegovina, the authorities (Ministry of Security of Bosnia and Herzegovina – Asylum Department) are responsible for foreigners seeking international protection, and they have access to primary health care, elementary and secondary education, legal aid and psychosocial assistance – with UNHCR's support. These persons are entitled to stay in the country, unless their asylum application is rejected. Everyone is entitled to seek asylum in another country. People who do not meet the requirements for refugee status or subsidiary protection may face deportation.

3. Do irregular migrants also deserve protection?

Reasons for which migrants leave their countries are often related to their livelihoods and finding ways to meet their existential needs and protect their human rights is extremely important. Migrants are protected under international human rights law. Failure to ensure protection of their human rights may have serious consequences for some of them.

This can lead to violations of human rights such as:

- serious discrimination;
- arbitrary apprehension or detention;
- forced labour, enslavement or exploitation.

Moreover, some migrants, such as victims of human trafficking or unaccompanied children or separated children, may have special needs for protection or assistance and are entitled to have these needs met (psychological assistance etc.)





## APPENDIX 1: Efficient communication

### Interpretation of some most frequent signs of non-verbal communication

	Defensive attitude	Aggressiveness	Impatience, boredom or discomfort	Misunderstanding of the interlocutor	Openness	Enthusiasm
Facial expression	Pursed lips	Clenched teeth, tense jugular veins	Feet stamping, wringing hands	Wrinkled brow, Raised eyebrow, strained nodding	Smile	Smile
Eye contact and gaze	Look away with minimum eye contact, skinny eyes	Intensive eye contact	Rolling eyes	Blank stare accompanied with unstable eye contact	Direct eye contact, without gazing, accompanied with nodding	Eyes wide open
Distance, orientation and body posture	Body stiffness, tightly crossed arms and legs, clenched fists	Approaching and diminution of an intimate space (arr. 30 cm) a sudden and threatening leaning towards the interlocutor  Shrugging,  Hand movements - inappropriate, indecent or degrading movements	Drumming fingers, legs swinging, body positioned towards the exit, looking at watch and other objects in the room		Flexible, open body posture, open hands, coming closer to interlocutor, arms and legs uncrossed	Upright body posture
Tone of a voice	Flat tone	Raised voice	Steady tone, fast talking		Steady tone	Well-modulated tone of voice

## APPENDIX 2: Manipulating with the time of deprivation of liberty

### Assessment of a degree of complexity

Any written order or request from a judicial institution (court or prosecutor's office) for undertaking of any operational activity is immediately taken into consideration in order to determine the degree of complexity.

The court submits a written court order to the protocol of the organisational unit in respective territory. This court order is registered in incoming mail log after which it is delivered to the head of the basic organizational unit.

The head of the basic organizational unit assesses the degree of complexity independently or with the help of other managers of the organizational unit.

The complexity assessment includes all available information related to the personality and character of the person to be deprived of liberty (whether he is repeat offender, if yes then in which category of offenders he/she belongs, information about the type and scale of expected resistance and potential abettors, potential consequences, material and technical means and human resources needed for the deprivation of liberty and other information than might be of interest for successful operation).

If, due to the insufficient availability of operational data, or lack of other necessary information it is not possible to determine a degree of complexity immediately, the head of the organisation unit can issue an order for additional verifications.

Additional check can be conducted through the means of communication, by direct engagement of officers in the field or by gathering data from other police authorities.

For additional verification through the means of communication it is not necessary to issue a work order, and the officer who performed the checks is obliged to make an official note of the collected information or to record the information on the back of the written order, confirming the authentication with his signature.

If the additional check is carried out by direct engagement of the officer, the head of the basic organizational unit is obliged to issue a work order containing specific tasks, based on which the official report is made.

If an additional check is carried out by gathering information from other police authorities the head of the basic organizational unit is obliged to send a written request to other legal bodies to submit requested information.

After assessing the degree of complexity the head of the basic organizational unit determines the degree of complexity by a written order, in a way that he executes the order in the upper right corner, indicating there degree of complexity and the risk level for the implementation of the order and provisions which internal organizational unit has to follow. After this, the order is submitted for implementation to the head of the internal organizational unit. Head of internal organizational unit, or an acting duty officer, if it is a matter of acting outside the working hours of the court, issues necessary documentation, material and technical means and organizes a patrol or police team who starts the execution of the task.

If the risk assessment determines that the order is of a high or highest degree of risk and that with the aim of deprivation of liberty of the requested person it is necessary to take more extensive operational and tactical measures and actions, the head of the organizational unit is immediately informed by the head of the police agency.

The notification must contain, inter alia, the reasons why the order has been assessed as having a high or the highest degree of risk and a proposal of the measures to be taken in the specific case.

After assessing the merits of the information and the proposed measures submitted by the head of the basic organizational unit, the decision on specific measures is made by the head of the police agency.

## APPENDIX 3: Obligation to inform person deprived of liberty on their rights

### Official records

Any deprivation of liberty must be documented. Documenting of liberty deprivation is conducted by making official records, as well as by issuing relevant certificates on liberty deprivation. In addition, depending on circumstances of liberty deprivation, it may be needed to make:

- **Record of examination;**
- **Record of rub down search;**
- **Report on rub down search;**
- **Certificate on temporarily seizure of items;**
- **Certificate on returned items;**
- **Official note on the use of tie equipment;**
- **Report on duress;**
- **Report on the liberty deprivation conduct;**
- **Certificate on the transfer of a detainee to another legal body or a prosecutor;**
- **Certificate on release of the person deprived of liberty etc.**

Prior to submitting all reports related to deprivation of person's liberty to competent and acting court and prosecutor's office, all information related to deprivation of liberty have to be sent, in hierarchical order, to all relevant agency's officials.

Person deprived of liberty are registered in the Record of person deprived of liberty, where the following data are entered for each person deprived of liberty:

- **Information about person deprived of liberty**

(surname, name of one parent, name, nickname, unique I.D. number of a citizen, age, sex, marital status, day, month, year, place and country of birth, current address, citizenship, employment, physical description (including visible bodily injuries), physical condition of a person (visible and identified health problems, injuries, drug use, alcohol));

- **Deprivation of liberty**

(date and time of deprivation of liberty, exact location of deprivation of liberty, misdemeanour or criminal offense for which the person is suspected, reason for deprivation of liberty, use of force, type of force used, police officer who committed deprivation of liberty, mode of transportation to the organizational unit, date and time arrival at the law enforcement agency, police officer in charge of transport, police officer who searched the person deprived of liberty, seized items, officer in charge who approved the deprivation of liberty);

- **Communication with relevant court and prosecutor's office;**

- **Rights of a person deprived of liberty**

(giving information about their rights, request for lawyer, request for medical assistance, request for informing a family member / consular worker / other person, documents on deprivation of liberty);

➤ **Surrender of a person deprived of liberty**

(mode of transport/bringing a person deprived of liberty to another organizational unit, court, or other legal body, name, surname and official identification number of police officers who brought the person deprived of liberty, date and exact time and place of surrender of the person to another organizational unit / prosecutor's office / court / other competent body to which the person is surrendered, name, surname, official identification card of the person who surrendered and the person who took over the person deprived of liberty).

➤ **Releasing a person deprived of liberty**

(Date and time of the decision on release, the reason for release).

In case when other organisational unit admits a person deprived of liberty, this person doesn't have to be registered again in a different admission log. Instead, procedures related to the case of this person deprived of liberty continues until the person is handed-over to other legal body, or until the cessation of reasons for deprivation of liberty. If a person has been deprived of liberty by another legal body, after the admittance the person is registered in the Log and in the part containing data on deprivation of liberty, indicated is a legal body that deprived the person of liberty.

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**Questionnaire for person deprived of liberty**

1. Have you been injured during deprivation of liberty?

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2. Have you been subjected to physical abuse during deprivation of liberty, if so – in what way?

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3. Have you been examined by medical personnel or doctor?

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4. Have you been subjected to insults, belittling or threats by official staff during the deprivation of liberty?? If so - in what way?

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5. Do you have any injuries and if so, describe how these injuries occurred?

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6. Do you have any health issues, or do you suffer from certain diseases (blood sugar, coronary, kidney, or respiratory tract diseases like asthma, epilepsy, or other chronic diseases)?

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7. Have you consumed alcohol, narcotics or other opiates in the period of past 24 hours? If so, do you need medical help??

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8. Do you use any medical therapies prescribed by your doctor?

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9. What medications are you using?

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10. Where are your medicines and with whom, do you have a telephone number from a person who could bring you medicines?

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11. When was the last time you consumed food and are you hungry?

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12. When was the last time you consumed fluids, that is, are you thirsty?

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13. Do you have any physiological needs?

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14. Do you have any requirements or needs that we have not listed in our questionnaire?

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15. Do you have items with you that could cause personal injury to yourself or others?

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Date and time of completion:

\_\_\_\_.\_\_\_\_.\_\_\_\_. Year, at \_\_\_\_ , \_\_\_\_ hrs.

Questionnaire completed by:

Name and surname: \_\_\_\_\_ Signature: \_\_\_\_\_

**NOTE:**

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Police officer:

Name and surname: \_\_\_\_\_ Signature: \_\_\_\_\_

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## Appendix 4: Examination (visual check-up) and search of person deprived of liberty

### The most common forms of rules infringement during the examination and search of PDL:

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- Superficial or complete omissions during security examination and preliminary search of the PDL immediately after the arrest, and also on the site of arrest;
  - discarded items and traces immediately before person's deprivation of liberty got to be taken and contaminated by law enforcement officers. These items get to be recorder as temporary seized items, which does not correspond to an actual situation and represents a violation of human rights (discarded items and traces got to be excluded during the investigative procedure known as „on-site investigation“),
  - not recording all found and seized items in the record of examination or search of a person, and when recording, they are very often superficially described in the record of the examination of the person and in the certificate on temporary seized items (without providing any detailed descriptions);
  - The record of the examination of the person and the certificate of temporary seizure of items often contains seized items that fall under the category of evidence (**items seized and documented in this way cannot be used as evidences in criminal or misdemeanour proceedings**). Mentioned items have to be documented in the Search Report of PDL, in accordance with the CPC and the Law on Misdemeanours
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## Appendix 5: Inter-Agency Cooperation on Prevention of Ill-treatment and Impunity

- How to evidence cooperation between various stakeholders in the custodial environment to prevent ill-treatment and impunity-

In European countries, many agencies external to the police can be and are in practice involved in cooperating with and monitoring/supervising the police in order to prevent torture and other forms of ill-treatment. These include most notably National Preventive Mechanisms (NPMs) in countries that have ratified the Optional Protocol to the UN Convention Against Torture (OPCAT), Ombuds institutions or other national human rights institutions, international monitoring bodies such as the European Committee for the Prevention of Torture (CPT) or the UN Sub-Committee on Prevention of Torture (SPT), prosecutors, Bar associations and individual lawyers, medical doctors examining persons in police custody, or civil society organisations that are mandated with monitoring or otherwise cooperating with the police to strengthen the prevention of ill-treatment.

According to the request from side of the Council of Europe office in Sarajevo, this short paper will focus exclusively on the **role that prosecutors could and should play** in this matter.

It should be noted at the outset that the relationship between the police and prosecutors is generally **regulated by law and internal regulations**. Hence, a number of the questions posed by the Council of Europe colleagues (see annex) can be clarified by looking into the respective laws of various countries, and in particular the criminal procedure codes and laws on prosecutors and on police. As public officials, both police and prosecutors are normally bound by law to keep official secrecy. Furthermore, internal regulations (which are usually not publicly available) are used to further specify the relationship between prosecutors and the police by outlining, for instance, in which manner police officers have to inform prosecutors of arrests they have made and on the reasons for arrests. The way in which cooperation between the police and prosecutors develops therefore primarily depends on the will of the legislator and legal traditions prevalent in the country.

It is also important to note that prosecutors' functions differ from country to country, and it is therefore difficult to talk about "best practices" when it comes to cooperation with the police. In some countries, **prosecutors are the first instance independent of the police who get to see a newly arrested person**, often after a fixed period of several hours or one to two days<sup>22</sup>. In other countries, arrestees are rather presented to a judge or an investigative judge; prosecutors in these countries **do not normally get to see arrested persons** until the court hearing, although they are in charge of the criminal investigation.

In **Austria**, for instance, prosecutors are responsible for heading criminal investigations and instructing the criminal police to carry out investigative measures.<sup>23</sup> According to the law, they should try to achieve mutual consensus in this work; but if no agreement can be found over how to conduct an investigation, the prosecutor in charge can give the police binding orders (Art. 98 CCP). Prosecutors can participate in investigative steps (such as interviewing a suspect) or carry out their own investigation (Art. 103 CCP), but primarily it is the criminal police who perform this work, while prosecutors supervise them by merely examining their reports (Art. 101 (4) CCP).

The manner in which police and prosecutors in Austria have to **communicate** with each other is equally regulated by law. The police have to inform the territorially competent prosecutor's office of the start of an investigation that requires the approval of the prosecution (Art. 99 CCP). The police have to write a report on any measure they take, which should include the reason for the measure, the way it was implemented, and the result of the measure. If the police has to use force, they need to provide special reasoning in their report to the prosecution. Reports have to

<sup>22</sup> In most South-Eastern European countries, an arrested person is mandatorily presented to a prosecutor after periods of maximum eight (Serbia) to 24 hours (Albania, Bosnia and Herzegovina, Montenegro) after apprehension. In Croatia, a prosecutor must interview an arrested person within 16 hours after this person has been transferred to a custody officer.

<sup>23</sup> Certain investigative measures require additionally the approval of the competent court; c.f. Art. 101 Code of Criminal Procedure (CCP).



be conveyed in writing or by means of electronic data processing (IT) (Art. 100 CCP). On the other hand, prosecutors can give their orders verbally, unless they are ordering the use of force, which has to be reasoned and in written form (with the exception of urgent cases). The written form can be replaced by electronic means or use of electronic data processing (Art. 102 CCP).

Another practical example is the manner in which police officers in **Luxembourg**<sup>24</sup> inform prosecutors of an arrest: In the prosecutor's office, an officer (a substitute/representative of the prosecutor) is on duty 24/7 in order to receive information from the police. The initial communication is carried out via telephone, and the primary facts are described. This is followed up by e-mailing or telefaxing the procès-verbal of the arrest.

Generally speaking, prosecutors can indeed have an important role in the prevention of ill-treatment, if they understand that part of their function is the **upholding of the legality of the entire criminal process**. With this in mind, they should have a keen interest in guaranteeing that nobody is subjected to torture or other forms of ill-treatment. Furthermore, prosecutors should be firmly aware of the fact that **ill-treatment constitutes a crime**, which should be brought to justice *ex officio*<sup>25</sup>. In countries such as Bosnia and Herzegovina, in which prosecutors play a much more active role in criminal investigations than in many Western European countries where prosecutors only see suspects at a much later stage in court, there is possibly greater potential to develop the position of prosecutors in this respect.

Prosecutors who mandatorily meet suspects should make it a habit to ask the person they have in front of them at that occasion how they have been treated by the police so far. This includes the time of the actual apprehension and any allegation of excessive use of force, as well as the time spent in custody. It would probably go too far to expect from prosecutors that they conduct a lengthy interview with every arrested person about the manner they have been treated. However, **prosecutors should definitely have an open ear and ask at least a few questions if the person sitting in front of them** has any complaints against the police. Prosecutors should acknowledge that a person might be at the same time a suspect in a criminal case and a victim of police brutality.

It is somewhat obvious that the person in question will feel more at ease to talk about potential ill-treatment he/she has endured if they can speak **in private** with the prosecutor and not in the presence of the police officers who might be the perpetrators of ill-treatment against them. Finally, any **visible injuries** on the person in question must cause the prosecutor to inquire how these injuries were sustained. Prosecutors should have sufficient experience to detect if a potential victim is reluctant to speak about the origins of injuries because they are afraid of negative consequences and/or more ill-treatment.

Any allegation or injury indicative of ill-treatment must be followed up and treated as a potential crime. Prosecutors should order an **immediate forensic medical examination**, but make sure that it is not again the same police officers who bring the potential victim to the medical examination. In general, prosecutors should be aware that in such cases they are responsible for **victim protection measures**. This includes in particular a responsibility to ensure that a potential victim is not sent back to the same police station or into the sphere of authority of the same police officers who have possibly ill-treated them.<sup>26</sup>

<sup>24</sup> The situation in Luxembourg is comparable with other countries that have the Code Napoléon as the basis of their criminal procedure, such as France and Belgium.

<sup>25</sup> It depends on the laws in the respective country whether torture and other forms of ill-treatment are indeed made a crime, and whether the different forms of ill-treatment are crimes that need to be investigated and prosecuted *ex officio* or only upon official complaint.

<sup>26</sup> In Ukraine, this precept was included in the Code of Criminal Procedure (Art. 206), which obliges investigative judges, whenever a person states that he or she has been subjected to ill-treatment during apprehension or detention by public officials, the investigative judge is required to record such a statement or accept a written statement from the person concerned and in particular: (1) to ensure a prompt forensic medical examination of this person; (2) to assign the investigation of the facts to the appropriate investigating authority; (3) to take the necessary measures to ensure protection of the person concerned in accordance with the law. The judge should act in the above-described manner whatever the person states or if his/her appearance or condition, or any other information known to the judge, gives grounds for him or her to believe that the person concerned has been ill-treated during apprehension or subsequent detention. The judge is not required to act in this manner if the prosecutor provides evidence that such action has already been taken or is being taken.

A special function is held by prosecutors who form part of **independent investigative bodies** dealing with police misconduct, and in particular with cases of ill-treatment. In recent years, more and more countries have decided to establish such independent bodies, such as Norway, Denmark, Cyprus, Moldova, Slovenia and recently also in North Macedonia. It would go too far to explore here the potential of cooperation between this kind of prosecutors and the police; however, the Council of Europe certainly supports the establishment of such entities with a view to fighting impunity through effective investigations.<sup>27</sup>

In a number of countries, prosecutors are by law endowed with a more general **supervisory role over police custody**. For instance, prosecutors in Turkey regularly visit police stations in order to check custody records and other documents. They primarily verify that the records are filled in diligently and that persons are not held for longer by the police than legally permitted. Further, they should establish if the other safeguards against police ill-treatment, such as being informed of one's rights, the right to inform a third party of arrest, the right to a lawyer, the right to a doctor, the right to inform a foreign representation in case of arrested foreigners or other special rights of juveniles of persons with intellectual disabilities have been granted.

In some Eastern European countries, where prosecutors traditionally hold extensive powers, prosecutors have in the past also been made responsible for **examining conditions of police custody** in general. However, for various reasons this function has in practice not made much of a positive impact on the prevention of ill-treatment or the improvement of conditions of detention. In recent years, the role of monitoring police custody conditions has been more and more relinquished to NPMs.

Good cooperation between prosecutors and the police has the main **benefit** of adding transparency and professional supervision of the oftentimes rather opaque period of police custody, and guaranteeing strict adherence to legality. However, if the cooperation between the police and prosecutors becomes too close, there is a risk that prosecutors see themselves as being "on the side" of the police in the "fight against crime". This in turn might lead to prosecutors not being interested in the rights of arrested persons, as they are seen as the adversaries from a black-and-white viewpoint. Eventually, such an overly close understanding of cooperation can lead to prosecutors turning a blind eye to or even covering up crimes of ill-treatment committed by police officers.

On the other hand, an antagonistic relationship between the police and prosecutorial services are also not beneficial for the criminal justice system. This can easily happen if prosecutors feel that they are in a superior (rather than complementary) role to the police, and start treating police officers with contempt.

In sum, the cooperation between the police and prosecutors for the prevention of ill-treatment can be **strengthened** by various measures. The laws and regulations would have to be analysed to clearly determine which role prosecutors have to play in the first hours after an arrest, and whether these laws and regulations could be strengthened, e.g., by making it mandatory for prosecutors to inquire how suspects in front of them have been treated by the police; or by outlining more clearly which steps a prosecutor who is confronted with an allegation of ill-treatment has to take. Further, one could envisage training of prosecutors to raise their awareness of their special role in the prevention of ill-treatment and the various specific supervisory functions they could fulfil. Ultimately, the establishment of an independent body possibly comprised of investigators and prosecutors to deal with police misconduct would most certainly have a positive effect on the decrease of police ill-treatment.

Finally, a single point of contact for inter-agency cooperation would not add much value, as the mandates of the diverse agencies listed in the first paragraph are too diverse to necessitate or make feasible constant exchange. However, channels of communication between these bodies should certainly exist, and an annual inter-disciplinary meeting between different actors involved in police work could provide for a useful platform to exchange ideas and solve challenges of cooperation.

<sup>27</sup> See, e.g., Department for the Execution of Judgments of the European Court of Human Rights, DG1, Effective Investigations into Death or Ill-Treatment Caused by Security Forces, Thematic Factsheet, July 2020.

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**Questions serving as the basis of this discussion paper:**

- What external agencies (external to police) co-operate with police in prevention of ill-treatment?
- What is the mechanism by which this occurs?
- How does this co-operation usually develop? Who initiates this and how does it develop?
- What are the benefits to this?
- What are the challenges?
- How is information exchanged? Digitally? By post? By telephone? Via a MDT meeting?
- Are there any benefits and challenges to this?
- What are some of the pitfalls currently in sharing information? What about confidentiality issues from the protocols? How do you overcome these?
- How could this process be improved? What other information do you need?
- Are some agencies better than others at sharing information and co-operation? Why do you think this is so and how can it be improved?
- Can you give a case example of when inter-agency cooperation would have improved the situation regarding ill treatment? How would it have been improved?
- What would be five of the most important problems for inter-agency cooperation? What would be five of the most effective solutions?
- Do you think that having a single point of contact for all inter-agency co-operation would be of benefit? If so, who?

## Appendix 6: The Rights of Persons Deprived of Liberty

**Dr Julia Kozma, international consultant**

One of the challenges for the human rights trainers in police agencies is how to convey to police officers what constitutes torture and inhuman or degrading treatment, and why it is prohibited. What is often missing to a certain extent is the notion of an “absolute” right, as opposed to rights that can be limited.

The prohibition of torture and other forms of ill-treatment are absolute, meaning that it can never be justifiable to torture someone or to treat them in an inhuman or degrading manner. The wording of Article 3 ECHR reflects this absolute nature of the prohibition by omitting any limitation within the text of the Convention, as included in most other rights. Another example of an absolute right is the prohibition of slavery, which – similarly to torture - aims at destroying the human being as a subject and his/her dignity. It might be tempting in practice to apply “just a little bit of torture” in cases where it seems to be “necessary” and “appropriate to safeguard the lives of others”, such as in the often quoted “ticking bomb scenario” or in the real-life case of Gäfgen, who had kidnapped a boy for ransom and was caught by the police while trying to collect the ransom. The police authorities had threatened him with the application of torture in order to find out about the boy’s whereabouts and potentially save his life (Gäfgen v. Germany, Application no. 22978/05, 1 June 2010). However, it must be clear that torture cannot be applied only to limited cases, but that history has shown that once torture is tolerated in single cases, it spreads throughout the whole criminal justice sector and undermines society at large.

Furthermore, with regard to the differentiation between torture, inhuman treatment and degrading treatment, there are certain reservations as to the “intensity of pain” threshold. This doctrine was developed by the Court in 1978 in the Ireland v. UK case (based on previous Commission cases), and is now considered to be outdated - for good reasons. How much pain a person feels is a rather subjective test, and depends on various factors (age, sex, physical constitution etc.). I would therefore not use this threshold to explain the difference between torture and inhuman treatment. In short, it is better to use for training purposes the definition for torture as contained in Art. 1 CAT and shortly elaborate on the different elements (intent, severe pain or suffering whether physical or mental, purpose (confession, information, punishment etc.), and involvement of a public official). Inhuman treatment still has to fulfil a certain severity of mental or physical pain or suffering; but often the purpose (extraction of confession or information) is missing, or the public officials do not intend to cause this pain. Inhuman treatment does not have an official definition, and is best explained by giving examples, such as inhuman conditions of detention, neglect that causes pain or suffering (e.g. forgetting to give a detainee food or water, not providing necessary medical care), or the application of excessive force. Degrading treatment is treatment that causes feelings of fear, anguish and inferiority, capable of humiliating and debasing the victim. It is not necessary for degrading treatment to reach a certain level of pain.

Finally, it should be made clear that Article 3 ECHR does not outlaw every interference with the physical integrity of persons. In particular cases, law enforcement officials will be compelled to use physical force that can actually cause intensive pain in the person concerned (use of baton or pepper spray). However, this treatment will not qualify as inhuman treatment if it was applied in accordance with the law, pursued a legitimate cause (such as the safeguarding of the life of others), and was necessary and proportionate in the circumstances. An imaginable example could be the use of force against a hostage taker, who could be shot in the leg or tasered in order to save the life of the hostage – all quite painful! As soon as the aggressor is brought under control, however, there can be no justification for further applying pain on him/her, as this would qualify as inhuman treatment, or even torture if the other elements, in particular the purpose (e.g. to punish) exist.

Another major concern is the correct interpretation of the **right to life** in police work. It is true that the right to life is not absolute, i.e. that it can be limited in exceptional situations. Police officers can take somebody’s life under very strictly defined circumstances, and act legally (i.e. not violate the right to life). What is vital, though, is to very clearly explain these circumstances and give guidance on the principles of legality, necessity and proportionality. The ECtHR applies

the strictest proportionality test to these situations where a public official has killed (or used force that could very easily have led to the death of) a person, and has even found that a lack of planning of an operation that led to the death of persons, the lack of training of police officers, or unclarity in the laws can lead to a violation of Art. 2 ECHR even if the actual action that led to the death was *prima facie* justified. Here is another short summary that might be helpful:

The notions of self-defence and defence of others, as well as the use of potentially deadly force to effect an arrest or prevent the escape of a detainee, or for quelling a riot or insurrection are explicitly mentioned as limitations to the right to life in Article 2 (2) ECHR.

However, these exceptions do not give a “*carte blanche*” to the authorities when pursuing any of these aims. On the contrary, the ECtHR has regularly applied a very strict test in order to determine whether the use of lethal force by the State has been absolutely necessary and proportionate. The leading case in this connection is *McCann and Others v. The United Kingdom* (Application no. 18984/91, 27 September 1995), where the Court held that Article 2 allows for exceptions to the right to life only when it is “absolutely necessary”, indicating that

a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” [...].

*McCann v. The United Kingdom*

In the mentioned case the Court found a violation of the right to life because the operation, in the course of which Special Air Service soldiers shot dead three members of the IRA suspected of having on them a remote control device to explode a bomb, could have been planned and controlled without the need to kill the suspects. The use of force that can lead to death does not only have to be authorised under national law; but policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident. The Court has in the past examined whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken.

A variation to the case of *McCann* is the case of the hostage taking by Chechen separatists in the “*Dubrovka*” theatre in Moscow in 2002 (*Finogenov and Others v. Russia*, Applications nos. 18299/03 and 27311/03, 20 December 2011). While the Court found that the decision by the authorities to overcome the hostage crisis by force and to use gas was justified in the circumstances, it held that Article 2 had been violated because the rescue operation was not sufficiently prepared, in particular because of the “inadequate information exchange between various services, the belated start of the evacuation, limited on-the-field coordination of various services, lack of appropriate medical treatment and equipment on the spot, and inadequate logistics”.

As mentioned, a very strict necessity and proportionality test has to be applied whenever limiting the right to life for any of the reasons foreseen by Article 2 (2). For example, the ECtHR has found a violation of the right to life in a case of a prison riot, in the course of which eight prisoners were killed and six injured, because the force used had not been “absolutely necessary” (*Perişan and Others v. Turkey*, Application no. 12336/03, 20 May 2010). The Court also considers that in principle there can be no such necessity where it is known that the fleeing person poses no threat to life or limb and is not suspected of having committed a violent offence, even if failure to use lethal force may result in the opportunity to arrest the fugitive being lost (*Nachova and Others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, 6 July 2005).

In various cases a violation of Article 2 was found because the officers responsible for killing persons had not been adequately trained to assess whether it was necessary to use a firearm and in the respect for human life as a fundamental value, vetted before issued with a firearm, or

apparently assessed to be fit to carry a firearm (Gorovenky and Bugara v. Ukraine, Applications nos. 36146/05 and 42418/05, 12 January 2012; Sašo Gorgiev v. “The Former Yugoslav Republic of Macedonia”, Application no. 49382/06, 19 April 2012).

Finally, the Court has repeatedly criticised that the legal frameworks guiding the use of force have been deficient, such as in the case of Soare and Others v. Romania (Application no. 24329/02, 22 February 2011). Another interesting detail of this case is the finding by the Court, as already in the case of Makaratzis v. Greece, that a person does not necessarily have lost his/her life in order to qualify for a violation to the right to life, if the force was potentially lethal and the victim only survived by chance.

The purpose of this material 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, Inhuman and Degrading Treatment or Punishment (CPT). The Council of Europe, 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 Bosnia and Herzegovina.

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## MORE INFORMATION

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