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CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE

LEGISLATIVE ASSISTANCE AND RESEARCH PROGRAM

ANALYSIS OF THE DRAFT LAW ON POLICE OF THE REPUBLIC OF MONTENEGRO

PROMOTING THE RULE OF LAW



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LEGISLATIVE ASSISTANCE AND RESEARCH PROGRAM

ANALYSIS OF THE DRAFT LAW ON POLICE
OF THE REPUBLIC OF MONTENEGRO

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Analysis of the Draft Law on Police of the Republic of Montenegro

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Analysis of the Draft Law on Police of the Republic of Montenegro¹

I. Introduction

The following is a report on the draft Law on Police of the Republic of Montenegro.² It aims to highlight and identify to Montenegrin lawmakers and legislative drafters potential problems within the body of the text as well as practical concerns of implementation. The analysis seeks to evaluate the draft law within a comprehensive framework of domestic constitutional and regulatory concerns, comparative domestic schemes, as well as broader international standards and practice.

The draft Law on Police is generally a good law and its provisions intend to establish a police force that is at once efficient and respectful of the rights of Montenegro's citizens. To this end, the majority of concerns about the Law on Police center on the clarity and consistency of its provisions and the creation of practicable standards. In order to best address these issues, this assessment is divided into ten separate sections: Police Infrastructure & Administration, Police Accountability, Search & Seizure, Arrest, Summons, Detention, Coercion, Surveillance & Undercover Investigations, Labor Relations, and International Cooperation.

A. Police Infrastructure & Administration

Effective police legislation requires the establishment of a workable infrastructure, one within which the allocation of authority and duties is both clear and comprehensible. Specifically, a successful law on police addresses the qualifications needed to become an officer; the official duties and responsibilities of police personnel; the chain of command as well as who has the ultimate authority and responsibility for police actions; and, the rights and responsibilities police officers have in their capacity as employees. To its credit, the draft Law on Police includes these critical elements.³ However, any successful legislation on police must also ensure the efficient internal administration of these criteria. Under the current administrative framework of the draft Law on Police, the Minister of the Interior is given an abundance powers and duties. It is suggested that modifications to the current structural framework be considered given this concentration of authorities.

According to Article 3 of the draft legislation, all police in the Republic of Montenegro are subject to the control of the Minister of the Interior. Under the Minister is the Directorate General of the Police, the head of which "is appointed by the Government of the Republic of Montenegro, at the proposal of the Minister" (Art. 13). The Director General "is responsible to the Minister and the Government" (Art. 13). Within the Directorate General are the Police Board

¹ Compiled by Olivier Beabeau, Esq., CEELI Legislative Analyst.

² The analysis and conclusions contained herein are based on a thorough review of an unofficial English-language translation of the draft Law, the accuracy of which has not been verified. As a result, specific issues identified by this report may flow from the translation rather than the language of the original text.

³ Article 97 states the necessary qualifications; Articles 2, 4, 5, 6, 7, and 8 detail the duties and responsibilities of the police; Articles 17-95 delineate the authority of the police; Articles 3, 11, 12, 13, 14, 15, 16 and 102 state the chain of command, and who has intermediary authority and responsibility for police actions; Articles 10, 141, 142, 144, 145, 146, 147, 148A, 148B and 149 discuss who has intermediate and ultimate authority and responsibility for police actions; and Articles 96-140 establish the rights and responsibilities of officers as employees.

(Art. 14) and Specialist Organizing Units (Art. 12), responsible through the Director General ultimately to the Minister. The same is true for Police Chiefs and Police Commanders at Police Head Offices, Stations, and Departments throughout the Republic: through the Director General they are all ultimately responsible to the Minister (Arts. 15 and 16).

This chain of command framework may prove to be problematic. Specifically, the general power granted over all police stations and departments may afford the Minister too much authority while providing too little control to the local police units throughout the Republic.

B. Internal Control

1. Council for Civil Control over the Work of the Police

Two entities are granted supervision and control of police work by Article 141. The first of these bodies is the Council for Civil Control over the Work of the Police, discussed in Articles 148 thru 152.

The Council is established in order to monitor the police and “initiate measures of prevention for crime control” (Art. 48(3)). However, the structure of this office poses potential difficulties due to its lack of independence from the Ministry of Interior. The Council is under the control of the Minister and subsequently within the police infrastructure. While Article 151 states that the Council representatives are appointed for a five-year term and does not address by whom these appointments are made, Article 148B (there are two Article 148s in the translation draft) indicates that this Council only comes into being “by decision of the Minister.” In addition, the Council must submit an annual report to the Minister and special reports for every specific case (Art. 149). As it may seem logical for the General Inspectorate for Protection and Control of Legality of Work of Ministry to be under the control of the Minister (because the General Inspectorate exercises internal control of the police), the Council for Civil Control of Police Actions should remain independent from the Minister.

The intended function of the Council is the review of police work from *outside* the confines of the police chain of command. It is therefore proposed that the Council answer to the Parliament rather than the Minister. Such a requirement would be in harmony with Article 142, which provides in part that the “[s]upervision of the legality of police work is performed by the Parliament of the Republic of Montenegro ...” While there is no conflict in having the Council submit a copy of its annual report to the Minister (Art. 149), the Parliament should be the final authority to which the Council answers (not merely through recommendations and opinions) and by which the Council is appointed. Ultimately, bodies that are transparent and wholly independent from law enforcement should oversee the police. The correlating offices of the draft Law on Police should therefore be amended in accordance with this principle. The Ombudsman offices instituted throughout the European Union and its member states may prove useful models in the establishment of a successful framework.⁴

In addition to ensuring the independence of the Council, it is suggested that the drafters broaden the composition of the Council. It is commendable that the draft law attempts to include a range of representatives. Its members are not police employees, but rather legal, medical, and

⁴ The Organization for Security and Co-operation in Europe’s *Ombudsman and Human Rights Protection Institutions in OSCE Participating States*, OSCE Human Dimension Implementation Meeting, Background Paper 1 (October 1998), is instructive as to the roles and constitution of Ombudsman offices throughout Europe.

NGO professionals. Nevertheless, it may be beneficial to expand the group by a few seats (perhaps to an eight-person body) to include persons with academic interests in law, security issues, and crime prevention. A larger group would enable a wider scope of competencies and constituencies among the membership that may prove beneficial to a balanced and effective administration of Council duties. Also, a more defined articulation of the NGO representation among the Council representatives would render the provision's intent more transparent. Measures aimed at increased diversity and clarity would serve to reinforce the impartial nature and legitimacy of the Council as a supervisory body.

It is further suggested that the functions of the Council relating to those of the Police Board (discussed in Art. 14) be addressed. As is, there is a potential for overlap and confusion. Moreover, it is not clear as to who will comprise the Police Board.

2. General Inspectorate for Protection and Control of Legality of Work of Ministry's Officials.

The second supervisory entity discussed in the draft law is the "General Inspectorate for Protection and Control of Legality of Work of Ministry's Officials" (Art. 144). The function of the General Inspectorate is the internal control of police work. Its General Inspector is "put on a position by the Minister" and is "responsible for his work to the Minister" (Art. 145). The mandate and duties of the office remain vague and open-ended, however. Its responsibilities generally include the control of police work, the application of authority, the supervision of police as well as "other services" of the Ministry, and "other controls" relevant to the "efficient and Lawful work of the Ministry" (Art. 146). These elements should be clarified.

C. Regulatory Authority

The Minister establishes the regulations for twenty-five various aspects of police work (Arts. 156-157). These regulations would span a variety of issues, including the mode of "depriving someone of freedom temporarily" (Art. 157(7)), the mode of "checking and establishing" someone's identity (Art. 157(5)), the mode of "application of authority of entering someone's domicile without court decision" (Art. 157(8)), and the mode of "use of authority for inspection of persons, luggage and vehicle" (Art. 157(15)).

The ability of the Minister to establish such regulations creates some viable concerns. If each new Minister were to change some or all of the twenty-five specified categories of regulations upon assuming office there could prove to be a great deal of volatility and inconsistency in policing, ultimately resulting in concerns of reliability and legitimacy among both the police force and the public.

D. General Observations

As a final note to the structure of the police, it has been suggested that a minor yet important modification be made to Article 4. While Article 2 requires police to protect "citizens rights and freedoms and other values" and Article 4(1) provides for the "protection of life, rights and security of citizens", there remains to be an acknowledgement of the service function of the police force. This service function, an affirmative requirement that the police help those persons in need of assistance, is more fully recognized in "western" or "democratic" police forces today.⁵

⁵ For instance, the Australian state of Victoria's police force includes in its list of purposes an affirmative

By expressly including such a declaration in the law, a formal foundation and precedent for a “civil” model of policing is established. Such an assertion may prove to be a positive and useful legitimizing element in contemporary Montenegrin policing. In contrast to those more politicized policing models that have proven unsuccessful and detrimental to citizens in many parts of the world, such a statement would serve as an optimistic and distinguishing characteristic of the Montenegrin police force.

II. Police Accountability

A. Civilian Complaints

It is advised that the development of internal departments competent to receive citizen complaints, objectively investigate these complaints, and punish or absolve police officers be discussed further and more clearly within the body of the draft Law on Police.

1. The Need for Clear Standards

Article 2 discusses civil actions against the police. The article allows for “a citizen who *thinks* his rights and freedoms are violated” (emphasis added) by police to an entitlement of compensation.⁶ However, if the purpose of the draft law is to ensure damages actions when police misconduct is proven (not only when the citizen “thinks” it has occurred), then the drafters may wish to consider more specific language in order to identify the types of misconduct that can form the basis for relief.

Articles 21 and 155 further exemplify a need to express definite standards. Article 21 requires the police to “act kindly” and respect the dignity of others, and Article 155 says that the Republic is “responsible” for “harm” to third persons. The absence of any standards or detailed list of actionable claims creates an uncertainty that may prove to be a costly and time-consuming oversight.⁷

In the United States, damages against the government are generally available only if the government affirmatively sanctions the misconduct or fails to provide training that would have prevented the misconduct. Damages against the individual officer are generally available only if the officer acted in bad faith. Violation of an individual’s dignity is generally not compensable. These limitations on compensation are designed not only to spare resources, but also to avoid any inhibition of departmental and police decision-making.

2. Enforcement Concerns

The draft law attempts to ensure enforcement of the police’s obligations to honor citizen’s rights by establishing internal controls and by allowing aggrieved citizens to file a complaint with the Inspector General. One concern is that both of these devices ultimately rest

requirement “to help those in need of assistance.”

⁶ The draft Law’s compensation provision is derivative of Article 25 of the Constitution of the Republic of Montenegro, which provides that, “[a]ny person wrongfully detained or wrongfully convicted shall be entitled to compensation of damages by the state.” CONSTITUTION OF THE REPUBLIC OF MONTENEGRO pt. 1, art. 25.

⁷ It should be noted that Article 77 is the exception, requiring that deprivation of freedom without legal ground or for longer than is permitted by other provisions entitles one to compensation.

enforcement of citizens' Constitutional rights in police officials. As has already been noted, the draft law does not incorporate a satisfactory mechanism for seeking external enforcement.⁸

Section 9 of the draft Law on Police, beginning with Article 130, appears to permit administrative disciplinary measures to be taken against police officers who violate the rights of citizens. Police departments in the United States have comparable rules, but have found them to be inadequate. The American experience illustrates that some institution outside the police agency itself should have some power to discipline the police in these situations, because police agencies are often inclined to protect their officers – especially when aggressive policing results in catching criminals. The role of effective enforcement therefore has developed via the exclusionary rule and also through lawsuits brought by aggrieved citizens against police agencies and even against individual police officers. Montenegro might wish to consider similar or comparable outside supervision (with similar or comparable enforcement powers). Articles 141, 142, and 152 allude to these possibilities, but seem too vague to be effective in particular cases.⁹

The policy arguments for incorporating a functional external enforcement mechanism are manifold. To begin with, such mechanisms enhance the perception of fairness in that police are not the sole arbiters of their own conduct.¹⁰ Another related policy issue is that the availability of external enforcement mechanisms may encourage citizens to seek redress where they otherwise might not. In other words, some citizens may not pursue redress through internal mechanism because they: (i) may not believe police will effectively discipline each other, and/or (ii) may fear retaliation for filing a complaint through the internal process. Finally, external enforcement mechanisms effectively enforce respect for the citizens' Constitutional rights by increasing the “cost” of violating those rights.

B. Reporting and Record Keeping

The draft Law on Police includes a number of provisions requiring various forms of record keeping. While it is to be commended for following the lead of many European countries in this area, certain provisions need to be clarified.

Article 10 requires the Minister of Interior to submit an annual report on police work to the Parliament. It is suggested that the types of information that should go into these reports be listed (*e.g.*, number of arrests, prosecutions, use of various investigative techniques).

Article 26 addresses the “Gathering of Information” and speaks to record keeping in the context of interrogations. However, the record of an interrogation can take various forms and the drafters may wish to consider the possibilities and make appropriate modifications to the article.

⁸ *See supra.* part II.A.

⁹ Article 152 provides for a mechanism in which a person may lodge a complaint to the head of the police authority for an officer believed to have violated a rule. A complaint is lodged with the Inspector General if the person is not satisfied. It provides for a 15-day time period within which a complaint is to be addressed by the Minister. However, the draft Law does not provide any other recourse such as a hearing before a disciplinary board or the opportunity for judicial relief. This lack of an effective appeal procedure appears to conflict with Article 17 of the Constitution of Montenegro.

¹⁰ Incidents cited in a recent U.S. State Department report suggest that existing remedies are not effective. *See Country Reports on Human Rights Practices – 2001: Federal Republic of Yugoslavia* (UNITED STATES DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR), March 4, 2002.

For example, is the interrogation to be recorded by hand, audiotape, or videotape? Moreover, is it mandatory that the record is in one format or another, and what are the governing circumstances? In the interests of best preserving information and deterring abuse of authority, it is suggested that all interrogations and interviews be videotaped and that the draft legislation incorporate the requisite enabling provisions.

The final paragraph of Article 33 requires a record of facts and circumstances be kept of any inspection of buildings or premises. There is, however, no discussion of who is to receive a copy of these reports. In comportment with Article 31 of the Montenegrin Constitution, it is suggested that the person or persons whose building or premises are the object of a search be given a copy of the report.¹¹ This effectively deters the police from altering any information pertaining to the inspection (*e.g.*, date, time, findings, etc.). In addition, it promotes administrative efficiencies by discouraging frivolous claims and lawsuits against the police. Such a modification would be in line with Article 12 of the Universal Declaration of Human Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 31 of the Montenegrin Constitution.¹²

Article 35, in the final paragraph, authorizes police to forbid photographing of the crime scene. This provision should be clarified as to its temporal limitations. It is recommended that at some point in time the defense have access to photograph the scene.

Article 67 gives a “person” the right of inspection into police records. It is uncertain whether this class of persons includes suspects, witnesses, or the general public. The class should therefore be more clearly defined.

C. A Police Code of Ethics

It is recommended that a code of ethics be specifically outlined and constitute its own section within the draft Law on Police. The inclusion of a definite and identifiable Police Code of Ethics would comport with the Council of Europe’s European Code of Police Ethics.¹³ At present, it is unclear if such a distinguishable set of provisions exists within the draft law or where it is located. Articles 18 and 132(5) refer to a code of conduct and police ethics that is a part of the Law on Police; however, its precise elements, parameters, and whereabouts remain vague and unresolved.

¹¹ “Protection of secrecy of personal data shall be guaranteed. The use of personal data for purposes other than those for which they were compiled shall be prohibited. Everyone shall have the right of access to personal data concerning his own person and the right of judicial protection in case of their abuse.” CONST. OF THE REP. OF MONTENEGRO pt. 1, art. 31.

¹² See *Universal Declaration of Human Rights*, art. 12, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., U.N. Doc. A/810, (1948); *Convention for the Protection of Human Rights and Fundamental Freedoms*, art. 8, 213 U.N.T.S. 224 (1953).

¹³ Council of Europe, *Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics* (European Code of Police Ethics), app. ch. VI(63), (last visited Apr. 24, 2002) <<http://cm.coe.int/ta/rec/2001/2001r10.htm>>.

III. Search and Seizure

A. Legitimacy and Comparative Standards

In order to establish the legitimacy and accountability of its police force, Montenegrin officials may wish to consider establishing more clear and pronounced legal standards of search and seizure. In the United States, for instance, searches for evidence must be based on probable cause. Probable cause has been defined as a level of certainty near a more-likely-than-not standard.¹⁴ Subject to certain articulated exceptions, searches must also be authorized by a judicial warrant prior to the police action and meet probable cause and particularity criteria. The legal standard for arrest is also one of probable cause.

A standard of reasonable suspicion, one less than probable cause, is required prior to conducting a “stop” or a “frisk” and no warrant is required.¹⁵ Police may dispense with a warrant for contemporaneous searches of a validly arrested person or the area within the arm-span of that person. Any further search of the premises in which an arrest takes place may occur on reasonable suspicion that accomplices may be hiding there. No warrant is required for searches while in immediate pursuit of a suspect and for most searches of automobiles that have been stopped, although probable cause is required in both cases.

The mechanism to ensure the proper compliance and execution of these standards in the United States is known as the exclusionary rule. If the rules of search and seizure are violated, the illegally obtained evidence and the subsequent evidentiary fruits garnered from it, are excluded from the prosecution’s case. As a safeguard, however, illegally obtained evidence may survive scrutiny if it was obtained in good faith reliance on a warrant, is used exclusively to impeach a defendant, or would ultimately have been discovered through other legal means.

B. Problems with the Draft Law

1. The Need for Clear Standards

In its present form, the draft Law on Police does not include clear standards of search or seizure. Article 18 enumerates twenty-three various police actions that qualify as sanctioned police authority. Included among these are the gathering of information; inspection of vehicles, passengers and luggage; inspection of buildings and rooms; entering someone else’s apartment and other premises; collecting, processing and using of personal data; inspection of persons; temporary taking away of objects; and, insight into business books and other documentation. However, Article 18 does not identify clear or definite standards accompanying these particular competencies.

Article 23 does speak to a generalized standard for all police authority and requires that the performance of such authority “be proportionate to the need for which that authority is undertaken.” In addition to this requirement of proportionality, the implementation of the least restrictive means is required in achieving these police objectives. While this requirement of proportionality in the *implementation* of authority is commendable and comports with international legal standards, it is suggested that the draft law and its detailed individual police

¹⁴ Christopher Slobogin, *An Empirically Based Comparison of American and European Regulatory Approaches to Police Investigation*, 22 MICHIGAN JOURNAL OF INTERNATIONAL LAW 423 at 424.

¹⁵ See generally *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991).

authorities include standards addressing the thresholds which are required to be satisfied *prior to the implementation* of these authorities (namely a probable cause or reasonable suspicion standard).

Article 24 further illustrates that while there is an obligation of proportionality in police action, its application is nevertheless discretionary. The provision provides in part that a police officer “applies police authorities at his own decision, by order of superior officer and by order of competent authority.” Essentially, this leaves searches and seizures to the discretion of individual police officers and without a clearly articulated standard of police action. Rather than identifying any definitive standard, this article and the ones that follow (*e.g.*, Arts. 34, 71, 72, and 85) utilize language such as “if necessary”, leaving the motivation for any police action to the subjective determination of the police.

Articles 28 and 29 set forth the police authority to temporarily restrict the movement and establish identity of persons. These provisions appear to be analogous to the “stop” authority permitted to police in the United States. As with the previous articles, there is no overarching standard in the application of this authority. For instance, Article 28 lists four circumstances in which the police may restrict movement, yet there is no applicable standard.¹⁶ The limitation on authority is therefore illusory. Indeed, even when an attempt at a standard is put forth in Article 29(7) (*i.e.*, “provokes suspicion”), it is vague and susceptible to similar justifications. This absence of standards effectively opens the door to an endless stream of discretionary justifications.

Article 29 does not provide any time limits on the establishment of identity. In contrast, Western police legislation and regulations impose clear limitations on this authority. In France, for instance, an “identity check” may last only four hours, while in the United States the police may detain a person for approximately fifteen minutes on a reasonable suspicion if necessary to check identity, but no longer unless probable cause develops.¹⁷

The purpose of having clear, objective standards is to prevent abusive police action (*e.g.*, to channel the discretion the police have by making them accountable for their actions). In order to ensure police accountability, officers must be able to articulate the specific facts that led to a conclusion in favor of a search or seizure. They cannot rely on subjective factors such as “hunch”. Officers must be able to explain the facts upon which they relied as establishing probable cause or reasonable suspicion with specificity so that a judge, who may be called upon to review the lawfulness of search and seizure, can make an independent determination as to their veracity.

Articles 33, 71, and 85 may be evidence of the drafters’ intent to establish more definable standards, yet due to their construction and the omission of any further explanation, they seem to fall short of a workable model. Article 33 speaks of “justified suspicion”, but it does not demonstrate what elements qualify as justification. Apparently, a search of a building is permitted if such “suspicion” exists even when the suspected crime is a “petty offense” and even

¹⁶ Article 28 of the draft Law grants police the authority to restrict movement for the following purposes: (i) to prevent committing the criminal offense, or infringement; (ii) to detect and capture the persons who committed criminal offense, or infringements; (iii) to detect and capture searched persons; and, (iv) to detect traces and objects which may serve as evidence in criminal offense, or petty offense proceedings.

¹⁷ See *United States v. Sharpe*, 470 U.S. 675 (1985).

when there is no warrant.¹⁸ Likewise, when Article 85 sets forth “suspicion” as a prerequisite for the inspection of business documents, or when Article 71 professes “legitimate suspicion” in the context of searches of persons, there is no description of what constitutes a valid or tenable suspicion. These inconsistencies may give rise to different interpretations and selective application. Subsequently, there is a risk of denial of due process and equal protection under the law. It is suggested that the constituent elements and levels of suspicion be outlined and further developed.

In order to more readily rectify the discrepancies among provisions and sufficiently address the issue of identifiable standards, the drafters may wish to consider combining the powers provided for in Articles 18 thru 65 and those of Articles 71 thru 85. There should be no distinction drawn between “gathering information” and “collecting, processing and using personal data” (Arts. 26 and 65). The authority of the police in carrying out its lawful duties should be consistent. There are presently too many inconsistencies among individual provisions that address the same subject matter. Such ambiguity could very well result in inconsistent applications of the laws that directly affect the rights and liberties of private citizens. For instance, rather than individually addressing the twenty-three police powers set forth in Article 18, it may be advisable to substitute constitutional principles and standards which clearly demarcate the parameters of action that are permissible in the course of the police’s daily activities.

Article 34 addresses police entrance into premises and enumerates the circumstances under which such entry is justified. The sixth of these justified occasions is when it is “necessary because of safety of persons and property.” It is advised that the drafters establish a clear and, to the extent possible, unambiguous definition of what constitutes the legal basis for an assessment of danger to the safety of persons and property (*e.g.*, consultation with safety personnel like medical and fire officials) and when unordered entry is sanctioned.

Article 5 notes that the police may undertake “urgent measures” if it is necessary for either protecting human life or eliminating an immediate danger to persons and property “*provided that these measures may not be undertaken on time by other competent authorities*”(emphasis added). Additionally, Article 5 provides for police assistance “to public administration authorities, units of local government administration, judicial and physical persons in case of *general danger* caused by natural disasters and epidemics” (emphasis added). Nevertheless, it remains unclear as to how Article 5 relates to Article 34 (*i.e.*, whether “urgent measures” would subsume Article 34(6)) and how their differing standards relate. As such, the drafters are advised to clarify the relationship between these articles and develop an identifiable set of applicable standards. In better defining such standards, the law would serve to further guarantee the rights provided for in Articles 20 and 29 of the Constitution of Montenegro.

Article 42 includes the following provision, “Police officer will deliver the escorted person to the authority to which the person was sent according to the escort order, and his belongings according to *the list*” (emphasis added). The “list” referred to in this article is not mentioned elsewhere in the Law on Police. It is therefore recommended that the drafters detail

¹⁸ In the United States, police may not enter a home to conduct a search for evidence relating to a misdemeanor even in an emergency, unless they have a warrant. *Welsh v. Wisconsin*, 466 U.S. 740 (1984). This limitation is imposed to prevent police from using crimes as pretexts to gain entry.

the integral elements of such lists (*inter alia*, is the list composed by the police officer or another official, when is such a list composed, and according to what standard?).

2. The Need for Warrant Procedure

The draft Law on Police is not entirely clear on the role, procedure, or necessity of warrants in relation to searches and seizures. The Constitution of Montenegro, in Article 29, requires that warrants be issued for searches of a home unless “so required for immediate apprehension of the perpetrator of a criminal act or for the purpose of human lives and property with adequate explanation at the time of arrest or within 24 hours from the moment of arrest.” In the draft Law on Police, Articles 34, 71, 73, and 85 discuss written court orders that must be obtained incident to searches. However, the threshold standards and processes necessary to obtain and implement such court orders remain unresolved. This omission is critical given the need for accountability and legitimacy. Identifiable procedures promote improved efficiency and increased morale within the institution, while at the same time engendering confidence among the public as a whole.

It is suggested that the specific process for the issuance of warrants be detailed and cross-referenced within the body of the draft law. If such a procedure does not yet exist, it should be developed. The issuance of a warrant could be based either upon a sworn affidavit establishing probable cause or oral testimony given to a judge or magistrate which would include sworn testimony communicated by telephone, radio, or other means of electronic communication. In addition, the warrant must define, with specificity, the object of the search and the places in which there is probable cause to believe that it may be found. In order to safeguard against invalid searches and the drawbacks of the “hindsight reasoning” (discussed below), it is also advised that there be a provision requiring police officers to announce their authority prior to forcible entry into a premises, whether to make an arrest or execute a warrant.¹⁹

Article 23 of the Constitution alludes to alternative timing requirements for the issuance of warrants. The provision seems to sanction both pre- and post-arrest warrants. Whether this option is intended, and if so, whether it extends to searches and seizures, is unclear. Nevertheless, the possibility for optional regimes highlights an important element of criminal procedure that is integral to the function and perception of the police.

The aim of the warrant process is to discourage illegal searches. However, the problem with the issuance of warrants *subsequent* to an arrest, search, or seizure is two-fold. First, a magistrate may fall into the pitfall of “hindsight reasoning”.²⁰ In other words, a magistrate who has knowledge that the police have obtained incriminating evidence may be biased to grant a warrant even if the searches or seizures may have been illegal. Second, the possibility of an *ex post* warrant creates an opportunity for police fabrication. In contrast, a pre-search warrant makes fabrication difficult by requiring a determination of probable cause prior to any search. Given the ramifications of issuing warrants after searches, it is recommended that the drafters clearly outline the proper warrant procedure.

¹⁹ These so-called “knock and announce” statutes are prevalent in many U.S. jurisdictions.

²⁰ Christopher Slobogin, *An Empirically Based Comparison of American and European Regulatory Approaches to Police Investigation*, 22 MICHIGAN JOURNAL OF INTERNATIONAL LAW 423 at 431.

The draft law should also define the circumstances where warrants are not required. Consent is an important exception that should be addressed. While it is discussed in Article 34(1), it is suggested that Articles 39, 71, 72, and 73 also make clear that Montenegrin police officers have the authority to take knowing and voluntary consents from individuals. For instance, Article 73 seems to require a warrant even in emergencies, which is inconsistent with earlier provisions. This requirement lies in contrast to those of other legal regimes such as the United States', where exigent circumstances permit warrantless searches. It is advised that the concept of the warrantless search be specifically addressed and that the relevant provisions be harmonized.

IV. Arrest

While there is no specific reference to the term "arrest" within the text of the draft law, the provisions addressing the deprivation of freedom, Articles 39 and 77, seem to subsume the Montenegrin requirements for arrests. It is suggested that the varying terms relating to arrest-like procedures be more clearly defined. Specifically, the boundaries of "Bringing in of the Person" (Art. 39) and "Depriving of Freedom" (Art. 77) should be developed and differentiated.

A. The Need for Warrant Procedure

The Constitution of Montenegro requires that warrants be issued for arrests with adequate explanation at the time of arrest or within 24 hours from the moment of arrest.²¹ As is true with the search and seizure provisions, however, the reference to court orders incident to police "arrests" in Articles 39 and 77 of the draft law lack any further development of procedures and standards.

In particular, the draft law is ambiguous as to where the ultimate authority for an arrest order resides. For instance, the fifth paragraph of Article 77 grants the head of the organizational unit the authority to make "a decision on the deprivation of freedom." It is unclear as to whether or not this "decision" is an official document akin to a warrant (Art. 78 seems to reference it as an identifiable document). Nevertheless, if the first paragraph of Article 77 controls, then a submission to the proper court for an order or decision would be required in addition to the organizational head's approval. The true role of the head of the organizational unit in the warrant process is therefore in question. It is uncertain whether the head of the unit's "decision" usurps a court order or whether the court can override such a "decision". If indeed the unit head has the power to deprive freedom by Article 77, it is in contradiction of Article 23 of the Constitution, which requires that a decision regarding detention be made "by a competent court of law." In addition, the origins of a final determination on the requisite "justified suspicion" remain confused.²² It is recommended that the drafters clarify the relationship between the organizational heads and the courts as well as outline the proper procedure for warrant application and execution.

The requirement that a circular be posted prior to a deprivation of freedom is also confusing. Due to the construction of Article 77, this requirement would seem to drastically limit the police's ability to detain an individual. This is because a wanted circular is always required

²¹ See CONSTITUTION OF THE REPUBLIC OF MONTENEGRO, pt. 1, art. 23.

²² The standard of justifiable suspicion remains vague and undeveloped in its own right and further expression of its constituent elements is suggested.

in addition to a court order and a finding of “justified suspicion”.²³ This differs from Article 39 on the “Bringing in of the Person”, where a written order and a wanted circular are mutually exclusive. It is advised that the drafters address the discrepancies between Articles 39 and 77 and develop a uniform requirement for the issuance of circulars. Furthermore, the inclusion of a well-defined warrant procedure would serve to minimize the confusion over posted circulars.

The *New York State Criminal Procedure Law* may be instructive in developing identifiable warrant procedures.²⁴ If, however, the drafters do not wish to detail such elements of criminal procedure within the police law and decide to treat it elsewhere within the legal canon, it is alternatively suggested that such procedures at least be cross-referenced in Articles 39 and 77.

B. Warrantless Arrest

While the development of warrant requirements is critical to effective law enforcement, it is equally important that the circumstances in which warrants are unnecessary be defined properly. Notwithstanding the attempts to identify such circumstances in Article 34, it remains necessary to more clearly define when a warrant is or isn’t required.

V. Summons

Articles 36, 37, and 38 fall under the heading of “Summons”. As such, it would appear that the term “invited” in Articles 37 and 38 is synonymous with “summoned”. It is advised that the drafters harmonize these terms for the sake of clarity.

Article 38 states that in exceptional circumstances a person may be “invited through media.” If read in conjunction with the fourth paragraph of Article 36, the police are authorized to bring in by force a person who does not respond to such an invitation. However, these provisions do not address whether or not the targeted individual actually receives notice through the media. It is suggested that the drafters discuss these implications, outline the exceptional circumstances under which such measures may be taken, develop temporal requirements for the issuance and response to summons, and specify the media outlets through which summons are to be issued. Such measures would serve to promote stability in the exercise of the police power as well as prevent its arbitrary application.

VI. Detention

Articles 22 and 23 of the Constitution of Montenegro outline certain personal rights and freedoms guaranteed to citizens when detained by the police. These rights and freedoms focus primarily on the duration of custody. In conjunction with Article 24 of the Constitution, the implied aim of these provisions is to preclude both false imprisonments and coerced confessions.

The draft Law on Police does not sufficiently detail the procedures incident to the detention of a person. While the implementation of a set of rules, such as the exclusionary rule

²³ Article 77 requires that in order for a police officer to deprive one’s freedom there must be: (i) a court’s decision on detention or a court order on conveying, (ii) justified suspicion of the commission of a criminal offense for which detention is obligatory by law, *and* (iii) the wanted circular was posted out (emphasis added).

²⁴ See NY CLS CPL § 690; *Cf.* Strafprozeßordnung [StPo] §§ 114-115, §120, §§125-130 (F.R.G.), (last visited April 24, 2002) <<http://www.iuscomp.org/gla/>>.

discussed earlier, may deter violations of individual rights, it is suggested that additional safeguards be implemented in the draft law to prevent constitutional violations.

A. Right to Silence

Article 26 of the draft Law on Police mentions a right to silence. However, it is not clear if this right applies to a suspect or to all citizens who are questioned by the police.²⁵ Furthermore, Article 26 does not acknowledge any *affirmative* duty to inform a citizen of his or her right to silence. This appears to contravene Article 22 of the Constitution which requires that a detained person “be promptly informed of his right to remain silent.” Article 26 should also state what happens to a citizen who refuses to give the “demanded information”. That is, are such persons held for four hours and then released or are they released immediately after refusing to divulge information.²⁶ There are similar concerns regarding Article 80, where there is no discussion of a right to silence and where the period of detention can be up to twelve hours in duration. The Constitution applies as readily to Article 80 as to Article 26 and appropriate modifications to both provisions should be considered.

Article 77 regarding the deprivation of freedom makes reference to an officer’s obligation to make a detainee “*acquainted* with the right not to declare anything”(emphasis added). This may be an attempt to ensure the constitutional requirement of an affirmative duty to inform; however, the construction of the provision leaves the status of any informative requirement in flux. As such, it is advised that the right to silence be further developed by the drafters, with a view to harmonizing the relevant provisions (*i.e.*, Arts. 26,77, and 80) with Articles 22, 23, and 24 of the Constitution of the Republic.

B. Right to Counsel

1. Right to Counsel at Interrogation and the Duty to Inform

The draft law does not provide for a right to counsel during interrogation. It does not discuss the right to request an attorney, to have an attorney appointed, or to have an attorney present during questioning. Article 22 of the Constitution gives a person who has been detained the “right to have the defence [sic] counsel choice present at the hearing.” Article 78 of the draft law recognizes a similar right to counsel. While acknowledging an entitlement to counsel, it does not specify the degree to which the right may be asserted (*e.g.*, before, during, or after interrogation) and whether it is the police officer’s affirmative duty to inform persons of this right.²⁷ Article 41 mentions a right to inform a lawyer prior to being brought in. Nevertheless, it too does not address the presence of counsel during interrogations.

It is advised that the drafters consider including both a right to counsel at interrogation and an affirmative duty to inform persons of this right in the law. These additions may decrease administrative costs (in terms of future legal challenges disputing whether the police have

²⁵ In the United States, warnings about the right to remain silent do not have to be given unless the witness is subjected to arrest or the functional equivalent thereof. *Berkemer v. McCarty*, 468 U.S. 420 (1984).

²⁶ *See infra*. part VII.A

²⁷ In the United States, an individual is entitled to legal assistance at all times, and the state must pay for an attorney once the person has been arrested and asks for an attorney. *Miranda v. Arizona*, 384 U.S. 436 (1966). Moreover, at all proceedings at which imprisonment is a possibility, defendants have a right to state-paid representation. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

coerced confessions) and serve to remind the police of their obligations to respect the individual's Constitutional right to be free from coercion and abuse.²⁸

2. Appointment of Counsel

Article 79 grants to the police the power to appoint an attorney to defend a person deprived of freedom. This power of appointment presents a conflict of interest for the police and should be reconfigured. This is particularly the case given the constitutional requirement that a detained person have “the right to have defense counsel of *his* choice....” (emphasis added).²⁹

Article 79 goes on to provide that a state defender will be appointed to a person who: (i) is deprived of freedom for a criminal offense where there is a prescribed penalty of imprisonment of one or more years, and (ii) is unable to bear the expense of his defense. While this section of the provision comports with the constitutional requirements of Montenegro (*i.e.*, Articles 22 and 25), it is advised that the class entitled to an appointment of a state defender be expanded to include those deprived of freedom for criminal offenses carrying a penalty of less than a year. A wider class of eligible defendants not only ensures better access to proper and effective counsel, it potentially reduces the administrative costs inherent in the maintenance of prisoners.

VII. Coercion and the Use of Force

A. The Use of Force (in the context of confessions and statements)

Article 24 of the Constitution of Montenegro prohibits the use of force (including “torture, humiliating and degrading treatment or punishment”) to extract a confession or statement.³⁰ It is not entirely clear how the draft law implements this guarantee. It is therefore advised that the constitutional guarantee be expressly outlined and cross-referenced in the draft Law on Police.

Article 4 of the draft Law on Police states that the “protection of life, rights and security of citizens” are performed according to the Constitution, respecting “international standards and all the regulations intended to protect the dignity of person[s] and human rights and freedoms of citizens.” Article 21 of the draft law requires police officers to “act kindly by respecting [the] dignity, reputation and honor of every person and other human rights and freedoms.” Although these provisions seem to make an attempt to ensure the rights detailed in the Constitution, their construction and placement amid more particularized articles may detract from their import and relationship to the law as a whole. It is therefore recommended that the “other rights” of Article 21 be detailed and that the relationship of Articles 4 and 21 to the surrounding provisions be more fully expressed.

²⁸ See CONSTITUTION OF THE REPUBLIC OF MONTENEGRO, pt. 1., arts. 20-25.

²⁹ CONSTITUTION OF THE REPUBLIC OF MONTENEGRO, pt. 1., art. 22.

³⁰ Article 24 of the draft Law states: “Respect for human dignity and dignity in all criminal and any other proceedings is hereby guaranteed, both the case of arrest or limitation of freedom and during serving of pronounced sentence [...] The use of force against a suspect who has been detained or whose freedom has been restricted and any forcible extraction of a confession or statement shall be prohibited and punishable. No one may be subject to torture, humiliating and degrading treatment or punishment. Medical and other scientific experimentation may not be carried out on an individual without his consent.”

Article 26 of the draft Law on Police may implement at least part of the constitutional guarantee, as it states that police cannot detain someone for the purpose of providing information for more than four hours and that the person detained is not obliged to provide information. However, one concern with Article 26 is the lack of general boundaries other than the “four hour” rule. If police bring in a reluctant witness who does not wish to cooperate with an investigation, the article clearly says the witness does not have to cooperate, but it implies that the police could detain a witness (*i.e.*, a non-suspect) for the four hours to try to coerce the cooperation. There currently are no safeguards to prevent the police from bringing in a non-suspect and keeping him or her for the four hours, regardless of whether that person has indicated a desire not provide the sought information. In the United States under certain circumstances, a refusal to provide information could result in a criminal charge for obstruction of justice or official business. The architects of the draft law might want to consider incorporating such procedures as the formal means of dealing with contumacious witnesses.

B. The Use of Firearms and Deadly Force

Article 52 sets out the conditions under which a police officer may use firearms against persons, one of which is when the officer cannot otherwise prevent the escape of someone who the officer believes committed a crime punishable by at least ten years’ imprisonment. This authority is reiterated in Article 54.

Such a broad allowance for the use force has been denied police in the United States.³¹ The U.S. Supreme Court held that it was not reasonable to let officers use force to apprehend fleeing felons who posed no threat of physical harm to the officer or to others.³² Furthermore, deadly force may be used only if there is probable cause to believe that the person poses a threat of physical harm to the officer or to others based on (i) the type of offense the person has committed or (ii) the person’s having threatened the officer or someone else with physical injury. The same rule has been applied to lesser crimes so that if, for example, someone stopped for a traffic violation tries to use his or her automobile to injure the officer who stopped them, the officer may retaliate with deadly force.

While the draft law does speak of proportionality in Article 23 and 45, it is advised that the construction of the articles make clear that proportionality applies to the firearms provisions. In addition, and perhaps more importantly, a standard of action akin to “reasonableness” should be expressed, one that is more objective than “belief”. It is suggested that this standard be clearly defined within each coercion provision.

³¹ In *Tennessee v. Garner* 471 U.S. 1 (1985), the U.S. Supreme Court struck down a Tennessee statute that authorized officers to use deadly force to apprehend a fleeing felon. The Tennessee statute incorporated the common law rule, which was that an officer could use whatever means were necessary to prevent the escape of someone whom the officer had probable cause to believe was guilty of committing a felony. A felony is an offense for which one can be imprisoned for more than a year; felonies constitute the more serious offenses, such as robbery, murder etc.

³² The Court says, “the use of deadly force to prevent escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.” *Id.* at 11.

Article 2 of the European Convention on Human Rights (ECHR) is instructive in outlining international standards on the use of firearms and deadly force. It implies that the police shall not engage in intentional killings.³³ However, the use of deadly force by police may not violate the Convention and the right to life if certain conditions are met. The ECHR provides that:

“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*:

in defense of any person from unlawful violence;

in order to effect a lawful arrest or to prevent escape of a person lawfully detained;

in action lawfully taken for the purpose of quelling a riot or insurrection” (emphasis added).³⁴

The requirement that the force be “absolutely necessary” means, according to the European Court on Human Rights, that the force used must be strictly proportionate to the aims expressed (i.e, a, b, or c).³⁵ Other international instruments such as the Council of Europe’s (Council of Europe) European Code of Police Ethics have echoed this view and declared that national legislation and regulations should contain provisions on these principles of necessity and proportionality.³⁶

The UN Code of Conduct for Law Enforcement Officials reiterates these ECHR and Council of Europe principles. It states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.³⁷ The comments to the Code also note that the standard to be utilized is one of “reasonable necessity under the circumstances.”³⁸ Comment (c) to Article 3 of the Code goes on to state that:

“[t]he use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.”³⁹

In the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, a more particularized standard is presented:

³³ *Convention for the Protection of Human Rights and Fundamental Freedoms*, art. 2, 213 U.N.T.S. 224 (1953).

³⁴ *Id.*

³⁵ *See generally, McCann and Others v. United Kingdom*, Eur. Ct. H.R., (ser. A), No.324-A, ¶¶ 145-156 (1995).

³⁶ *European Code of Police Ethics*, app. commentary at ch. V(37)(2001).

³⁷ *Code of Conduct for Law Enforcement Officials* (UN Code of Conduct), art. 3, U.N. G.A. Res. 34/169, 106th plen. Mtg., Annex 1, in COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE, pt. 1(D) at 6, (last visited April 24, 2002)

<<http://www.uncjin.org/Standards/Compendium/compendium.html>>.

³⁸ *UN Code of Conduct*, art. 3 cmt. a., U.N.G.A. Res. 34/169, 106th plen. Mtg., Annex 1.

³⁹ *Id.*

“Law enforcement officials shall not use firearms against persons except in self-defence or defence [sic] of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”⁴⁰

The draft Law on Police does discuss proportionality in Articles 23, 45, 46, and 47. As was noted earlier, Articles 23 and 45 address proportionality as a general requirement. However, Articles 46 and 47 apply the notion of proportionality to particular applications of force (the use of physical force in Art. 46 and the use of a stick in Art. 47). While these provisions do not utilize the term “proportionality” per se, the general concept of Article 45 (proportionality in all means of coercion) is reinforced by the requirement that “the least harmful consequences” be used (Art. 46) and that force be applied “only while resistance is given” (Art. 47). In the interest of consistency and in light of Montenegro’s desire to further integrate with both European and international standards, the draft law should also include a definite and clear requirement of proportionality within the use of firearms provisions.⁴¹

Article 52 of the draft Law on Police permits the use of firearms *only* if other means of coercion are unable to protect life, prevent escape in certain circumstances, provide self-defense, or provide the defense of a premise or person safeguarding by an officer. Nevertheless, it remains ambiguous whether some of these circumstances (*i.e.*, the prevention from escape of a person found committing an offense for which the punishment is at least ten years’ imprisonment and the protection of property) would fall within the Council of Europe category of “absolute necessity” or parallel the requirements of the UN Basic Principles.

Articles 52(5) and 57 are unclear as to when an attack on property justifies the use of firearms. The relationship between these provisions and the principle of proportionality should be addressed by the drafters as there seems to be an incongruity between the use of firearms, the protection of property, and the use of the “least harmful consequences” espoused earlier in the law. The need for clarification may very well rest in the term “safeguarded” which is vague and should be defined.

The need for a clear standard is only reinforced by the practical difficulties of implementing the requirements set forth in Articles 52 and 54. The onus put upon the police officer to determine, most likely in situations that require split-second decision-making, the seriousness of a crime and its prescribed punishment is very high. While the lack of a definable standard may open police actions to a variety of justifications after-the-fact, these provisions also

⁴⁰ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (UN Basic Principles), U.N.G.A. Res. 45/166, Annex 1 at ¶9, in COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE, pt. 1(D) at 6, (last visited April 24, 2002) <<http://www.uncjin.org/Standards/Compendium/compendium.html>>.

⁴¹ See Article 4, final paragraph, of the draft Law, which addresses international standards on human rights and personal freedoms. Further clarification would comport not only with Article 2 of the Council of Europe’s *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Sept. 3, 1953, 213 U.N.T.S. 221, and the *McCann* decision of the European Court of Human Rights, *supra*, note 26, but also with paragraph 5 of the *UN Basic Principles* which states that police authority must be exercised with restraint and “in proportion to the seriousness of the offense and the legitimate objective to be achieved.” *UN Basic Principles* at ¶ 5(a).

place a great deal of responsibility upon an individual police officer prior to his or her acting, responsibilities which are traditionally left to the judicial system. It is suggested that the substitution of a clear and identifiable standard for the 10-year imprisonment threshold may remedy the dangers of overburdening the police, while simultaneously stymieing the opportunities for indiscriminant application of force. Any such standard should be buttressed by a provision that requires law enforcement officials to, as far as is possible, apply non-violent means before resorting to the use of force and firearms

There should also be provisions that require assistance or medical aid be rendered to any injured persons resulting from the use of such police authority.⁴² Whether the draft law has properly addressed this remains unclear.⁴³ In addition, relatives or close friends should be notified at the earliest moment such an event.⁴⁴ It should also be clearly stated that arbitrary or abusive use of force or firearms will be punished as a criminal offense under Montenegrin law and that political instability or political emergency will not be invoked to justify any violation of these provisions.⁴⁵ While Article 63 addresses criminal proceedings against police officers, it provides for an excuse if the means of coercion were used “in limits of authority.” As this authority lacks any applicable standard, it is suggested that a standard be developed to establish identifiable parameters.

In order to properly ensure adherence to standards, the Council of Europe has suggested that personnel training procedures programs regarding the use of coercion and deadly force be implemented. They are, according to the Council of Europe, of the “utmost importance”.⁴⁶ As of yet, the draft law does not appear to recognize any such programs. It is suggested that enabling provisions be added to the text.

The procedures for reviewing the lawfulness of the use of lethal force by police officials should also be modified.⁴⁷ There currently is a potential conflict of interest in that the Ministry is to pay for both the prosecution and defense in these proceedings. In order to ensure fair and impartial treatment, it is advised that funding be provided by a neutral agency or that different sources fund the prosecution and defense.

Finally, the reporting procedures detailed in Article 60 are ambiguous. It remains uncertain as to how the Minister is to be informed and what the exact “measures for establishing responsibility” are. These deficiencies should be rectified.

⁴² *UN Basic Principles* at ¶ 5(c).

⁴³ See Article 58 ¶2.

⁴⁴ *Id.* at ¶ 5(d)

⁴⁵ *Id.* at ¶¶ 7,8.

⁴⁶ *European Code of Police Ethics* app. commentary at ch. V(35)(2001). For an example of training tools and documentary materials see the Council of Europe’s *Police Practice and Human Rights –A European Introduction*, Sept. 15, 1999, DH-AW-PO (99) 14. See also *Police and Human Rights Programme*, (last visited April 24, 2002) <<http://www.humanrights.coe.int/police/main/english.html>>.

⁴⁷ In the case of *McCann and Others v. United Kingdom*, the European Court of Human Rights noted that the obligation to protect the right to life, read in conjunction with a state’s affirmative duty to secure basic human rights and freedoms (namely those articulated in Article 1 of the Convention on Human Rights), “requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State.” *McCann*, Eur. Ct. H.R., (ser. A), No.324-A at ¶161.

C. Warnings and Orders

Articles 43 and 44 require police officers to give either warnings or orders in certain circumstances. However, there is no discussion of the nature of these warnings or orders and the consequences of any failure to heed them. In short, what is an “order” and what is the police officer authorized to do if it is disregarded? It may very well be that this section relates to the following provisions on coercion. Such a reading is logical given the fourth paragraph of Article 45 requiring warnings prior to the application of the “means of coercion”, and the more specified requirements of Articles 55 and 58. Nevertheless, it is advised that the drafters further explain the purpose and ramifications of Article 43 and 44 and their relationship to the rest of the draft law.

VIII. Surveillance and Undercover Investigations

Article 91, permitting the permanent placement in public areas of video and acoustic equipment may present constitutional problems. The personal freedoms guaranteed by Part Two of the Constitution may conflict with or override the police’s interest in surveillance. In particular, Article 22 of the Constitution guarantees the “[p]hysical and psychological integrity of a man” and further provides that “personal and personal rights are inviolable.” The relationship of the surveillance provisions to these constitutional provisions, as well as to the search provisions of the draft law, therefore need to be contemplated and clarified.

In the United States, the courts generally justify the exclusion of public places from privacy protection on the grounds that since there is no reasonable expectation of privacy in a public place; a person venturing out in public waives the right to privacy.⁴⁸ In sum, a person does not have a legitimate expectation of privacy, solitude, or seclusion in being free from the dissemination of inferences drawn from observations readily perceivable in public view. Furthermore, the term “public place” covers a wide range of locations, generally including any place, whether publicly or privately owned, to which the public has access. This effectively excludes from the scope of privacy protection anything that can be seen *from* a public place.⁴⁹ Nevertheless, here the term “public places” is open to interpretation and the drafters may wish to consider incorporating a definition of what constitutes such a “place” rather than have the courts determine the scope of the term.

Articles 92 thru 95 of the draft law discuss undercover work. There is a concern that the current provisions regarding undercover investigations uniformly require too high a level of approval. While highly sensitive investigations, such as high-level public corruption investigations, should require high levels of approval, less sensitive investigations should only require the approval of the Chief of Police or some equivalent of a local level of approval.⁵⁰

⁴⁸ See *e.g.*, *International Union v. Garner*, 601 F.Supp. 187 (M.D.Tenn. 1985).

⁴⁹ See *Aisenson v. American Broadcasting Co. Inc.*, 220 Cal.App.3d 146 (1990); *Figured v. Paralegal Technical Services*, 555 A.2d 663 (N.J.Super. A.D. 1989); *But c.f. Kyllo v. United States*, 533 U.S. 27 (2001).

⁵⁰ The American Bar Association has recommended that long-term overt public surveillance only take place if a “politically accountable police official” finds that a “legitimate law enforcement objective” will thereby be achieved, the community affected by surveillance by the surveillance has the opportunity to voice its views about the propriety of the surveillance, and the public is notified of the surveillance. Short-term overt and covert surveillance need only be approved by a “supervising officer” (but not a field officer). *ABA Criminal Justice Standards Relating to Technologically-Assisted Physical Surveillance*, Std. 2-6.3 (1999).

In addition, the term “surveillance” remains undefined in the draft legislation. The various types of permitted surveillance, whether physical surveillance with technical equipment or more intrusive techniques such as wiretapping, should be individually defined. These different types of surveillance should also require varied levels of approval (*e.g.*, there is a distinction between physical surveillance or “shadowing” and technical surveillance in terms of expectation of privacy). It is recommended that the draft law develop such definitions and require alternate levels of scrutiny for the various types of surveillance.

A useful example of regulations regarding surveillance techniques and authorization thresholds are the United States Federal Bureau of Investigation (FBI) standards.⁵¹ The more intrusive the technique is, the higher level of scrutiny the investigation receives. While physical surveillance requires only supervisor approval, consensual monitoring (*i.e.*, tape recording with an informant or undercover agent wearing a body recorder) needs approval of the office head or deputy head. Accordingly, a wiretapping investigation would necessitate higher approval and requires headquarter authorization and a court order. In addition to these technical levels of scrutiny, the FBI standards also utilize temporal criteria in approving undercover investigations. For instance, a “Group II” undercover investigation is short-termed and utilizes less intrusive techniques than the “Group I” investigations, which are long-term. Subsequently, a Group I investigation requires the approval of a special undercover board made up of deputy assistant directors and a legal advisor, while a Group II investigation only needs headquarter approval.

Although the specific distinctions between “Groups” may best be left to regulations, it is suggested that the groundwork for such distinctions be made in the draft law.

IX. Labor Relations

Article 106 speaks to increases in salaries due to specific and difficult working conditions. The provision permits an increase of 30% in salary for “officials of the Ministry” as related to “the resources provided for the officials of other department[s] of public administration.” Indeed, if the police are well compensated for their efforts, then strong candidates will be attracted to the police force and officers will be less vulnerable to corruptive influences. However, the allocation to “officials to the Ministry” leaves open the question of which officials are subject to increases in salary. For instance, are these salary increases applicable to police staff and officers or only to more elevated Ministry positions? It is therefore advised that this provision define the eligible recipients of pay increases. Additionally, the relationship between these salary increases and those “provided for the officials of other department[s] of public administration” remains uncertain and should be explained further.

While Article 106 speaks to supplementary salary, the basic salary of a police officer is to be established by ensuing regulations (Art. 104). Nevertheless, it is worth reemphasizing the point that proper compensation of officers is critical to the establishment of an effective police force. A well-compensated police corps is essential to fostering pride and loyalty in policing. Moreover, appropriate remuneration is crucial for making the police profession attractive,

⁵¹ See also *Attorney General’s Guidelines on FBI Undercover Operations* (Dec. 31, 1980), reprinted in S. Rep. No. 97-682, at 550 (1982).

retaining highly qualified staff, and reducing corruption within police ranks.⁵² It is suggested that the law further ensure that proper compensation is realized through its regulations.

Articles 110 thru 121 detail the rights and responsibilities of a police officer as an employee. Article 54 of the Constitution specifically prohibits professional members of the police force from striking. In view of the broad scope of the labor provisions and their need to comport with constitutional norms, a declaration akin to Article 54 of the Constitution should be incorporated within the text.

The bar on membership in political parties found in both Article 116 of the draft Law on Police and Article 41 of the Constitution may be in opposition to international norms involving freedoms of expression and association.⁵³ The drafters should consider tailoring these provisions to better suit their objectives. For instance, rather than a proscriptive denial of simple membership, a palatable solution may be the prohibition of certain targeted political activities (*e.g.*, fundraising, campaigning for candidates, etc.).

Article 114 states that employees of the Ministry must not perform independent entrepreneurial activities. It is suggested that language be added to further prohibit or limit participation in *pro bono* activities that pose a conflict of interest or give the appearance of impropriety. The purpose of such a provision would be to bolster the cumulative effectiveness of policing. Such a measure not only eliminates potentially detrimental conflicts, it also serves an administrative end. Namely, when investigators are called to testify in a matter before a court, their integrity may be called into question. A provision such as the one suggested would serve to minimize such eventualities and promote a more efficient judicial and administrative process.

X. International Cooperation

While Article 11(8) gives the Ministry of the Interior the authority to organize international cooperation, there is no further development of such processes in the draft legislation. Given the increasing internationalization of certain forms of crime, it is advised that the draft Law on Police outline some procedures for international cooperation, or at the very least articulate a policy stance on international cooperation.⁵⁴ Any such provisions should address the framework under which any information exchanges are to take place, *inter alia* what

⁵² See *European Code of Police Ethics* app. commentary ch. V(32)(2001).

⁵³ “Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise [sic] or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.” *European Code of Police Ethics* ch. V(32)(2001).

⁵⁴ Multinational or supranational entities relating to criminal enforcement today range from Interpol and Europol to Financial Action Task Forces (money-laundering) and deal with a multitude of criminal issues. In addition, bilateral cooperation among states and their respective ministries of justice are becoming more and more commonplace. Indeed, the utility of an international procedural framework for the Montenegrin police may be best demonstrated by its recent cooperation with Italy in attempting to combat cigarette smuggling between the two countries [discussed at the Center for Strategic and International Studies (CSIS) US-Montenegro Policy Forum Meeting, 7 March 2002; Mr. Branko Lukovac (Foreign Minister of the Republic of Montenegro) and Mr. Paolo Serpi (Embassy of Italy) attending].

judicial authorities or government agencies are to be involved and what types of information are to be exchanged.⁵⁵

⁵⁵ This would also apply to the Serbia/Montenegro institutional relationships. The current text of the draft Law makes only slight reference to the Montenegrin Police's relationship and authority vis a vis Serbian and FRY agencies. It is suggested that the relationship between the Serbian and Montenegrin police and military institutions, and their respective authorities, be clearly expressed.

Appendix A

Biographical Statements of Experts Assessing the Draft Law

Biographical Statements of Experts Assessing the Draft Law

Professor J. Holmes Armstead, Jr.

J. Holmes Armstead, Jr. has served as a military officer in command, staff, and legal positions for the past thirty years and has taught international and criminal law at various military schools, including the Austrian War College and currently the United States Naval Postgraduate School. He has also taught at universities and colleges in the United States, France, the United Kingdom, Italy, and Germany.

Professor Armstead recently has consulted with the United Nations on international criminal law and law of war issues at its Vienna headquarters. Professor Armstead has published numerous articles on international and criminal law and has assisted in the drafting of legislation and treaties.

Professor Susan W. Brenner

Susan W. Brenner is Professor of Law at the University of Dayton School of Law, where she teaches Criminal Procedure, Criminal Law, Federal Criminal Law and a Cybercrimes Seminar. Professor Brenner has spoken on cybercrimes at numerous conferences, including Interpol's Fourth Annual Conference on Cybercrimes in Lyon, France, the National District Attorneys Association's 2001 National Conference, and the Hoover Institution's Conference in International Cooperation to Combat Cyber Crime and Terrorism, held at Stanford University. She has also participated in the Økokrim Conference, "The Internet as the Scene of the Crime", held in Oslo, Norway in May of 2000, and in 2001 spoke on cybercrime legislation at a seminar put on by the Ministry of the Interior of the United Arab Emirates.

Professor Brenner serves on the American Bar Association's Privacy and Computer Crime Committee, the National District Attorneys Association's Cybercrimes Committee, and is Co-Chair of the National Institute of Justice – Electronic Crime Partnership Initiative's Working Group on Policy. She consults on cybercrime issues and often gives press interviews on the subject. Her internationally-known website, <<http://www.cybercrimes.net>>, was featured on "NBC Nightly News." Professor Brenner has also published articles dealing with cybercrime and cyberterrorism, including *Is There Such a Thing as Virtual Crime*, 4 California Criminal Law Review 1 (June 2001). She is writing or has written chapters for several cybercrimes books and is co-authoring a book on global cybercrime law with Stein Schjolberg, a noted European authority on the subject.

Aside from her work on cybercrimes, Professor Brenner has published numerous law review articles and book chapters dealing with issues in criminal law and procedure. She is the author of two books - *Federal Grand Jury Practice*, published in 1996, and *Precedent Inflation*, published in 1990. She also maintains a web site that is devoted to providing information on state and federal grand juries (<<http://www.udayton.edu/~grandjur>>). The site has been featured in both the *New York Times* and the *ABA Journal*. Professor Brenner has given numerous press interviews on grand jury issues; she also speaks and consults on these issues.

Prior to joining the Law Faculty at the University of Dayton, Professor Brenner practiced law with two firms, Shellow, Shellow & Glynn, located in Milwaukee, Wisconsin, and Silets & Martin, located in Chicago, Illinois. Before entering private practice, Professor Brenner clerked

for a federal district court judge and a state court of appeals judge in Indiana. She graduated from the Indiana University School of Law in 1981, and spent two years teaching at that law school before accepting her first clerking position.

Professor Andrew Goldsmith

Andrew Goldsmith is professor of law and criminal justice at Flinders University, Adelaide, Australia. He graduated in law from the University of Adelaide, and did postgraduate studies at the University of London and the University of Toronto. He has written extensively on police accountability, police culture, police violence, and police integrity. In the mid-1990s, he acted as a consultant to the Colombian government on police reform issues, in particular the establishment of civilian oversight. His most recent book (co-edited with C Lewis) is *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (Oxford, Hart Publishing, 2000).

Aimee R. Maxwell

Aimee R. Maxwell is the Director for the Professional Education of the Georgia Indigent Defense Council, the state agency responsible for indigent defense throughout the state of Georgia. Ms. Maxwell has also worked in the area of criminal defense as a private attorney and is a past president of the Georgia Association of Criminal Defense Lawyers. She received her undergraduate degree from the University of Georgia and her Juris Doctor from the Georgia State University School of Law. Ms. Maxwell has previously contributed to CEELI assessments on the Police Reform Program for the Republic of Lithuania and the Criminal Code for the Republic of Lithuania.

Professor Myron Moskowitz

Professor Myron Moskowitz received his law degree from the University of California (Berkeley) in 1964, where he was a member of the Law Review and Order of the Coif. He has served as law clerk to Justice Raymond Peters of the California Supreme Court, Chief Attorney of the National Housing Law Project, and Chair of the California Commission of Housing and Community Development. He has written several books and articles on landlord-tenant law, and he has litigated some of the major cases and helped draft legislation in this area. He is now a Professor of Law at Golden Gate University in San Francisco. Professor Moskowitz participated in the 1998 CEELI assessment on the Police Reform Program for the Republic of Lithuania.

Curt R. Meitz

Curt R. Meitz is the City Attorney of Waukesha, Wisconsin, located in the greater Milwaukee area, where he was first elected in 1986. His duties include having to advise a government body consisting of 15 alderman; the mayor; approximately thirty boards, commissions, and committees; the police and fire departments; and a board of police and fire commissioners.

Mr. Meitz previously served as both a prosecutor and a public defender. He has assisted the Wisconsin State Legislature in providing advice on proposed laws involving municipal affairs. He has argued successfully before the Wisconsin appellate courts as well as the United States Supreme Court on matters involving the constitutionality of the authority of the police.

Mr. Meitz also has some international experience, having taught a course in Tallinn, Estonia, on the American legal system, which included topics involving the appropriate investigative techniques of police officers. Mr. Meitz has previously assisted CEELI in the analysis of a number of legislative drafts.

Kevin Rardin

Kevin R. Rardin has served as Assistant District Attorney in Memphis, Tennessee, since 1984. He also serves as a consultant to the Memphis Police Department and the Shelby County Sheriff's Department. Mr. Rardin has taught Criminal Law and Procedure at the National Academy for Paralegal Studies and taught the Uniform Code of Military Justice and the Law of War as a detachment training officer of the United States Judge Advocate General's Corps. Mr. Rardin served as a First Lieutenant in the United States Army Reserve Judge Advocate General's Corps from 1989 to 1993 and served on active duty as a military lawyer during Operations Desert Shield and Desert Storm. He currently holds the rank of Major in the Tennessee National Guard, Judge Advocate General's Corps and serves as the 230th Area Support Group's Command Judge Advocate.

In addition, Mr. Rardin serves as an advisory council member of the International Criminal Justice Resource Center (ICJRC) and has assisted the ICJRC in providing material support to the International Criminal Tribunals for Rwanda and the Former Yugoslavia. He has previously participated in various CEELI projects, including an assessment on the Police Reform Program for the Republic of Lithuania. Mr. Rardin is a graduate of the Washington & Lee School of Law.

Professor Christopher Slobogin

Christopher Slobogin occupies the Stephen C. O'Connell Chair at the University of Florida Fredric G. Levin College of Law. He received J.D. and L.L.M. degrees from the University of Virginia Law School. He is co-author or author of two books on American criminal procedure, and has taught courses in comparative criminal procedure both in the United States and at Oxford, Trinity College (Ireland), Talca University (Chile), the University of Warsaw, and the University of Frankfurt. He has been a Fulbright Scholar at Kiev University, and served as faculty in programs for Russian and Central European judges and prosecutors on American criminal law, procedure and evidence in Moscow, Irkutsk (Russia) and Reno, Nevada sponsored by the National Judicial College.

Gregory S. Stephens

Gregory S. Stephens is currently the Chief Assistant Prosecuting Attorney for the Butler County Prosecutor's Office in Hamilton, Ohio. Among his various duties, Mr. Stephens tries delinquency and civil abuse cases in the Butler County Juvenile Court. Mr. Stephens also has experience with the criminal court system, having previously worked with the Warren County Prosecutor's Office and represented indigent clients while in private practice. He received his Juris Doctor from the University of Dayton School of Law in 1995 and his undergraduate degree from the Miami University of Ohio in 1991.

Dr. Richard M.J. Thurston

Dr. Richard M.J. Thurston currently teaches at Saint Peter's College, a Jesuit institution located in Jersey City, New Jersey, where he also serves as Chairperson of the Department of Political Science and as the College Pre-Law adviser. In his teaching and research, Dr. Thurston has focused on issues relating to international law and the international political economy. He teaches the Political Science Department's international courses - International Relations, International Political Economy, International Organizations, International Law, U.S. Foreign Policy, and two courses in comparative politics - Comparative Politics of Western Europe and Comparative Legal Systems.

Dr. Thurston is a member of several learned societies, including the American Political Science Association (APSA), the International Studies Association (ISA), the American Society of International Law (ASIL), and the International Law Association (ILA). He is particularly active in the ASIL, having served as international law moot court judge in the international semifinal rounds of competition in Washington, DC, every year since 1988. His current research interests are in the areas of state adherence to international legal norms and international trade law, upon which he has presented several conference papers and chaired several conference panels.

He received his B.A. in French from the University of Maine in 1971. Following four years of service in the Peace Corps in the West African country of Togo, he returned to his studies, receiving an M.A. in Community Development from the University of Missouri in 1980 and a Ph.D. in Political Science from the University of Missouri in 1984.

Maria Velikonja

Maria Velikonja is a Supervisory Special Agent with the Federal Bureau of Investigation, where she has worked for seventeen years. She serves as Assistant General Counsel in the Office of General Counsel and is a legal advisor to the counterterrorism division. She also has significant experience in undercover operations, acting as counsel to the FBI Undercover Operations Review Committee and having managed contracts for undercover operations spanning 59 FBI offices while a contracting officer and attorney for the Finance Division.

Ms. Velikonja is actively engaged in international issues. She has previously served as an advisor to the Macedonian Minister of Interior on human trafficking and as a task force director. She has acted as FBI legal representative to the Pan Am/Lockerbie trial and Expert-on-Mission to the International Criminal Tribunal for the former Yugoslavia. In addition, she has participated as a team leader and instructor at the International Law Enforcement Academy in Budapest, instructing senior police officers from 15 CEE and NIS countries on white-collar crime and public corruption issues. Ms. Velikonja has also contributed to previous CEELI projects, including the analysis of the Draft Law on the Special Investigations Service for the Republic of Lithuania.

Ms. Velikonja received her Juris Doctor from the University of Puget Sound Law School and her undergraduate degree from the University of Washington. She has also earned a Certificate in Public International Law from The Hague Academy of International Law and has completed graduate studies in international criminal law at the Georgetown University Law School.

The Honorable Marcia K. Walsh

Judge Marcia K. Walsh has served on the bench of the Circuit Court of Missouri in the Kansas City Municipal Division for the last nineteen years. She earned her M.A. and Juris Doctor degrees from the University of Kansas, and her Master of Laws degree from the University of Missouri Kansas City. Judge Walsh taught as an Adjunct Professor at the University of Missouri Kansas City Law School. She also served as a Fulbright Senior Scholar, and in this capacity lectured in Russia at the St. Petersburg State University Law Faculty. She served for three years on the Central Eurasia Review Committee for the Council for the International Exchange of Scholars, serving two of those years as Committee chair.

Judge Walsh has participated in 16 CEELI law reform projects, and has served as a CEELI facilitator at a joint CEELI/Department of Justice Seminar for Russian judges and prosecutors in St. Petersburg, Russia.

Appendix B

The European Code of Police Ethics

THE EUROPEAN CODE OF POLICE ETHICS

**Recommendation (2001) 10
adopted by the Committee of Ministers
of the Council of Europe
on 19 September 2001
and
Explanatory memorandum**

Directorate General I - Legal Affairs

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

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

*(Adopted by the Committee of Ministers
on 19 September 2001
at the 765th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system;

Aware of the need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that police efficiency is dependent on public support;

Recognising that most European police organisations - in addition to upholding the law - are performing social as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights;

Considering the principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters - criminal, civil and public law as well as human rights aspects - as adopted by the Committee of Ministers, decisions and judgments of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the diversity of police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individual's rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

Appendix to Recommendation Rec(2001)10

Definition of the scope of the code

This code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes.

I. Objectives of the police

1. The main purposes of the police in a democratic society governed by the rule of law are:

- to maintain public tranquillity and law and order in society;
- to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- to prevent and combat crime;
- to detect crime;
- to provide assistance and service functions to the public.

II. Legal basis of the police under the rule of law

2. The police are a public body which shall be established by law.

3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.

4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.

5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

III. The police and the criminal justice system

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.

7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.

8. The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities.

9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.

10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access to legal assistance effective, in particular with regard to persons deprived of their liberty.

11. The police shall not take the role of prison staff, except in cases of emergency.

IV. Organisational structures of the police

A. General

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.

13. The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.

14. The police and its personnel in uniform shall normally be easily recognisable.

15. The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.

16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.

19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.

20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.

21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

B. Qualifications, recruitment and retention of police personnel

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.

24. Persons who have been convicted for serious crimes shall be disqualified from police work.

25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.

C. Training of Police Personnel

26. Police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

27. General police training shall be as open as possible towards society.

28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.

29. Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be included in police training at all levels.

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.

D. Rights of police personnel

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.

33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.

34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

V. Guidelines for police action/intervention

A. Guidelines for police action/intervention: general principles

35. The police, and all police operations, must respect everyone's right to life.

36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

38. Police must always verify the lawfulness of their intended actions.

39. Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.

40. The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.

41. The police shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.

42. The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

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

45. Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.

46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

B. Guidelines for police action/intervention: specific situations

1. Police investigation

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.

48. The police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.

49. Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons.

50. Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.

51. The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular where there is a risk of intimidation of witnesses.

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

2. Arrest/deprivation of liberty by the police

54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.

VI. Accountability and control of the police

59. The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

62. Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.

63. Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

VII. Research and international co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

EXPLANATORY MEMORANDUM
Relating to the
Recommendation Rec (2001) 10
of the Committee of Ministers to member states
on the European Code of Police Ethics

I. Introduction

I.1. Codes of Police Ethics

Much that has been written about the police takes the form of descriptions of how they do or would act in various situations. There is tendency, except in a moralising manner, to set aside questions of how the police *should* act: to make clear the values and standards that are required of police in a modern, democratic society. The provision of "The European Code of Police Ethics" provides a basis for just such a framework. It could not be more timely. Many European countries are reorganising their police to promote and consolidate democratic values. They are also concerned to secure common policing standards across national boundaries both to meet the expectations of increasingly mobile Europeans, who wish to be confident of uniform, fair and predictable treatment by police, and to enhance their powers of co-operation, and hence their effectiveness, in the fight against international crime. The provision of the Code also supports the Council of Europe's aim of achieving greater unity between its members.

A glance at the role of police in a democracy reveals the particular relevance of a code of ethics for the police. People within democracies have organised their states to secure maximum freedom for themselves within the rule of law. Likewise, the criminal justice systems have been developed with the purpose of providing individual liberty and security. In democratic societies where the rule of law prevails, the police undertake the traditional functions of preventing, combating and detecting crime, preserving public tranquillity, upholding the law, maintaining public order, and protecting the fundamental rights of the individual. Moreover, in such societies the police provide various services to the public that are of a social nature, which support their other activities. They are granted discretion to fulfil these functions. The police in democracies help to sustain the values of democracy, and are themselves imbued with the self-same values. In general, the public consent to and, indeed, welcome the exercise of legitimate authority by the police so long as the police are seen to carry out their tasks towards worthwhile, democratic ends in an ethically acceptable manner. In turn, when they fulfil these conditions, the police have every right to expect that the public will trust them to carry out their responsibilities, and support and co-operate with them in their activities when doing so. These ideas about policing within democracies are at the heart of the Council of Europe.

Although a code of police ethics is only the beginning of any process to secure common police standards, without one such a process has little hope of succeeding. By laying the foundation for ethical norms, a code of police ethics enhances the possibility that ethical problems are more readily identified, more fully understood, analysed more carefully and more readily resolved. It also prompts questions about the values served by the police as an organisation, and their proper application. Key concepts within the police, such as 'loyalty', 'consent', 'impartiality', 'discretion' and 'professionalism' all benefit from the common reference and shared meaning, and hence understanding, made possible by a code. Moreover, it can help articulate personal standards of conduct, which captures a sense of pride in being members of a police organisation. This is of particular importance to police recruits, who need to know from the outset the core values that should define and govern their work. The mention of police recruits is a reminder of how important codes are for police training. Without some such objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be

argued for, with the risk that they are seen as merely local and the creation of no one but the trainer. It should be added that a police code of ethics has merit at all levels of training.

As has been mentioned, police services are greatly enhanced if police enjoy the consent and close co-operation of the public. The public is dependent upon the responsible delivery of police services for the delivery of which the police are invested with considerable authority, including discretion, which constitutes a virtual monopoly of legitimate coercion. For this reason the public has a need for assurance. A well publicised police code of ethics, by underlining the common standards, purposes and values of the police, can help to promote public trust in the police and further good public relations and co-operation. The same standards, by making clear the range and scope of police services help safeguard the police against unwarranted, frivolous and vexatious demands, and, above all, limit their liability for failures of service.

Moreover, a police code of ethics can work as a regulatory instrument for the internal organisation of the police. This is one of the striking features of "The European Code of Police Ethics". By providing minimum standards, values and ethical frameworks, it may serve a regulatory function in at least four ways: maintain quality control of the personnel of the police organisation (including civilian staff); help in the exercise of leadership, management and supervision; make senior members of the organisation more accountable; and provide a norm for the adjudication of difficult, internal disputes.

In terms of its possible influence upon police practice, a police code of ethics recommends best practice for the police, and is a specialised version of habitual, everyday, common-sense principled conduct. There are, however, a number of meanings for the word "ethics". Aristotle established the most widely understood meaning of the word. For him, it refers to the critical discipline that focuses upon everyday ethical conduct and beliefs for its subject matter. This is not the meaning of the word intended in the title "The European Code of Police Ethics". Modern societies and their police are partly organised under the twin principles of division of labour and co-operation. People find themselves engaged in a large number of specialised activities. While their everyday relationships employ common standards of conduct, they often have need of more specialised understanding and guidance when it comes to their particular jobs and occupations. This is because their work focuses upon particular aspects of human conduct in ways that highlight ethical dilemmas that are regularly repeated, and which their occupational roles require them to cope with and resolve. This is particularly the case with those working in the public services, where the public entrust their well-being to occupational specialists. In this context the word "ethics" refers to that body of principled requirements and prescriptions that is deemed fit to regulate the conduct of the occupation. It is important to note that "ethics" in this sense represents an attempt to apply everyday ethics to the specialist demands and dilemmas of public organisations. It is in this sense that "ethics" is used in "The European Code of Police Ethics".

The police objective of upholding the rule of law encompasses two distinct but inter-related duties: the duty of upholding the properly enacted and constituted law of the state, including securing a general condition of public tranquillity, and the related duty of keeping strictly within prescribed powers, abstaining from arbitrary action and respecting the individual rights and freedoms of members of the public.

The rule of law is focused not only on what is done but on how it is done. In carrying out their duties, police need to respect citizen's individual rights, including human rights, and freedoms and avoid arbitrary or unlawful action. This is fundamental to the meaning of the rule of law and therefore to the whole meaning and purpose of police duty in a democracy.

Above all the rule of law requires that those who make, adjudicate and apply the law should be subject to that same law. In other words, the police should be subject to the self-same law that they apply and uphold. It is the mark of the police in a fully-fledged and mature

democracy that they bind and subject themselves to the very law that they are pledged to uphold. The police role in upholding and safeguarding the rule of law is so important that the condition of a democracy can often be determined just by examining the conduct of its police.

The European Code of Police Ethics aims to provide a set of principles and guidelines for the overall objectives, performance and control of the police in democratic societies governed by the rule of law, and is to a large extent influenced by the European Convention on Human Rights. The Code is concerned to make specific and define the requirements and arrangements that fit the police to meet the difficult, demanding and delicate task of preventing and detecting crime and maintaining law and order in civil, democratic society. Even if the Recommendation primarily is aimed at Governments the guidelines are drafted in such a way that they may also be a source of inspiration to those dealing with the police and police matters at a more pragmatic level.

I.2 The background to “The European Code of Police Ethics”

From its earliest days, the Council of Europe has had police matters on its agenda. Indeed, the police play such an important role with regard to the protection of the fundamental values of the Council of Europe (pluralistic democracy, the rule of law and human rights) that the Council of Europe provides a natural platform for European discussion on the role of the police in a democratic society.

Considerable case law relating to the police has been established by the European Court of Human Rights. Moreover, guiding principles relevant to the police have been developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The European Social Charter and its case-law comprises important principles with regard to the social and economic rights of police personnel. The European Commission against Racism and Intolerance (ECRI) has developed principles for the police in its specific field of competence. Moreover, the European Commission for Democracy through Law (Venice Commission) has adopted texts on constitutional aspects of the police. The Group of States against Corruption (GRECO) has the mandate to evaluate national administrations, including the police, with regard to corruption.

The police has also been subject to the requirements of local and regional authorities, and this work has also been linked to problems of urban insecurity. Police and ethnic relations is another area of interest. Moreover, the Council of Europe has developed activities designed to promote human rights awareness within the police. Through this work, police practitioners and human rights experts, representing both states and non-governmental organisations, have been brought together to deal with problems of human rights in a professional police context. The training of police personnel in human rights, and a large number of documents, such as handbooks on police and human rights issues, are some of the concrete results of this work. It has served to develop an understanding within national police services of the necessity for raising awareness of human rights at all levels of the police.

The *“Declaration on the Police”*, adopted by the Parliamentary Assembly of the Council of Europe in 1979, was an early attempt to provide ethical standards for the police. It has been a source of inspiration for answering policy questions on the police in many European states. While the Committee of Ministers shared the Assembly's view of the necessity to apply particularly high ethical standards to the police in democratic societies, they did not give the ‘Declaration’ unqualified support, and it did not become a legal instrument of the Council of Europe.

The traditional inter-governmental standard setting work of the Council of Europe, carried out under the authority of the Committee of Ministers, has focused on the police with regard to criminal justice policies, criminal law and criminology (criminal procedure, crime

prevention, victim and witness protection, juvenile delinquency, custody, organised crime, corruption, public prosecution, etc.) and public law (personal integrity and data protection, etc). Legal instruments - conventions and recommendations - of relevance for the police have been developed within this framework.

Starting in 1989, changes occurred in central and eastern Europe, which led the Council of Europe to intensify considerably its activities with regard to the police. Within the framework of programmes aiming at supporting legal reform as well as the reform of public administration, including the police, a large number of activities (seminars, training sessions and the dissemination of legal expertise) were implemented under themes such as "the role of the police in a democratic society", "police ethics", and "police and the rule of law".

It was in this context of police reform that the need for a normative, pan-European framework for the police was again highlighted. As a result, the Committee of Ministers established the *Committee of Experts on Police Ethics and Problems of Policing (PC-PO)* under the authority of the European Committee on Crime Problems (CDPC).

The terms of reference of Committee PC-PO were adopted by the CDPC at its 47th plenary session in 1998, and confirmed by the Committee of Ministers at the 641st meeting of their Deputies in September 1998.

The following terms of reference were given to Committee PC-PO:

"The Police play an important role within the criminal justice system. As opposed to other professional groups within that system, few international instruments apply to the Police. At the moment many European countries are reorganising their Police as a crucial part of the process to promote and consolidate democratic ideas and values in society. Police ethics have thus become an important topic in several member States of the Council of Europe.

The Committee of experts should prepare a study of police ethics in the broad sense, taking into account such questions as:

- *the role of the Police in a democratic society and their place in the criminal justice system;*
- *the objectives of policing under the Rule of Law - prevention of crime, detection of crime etc;*
- *control of the Police.*

The Committee of Experts should consider, in particular, aspects of police ethics related to certain situations that occur in daily police work, such as the interrogation of suspects and other functions of investigation, the use of force, the exercise of police discretion etc. Ethical aspects of police management in general as well as their inclusion as a training subject would also be covered. In this respect the differences between ethical codes, codes of professional conduct and disciplinary codes should be taken into consideration. In carrying out this task the Committee should bear in mind the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as Assembly Resolution 690 (1979) on the Declaration on the Police. It should take into account the work of the Committee of Experts on Partnership in Crime Prevention (PC-PA) as well as other relevant activities of the Council of Europe.

The outcome of the work should be a report and/or a recommendation on police ethics, which could be used as a guiding framework for member States when police reforms and national codes of police ethics are being considered."

The Committee was composed of experts from Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Lithuania, Moldova, Poland, Portugal, Romania, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and the United Kingdom. The Committee included experts coming from ministries of the interior, ministries of justice, the police, the prosecution and the judiciary. The Committee was chaired by

Mr Karsten Petersen, Deputy Police Commissioner, Denmark. Two scientific experts - Mr Amadeu Recasens i Brunet (Director of Escola de Policia de Catalunia and Professor at the University of Barcelona, Spain) and Mr Neil Richards (Director of Chief Police Officers Development Programme, National Police Training, Bramshill, United Kingdom) - were appointed to assist the Committee. The Secretariat was provided by the Directorate General of Legal Affairs, DG I, of the Council of Europe.

The European Commission, I.C.P.O.-Interpol, the Association of European Police Colleges (AEPC) and the International Centre of Sociological Penal and Penitentiary Research and studies (Intercenter) were observers to the Committee. The Association for the Prevention of Torture (APT), the European Council of Police Trade Unions (CESP), the European Network of Police Women (ENP), the European Federation of Employees in Public Services (EUROFEDOP), the International Federation of Senior Police Officers (FIFSP), the International Police Association (IPA) and the International Union of Police Federations (UISP), were consulted in the final stages of the work.

The Committee based its work upon legal instruments (conventions and recommendations of the Council of Europe and other international organisations) as well as principles established by the European Court of Human Rights and other bodies of the Council of Europe, mentioned above. The Committee organised hearings with representatives of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the European Committee of Social Rights. Moreover, the Committee was informed of projects and activities related to police carried out by the various Directorates General of the Council of Europe. The work of the Committee was presented and supported at the Twelfth Criminological Colloquium, organised by the Council of Europe in November 1999, on the theme "Police Powers and Accountability in a Democratic Society", and at the High Level Conference between European Ministers of the Interior, in June 2000.

The Committee held six plenary and three working group meetings between December 1998 and March 2001. Following a request by the Parliamentary Assembly, the Committee of Ministers agreed that a provisional draft recommendation be sent to the Parliamentary Assembly for its opinion. The opinion of the Assembly was taken into account by the Committee at its sixth meeting.

The text of the draft recommendation, "*The European Code of Police Ethics*", and its explanatory report were finalised at the sixth meeting of the Committee in March 2001, and submitted for approval and transmission to the Committee of Ministers at the 50th plenary session of the European Committee on Crime problems (CDPC), held in June 2001. At the 765th meeting of their Deputies on 19 September 2001, the Committee of Ministers adopted the Recommendation and authorised publication of the explanatory memorandum thereto.

II. Preamble to the Recommendation

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the Rule of Law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the Rule of Law and that the police have an essential role within that system;

Aware of the common need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that the police efficiency is dependent on public support;

Recognising that most European police organisations - in addition to upholding the law - are performing social functions as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for human dignity and individuals' fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;

Considering principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the Resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters - criminal, civil and public law as well as human rights aspects - as adopted by the Committee of Ministers, decisions and judgements of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the variety of different police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individual's rights in democratic societies governed by the Rule of Law;

Recommends that the governments of member States be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of "The European Code of Police Ethics", appended to the present Recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

III. Commentary on the preamble:

Since its inception, the Council of Europe has worked to establish and promote common principles in its member states' laws, practices and systems. The criminal justice system has been one of the priorities in this respect, as crime fighting demands the direct practical application of the principles on which the Council of Europe was founded and which it is expected to uphold, namely the rule of law, democracy and human rights.

Moreover, the effectiveness of responses to crime depends to a large extent on their being harmonised within a coherent and concerted European policy. That requirement is increasingly becoming more important with the existence of crime phenomena, such as organised crime and corruption, which often have an international dimension, with respect to which national systems risk to prove insufficient.

Traditionally, the elaboration of common standards applicable to law enforcement bodies, such as the police, has not been as developed as is the case for example with regard to the judicial side of criminal justice or the implementation of sanctions. The recent adoption of the Council of Europe Recommendation Rec (2000) 19 on the Role of Public Prosecution in the Criminal Justice System, as well as the present Recommendation is, however, a new trend in this respect. Moreover, the recognition of the police as a component of the criminal justice system, thus bringing justice and home affairs closer to each other, is likely to provide a solid basis for continued harmonisation of standards applicable to the police.

In a Europe where national borders become less important the focus on the police and their powers from an international perspective is unavoidable. The debate concerns to a large extent the efficiency of the police in combating crime that increasingly is operated over national borders, such as organised crime and corruption. However, the debate is not

limited to this perspective. In a democratic society the police powers are restricted with regard to what is acceptable from the perspective of individuals' fundamental rights and freedoms, as laid down in the European Convention on Human Rights. A proper balance between these interests must be found and it is here that the international ethics of the police are at stake.

The police are accountable not only to the state but also vis-à-vis the public in such a society and their efficiency is to a large extent depending on public support. In this respect the social function and the public service side of the police are important also for the carrying out of law enforcement.

The European Convention on Human Rights and its case-law has been considered a basic framework for the drafting of the present Recommendation. Moreover, principles of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have been incorporated into the text. The work has also in relevant parts been influenced by the European Social Charter and its case-law. Moreover, other international texts, particularly applicable to the police, the United Nations Code of Conduct for Law Enforcement Officials and Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police have not only been considered in depth, but also been influential sources for the drafting of the present Recommendation.

The following Council of Europe texts, which offer guidance in matters relating to the present Recommendation, have been given the closest attention:

- Framework Convention for the Protection of National Minorities (ETS No 157);
- Resolution (78) 62 on juvenile delinquency and social change;
- Recommendation R (79) 17 concerning the protection of children against ill-treatment;
- Recommendation R (80) 11 concerning custody pending trial;
- Recommendation R (83) 7 on participation of the public in crime policy;
- Recommendation R (85) 4 on violence in the family;
- Recommendation R (85) 11 on the position of the victim in the framework of criminal law and procedure;
- Recommendation R (87) 15 on regulating the use of personal data in the police sector;
- Recommendation R (87) 19 on the organisation of crime prevention;
- Recommendation R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families;
- Recommendation R (96) 8 concerning crime policy in Europe in a time of change;
- Recommendation R (97) 13 concerning intimidation of witnesses and the rights of the defence;
- Resolution (97) 24 on the twenty guiding principles for the fight against corruption;
- Recommendation R (99) 19 concerning mediation in penal matters;
- Recommendation R (2000) 10 on codes of conduct for public officials;
- Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system;
- Recommendation Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer;
- ECRI General Policy Recommendations; European Commission against Racism and Intolerance.

It should also be mentioned that several other texts (instruments and handbooks, etc.) produced within the Council of Europe relating to police matters, such as "police and human rights", "police ethics", media, racism and intolerance, equality and minority questions, have been considered.

The present Recommendation has been drafted from the viewpoint that there are big differences between member states in terms of how their law enforcement/police tasks are being implemented. This is particularly noticeable in terms of the status and the organisation of the forces/services as well as their operating methods. At the same time there are great similarities, in particular as regards the objectives of the police and the problems they face in their daily activities. Having this in mind, the Recommendation consists of major guiding principles that are considered crucial in a well established democracy, both for the efficiency of the police and for their acceptance by the public.

The establishment of common standards is very timely. Police reforms are being carried out throughout Europe and, in particular, in the more recent democracies police reforms are part of general processes with the overall objective of consolidating democratic principles such as the rule of law and the protection of human rights, in public administration.

The present set of guiding principles may serve as guidance and source of inspiration when police systems are being reformed. It is, however, clear that a reasonable margin of appreciation must be left to member states, not least with regard to the different historical heritage and the level of development. With this Recommendation a foundation for continued efforts relating to the police has been achieved and the Council of Europe has made police matters one of its priorities.

Definition of the Scope of the Code

This Code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society and, who are empowered by the state to use force and/or special powers for these purposes.

Commentary

The definition of the scope of the Code at the outset of the recommendation serves the purpose of establishing its applicability. In order to make the Code relevant for as many police systems as possible and considering the variety of different police systems existing in Europe, in particular their different stages of development and organisational structures, the definition is made wide. The definition used in this paragraph makes the Code applicable to “traditional” police in all member States. (It is worth noting that this definition should not be confused with the *recommended* objectives of the police, which are included in Article 1 of the Code.)

For the reasons referred to above, the definition of the scope of the Code only contains the “hard core” characteristics that are entrusted to all existing public police bodies in Europe, that is the power to use force in order to maintain law and order in civil society, normally including upholding public order, prevention and detection of crime. Having this definition, as the lowest common denominator for the applicability of the Code, there is no need to establish a detailed description of various types of police to be affected. Thus, this Code applies to all police responsible for police activities in civil society. The Code applies regardless of how such police are being organised; whether centralised or locally oriented, whether structured in a civilian or military manner, whether labelled as services or forces, or whether they are accountable to the state, to regional or local authorities or to a wider public.

Although the intention is to have a as wide a range as possible of the Code, certain specific types of police are excluded from its scope. The reference to *traditional* police should be regarded as opposed to “special types” of police, which are set up for specific purposes other than keeping law and order in civil society. Examples of police that do not come within the scope of the Code are military police when exercising their military functions and secret security services. Another category not covered by the Code is “penitentiary police”, which in the countries where they exist, are limited to perform their duties in penal institutions.

It should be added that private security companies are not covered by this Recommendation.

I. Objectives of the Police

1. *The main purposes of the police in a democratic society governed by the Rule of Law are:*
- *to maintain public tranquillity, and law and order in society;*
 - *to protect and respect the individual's fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;*
 - *to prevent and combat crime;*
 - *to detect crime;*
 - *to provide assistance and service functions to the public.*

Commentary

This Article contains a selection of the most important objectives of the police in a democratic state governed by the Rule of law.

Maintaining *tranquillity* and *law and order* in society are the classical overall objectives and the full responsibility of the police, often referred to as “public order” policing. This concept covers a wide variety of police activities among which providing for the safety and security of persons (physical as well as legal) and property (private as well as public) and law enforcement between the state and individuals as well as between individuals should be mentioned.

The respect for the *individual's fundamental rights and freedoms* as enshrined in the European Convention on Human Rights as an objective of the police is possibly the most significant token of a police service in a society governed by the rule of law. This objective implies not only a separate obligation to uphold these rights, but that there are limits as to how far the police may proceed in order to fulfil their other objectives.

The wording “notably the European Convention on Human Rights” is chosen in order to indicate a specific and precise reference to a particular instrument, without excluding the importance of other relevant human rights texts in this respect.

Crime prevention is dealt with differently in member states, however, most commonly, this is regarded as an overall responsibility of the state. Crime prevention is often divided between *social* and *situational prevention*, both of which apply to the police.

As follows from the Council of Europe Recommendations No. R (83) 7 on Participation of the Public in Crime Policy as well as No. R(87)19 on Organisation of Crime Prevention, effective crime prevention requires active participation by the community at large, including the public. “Partnership” in crime prevention is an often used term in recent years, which indicates that this is not a task exclusively of the police. Activities in crime prevention need to be co-ordinated between the efforts for the police and other agencies and the public. Even if the ultimate responsibility for crime prevention policy, in most member states does not lie with the police, it is nevertheless one of their main objectives, which, in a society governed by the Rule of Law requires certain safeguards to curb abuse directed against individuals.

Crime detection is one of the classical primary objectives of police in all states. Even if crime detection often amounts to a limited part of the total police work, it is a vital component of the activities of the police. People expect much of the police in terms of their crime detection. Effective crime detection has also a preventive effect in itself, and is thus crucial for promoting public confidence in criminal justice.

Crime detection is organised differently in various states; in some states it is the responsibility of the general police, whereas in other states it is carried out by special branches of the police, such as criminal police or judicial police. The independence of the

police from the prosecution authorities also differ to a large extent. However, the problems the police are facing in their crime detection are identical all over Europe. This Code does not challenge the centrality of the crime fighting side of police work, but it underlines the importance of upholding a proper balance between the efficiency of the police and the respect for individuals fundamental human rights, which is particularly difficult in crime fighting. The principle of “presumption of innocence” and its accompanying safeguards are certainly of great importance for persons suspected of crime. In addition, the respect for individual rights in crime detection, also comprises the rights of other persons affected, such as victims and witnesses, towards whom the police also have responsibilities.

Safeguards in crime detection are dealt with in Chapter V.2, below.

The provision of *assistance* to the public is also a feature of most police bodies, but such functions are more or less developed in various member states. The inclusion of *service* functions under the objectives of the police is somewhat different as it changes the role of the police from that of being a “force” to be used in society into a “service” body of the society. For some years there has been a clear trend in Europe to integrate the police more fully into civil society, to bring them closer to the public. The development of “community policing” in several member States serves such a purpose. One important means used to do this is to give the police the status of a public service body rather than a pure law enforcer. In order to make such a shift a bit more than a semantic exercise, the service side of the police should be included as one of the purposes of a modern democratic police. Whereas assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other authorities or social services, the service side of the police is more vague and thus difficult to define. It should not be confused with certain administrative duties given to the police (issuing passports etc). In general, the police as a public service body is connected to the role of the police as a resource for the general public, and easy access to the police is one of the basic and most important aspects in this respect. The service side of the police has more to do with police attitudes towards the public than with giving the police far going service functions in addition to their traditional duties. It is clear that the police cannot be charged with a too heavy responsibility for service functions in society. Member states should therefore establish guidelines for police performance and duties in this respect.

II. Legal Basis of the Police under the Rule of Law

- 2. The police are a public body, which shall be established by law.*
- 3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.*
- 4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise and, if need be, supported by regulations equally accessible to the public and clear.*
- 5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.*

Commentary

This Section establishes the legal framework according to the Rule of Law of the police as an institution as well as for its actions. The section also contains some fundamental legal requirements, some of which are deduced from the European Convention on Human Rights and its accompanying case law. Articles 2-5 summarise some of the principles behind the concept of the rule of law with regard to the police.

Article 2 underlines that the police as an institution is a public body. It means that public authorities, ultimately the state, cannot evade their responsibility for the police and that the

police as an institution cannot be made into a private body. Another thing is that police functions/powers can be delegated to private bodies.

Moreover, Article 2 states that police organisations should be established by law. This implies that the police are based on the constitution and/or ordinary legislation, however, it does not exclude detailed regulations of the police in subordinated instruments, such as governmental decrees or instructions of the Head of Service, provided that these are given with delegated powers in conformity with the constitution/legislation.

Article 3 spells out the principles that should always guide police operations; they must be lawful, both with regard to national legislation and relevant international standards. As regards the latter, the European Convention on Human Rights and related instruments are of particular importance.

Article 4 sets out two general additional principles contained in the “Rule of law Concept”, which have been referred to by the European Court of Human Rights in several cases. In order to be in a position to protect his/her own rights against police powers, the citizen must be aware of which legal rules apply. Firstly, this implies that regulations are accessible to the general public and, secondly, the norm, whether legislation or a subordinate regulation, must be formulated with sufficient precision. These two requirements are necessary to give the citizen the possibility to foresee the consequences which a given regulation may entail. It is clear that consequences never can be foreseeable with absolute certainty and, in addition, laws and regulations must keep pace with changing circumstances. Therefore, the Recommendation does not go any further than the European Court of Human Rights, and uses the wording “sufficiently clear”. There must be a good balance between the details and the flexibility of a police regulation, both concerning the basis for the organisation and the performance of operations. The importance of these principles cannot be underestimated in respect of state powers used against individuals. This is the reason for having them spelled out in the Recommendation.

A cardinal principle of the rule of law, contained in Article 5, is that the law applies equally to all citizens, including those who execute the law, like police personnel. Exceptions from this rule should only be allowed when it is necessary for the proper performance of police duties.

This Article also implies that, unless there are special reasons, police personnel should, as a rule, be subject to ordinary legislation as well as to ordinary legal proceedings and sanctions. Internal disciplinary measures fall outside the scope of this rule. The European Court of Human Rights have established case law concerning the distinction between disciplinary matters and criminal matters. In essence, it is not feasible for a state to label what, according to international law, should be considered a criminal matter, a disciplinary matter, and thus disregard procedural safeguards provided for in Article 6 of the European Convention on Human Rights.

III. The Police and the Criminal Justice System

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.

Commentary

As already stated in the preamble, the police are one of the four components of the criminal justice system; police, prosecution, courts and corrections. Even though this model of the criminal justice system sees each element as independent, it is widely accepted that the system should incorporate a number of checks and balances in order to ensure that the total system, and its constituent elements operate according to the law and in an efficient way. At the same time, this model of the criminal justice system, in which individual cases

are seen as passing from one element to another and thereby justifying the criminal justice process, requires that these elements are independent and autonomous to a certain degree with regard to each other. Such a system is more likely to provide safeguards for those passing through it.

This Article underlines the importance of a separation of the role of the police from the other components of the criminal justice system. The police, who are “the first link of the chain”, should have no controlling functions over the other bodies in the criminal justice system.

7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.

Commentary

This Article deals with the integrity of the criminal justice system. The independence and the impartiality of the judiciary is one of the corner stones in a society governed by the rule of law. The police, as part of the criminal justice system, are necessarily close to the judiciary and must never act in a way that may prejudice, or be seen to affect the impartiality of the judiciary. On the other hand, the judiciary should respect the police as a distinct professional body and not interfere with their professional arrangements.

The police are subject to the judiciary in judicial decisions, which they must scrupulously respect and often implement, provided these are legitimate. The legitimacy, or lawfulness, is related to national law as well as to international (human rights) law, see also Article 3.

The second part of this Article would normally imply that the police must respect all judgments and decisions of courts and even do whatever is appropriate to enable their execution. However, the way in which the Article is formulated opens a possibility for the police not to play the role of “blind implementers” in situations when the requirements for justice in a democratic society governed by the rule of law are clearly set aside. It follows from Articles 3 and 37 that the police always must check the lawfulness of their actions.

This Article does not prejudice the rights and freedoms of police personnel as private citizens.

8. The police shall, as a general rule, not have judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission by the police affecting individual rights, before the judicial authorities.

Commentary

As an exception from the main rule of strict separation of powers between the Executive and the Judiciary, the police may in certain situations be entrusted with judicial powers. The Recommendation emphasises that the police should be in a position to exercise judicial powers only to a limited extent, normally in regard to minor offences where the facts are simple and where the offender accepts guilt, the sanctions are limited, and often standardised. It is crucial that decisions, by the police based on delegation of judicial powers can be challenged before a court and that the offender is made aware of this. This follows from Article 6 of the European Convention on Human Rights, which states everyone’s right to a fair trial by a court of law. The present Article provides for the possibility to challenge all decisions by the police before the judicial authorities.

9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the performance of crime investigation in individual cases. The police should keep the superior crime investigation authorities

informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.

Commentary

This Article reflects the principles contained in the Council of Europe Recommendation on the Role of Public Prosecution in the Criminal Justice System (Rec(2000)19) concerning the relationship between the prosecution and the police. Due to the different systems prevailing in Europe, that Recommendation makes a distinction between member states where the police are independent from the prosecution and those where the police are placed under the authority of the prosecution. Irrespective of what kind of system, that Recommendation gives two general functions to the prosecution vis-a-vis the police; to scrutinise the lawfulness of police investigations, and to monitor that human rights are respected. Moreover it indicates that there should be appropriate and functional co-operation between the public prosecution and the police.

In countries where the police is placed under the authority of the prosecution, the said Recommendation (Rec(2000)19) states in Article 22 that “State should take effective measures to guarantee that the public prosecutor may:

- a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution, ... etc;
- b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
- c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
- d. sanction or promote sanctioning if appropriate of eventual violations.”

Article 9 of the present Recommendation, mirrors the above described rules for the prosecution on the police. States should therefore see to it that there is functional and appropriate co-operation between the police and the prosecution, also with a police perspective. In particular, measures should be taken with the view that the police should receive clear and precise instructions from the prosecution. Such measures could be instructions through legislation or lower forms of regulations, accompanied by training, even co-training between the police and the prosecution etc. On the other hand, the co-operation also requires that the police is obliged to inform the superior investigating authority of progress in policy matters and, in particular, in the specific cases. The reporting back to the prosecution/investigating judge should preferably be regulated in detail and equally requires training.

10. *The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist to make the right to access to legal assistance effective, in particular with regard to persons deprived of their liberty.*

Commentary

One of the corner stones in a rule of law society is to provide everyone equal access to law and justice. Generally, this implies also to provide effective legal assistance to everyone whose rights and interests are threatened, see Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer. Moreover, Article 6 of the European Convention on Human Rights contains the specific provision that everyone charged with a criminal offence has the right to defend himself/herself in person or through legal assistance of his/her own choosing (see also Article 47 of the present Recommendation).

Article 10 highlights that the police must respect the role of defence lawyers in the criminal justice process. This implies inter alia that the police shall not interfere unduly into their work or in any sense intimidate or harass them. Moreover, the police shall not associate defence lawyers with their clients. The assistance of the police with regard to offenders' right to legal assistance is particularly needed when the person in question is deprived of his/her liberty by the police.

11. *The police shall not take the role of prison staff, except in cases of emergency.*

Commentary

This Article, complementary to Article 6, has been included to emphasise the absolute difference between the functions of the police, which in its judicial function is preoccupied with the pre-trial procedure, from that of treating convicted and sentenced offenders. According to Council of Europe standards concerning the administration and management of probation and prison systems, for example the European Prison Rules (Rec. No. R (87) 3) and the Recommendation on staff concerned with the implementation of sanctions and measures (Rec. No. R (97) 12), it is clear that the professions of probation and prison staff are completely different from those of the police, in particular in their crime detection function. Accordingly, personal qualifications, recruitment procedures and training are all very different. This rule indicates an important principle for the separation of powers within the criminal justice system, before and after sentencing. However, it does not preclude that police are called for in emergency situations.

(In some member States, correctional staff are referred to as "penitentiary or prison police". As was mentioned in the commentary to the "Definition of the Scope of the Code", this category of staff are not covered by the Recommendation.)

IV. Organisational Structures of the Police

IV.1 General

12. *The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.*

Commentary

This Article embodies a principle, which is key to the identity of a police organisation in a democratic society governed by the rule of law. Police work in such a society succeeds best if it is carried out with the consent of the population ("*earning public respect*"). Therefore, it is crucial for the police to establish a mutual understanding and co-operation with the public. This is true for most of the functions the police are entrusted with.

The organisational structures of the police should preferably be such as to promote confidence building between the police and the public. One important aspect in this respect is to develop a high level of professionalism within the police. Another aspect is to develop the police organisation into a transparent public service body. In such a way the public may regard the police more as a service at their disposal than as a force imposed upon them.

13. *Police organisations, when performing police duties in civil society, shall be under the responsibility of civilian authorities.*

Commentary

It should be recalled that the scope of the present Code is limited to police work in civil society. The judicial side of police work - the police being a component of the criminal justice system - and the public order side of the police, as well as the public service dimension of police work, and the integration of the police in civil society, are all elements that are different from military functions and objectives. Moreover, the legal basis and powers of the police in a rule of law society, where the focus is on the respect for civil and

political rights of individuals, are also different from those of the military. Although there are some similarities between police and military functions and performances, the above special characteristics of the police are so important in a democratic society governed by the rule of law that they should be supported by all means. The organisational responsibility is one of the means in this respect. A police organisation under civilian responsibility is likely to best cultivate police professionalism suitable for civil society.

The organisational police structures - civil or military - differ very much in Europe. In western and northern Europe the police are primarily civilian. In central and eastern Europe, several police organisations have a military structure; whereas in southern Europe, both models exist, sometimes side by side in the same country.

Moves towards community orientation of the police is under way in several member states. These processes contain often elements of organisational reform. In central and eastern Europe, this is part of an overall transition processes into systems of democracy and the rule of law. However, this trend is also going on in parts of Europe with traditions of long standing democratic systems.

In the prevailing circumstances and, with full respect to the history and traditions in member states, the present Article does not go any further than to state that police functions performed in civil society - whether carried out by civilian or militarily organised police - should ultimately be under the responsibility of civilian authorities.

14. *The Police and its personnel in uniform shall normally be readily recognisable.*

Commentary

This Article contains a principle of crucial importance for the traditional police in a democratic society governed by the rule of law; it should be easy for the general public to recognise police stations and the uniformed police. This also covers equipment used (cars etc). The Article indicates that, unless there are special reasons, such as the proper exercise of police functions, the police should be distinctively recognisable from other bodies. This forms part of the general requirement of openness and transparency of the police organisation, however, it also serves the purpose of easy access to the police in emergency situations. (See also Article 44.)

15. *The police organisation shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.*

Commentary

The police belong to the executive power. They cannot be fully independent of the Executive, from which they receive instructions. However, in executing their given tasks the police must follow the law and are, in addition, entrusted with discretion. In exercising their powers, the police should not receive any instructions of a political nature.

Operational independence should apply throughout the organisation. Such an independence is an important feature of the rule of law, as it is aimed at guaranteeing that police operations are being conducted in accordance with the law, and when interpretation of the law is needed, this is done in an impartial and professional way. Operational independence requires that the police are fully accountable for their actions/omissions (see also Section VI).

16. *Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.*

Commentary

In a society governed by the rule of law, the law applies equally to all citizens. If this principle is to be meaningful, it follows that police personnel, just as any citizen, must also

be personally accountable for their own actions. Moreover, they should also be fully accountable for orders to subordinated police personnel, given with hierarchical powers.

17. *The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.*

Commentary

This Article, which is complementary to Article 16, concerns the responsibility for orders within the police. The fact that all police personnel are responsible for their own actions, does not exclude that superiors may also be held responsible, for having given the order. The superior may be held responsible side by side with the “implementing” official, or alone in cases where the latter person followed orders in “good faith”. (See also Article 38.) Through an established *chain of command*, ultimate responsibility for police action can be traced in an effective way.

18. *The police shall be organised in a way that promotes good police / public relations and where appropriate effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.*

Commentary

This Article recommends states to organise their police from the perspective of the police as an integrated part of society. The police may increase its efficiency if well-functioning relationships are established between them and other public bodies on different levels and, in particular, between the police and the wider public, the latter often being represented by groups or organisations of a non governmental character.

The Recommendation leaves open how to implement this principle. Different models exist in Europe to make the police co-operate with other agencies and to bring the police closer to the community. Decentralisation of the police organisation is generally considered as an important means. However, this is often closely related to the extent that local democracy is developed in a country. “Community policing” was in Europe initially developed in the United Kingdom, as a way to involve the whole community in crime prevention in particular, but also in detecting crime. Many European countries have followed this model.

Urban insecurity in bigger cities in Europe is an example of a multi-facetted problem, often related to phenomenon, such as poverty, racism and juvenile delinquency, which cannot be effectively combated solely by police action, but which requires a wider society approach with many players involved.

19. *Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.*

Commentary

The police should be as transparent as possible towards the public. A readiness by the police to disclose information on its activities is crucial for securing public confidence. At the same time, the police must respect confidentiality for a number of reasons; integrity of persons, crime investigation reasons, the principle of the presumption of innocence, security reasons etc. Obviously, even if situations like those described are well regulated in most states, there will always be a margin of appreciation left to the police in striking the balance between the two interests. In addition, communication between the police and the media can be difficult, and may not always be well prepared from the police side. Therefore, it is recommended that the police establish guidelines for their media contacts. It is noted that

in some member States media relations are being dealt with in departments especially tasked for such contacts. A key principle should always be that of objectivity.

20. *The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular, to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably in the European Convention on Human Rights.*

Commentary

The concern with this Article is to enhance a police culture which in recognising its responsibility for upholding individuals' fundamental rights and freedoms, works to safeguard its own professional integrity through internal accountability measures. This could be realised in different ways. The leadership and management of the police certainly play an important role in establishing an "ethos", which upholds individual rights and the principle of non-discrimination, both within the organisation and in dealings with the public. Other means are an open communication between staff (horizontal as well as vertical), standard setting (professional codes of conduct) and monitoring. It is clear that recruitment and training play an important role in this respect. (External accountability is dealt with in Chapter VI.)

21. *Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.*

Commentary

There is no common international definition of corruption. The qualification of what should be considered as corruption varies from country to country. The Criminal Law Convention on Corruption adopted by the Council of Europe in 1999, does not provide a uniform definition of corruption. However, it aims at developing common standards concerning certain corruption offences, such as bribery (active and passive).

The term "police corruption" is often used to describe a great variety of activities, such as bribery, fabrication or destruction of evidence, favouritism, nepotism, etc. What seems to be a common understanding of police corruption is that it necessarily involves an abuse of position, an abuse of being a police official. Moreover, it is widely recognised that corruption should be regarded as a constant threat to the integrity of the police and its proper performance under the rule of law in all member states.

The present Article aims at highlighting that member States should put in place effective internal measures to combat corruption within their police. This could include measures to define corrupt behaviour, to the extent possible; that the causes for corruption in the police be studied, and that organisational structures and control mechanisms to combat corruption be established.

It should be mentioned that corruption has only in recent years become a focal point on the international agenda. Nowadays, member states consider corruption a real threat to democracy, the rule of law and the protection of human rights, and, as a result, the Council of Europe, being the pre-eminent European institution to defend these rights, has developed a series of instruments for the fight against corruption; the Resolution on the twenty guiding principles for the fight against corruption ((97) 24) and Recommendations on the status of public officials in Europe (No. R (2000) 6) and on codes of conduct for public officials (No. R (2000) 10), which all apply to the police, and the Criminal Law Convention (ETS No 173) as well as the Civil Law Convention on Corruption (ETS No 174), adopted in 1999. Moreover, the Group of States against Corruption (GRECO) was established in 1998 to monitor corruption in member States. The Council of Europe is also performing other programmes with the overall objective to the fight against corruption, inter alia in the police sector, which are open to member states.

IV. 2 Qualifications, Recruitment and Retention of Police Personnel

22. *Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.*

Commentary

In order to select appropriate candidates to the police, the selection process should only be based on objective criteria. This rule deals with personal qualifications, which may be divided into personal skills and experience. To the former category belongs the personal abilities and aptitudes of the applicant, some of which are described in Article 23. The latter category - personal experience - covers both educational background and life experience, often the previous working experience of candidates. The personal qualifications should meet the objectives of the police, see Article 1. The same basic principles should apply to all ranks although the qualifications may differ. Appointments to the police for political reasons should be avoided, in particular to posts of an operational character.

23. *Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.*

Commentary

The listed examples of personal skills are important for the operational staff of a police service in a democracy. The list is not exhaustive. The ultimate goal is to have police personnel with a broad understanding of the society they serve and whose behaviour is appropriate for fulfilling their tasks in accordance with the objectives of the police.

24. *Persons who have been convicted for serious crimes shall be disqualified from police work.*

Commentary

This Article sets a minimum standard, which should apply to those at the point of recruitment, to recruits and to fully recruited police personnel. It is, however, open to member States to decide what "degree of tolerance" should be accorded to crimes that fall short of the category of serious crimes. Furthermore, the requirement of a conviction should also be interpreted as a minimum standard, which does not exclude that recruits and personnel be disqualified as police, or from carrying out police duties, for the reason of well substantiated suspicion of criminal activities, committed by the person in question.

25. *Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.*

Commentary

In order to be as beneficial as possible to the police, recruitment procedures should be carried out in an objective and non-discriminatory way. Some means for achieving this are described in Article 22 and its Commentary. Access to the police in a non-discriminatory way also has support in the European Convention on Human Rights (Protocol No. 12) as well as in the European Social Charter. The case law of these instruments has in this respect tended to focus on the following grounds - sex, political opinion, religion, race, national and ethnic origin.

"Necessary screening" of candidates indicates that the recruiting authority should have an *ex-officio* and active "research" approach when scrutinising the background of applicants. This requirement is more demanding in countries where the public administration, including

the criminal justice system, is not so well developed and/or in countries which are suffering from catastrophes and war, than in countries where public records, such as criminal records, are accurate and easy to access.

It is a fact that women generally are grossly under represented in the police in all member States, and that this is even more apparent in the higher ranks and managerial positions than in the basic grades. A similar situation can generally be described for minority groups, including ethnic minority groups, in all member States.

It is appreciated that the relations between the police and the public will benefit from the composition of the police reflecting that of society. This will reinforce the efficiency of the police and promote their support by the public. As a consequence, every effort shall be made to this effect.

The second sentence of the Article implies that recruitment policies shall encourage a representation in the police, which corresponds to that of the society. Such a policy should be made known to the public and implemented at a reasonable pace and take full account of the requirements stated in Article 22.

IV. 3 Training of Police Personnel

26. *Police training, which shall be based on the fundamental values of democracy, the Rule of Law and the protection of human rights, shall be developed in accordance with the objectives of the police.*

Commentary

The police play a prominent role as a defender of the society it serves and should preferably share the same fundamental values as the democratic state itself. The fostering of democratic values in the police is therefore crucial and training is one of the most important means in furthering values among the staff. As a result, this Article brings in the fundamental values of all member states of the Council of Europe as an integrated part of the training of the police.

Ethical and human rights aspects of police work should preferably be introduced in a problem oriented context, which focuses on practical police work and gives a solid understanding of the underlying principles. Although member states give considerable attention to human rights training, there is still a great need to develop this part of police training, in particular to develop training methods and material. The Council of Europe is active in this area and several handbooks containing practical guidelines on human rights in police training have been developed on an expert level.

27. *General police training shall be as open as possible towards society.*

Commentary

The principle of openness and transparency of a police organisation, must also be reflected in the training of its staff. A police which aims to carry out tasks with the support of the public, must have its personnel trained in an environment, which is as close as possible to social realities. This would include the physical environment (place and equipment) as well as the intellectual input to the training.

Police training in closed and remote places, involving students living in barracks, etc, may be necessary for certain types of specialist training. However, general training of police should, wherever possible, be carried out in "normalised" conditions. Another strong implication of openness is that external training, involving institutions other than the police, should be offered, in addition to internal training.

Police openness towards society is also beneficial for the dynamics of training. In particular, with problem oriented training, states of affairs in society must be faithfully reproduced for the training to be effective.

28. *General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.*

Commentary

This Article contains the principle that police personnel, as a rule, initially, shall undergo general training and that initial training, should be followed, if need be, by more specialised training. Such a system will help to create a staff, familiar with the same basic values of policing and capable of carrying out a variety of tasks. The approach of training police personnel as generalists initially, does not rule out that police personnel - in addition - need special training relating to specific tasks and responsibilities (ranks). The Article also underlines the need to complement initial training with in-service training at regular interval.

Police training is closely related to the system of recruitment to the police. There are states where all police personnel, as a rule, are recruited as basic grades (United Kingdom model) and systems where basic grade staff and managerial staff could be recruited through separate proceedings (continental Europe), as a requirement for being recruited to the latter category is often a university degree. The principles in this rule apply to both these systems.

29. *Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be thoroughly included in police training at all levels.*

Commentary

The practical aspects on the use of force by the police, in particular vis-à-vis individuals or groups of individuals are of such crucial importance for the police in a rule of law society, that it has been highlighted in a separate Article. Practical training would imply that it should be as close to reality as possible.

30. *Police training shall take full account of the need to challenge and combat racism and xenophobia.*

Commentary

This article draws attention to the problem of racism and xenophobia which exists in many European countries, and is an important factor in urban insecurity. Police training should, whenever necessary, challenge any racist or xenophobic attitudes within the police organisation, and also emphasise the importance of effective police action against crimes which are based on race hatred and target ethnic minorities.

IV.4 Rights of Police Personnel

31. *Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.*

Commentary

The Articles of this section are guided by the overall principle that police in an open democratic society should have the same rights as other citizens, to the fullest possible extent. This is an important element of the rule of law and of making the police part of the society it serves.

The rights covered by the European Convention on Human Rights (civil and political rights) apply fully to all citizens in member states, including those employed by the police. Some of these rights are “absolute” in their character, whereas others may be derogated under special conditions. In this respect, reference is made to the extensive case law developed by the European Court of Human Rights.

The present Article emphasises that member states shall not deprive their police staff of any civil and political rights, unless there are legitimate reasons directly connected to the proper performance of police duties in a democratic state governed by the rule of law.

32. *Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures; taking into account the particular character of police work.*

Commentary

This Article refers to social and economic rights, which are covered by the European Social Charter, a complementary instrument to the European Convention on Human Rights for these particular rights.

Police personnel have the status as public servants (or civil servants) in several member States. As this is not the case in all member states, it is stated that police personnel, to the extent possible, should enjoy social and economic rights as public servants. Such rights may be limited for reasons of the special character of police work. The listed social and economic rights in the Article highlights a few crucial rights but is not exhaustive.

The right to *organise* - to join trade unions - has in the European Social Charter (Article 5) a special interpretation when it comes to the police as the Charter in this respect leaves a margin of appreciation to the states. However, the case-law under the Charter has established that, even if there may be no unlimited right for the police to organise, it would be a violation of the Charter to forbid police officers to set up their own representative associations. National law may provide for police-only organisations, which is the case in some member states. However, a complete ban on the right to strike for police is not contradictory to the Charter and its case-law and the present Recommendation does not go any further.

The rights to *appropriate remuneration* and *social security*, as well as *special health and security measures* have been highlighted in the recommendation for the reason of the special character of police work. This refers, for example, to the unpredictable tasks that police personnel are facing every day, to the risks and dangers inherent in police work and to the irregular working hours. Moreover, these rights of police personnel are also crucial conditions for making the police profession attractive. This aspect is extremely important, considering the need for highly qualified staff to be recruited to, and retained within, the police. Furthermore, a well remunerated police personnel is more likely not to be involved in undesired activities, such as corruption.

33. *Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.*

Commentary

Disciplinary sanctions against police personnel are normally an internal police matter and are often of a minor character. However, disciplinary measures may also be severe and sometimes it is difficult to draw the line between the criminal and the disciplinary aspects of a case. Furthermore, criminal proceedings and sanctions may be followed by disciplinary measures.

The possibility to have disciplinary decisions challenged by an independent body, preferably a court of law has two main advantages. Firstly, it would provide police personnel a safeguard against arbitrary decisions. Secondly, it opens up the police towards society (transparency), in particular, given that court hearings and judgments/decisions of courts are normally made public.

Another, more legalistic aspect is that if disciplinary measures were subject to review by a court of law, the right to a fair trial, according to Article 6 of the European Convention on Human Rights, which in certain situations apply also to disciplinary matters, would always be safeguarded.

34. *Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.*

Commentary

Police personnel, as a result of their particular tasks and close contacts with the public, will sometimes be the subject of accusations by the public concerning their performance. If such accusations are ill-founded (following investigations/proceedings that are impartial) police personnel should be entitled to necessary support from their authorities, in particular, concerning personal assistance. (Police complaints systems are dealt with in Chapter VI.) This Article does not exclude that support to police personnel may be required in other situations, such as during internal proceedings against staff.

V. Guidelines for Police Action / Intervention

Commentary

This part of the recommendation deals to a large extent with guidelines for operational police personnel in their daily activities. During the preparatory work of the Recommendation, reference was sometimes made to “internal ethics” for this part of the text as opposed to the “broader ethics of the police” for the sections which concern the framework of the police in a democratic society, their place in the criminal justice system, organisational structures, etc.

The guidelines are divided into two parts, one dealing with general principles of democratic policing which apply to almost any situation, and the other devoted to principles for specific situations which provide particular difficulties in terms of ethics and human rights in all member States.

V.1 Guidelines for Police Action/Intervention: General Principles

35. *The police and all police operations must respect everyone's right to life.*

Commentary

This Article - which is based on Article 2 of the European Convention on Human Rights - implies that the police and their operations shall not engage in intentional killings. Considering Article 2 of the European Convention on Human Rights in the light of Protocol No. 6 to the same Convention, concerning the abolition of the death penalty, it should also be excluded that the police are being used for the execution of capital punishment.

Another factor is that police actions may lead to the loss of life as a result of the use of force by the police. That may not necessarily violate the respect for the right to life, provided that certain conditions are fulfilled.

Article 2 of the European Convention on Human Rights, which contains the prohibition of intentional deprivation of life, requires that everyone's life shall be protected by the law.

The second paragraph of Article 2 reads:

“Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;*
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.”*

The European Court of Human Rights (see for example “McCann case”, European Court of Human Rights, Series A, No.324-A) has held that these exceptions primarily describes situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. The use of force may be no more than absolutely necessary for the achievement of one of the purposes set out in *a*, *b* and *c*. “Absolutely necessary” implies according to the European Court of Human Rights, in particular, that the force used must be strictly proportionate to the achievements of the aims mentioned (*a*, *b* and *c*).

The training of police personnel in this respect is of utmost importance.

36. *The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.*

Commentary

The prohibition of torture or inhuman or degrading treatment or punishment contained in this Article, derives from Article 3 of the European Convention on Human Rights. The European Court of Human Rights clearly and systematically affirms that Article 3 of the European Convention enshrines one of the fundamental values of democratic societies and that the prohibition is absolute. That means that under no circumstances can it be admissible for the police to inflict, instigate or tolerate any form of torture for any reason. The word “tolerate” implies that the police should even have an obligation to do their utmost to hinder such treatment, which also follows from the overall objectives of the police, see Articles 1 and 38.

In addition to the fact that torture, inhuman or degrading treatment or punishment is a serious offence against human dignity and a violation of human rights, such measures, when used for the purpose of obtaining a confession or similar information, may, and are even likely to, lead to incorrect information from the person who is subject to torture or similar methods. Thus, there is no rational justification for using such methods in a state governed by the rule of law.

It is clear that both physical and mental suffering are covered by the prohibition. For a more detailed analyses on what kind of behaviour that is covered by torture, inhuman or degrading treatment, reference is made to the case law of the European Court of Human Rights as well as to the principles developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These bodies have provided a rich source of guidance for the police, which must govern police action and be used in the training of police personnel.

It goes without saying that a police service that uses torture or inhuman or degrading treatment or punishment against the public, are unlikely to earn respect or confidence from the public.

37. *The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.*

Commentary

This Article recognises the case-law of the European Court of Human Rights with regard to Article 2 of the European Convention on Human Rights, see the Commentary to Article 34.

However, it should be noted that the present rule is applicable to all kinds of situations where the police are entitled to use force.

As a starting point, there must always be a legal basis for police operations (Article 3), including the use of force. Arbitrary use of force can never be accepted. Moreover, the present Article indicates that the use of force by the police must always be considered as an exceptional measure and, when there is need for it, no more force than is absolutely necessary may be used. This implies that the force used should be proportionate to the legitimate aim to be achieved through the measure of force. There must, accordingly, be a proper balance between the using of force and the situation in which the force is used. In practical terms, this means, for example, that no physical force should be used at all, unless strictly necessary, that weapons should not be used, unless less strictly necessary, and, if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary; shoot to warn before shoot to wound and do not wound more than is strictly necessary, etc.

Normally, national legislation and regulations should contain provisions on the use of force based on the principles of *necessity* and *proportionality*. However, the practical approach to the problem in a given situation is more difficult, as the use of force, according to the above principles, places a heavy burden on the police and emphasises the need for police personnel not only to be physically fit and equipped but also, to a large extent, to have well developed psychological skills. The importance of recruitment of suitable personnel to the police, as well as their training cannot be under estimated in this respect, see also Articles 23 and 29.

38. *Police must always verify the lawfulness of their intended actions.*

Commentary

It is a basic requirement that the police, in a society governed by the rule of law, only conduct lawful activities. It follows from Article 3, that the lawfulness test is not limited only to national law, but includes international human rights standards.

The present Article gives the police an *ex officio* obligation to control the legality of their action before and during their interventions. This applies to the police as an organisation as well as to the individual police official. A system of checks and balances within the police, as well as training, are important means of ensuring that such verification becomes systematic.

39. *Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of any form of sanction.*

Commentary

Since police personnel, in accordance with Article 16, should be held personally liable for their own actions, there must be a possibility for them to refuse carrying out orders which are illegal (contrary to the law). The wording "clearly illegal", has been chosen to avoid incurring police disobedience in situations where the legality of an order is unclear.

With full respect to the necessary hierarchical structures in the police, the overall idea with this Article is to avoid the individual's responsibility for flagrant illegal activities and human rights violations being "covered up" by hierarchical structures. The "operational independence" of the police from other state bodies (Article 15), works in the same direction. The duty with regard to illegal orders should also contain an obligation to report such orders. The reporting of illegal orders shall have no negative repercussion or sanctions on the reporting staff.

40. *The police shall carry out their tasks in a fair manner, in particular, guided by the principles of impartiality and non-discrimination.*

Commentary

The *fairness* requirement is an overall and open ended quality, which comprises the principles of impartiality and non discrimination as well as other qualities. The police act with fairness when they show full respect for the positions and rights of each individual that are subject to their police duties. Fairness should apply to all aspects of police work, but it is particularly emphasised with regard to the public.

The *impartiality* implies, for example, that the police act with integrity and with a view to avoid taking sides in a conflict, which is under scrutiny. In the case of an offence, the police must take no position on the question of guilt (see also Article 47). Furthermore, the impartiality requires that police personnel abstain from any activity outside the police which is likely to interfere with the impartial discharge of their police duties or which may give rise to the impression amongst the public that this is the case.

The general principle of *non discrimination* and equality is a fundamental element of international human rights law. With the adoption of Protocol No. 12 to the European Convention on Human Rights, there is a general prohibition of discrimination contained in that instrument. The scope of protection against discrimination concerns rights under the European Convention on Human Rights, individual rights directly under national law or via obligations to public authorities and acts by public authorities in their exercise of discretionary powers or any other act of such a body, for example the police.

The present Article does not list particular grounds of discrimination. There is no intention, however, to deviate from what is contained in the European Convention on Human Rights, which mentions a non exhaustive list to which further grounds could be added. Examples of grounds of discrimination are sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, physical or mental disability, sexual orientation or age.

Finally, it should be mentioned that in certain cases, unequal treatment, which has an objective and reasonable justification, may not amount to discrimination, according to the European Convention on Human Rights and its case-law.

41. *The police shall only interfere with individual's right to privacy when strictly necessary and only to the extent required to obtain a legitimate objective.*

Commentary

Individuals right to "privacy" would include the rights covered by Article 8 of the European Convention on Human Rights: private life, family life, home and correspondence. As a starting point, there must always be a legal basis for police operations (Article 3), including interference with peoples' privacy. Arbitrary interference can never be accepted. Moreover, the present rule indicates that the interference in peoples' privacy must always be considered as an exceptional measure and, even when justified, should involve no more interference than is absolutely necessary.

42. *The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.*

Commentary

The use of new information technologies largely facilitates police action against different forms of criminality. The registration and the analysis of personal data, in particular, allows the police to crosscheck information and thus to expose networks the existence of which

would remain obscure without resort to these tools. However, the uncontrolled use of personal data may constitute violations of the right to privacy of the individuals concerned. In order to avoid abuse at the stages of collection, storage and use of personal data, such police activities must be guided by principles for the protection of data. In this respect, the principles expressed in this Article should be considered in the light of the Recommendation No. R (87) 15 of the Council of Europe regulating the use of personal data in the police sector.

43. *The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.*

Commentary

The rights referred to in this Article are a recapitulation of rights provided for in the European Convention on Human Rights (Articles 9, 10 and 11 of the Convention, Article 1 of its First Protocol and Article 2 of Protocol No.4 to the same Convention) , which are essential for the effective functioning of an open democratic society, but which have not been dealt with elsewhere in the Recommendation.

The police play a major part in safeguarding these rights - without which democracy becomes an empty notion without any basis in reality - either directly, through safeguarding democratic arrangements, or indirectly, through their general responsibility for upholding the rule of law.

44. *Police personnel shall during intervention normally be in a position to give evidence of their police status and professional identity.*

Commentary

The police service is judged by the public, to a large extent, upon how the police personnel act. Correct behaviour of individual police officials is, therefore, of ultimate importance for the credibility of the police. In order to earn the respect of the public, it is not sufficient only to act within the law, but to apply the law with integrity and respect towards the public; applying the law with a degree of "common sense" and never to forget the "public service" which is a necessary dimension in police work.

Police personnel act with integrity and respect towards the public, when they are professional, impartial, honest, conscientious, fair and just, politically neutral and courteous. In addition, the police should acknowledge that the public consists of individuals, with individual needs and demands. Vulnerable groups in society call for extra attention by the police.

45. *Police personnel shall during intervention normally be in a position to give evidence of their police status and professional identity.*

Commentary

This Article, which is closely linked to Article 14, has two main purposes. Firstly, the intervening police personnel shall as a rule always be in a position to give evidence that they belong to the police. Secondly, they shall normally also be in a position to identify themselves as an individual member of the police ("professional identity"). The requirement that police personnel normally should give evidence of their professional identity before, during or after intervention is closely linked to the personal police responsibility for action or omission (Article 16). Without a possibility of identifying the individual police man/woman, the personal accountability, seen in the perspective of the public, becomes an empty notion. It is clear that the implementation of this regulation must be balanced between the public interest and the safety of the police personnel on a case by case basis. It should be stressed

that the identification of a member of the police does not necessarily imply that his/her name be revealed.

46. *Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.*

Commentary

This Article, which concerns the conduct of police personnel, is complementary to that of Article 21, which deals with organisational structures in the fight against corruption. The Article places a positive obligation upon the police official to avoid corrupt behaviour as an individual and discourage it among colleagues. Police officials shall, in particular, carry out their duties in accordance with the law, in an honest and impartial way and should not allow their private interests to conflict with their position in the police. To this end, police officials shall always be on the alert for any actual or potential conflicts of interest and take steps to avoid such conflicts. They shall report to their superiors or to other appropriate authorities if they become aware of corrupt behaviour within the police.

It should be noted that the Council of Europe Recommendation No R (2000) 10 on Codes of Conduct for Public Officials (drafted by the “Multidisciplinary Group on Corruption”, GMC) is applicable to the police and its personnel.

V.2 Guidelines for Police Action/Intervention: Specific Situations

V.2.1 Police Investigation

47. *Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.*

Commentary

In order to avoid arbitrary police investigations, a minimum requirement should be fulfilled before the police initiate any such investigation. There should at least be reasonable (and legitimate) suspicion of an offence or crime, that is the suspicion must be justified by some objective criteria.

48. *The police must follow the principles that everyone charged with a criminal offence should be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular, the right to be informed promptly of the accusation against them, and to prepare his/her defence either in-person, or through legal assistance of his/her own choosing.*

Commentary

The principle of the presumption of innocence, contained in Article 6 of the European Convention on Human Rights, is one of the most important rights of individuals in the criminal justice process. The police, often “the first link of the chain” in this process, have a particularly difficult task as they must, in an objective manner, investigate a case and no matter how overwhelming the evidence is against a suspect, must respect the presumption of innocence. With regard to the relation between the police and the public, in particular the media, the problem becomes even more accentuated (see also Article 19).

The list of certain additional minimum rights of everyone charged with a criminal offence, also drawn from Article 6 of the European Convention on Human Rights, is also extremely important for the police to bear in mind, as these rights should be provided for as soon as possible during the criminal justice process. Often, that is during the police investigation.

49. *Police investigations shall be objective and fair. They shall be sensitive and adaptable towards the special needs of persons, such as children, juveniles, women, minorities, including ethnic minorities, and vulnerable persons.*

Commentary

Police work should always be guided by objectivity and fairness. This is particularly important in police investigations. The objectivity required implies that the police must carry out an investigation impartially, that is, they should base an investigation on *all* relevant circumstances, facts and evidence, that work both for and against their suspicions. Objectivity is also a criteria for the fairness requirement, which, in addition, requires that the investigation procedure, including the means used, is such as to provide for an environment that lends itself to a “just” process, where the individual’s fundamental rights are respected.

The fairness requirement for police investigations also means that consideration must be taken of an individuals’ right to participate fully. The investigation must, for example, be adapted to take account of the physical and mental capacities and cultural differences of those involved. Investigations concerning children, juveniles, women and individuals belonging to minority groups, including ethnic minorities are particularly important in this respect. The investigation should be thorough, with as limited a risk of damage to those subject to the investigation as possible. Upholding these measures sustains “fair police process”, which constitutes the preparatory basis for a “fair trial”.

50. *Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.*

Commentary

This rule, which generally applies to police interviews, originates in statements with regard to the interrogation process in custody made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as contained in its 2nd General Report (1992):

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

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

The present Article, is applicable to all police interviews, regardless of whether those subject to the interview are in custody or not.

51. *The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular, where intimidation of witnesses is at risk.*

Commentary

Police personnel must be competent in handling the early stages of an investigation, in particular, contacts with those implicated by a crime. The proper protection of witnesses is necessary for their safety, which is a crucial condition for them to give evidence and thus for the outcome of the investigation. When intimidated witnesses are afraid of the possible

consequences of giving evidence, investigative techniques must be flexible, and take this into account. The problem of intimidated witnesses is particularly critical in situations, such as those related to terrorism, to organised crime, to drug related crime and to violence within the family. Moreover, in cases where the witnesses are also victims of the crime, the handling of witnesses becomes even more complex.

This Article underlines how important it is for the police to be aware of the special needs of witnesses in different situations, and their protection. Not only does this call for special training of police personnel, but also guidelines are necessary to determine the proper handling of witnesses by the police. In this respect reference is made to the extensive work already carried out by the Council of Europe, concerning witness and victim protection (Recommendations No. R (85) 4 on the violence in the family, No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R ((87) 21 on assistance to victims and prevention of victimisation, No. (91) 11 on sexual exploitation, pornography and prostitution of , and trafficking in children and young adults, No. R (96) 8 on crime policy in Europe in a time of change and recommendation No. R (97) 13 on intimidation of witnesses and the rights of the defence).

52. *Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.*

Commentary

This Article summarises the police duties of providing assistance and information for victims of crime as stated in Recommendation No. R (85) 11 on the position of the victim in criminal law and procedure. In addition, the Article places an obligation on the police to provide the necessary support for victims, which implies that there is a readiness and capacity within the police to provide such support either directly or through other agencies and organisations.

53. *The police shall provide interpretation/translation where necessary throughout the police investigation.*

Commentary

This Article complements Article 5.2 of the European Convention on Human Rights, which gives everyone who is arrested the right to be informed of the reasons for the arrest, and the charge against them, in a language which they understand.

V.2.2 Arrest/Deprivation of liberty by the police

54. *Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.*

Commentary

Deprivation of liberty must be regarded as an exceptional measure, which may never be used unless absolutely necessary and must be limited in time. As with all police operations, this measure must always be lawful. The Article emphasises with every arrest/deprivation of liberty, that the individual needs of the person concerned must be fully considered.

In accordance with the statement of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its 2nd General Report (1992), a comprehensive custody record should be kept for each arrested person/detainee:

“The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of

liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record."

55. *The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.*

Commentary

This Article brings to the attention the right provided for in Article 5.2 of the European Convention on Human Rights (*that "[e]veryone 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."*) and a statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 2nd General Report (1992), that persons "*taken into police custody should be expressly informed without delay of all their rights*" (including those contained in Article 56). To this has been added that persons deprived of their liberty should also be informed of the procedure of their case. (The wording "to the extent possible according to domestic law" is used as this information is sometimes provided by other authorities than the police, such as the public prosecution.)

56. *The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.*

Commentary

This Article gives the police full responsibility for the standards of the physical environment of persons deprived of their liberty, who are kept in police facilities. The Article implies that the police have an obligation to care actively for the safety of persons kept in their custody. They should take full responsibility for safeguarding those in their custody from harm, originating either from outside or inside the custody, including self-inflicted harm by the detainee. This would, for example, involve the separation of dangerous persons. Furthermore, deterioration in the health of the person deprived of liberty - mental as well as physical - should, so far as is possible, be prevented and medical care provided if necessary. This may also imply that instructions of doctors or other competent medical personnel must be followed. The police should also provide for appropriate hygiene, including toilet facilities, and food.

The Police cells should be of a reasonable size, considering the number of persons accommodated. Furthermore, there should be "adequate lighting", preferably natural day light as well as artificial light. "Adequate ventilation" implies that fresh air should be available at an appropriate temperature. Suitable means of rest, bed or chair, should be provided for all persons kept in police custody. (Reference is also made to further standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.)

57. *Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.*

Commentary

This rule is based on three rights of persons who are deprived of their liberty by the police, which have been identified by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

“The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT’s opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).” (CPT 2nd General Report, 1992)

58. *The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles deprived of their liberty.*

Commentary

Out of respect for the dignity and integrity of individuals and their needs, the police should avoid, whenever possible, keeping criminal suspects together with other categories of persons deprived of their liberty (c.f. immigration detainees). This rule is in accordance with principles established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other grounds for separation are sex and age, however, separation on these grounds must also take into account personal needs and decency.

VI. Accountability and Control of the Police

59. *The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.*

Commentary

The police shall be accountable to the state (through central, regional or local bodies) as the state is the principal of the police. Accordingly, there are state bodies to monitor and control the police in all member states. However, state control over the police must in an open democratic society be complemented with the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability vis-a-vis the public is a crucial condition for making the mutual relationship between the police and the public a reality.

There are several means of rendering the police accountable to the public. The accountability can be direct or channelled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective. Complaints procedures, dialogue and co-operation as means for accountability are included in Articles 59-62.

60. *State control of the police shall be divided between the legislative, the executive and the judicial powers.*

Commentary

In order to make the control of the police as efficient as possible, the police should be made accountable to various independent powers of the democratic state, that is the legislative, the executive and the judicial powers.

In a simplified model, the *legislative* power (Parliament) exercises an *a priori* control by passing laws that regulate the police and their powers. Sometimes the legislative power also perform an *a posteriori* control through “justice and interior commissions” or through “Parliamentary ombudsmen”, who may initiate investigations, *ex officio* or following complaints by the public concerning mal administration.

The *executive* power (government: central, regional or local), to which the police are accountable in all states, perform a direct control over the police as the police are part of the executive power. The police receive their means from the budget, which is decided by the government (sometimes approved by the parliament). Furthermore, the police receive directives from the government as to the general priority of the their activities and the Government also establishes detailed regulations for police action. It is important to emphasise that the police should be entrusted with operational independence from the executive in the carrying out their specific tasks (see also Article 15).

The *judicial* powers (in this context comprising the prosecution and the courts) should constantly monitor the police in their functions as a component of the criminal justice system.

The *judicial* powers (in this context the courts), also perform an *a posteriori* control of the police through civil and criminal proceedings initiated by other state bodies as well as by the public.

It is of the utmost importance that these powers of the state are all involved in the control of the police in a balanced way.

61. *Public authorities shall ensure effective and impartial procedures for complaints against the police.*

Commentary

Complaints against the police should be investigated in an impartial way. “Police investigating the police” is an issue which generally raises doubts as to the impartiality. States must therefore provide systems which are not only impartial but also seen to be impartial, to obtain public confidence. Ultimately, it shall be possible to refer such complaints to a court of law.

62. *Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.*

Commentary

This Article points to the possibilities of developing public-police relations through accountability mechanisms, which bring the public closer to the police and thus contribute to a better mutual understanding. Accordingly, mechanisms, which foster the settlement of disputes between the public and the police are to be recommended. That may be established as a mediation or complaints structure, which opens a possibility for contacts and negotiations between the public and the police in order to settle disputes in an informal way between the parties. Such mechanisms should preferably be independent from the police.

In addition, member states should consider strengthening existing structures, or develop new ones for police accountability in certain situations where the police enjoy wide discretion vis-à-vis the individual, for example in the use of force, when persons are deprived of their liberty, when the police interview suspects and when they use certain investigative measures. Transparency and public monitoring of situations, such as the provision of public access to police cells is an example of such a measure, which is beneficial for the public as well as for the police as it gives the public a measure of control at the same time as it helps to counteract ill-founded accusations against the police.

63. Codes of ethics of the police, based on the principles set out in the present Recommendation, shall be developed in member states and overseen by appropriate bodies.

Commentary

Member states are encouraged to develop codes of ethics based on the values reflected in this Recommendation. It may be difficult to distinguish between ethical codes and codes of conduct, however, these should clearly be distinguished from disciplinary instruments, as the latter are aimed rather at defining what constitutes a breach of professional conduct and its internal consequences.

Ethical codes should be overseen by appropriate bodies. It is up to member states to give this task to existing bodies or to create new ones. Such bodies should, for example, be independent from the police, be as transparent as possible towards the public and at the same time have an understanding of police matters. The “Ombudsman institution” is an example of such a body.

VII. Research and International Co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

Commentary

The police is an important institution of a democratic state governed by the rule of law. It is a vital component of the criminal justice system and the body responsible for public order. The police is provided with specific powers and should be, at the same time, an integrated part of the society it serves, etc.

Such a multifaceted body clearly warrants the best critical attention in the form of research and police studies. Internal police research should therefore be complemented with research on the police by institutions independent of the police. A close link between police training and universities is an example of a measure that would serve such a research purpose.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

Commentary

The values and principles expressed in the Recommendation need to be implemented through legislation, regulations and training. In addition, acceptance of the values should grow from within the police. For these reasons there is a need to stimulate international co-operation between the police in Europe, including states and international organisations, such as ICPO-Interpol, Europol and Cepol. The Council of Europe with its particular expertise in articulating democratic values, ethics, human rights and the rule of law, has an important role in facilitating this co-operation.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

Commentary

The adoption of “The European Code of Police Ethics” is in itself an important step for the promotion of Council of Europe principles with regard to the police in member States. However, the principles contained in the Code should also be actively promoted following its adoption.

Firstly, the Code is a basic text, which should be complemented with other Council of Europe legal instruments targeting specific topics more in depth.

Secondly, an intergovernmental structure within the Council of Europe could be a useful basis for furthering police matters in member States. Considering that the police in all member States are bodies closely associated with the criminal justice systems and their activities mainly are related to law and order, crime prevention and crime control, follow-up action should preferably be considered in such a context. The know-how and expertise built up with regard to police ethics, criminal justice, individuals' fundamental rights and the rule of law, could in such a way be maintained in the future within the Council of Europe.

Appendix C

U.N. Basic Principles for the Treatment of Prisoners

U.N. Basic Principles for the Treatment of Prisoners

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

Appendix D

U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas the work of law enforcement officials ^{*} is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law

enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have

appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have

resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Note:

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

Appendix E

U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted by General Assembly resolution 43/173 of 9 December 1988

Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

Use of Terms

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

* The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:
 - (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
 - (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical

examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

Appendix F

U.N. Code of Conduct for Law Enforcement Officials

U.N. Code of Conduct for Law Enforcement Officials

Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Commentary:

(a) The term “law enforcement officials”, includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: “[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments].”

(b) The Declaration defines torture as follows:

“ . . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”

(c) The term “cruel, inhuman or degrading treatment or punishment” has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) “Medical attention”, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws

and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

Appendix G

New York State Criminal Procedure Law Article 690, Search Warrants

CRIMINAL PROCEDURE LAW

PART THREE.

SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES

TITLE T.

PROCEDURES FOR SECURING EVIDENCE BY MEANS OF COURT ORDER AND
FOR SUPPRESSING EVIDENCE UNLAWFULLY OR IMPROPERLY OBTAINED

ARTICLE 690. SEARCH WARRANTS

Section

690.05 Search warrants; in general; definition.

690.10 Search warrants; property subject to seizure thereunder.

690.15 Search warrants; what and who are subject to search thereunder.

690.20 Search warrants; where executable.

690.25 Search warrants; to whom addressable and by whom executable.

690.30 Search warrants; when executable.

690.35 Search warrants; the application.

690.36 Search warrants; special provisions governing oral applications
therefor.

690.40 Search warrants; determination of application.

690.45 Search warrants; form and content.

690.50 Search warrants; execution thereof.

690.55 Search warrants; disposition of seized property.

S 690.05 Search warrants; in general; definition.

1. Under circumstances prescribed in this article, a local criminal court may, upon application of a police officer, a district attorney or other public servant acting in the course of his official duties, issue a search warrant.

2. A search warrant is a court order and process directing a police officer to conduct:

(a) a search of designated premises, or of a designated vehicle, or of a designated person, for the purpose of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant; or

(b) a search of a designated premises for the purpose of searching for and arresting a person who is the subject of: (i) a warrant of arrest issued pursuant to this chapter, a superior court warrant of arrest issued pursuant to this chapter, or a bench warrant for a felony issued pursuant to this chapter, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant; or (ii) a warrant of arrest issued by any other state or federal court for an offense which would constitute a felony under the laws of this state, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant.

S 690.10 Search warrants; property subject to seizure thereunder.

Personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it:

1. Is stolen; or
2. Is unlawfully possessed; or
3. Has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense against the laws of this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state; or
4. Constitutes evidence or tends to demonstrate that an offense was committed in this state or another state, or that a particular person participated in the commission of an offense in this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state.

S 690.15 Search warrants; what and who are subject to search thereunder.

1. A search warrant must direct a search of one or more of the following:
 - (a) A designated or described place or premises;
 - (b) A designated or described vehicle, as that term is defined in section 10.00 of the penal law;
 - (c) A designated or described person.
2. A search warrant which directs a search of a designated or described place, premises or vehicle, may also direct a search of any person present thereat or therein.

S 690.20 Search warrants; where executable.

1. A search warrant issued by a district court, the New York City criminal court or a superior court judge sitting as a local criminal court may be executed pursuant to its terms anywhere in the state.

2. A search warrant issued by a city court, a town court or a village court may be executed pursuant to its terms only in the county of issuance or an adjoining county.

S 690.25 Search warrants; to whom addressable and by whom executable.

1. A search warrant must be addressed to a police officer whose geographical area of employment embraces or is embraced or partially embraced by the county of issuance. The warrant need not be addressed to a specific police officer but may be addressed to any police officer of a designated classification, or to any police officer of any classification employed or having general jurisdiction to act as a police officer in the county.

2. A police officer to whom a search warrant is addressed, as provided in subdivision one, may execute it pursuant to its terms anywhere in the county of issuance or an adjoining county, and he may execute it pursuant to its terms in any other county of the state in which it is executable if (a) his geographical area of employment embraces the entire county of issuance or (b) he is a member of the police department or force of a city located in such county of issuance.

S 690.30 Search warrants; when executable.

1. A search warrant must be executed not more than ten days after the date of issuance and it must thereafter be returned to the court without unnecessary delay.

2. A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless the warrant expressly authorizes execution thereof at any time of the day or night, as provided in subdivision five of section 690.45.

S 690.35 Search warrants; the application.

1. An application for a search warrant may be in writing or oral. If in writing, it must be made, subscribed and sworn to by a public servant specified in subdivision one of section 690.05. If oral, it must be made by such a public servant and sworn to and recorded in the manner provided in section 690.36.

2. The application shall be made to:

(a) A local criminal court, as defined in section 10.10 of this chapter, having preliminary jurisdiction over the underlying offense, or geographical jurisdiction over the location to be searched when the search is to be made for personal property of a kind or character described in section 690.10 of this article except that:

(i) if a town court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the local criminal court of any village within such town or, any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county;

(ii) if a village court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the town court of the town embracing such village or any other

village court within such town, or, if such town or village court is not available either, before the local criminal court of any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county; and

(iii) if a city court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the local criminal court of any adjoining town or village, or village court embraced by an adjoining town, within the same county as such city.

(b) A local criminal court, as defined in section 10.10 of this chapter, with geographical jurisdiction over the location where the premises to be searched is located, or which issued the underlying arrest warrant, when the search warrant is sought pursuant to paragraph (b) of subdivision two of section 690.05 of this article, for the purpose of arresting a wanted person.

Any search warrant issued pursuant to this section shall be subject to the territorial limitations provided by section 690.20 of this article.

3. The application must contain:

(a) The name of the court and the name and title of the applicant; and

(b) A statement that there is reasonable cause to believe that property of a kind or character described in section 690.10 may be found in or upon a designated or described place, vehicle or person, or, in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05, a statement that there is reasonable cause to believe that the person who is the subject of the warrant of arrest may be found in the designated premises; and

(c) Allegations of fact supporting such statement. Such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The applicant may also submit depositions of other persons containing allegations of fact supporting or tending to support those contained in the application; and

(d) A request that the court issue a search warrant directing a search for and seizure of the property or person in question; and

(e) In the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05, a copy of the warrant of arrest and the underlying accusatory instrument.

4. The application may also contain:

(a) A request that the search warrant be made executable at any time of the day or night, upon the ground that there is reasonable cause to believe that (i) it cannot be executed between the hours of 6:00 A.M. and 9:00 P.M., or (ii) the property sought will be removed or destroyed if not seized forthwith, or (iii) in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section

690.05, the person sought is likely to flee or commit another crime, or may endanger the safety of the executing police officers or another person if not seized forthwith or between the hours of 9:00 P.M. and 6:00 A.M.; and

(b) A request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose, upon the ground that there is reasonable cause to believe that

(i) the property sought may be easily and quickly destroyed or disposed of, or (ii) the giving of such notice may endanger the life or safety of the executing officer or another person, or (iii) in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05 for the purpose of searching for and arresting a person who is the subject of a warrant for a felony, the person sought is likely to commit another felony, or may endanger the life or safety of the executing officer or another person.

Any request made pursuant to this subdivision must be accompanied and supported by allegations of fact of a kind prescribed in paragraph (c) of subdivision two.

S 690.36 Search warrants; special provisions governing oral applications.

1. An oral application for a search warrant may be communicated to a judge by telephone, radio or other means of electronic communication.

2. Where an oral application for a search warrant is made, the applicant therefore must identify himself and the purpose of his communication. After being sworn as provided in subdivision three of this section, the applicant must also make the statement required by paragraph (b) of subdivision two of section 690.35 and provide the same allegations of fact required by paragraph (c) of such subdivision; provided, however, persons, properly identified, other than the applicant may also provide some or all of such allegations of fact directly to the court. Where appropriate, the applicant may also make a request specified in subdivision three of section 690.35.

3. Upon being advised that an oral application for a search warrant is being made, a judge shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within twenty-four hours of the issuance of a warrant. If longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of a warrant.

S 690.40 Search warrants; determination of application.

1. In determining an application for a search warrant the court may examine, under oath, any person whom it believes may possess pertinent information. Any such examination must be either recorded or summarized on the record by the court.

2. If the court is satisfied that there is reasonable cause to believe that property of a kind or character referred to in section 690.10, and described in the application, may be found in or upon the place, premises, vehicle or person designated or described in the application, or, in the

case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05, that there is reasonable cause to believe that the person who is the subject of a warrant of arrest, a superior court warrant of arrest, or a bench warrant for a felony may be found at the premises designated in the application, it may grant the application and issue a search warrant directing a search of the said place, premises, vehicle or person and a seizure of the described property or the described person. If the court is further satisfied that grounds, described in subdivision four of section 690.35, exist for authorizing the search to be made at any hour of the day or night, or without giving notice of the police officer's authority and purpose, it may make the search warrant executable accordingly.

3. When a judge determines to issue a search warrant based upon an oral application, the applicant therefor shall prepare the warrant in accordance with section 690.45 and shall read it, verbatim, to the judge.

S 690.45 Search warrants; form and content.

A search warrant must contain:

1. The name of the issuing court and, except where the search warrant has been obtained on an oral application, the subscription of the issuing judge; and

2. Where the search warrant has been obtained on an oral application, it shall so indicate and shall state the name of the issuing judge and the time and date on which such judge directed its issuance.

3. The name, department or classification of the police officer to whom it is addressed; and

4. A description of the property which is the subject of the search, or, in the case of a search warrant as defined in paragraph (b) of subdivision two of section 690.05, a description of the person to be searched for; and

5. A designation or description of the place, premises or person to be searched, by means of address, ownership, name or any other means essential to identification with certainty; and

6. A direction that the warrant be executed between the hours of 6:00

A.M. and 9:00 P.M., or, where the court has specially so determined, an authorization for execution thereof at any time of the day or

7. An authorization, where the court has specially so determined, that the executing police officer enter the premises to be searched without giving notice of his authority and purpose; and

8. A direction that the warrant and any property seized pursuant thereto be returned and delivered to the court without unnecessary delay; and

9. In the case of a search warrant as defined in paragraph (b) of subdivision two of section 690.05, a copy of the warrant of arrest and the underlying accusatory instrument.

S 690.50 Search warrants; execution thereof.

1. In executing a search warrant directing a search of premises or a vehicle, a police officer must, except as provided in subdivision two, give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof before entry and show him the warrant or a copy thereof upon request. If he is not thereafter admitted, he may forcibly enter such premises or vehicle and may use against any person resisting his entry or search thereof as much physical force, other than deadly physical force, as is necessary to execute the warrant; and he may use deadly physical force if he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

2. In executing a search warrant directing a search of premises or a vehicle, a police officer need not give notice to anyone of his authority and purpose, as prescribed in subdivision one, but may promptly enter the same if:

(a) Such premises or vehicle are at the time unoccupied or reasonably believed by the officer to be unoccupied; or

(b) The search warrant expressly authorizes entry without notice.

3. In executing a search warrant directing or authorizing a search of

a person, a police officer must give, or make reasonable effort to give, such person notice of his authority and purpose and show him the warrant or a copy thereof upon request. If such person, or another, thereafter resists or refuses to permit the search, the officer may use as much physical force, other than deadly physical force, as is necessary to execute the warrant; and he may use deadly physical force if he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

4. Upon seizing property pursuant to a search warrant, a police officer must write and subscribe a receipt itemizing the property taken and containing the name of the court by which the warrant was issued. If property is taken from a person, such receipt must be given to such person. If property is taken from premises or a vehicle, such receipt must be given to the owner, tenant or other person in possession thereof if he is present; or if he is not, the officer must leave such a receipt in the premises or vehicle from which the property was taken.

5. Upon seizing property pursuant to a search warrant, a police officer must without unnecessary delay return to the court the warrant and the property, and must file therewith a written inventory of such property, subscribed and sworn to by such officer.

6. Upon arresting a person during a search for him or her pursuant to a search warrant as defined in paragraph (b) of subdivision two of section 690.05, a police officer shall comply with the terms of the warrant of arrest, superior court warrant of arrest, or bench warrant for a felony, and shall proceed in the manner directed by this chapter.

Upon arresting such person, the police officer shall also, without unnecessary delay, file a written statement with the court which issued the search warrant, subscribed and sworn to by such officer, setting forth that the person has been arrested and duly brought before the appropriate court, return to the court the warrant and the property seized in the course of its

execution, and file therewith a written inventory of any such property, subscribed and sworn to by such officer.

S 690.55 Search warrants; disposition of seized property.

1. Upon receiving property seized pursuant to a search warrant, the court must either:

(a) Retain it in the custody of the court pending further disposition thereof pursuant to subdivision two or some other provision of law; or

(b) Direct that it be held in the custody of the person who applied for the warrant, or of the police officer who executed it, or of the governmental or official agency or department by which either such public servant is employed, upon condition that upon order of such court such property be returned thereto or delivered to another court.

2. A local criminal court which retains custody of such property must, upon request of another criminal court in which a criminal action involving or relating to such property is pending, cause it to be delivered thereto.

Appendix H

Constitution of the Republic of Montenegro

In accordance with the Amendment LXXXII, item 1, para. 7 of the Constitution of the Republic of Montenegro, the Assembly of the Republic of Montenegro, at its session held on October 12, 1992, has passed

THE DECISION

ON THE PROMULGATION OF THE CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

The Constitution of the Republic of Montenegro having been adopted by the Assembly of the Republic of Montenegro at its session held on October 12, 1992 is hereby promulgated.

No. : 02-2893

In Podgorica, on this 12th day of October 1994

The Assembly of the Republic of Montenegro

President of the Assembly

Dr. Risto Dj. Vukcevic

(signature)

Mindful of the historical right of the Montenegrin people to have its own state, acquired through centuries-long struggle for freedom;

Dedication of the citizens of Montenegro to freedom, democracy and equality among peoples and friendship among nations;

In the belief that nature is the source of health, spirituality and culture, of the human kind, whereas the state is a guardian of sanctity and purity of nature;

Determination of its citizens for Montenegro to continue to live in the joint state of Yugoslavia as a sovereign and equitable republic;

The Assembly of the Republic of Montenegro, striving to provide permanent peace and secure all the tributes of tranquility, honour, justice and freedom,

hereby adopts and promulgates

CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

Section I

Basic Provisions

Article 1.

STATE

Montenegro is a democratic, social and ecological state.

Montenegro is a republic.

Montenegro is the member of the Federal Republic of Yugoslavia.

Article 2.**SOVEREIGNTY**

Montenegro shall be sovereign in all matters which it has not conferred on to the jurisdiction of the Federal Republic of Yugoslavia.

Sovereignty is vested in all the citizens of the Republic of Montenegro.

Citizens shall exercise their sovereignty directly and through their freely elected representatives.

Any change in the status of the country, change of the form of government and any change of frontiers shall be decided upon only by citizens in a referendum.

Article 3.**DEMOCRACY**

No authority shall be either established or recognised which does not result from the freely expressed will of citizens.

Article 4.**RULE OF LAW**

The state is founded on the rule of law.

The government shall be in conformity with the Constitution and Law.

Article 5.**DIVISION OF POWER**

The government of Montenegro shall be arranged according to the rule of the division of power into the legislative, executive and judicial.

Legislative power is vested in the Assembly, the executive power in the Government and the judicial in the courts of law.

Montenegro shall be represented by the President of the Republic.

Constitutionality and legality shall be protected by the Constitutional Court.

Article 6.**THE STATE SYMBOLS**

Montenegro shall have a coat of arms, a flag and a national anthem.

Article 7.**THE CAPITAL CITY AND ADMINISTRATIVE CENTRE**

The administrative centre of Montenegro shall be Podgorica.

The capital city of Montenegro shall be Cetinje.

Article 8.**TERRITORY**

The territory of Montenegro shall be a single and inalienable territory.

Montenegro shall be organised in territorial units - municipalities.

Article 9.**LANGUAGE AND ALPHABET**

In Montenegro Serbian language of the iekavian dialect will be the official language.

Cyrillic and Latin alphabets shall be deemed to be equal.

In the municipalities in which the majority or a substantial number of population consists of the national minorities and ethnic groups, their respective languages and alphabets shall be in the official use.

Article 10.**CITIZENSHIP**

Montenegro shall confer Montenegrin citizenship on its citizens.

No person may be deprived of the Montenegrin citizenship nor of the right to change the citizenship.

Article 11.**RELIGION**

The Orthodox Church, Islamic religious community, the Roman Catholic Church and other faiths shall be separate from the state.

All the faiths shall be deemed to be equal and free in the performance of their religious rites and affairs.

All the religious denominations will independently arrange their interior organisation and religious affairs within the legal set-up.

The state shall offer material assistance to religious denominations.

Article 12.**LEGISLATURE**

The law shall prescribe and regulate the following, in accordance with the Constitution:

Manner in which rights and freedoms shall be exercised if this is necessary for their exercise;

Manner of establishing, organising and competence of the state authorities and the procedure before the authorities if this is necessary for their proper functioning;

The system of the local self-government;

Other matter of interest for the Republic.

Article 13.

LIMITS OF FREEDOM

In Montenegro everything shall be deemed to be free if not prohibited by law.

Everyone is obliged to uphold the Constitution and the law.

Public officials must consciously and honestly perform their duties and shall be held responsible for their performance.

Section II

Freedoms and Rights

Article 14.

BASIC PROVISIONS

Freedoms and rights shall be exercised in accordance with the Constitution.

Article 15.

FREEDOM AND EQUALITY

All citizens are free and equal regardless of any particularities and/or other personal attributes.

Everyone shall be equal before the law.

Article 16.

INVIOLABILITY

Freedoms and rights are inviolable.

Everyone is obliged to respect freedom and rights of other.

Any abuse of the freedom and rights shall be deemed to be unconstitutional and shall be punishable according to law.

Article 17.

PROTECTION

Everyone is entitled to an equal protection of his freedoms and rights in the procedure prescribed by law.

RIGHT OF APPEAL

Everyone is guaranteed the right to an appeal or some other legal remedy against the decisions deciding on his rights or interests based on the law.

Article 18.**LEGAL ASSISTANCE**

Everyone shall have the right to legal assistance.

Legal assistance shall be offered by the Bar Association, as an independent service and by other legal services.

Article 19.**ENVIRONMENT**

Everyone shall have the right to a healthy environment and shall be entitled to a timely and complete information on its state.

Everyone has the duty to preserve and promote the environment.

*1. Personal Freedoms and Rights***Article 20.****PERSONAL INVIOABILITY**

Physical and psychological integrity of a man, his privacy and personal rights are inviolable.

Dignity and safety of a man are inviolable.

Article 21.**CAPITAL PUNISHMENT**

Human life is inviolable.

The capital punishment may be ruled and pronounced only for the most serious criminal offence.

Article 22.**DETENTION**

Every person is entitled to personal freedom.

The seizure or detention must be understood by the arrested person to be an arrest, promptly and in his own language or in the language which he understands, and the reasons for the arrests must be communicated.

Detained person must be promptly informed of his right to remain silent.

At the request of the person detained, the arresting authority must promptly inform close relations of the detained about his arrest.

Person detained shall have the right to have the defence council of his choice present at the hearing.

Illegal arrest shall be deemed to be a punishable offence.

Article 23.**CUSTODY**

A person reasonably suspected of having committed a criminal offence may be detained and held in confinement on the basis of the decision by a competent court of law, only when this is indispensable for the conduct of criminal procedure.

Person detained must be given the warrant for the arrest with adequate explanation at the time of the arrest or within 24 hours at the latest from the moment of the arrest. The detained person shall have the right of appeal against the arrest which shall be decided upon by the court of law within 48 hours.

The length of detention must be of the shortest possible duration.

The detention ordered by a first instance court must not exceed three months from the day of arrest. This time limit may be extended for further three months by the decision of a higher court. If by the end of this period the indictment has not been filed, the accused shall be released.

The detention of persons underage (minors) may not exceed 60 days.

Article 24.**RESPECT OF HUMAN DIGNITY**

Respect of human dignity and dignity in all criminal and any other proceedings is hereby guaranteed, both in the case of arrest or limitation of freedom and during serving of pronounced sentence.

PROTECTION OF PHYSICAL INTEGRITY

The use of force against a suspect who has been detained or whose freedom has been restricted and any forcible extraction of a confession or statement, shall be prohibited and punishable.

No one may be subject to torture, humiliating and degrading treatment or punishment.

Medical and other scientific experimentation may not be carried out on an individual without his consent.

Article 25.**RULE OF LEGALITY**

No one may be punished for an act which did not constitute a penal offence under law or by-laws at the time it was committed, nor may a punishment be pronounced which was not envisaged for the offence in question.

Criminal offences and criminal sanction shall be prescribed by law.

Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty by a valid decision of the court of law.

COMPENSATION OF DAMAGE

Any person wrongfully detained or wrongfully convicted shall be entitled to compensation of damages by the state.

RIGHT TO DEFENCE

Every person shall be guaranteed the right to defend himself and the right to engage a defence counsel before the court of law or before some other body authorised to conduct proceedings.

Article 26.

All criminal and other punishable offences shall be determined and sentences pronounced according to legal regulation and provisions based on the law which was in force at the time the offence was committed, except if the new legal regulations and provisions are based on the law which is more lenient for the perpetrator.

Article 27.

NE BIS IN IDEM

No person shall be tried twice for the same offence.

Article 28.

FREEDOM OF MOVEMENT AND RESIDENCE

Citizens shall be guaranteed the freedom of movement and residence.

Freedom of movement and residence may be restricted only for purpose of conducting criminal investigations, for prevention of contagious diseases or when so required for the defence of the Federal Republic of Yugoslavia.

Article 29.

HOME

The home shall be inviolable.

A person in an official capacity may enter a dwelling or other premises against the will of the tenant and may search them, but only on the grounds of a search warrant issued by a court of law.

The search shall be conducted in the presence of two witnesses.

A person in an official capacity may enter dwelling or other premises without the court warrant and may conduct the search without the presence of two witnesses if so required for immediate apprehension of the perpetrator of a criminal act or for purpose of saving human lives and property.

Article 30.

PRIVACY OF MAIL

Privacy of mail and other means of communication shall be inviolable.

Under a court decision the principle of inviolability of the privacy of mail and other means of communication may be put in abeyance if so required for purpose of criminal proceedings or for

the defence of the Federal Republic of Yugoslavia.

Article 31.

PERSONAL DATA

Protection of secrecy of personal data shall be guaranteed.

The use of personal data for purposes other than those for which they were compiled shall be prohibited.

Everyone shall have the right of access to personal data concerning his own person and the right of judicial protection in case of their abuse.

2. Political Freedoms and Rights

Article 32.

VOTING RIGHT

Every citizen of Montenegro who has reached the age of 18 shall be entitled to vote and be elected to a public office.

The voting right is exercised at the elections.

The voting right is general and equal.

Elections shall be free and direct and voting shall be by a secret ballot.

Article 33.

INITIATIVE, REPRESENTATION AND PETITION

Every person shall be entitled to a free initiative, to submit representation, lodge a petition or a proposal to a state authority and shall be entitled to receive an answer thereto.

No person shall be held responsible and neither shall suffer any other detrimental consequences for opinions expressed and contained in the initiatives, representations, petitions or proposals, except in case the person in question has therethrough committed a criminal offence.

Article 34.

FREEDOM OF MAN

Freedom of belief and conscience shall be guaranteed.

Freedom of thought and public expression of opinion, freedom of confession, public or private profession of religion and freedom to express national affiliation, culture and the freedom to use one's own language and alphabet shall be guaranteed.

No person shall be obliged to declare his opinion, confession and national affiliation.

Article 35.**FREEDOM OF PRESS**

Freedom of press and of other public information media shall be guaranteed.

Citizens shall have the right to express and publish their opinion in the public information media.

Publication of newspapers and public dissemination of information by other media shall be accessible to everyone without prior permission, subject to registration with the competent authority.

Radio and television broadcasting organisations shall be established in accordance with law.

Article 36.**RESPONSE, RECTIFICATION, COMPENSATION OF DAMAGES**

The right to a response and the right to rectification of incorrect published information or data as well as the right to compensation of damages caused by publishing of incorrect information or data shall be guaranteed.

Article 37.**CENSORSHIP OF PRESS**

Censorship of press and of other forms of public information media shall be prohibited.

DISTRIBUTION OF PRESS

No person shall have the right to prevent distribution of press and dissemination of other information except when the competent court of law shall find that they call for a forcible overthrow of the order established by the Constitution, violation of the territorial integrity of Montenegro and the Federal Republic of Yugoslavia, violation of guaranteed freedoms and rights or incite and foment national, racial or religious hatred and intolerance.

Article 38.**FREEDOM OF SPEECH**

Freedom of speech and of public appearance shall be guaranteed.

Article 39.**FREEDOM OF ASSEMBLY**

Citizens shall be guaranteed the right to peacefully assemble without prior approval, subject to prior notification of the competent authorities.

Freedom of association and other peaceful assembly may be provisionally restricted by a decision of the competent authority in order to prevent a threat to public health and morals or for the protection of human lives and property.

Article 40.**FREEDOM OF ASSOCIATION**

Citizens shall be guaranteed the freedom of political, trade union and other association and activities, without the requirement of a permit, subject to registration with the competent authorities.

The state shall offer assistance to political, trade union and other associations whenever there is a public interest thereof.

Article 41.**PROHIBITION OF ORGANISATION**

Political organisation in the state authorities shall be prohibited.

Professional members of the police force may not be members of the political parties.

Judges, justices of the Constitutional Court and the public prosecutor may not be members of the bodies of the political parties.

Article 42.**SECRET AND PARA-MILITARY ORGANISATIONS**

Activities of political, trade union and other organisations aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of Montenegro and of the Federal Republic of Yugoslavia, violation of guaranteed freedoms and rights of man and citizen or inciting and fomenting of national, racial, religious and other hatred or intolerance shall be prohibited.

Establishment of secret (clandestine) organisations and paramilitary groups shall be prohibited.

Article 43.**INEQUALITY AND INTOLERANCE**

Any incitement or encouragement of national, racial, religious and other inequality and incitement and fomenting of national, racial, religious and other hatred or intolerance shall be unconstitutional and punishable.

Article 44.**CITIZEN AND INTERNATIONAL ORGANISATIONS**

Citizens shall have the right to participate in regional and international non-governmental organisations.

Citizens shall have the right to address international institutions for purpose of protection of their freedoms and rights guaranteed under the Constitution.

3. Economic, Social and Cultural Freedoms and Rights

Article 45.**PROPERTY**

Property shall be inviolable.

No person shall be deprived of his property, nor may it be restricted except when so required by the public interest, as prescribed by law, subject to fair compensation which may not be below its market value.

Article 46.**INHERITANCE**

The right of inheritance shall be guaranteed.

Article 47.**EARNING AND ENTREPRENEURSHIP**

Freedom of earning and freedom of entrepreneurship shall be guaranteed.

All acts and activities creating or instigating monopoly and preventing market oriented economic activities shall be prohibited.

Article 48.**RESTRICTION OF OWNERSHIP AND EARNING**

The right to own property and the freedom of earning may be restricted by law, i.e. legal regulations with the force of law, for the duration of a state of emergency, in times of immediate threat of war or a state of war.

Article 49.**TAXATION**

All person shall be obliged to pay taxes and other dues.

Article 50.**COPYRIGHT**

Freedom of creation and publishing of scientific and works of art, scientific discoveries and technical innovations shall be guaranteed and their authors shall be entitled to moral and material rights.

Article 51.**STATE OF EMERGENCY**

Everyone shall be obliged to participate in prevention and elimination of the general state of emergency.

Article 52.**RIGHT TO WORK**

Everyone shall have the right to work, to a free choice of occupation and employment, to just and humane conditions of work and to protection during unemployment.

Forced labour shall be prohibited.

Article 53.**RIGHTS OF WORK FORCE**

All persons employed shall have the right to corresponding remunerations.

All persons employed shall have the right to limited working hours and a paid vacation.

All persons employed shall have the right to protection at work.

Youth, women and disabled persons shall enjoy special protection at work.

Article 54.**STRIKE**

All persons employed shall have the right to a strike for protection of their professional and economic interests.

Persons employed in the state administration and professional members of the police force shall not have the right to strike.

Article 55.**SOCIAL SECURITY**

Under a mandatory insurance scheme all persons employed shall provide for themselves and members of their families all forms of social security.

The state shall provide social welfare for citizens unable to work and without livelihood, as well as for citizens without the means of subsistence.

Article 56.**PROTECTION OF DISABLED PERSONS**

Disabled persons shall be guaranteed social protection.

Article 57.**HEALTH CARE**

Everyone shall be entitled to health care.

Children, expectant mothers and elderly persons shall be entitled to publicly financed health care, if they are not covered by another insurance program.

Article 58.**MARRIAGE**

Marriage may be contracted only upon a free consent of both bride and groom.

Article 59.**FAMILY**

Family shall enjoy special protection.

Parents shall be obliged to care for their children, for their up-bringing and education.

Children shall be obliged to care for their parents whenever they should be in need of care.

Article 60.**MOTHER AND CHILD**

Mother and child shall enjoy special protection.

Children born out of wedlock shall have the same rights and obligations as children born in wedlock.

Article 61.**ABUSE OF CHILDREN**

Abuse of children is prohibited.

Employment of children and minors on jobs hazardous for their health and development shall be prohibited.

Article 62.**EDUCATION**

Everyone shall be entitled to education under equitable conditions.

Primary education shall be mandatory and free of tuition fees.

Article 63.**AUTONOMY OF UNIVERSITIES**

The autonomy of universities, higher education institutions and scientific institutions shall be guaranteed.

Article 64.**SCIENCE, CULTURE AND ARTS**

The state shall render assistance and instigate development of education, sciences, culture, arts, sports, physical and technical culture.

The state shall protect scientific, cultural, artistic and historical values.

Article 65.

STATE AND ENVIRONMENT

The state shall protect environment.

Freedom of earning and free entrepreneurship shall be restricted by environment protection.

4. Local Self-Government

Article 66.

LOCAL SELF-GOVERNMENT

The right to a local self-government shall be guaranteed.

Local self-government shall be exercised in the municipality and in the capital.

Citizens shall decide through local self-government directly and through their freely elected representatives on certain public and other affairs of direct interest for the local population.

Local self-government in the municipality shall consist of the assembly and of the president of the municipality.

The Republic shall offer assistance to the local self-government.

5. Special Rights of National and Ethnic Groups

Article 67.

PROTECTION OF IDENTITY

The protection of the national, ethnic, cultural, linguistic and religious identity of the members of national and ethnic groups shall be guaranteed.

Protection of rights of members of national and ethnic groups shall be exercised in accordance with the international protection of human and civic rights.

Article 68.

LANGUAGE, ALPHABET, EDUCATION AND INFORMATION

Members of national and ethnic groups shall have the right to free use of their mother tongue and alphabet, the right to education and the right to information in their mother tongue.

Article 69.

SYMBOLS

Members of national and ethnic groups shall have the right to the use and display of their national symbols.

Article 70.**ASSOCIATION**

Members of national and ethnic groups shall have the right to establish educational, cultural and religious associations, with the material assistance of the state.

Article 71.**EDUCATIONAL PROGRAMS**

Curriculum of educational institutions shall cover both history and culture of the national and ethnic groups.

Article 72.**LANGUAGE**

Members of the national and ethnic groups shall be guaranteed the right to the use of their mother tongue in the proceedings before the state authorities.

Article 73.**REPRESENTATION**

Members of the national and ethnic groups shall be guaranteed the right to a proportional representation in the public services, state authorities and in local self-government.

Article 74.**CONTACTS**

Members of the national and ethnic groups shall have the right to establish and maintain free contacts with citizens outside of Montenegro with whom they are having a common national and ethnic origin, cultural and historical heritage and religious beliefs, but without any detriment for Montenegro.

RIGHT OF APPEAL

Members of the national and ethnic groups shall have the right to participate in the regional and international non-governmental organisations, and the right to address international institutions for purpose of protection of their freedoms and rights guaranteed by the Constitution.

Article 75.**EXERCISE OF RIGHTS**

Special rights granted to members of the national and ethnic groups may not be exercised if they are in contradiction with the Constitution, principles of international law and principle of territorial integrity of Montenegro.

Article 76.**PROTECTION COUNCIL**

Republican Council for Protection of Rights of National and Ethnic Groups shall be established in Montenegro, for purpose of preservation and protection of the national, ethnic, cultural, linguistic and religious identity of national and ethnic groups and for the exercise of their rights prescribed by the Constitution.

Republican Council for Protection of Rights of National and Ethnic Groups shall be headed by the President of the Republic.

Composition and competencies of the Republican Council shall be prescribed by the Assembly.

Section III**Organisation of the State***1. The Assembly***Article 77.****COMPOSITION AND ELECTION**

The Assembly shall consist of deputies elected by citizens in direct and secret ballot, on the basis of a general and equitable voting right.

One deputy shall be elected for every six thousand voters.

INDEPENDENCE OF DEPUTIES

Every deputy shall decide and vote according to his own belief and may not be recalled.

PROFESSIONAL FUNCTION

Every deputy shall be entitled to a professional exercise of his function as deputy.

Article 78.**TERM OF OFFICE**

Term of office of the Assembly shall be four years.

In cases of the state of war the term of office of the Assembly shall be extended for as long as peace is not established.

At the proposal of not less than 25 deputies, Government or the President of the Republic, the Assembly may decide to shorten the term of office.

Article 79.**IMMUNITY**

A deputy shall enjoy immunity.

A deputy shall not be called to account for an opinion expressed or a vote cast in the Assembly. No deputy may be subject to criminal proceedings nor detained without prior approval of the Assembly.

A deputy may be detained without the approval of the Assembly if he should be apprehended during a criminal offence for which the penalty prescribed exceeds five years of prison sentence.

The immunity enjoyed by the deputies is also enjoyed by the President of the Republic, members of the Government, judges, justices of the Constitutional Court and the public prosecutor.

Article 80.

PRESIDENT AND VICE PRESIDENT

The Assembly shall have a president and one or more vice presidents to be elected from among the deputies for the term of office of four years.

President shall represent the Assembly, call elections for the President of the Republic and perform other tasks prescribed by the rules of procedure of the Assembly.

Article 81.

COMPETENCIES

The Assembly shall:

- adopt the Constitution;
- enact laws, other regulations and general enactments;
- enact development plan of Montenegro, budget and annual balance sheet;
- determine principles for organisation of the state administration;
- ratify international treaties within the competences of the Republic;
- announce a republican referendum;
- float public loans and decide on entering into indebtedness of Montenegro;
- elect and dismiss president and members of the government, president and justices of the Constitutional court, president and judges of all the courts of law;
- appoint and dismiss public prosecutor and other officials;
- grant amnesty for criminal offences prescribed by the republican law;
- perform other duties as prescribed by the Constitution.

Article 82.

SESSIONS

The Assembly shall sit in regular and extraordinary sessions.

Regular sessions of the Assembly shall be convened two times a year, in accordance with the

rules of procedure of the Assembly.

The first regular session shall begin on the first working day in March and the second session on the first working day in October.

The Assembly shall convene in extraordinary session at the request of not less than one third of the total number of deputies, or at the request of the President of the Republic and of the Prime Minister.

Article 83.

DECISION MAKING

The Assembly shall decide if the session is attended by more than one half of the total number of deputies, and the decision shall be made by a majority of votes of the deputies present, if not otherwise prescribed by the Constitution.

When the Assembly is deciding on the enactments regulating the manner in which the freedoms and rights are exercised, on the electoral system, on the material obligations of the citizens, on the state symbols, on the dismissal of the President of the Republic and on the vote of confidence to the Government, on a referendum, on shortening of the term of office and on its rules of procedure, decision shall be brought by a majority of votes of the total number of deputies.

Article 84.

DISSOLUTION OF THE ASSEMBLY

The Assembly shall be dissolved if it should fail to elect the Government within 60 days from the date when the President of the Republic proposes candidates for the Prime Minister.

The Assembly may not be dissolved during the state of war, in case of an imminent danger of war or a state of emergency.

If the Assembly should cease to perform its duties as prescribed by the Constitution for a considerable period of time, the Government may, after hearing the opinion of the president of the Assembly and of the presidents of the clubs of deputies of the Assembly, dissolve the Assembly.

The Government shall not be entitled to dissolve the Assembly if a procedure had been instituted for the vote of no-confidence in the Government.

Dissolution of the Assembly shall be prescribed by the decree of the President of the Republic and a date shall be set for the election of the new Assembly.

Article 85.

INTRODUCTION OF BILLS

The right to introduce bills, other regulations and general enactments shall be vested in the Government, deputies and at least six thousand voters.

2. President of the Republic

Article 86.

ELECTION

The President of the Republic shall be elected in direct elections and by secret ballot, on the basis of a general and equitable voting right, and for a term of office of five years.

In the event of a state of war the term of office of the President of the Republic shall be extended for as long as the peace is not established.

The same person may be elected only two times for the President of the Republic.

Article 87.

TERMINATION OF MANDATE

The term of office of the President of the Republic shall cease when the term of office for which he has been elected expires, in the event of recall or by his resignation.

The President of the Republic may be recalled by the Assembly only in case the Constitutional Court should decide that he has breached the provisions of the Constitution.

The procedure to determine the breach of Constitution shall be instituted by the Assembly.

Article 88.

COMPETENCIES

The President of the Republic shall:

represent the Republic in the country and abroad;

promulgate laws by ordinance;

call elections for the Assembly;

propose to the Assembly candidates for the Prime Minister, president and justices of the Constitutional Court;

propose to the Assembly calling of a referendum;

grant amnesty for criminal offences prescribed by the republican law;

confer decoration and awards;

perform all other duties in accordance with the Constitution.

The President of the Republic shall be a member of the Supreme Defence Council.

Article 89.

PROMULGATION OF LAWS

President of the Republic shall promulgate a law by ordinance within seven days from the date of its adoption.

The President of the Republic may, within seven days from the date of adoption of a law, request the Assembly to decide again on the same law.

The President of the Republic shall be bound to promulgate a law passed for the second time by the Assembly.

Article 90.

PERFORMANCE OF DUTIES

In case of termination of the term of office of the President of the Republic, and until the election of the new President and in the case the President of the Republic is temporarily prevented to perform his functions, his duties shall be assumed by the President of the Assembly and in case the Assembly is dissolved, by the Prime Minister.

3. Government

Article 91.

COMPOSITION AND PRIME MINISTER

The Government is composed of the Prime Minister, one or more deputy prime ministers and ministers.

The Government shall be headed by the Prime Minister.

Article 92.

ELECTION

The candidate for the Prime Minister shall present to the Assembly his program and shall propose the list of ministers of his Government to the Assembly.

If the Assembly should not adopt the proposed program, the President of the Republic shall propose a new candidate for the Prime Minister within ten days.

Article 93.

INCOMPATIBILITY OF FUNCTION

A member of the government may not serve as a deputy or perform any other public function and neither may he professionally engage in other activities.

Article 94.

COMPETENCIES

The Government shall:

determine and conduct interior and foreign policy;

enact and execute laws and other regulations necessary for the enforcement of law;

conclude international treaties within the competences of the Republic;

propose development plan, budget and the annual balance sheet of the Republic;
determine organisation and manner of work of state administration;
perform supervision over work of ministries and other state administration authorities, and shall annul and abolish their regulations;
enact decrees and enactments during a state of emergency, in the event of imminent war danger or in the event of a state of war, if the Assembly shall not be able to convene, and shall submit to the Assembly the said enactments for its approval as soon as the Assembly shall be in session;
perform all other tasks as prescribed by the Constitution and law.

Article 95.**RESIGNATION AND RECALL**

The Government and the member of the Government may submit their resignation.
Resignation by the Prime Minister shall be deemed to mean resignation of the Government.
The Prime Minister may propose to the Assembly to recall any member of the Government.

Article 96.**VOTE OF CONFIDENCE**

The Government may raise the question in the Assembly of its vote of confidence.

Article 97.**VOTE OF NO CONFIDENCE**

The Assembly may vote no confidence in the Government.
The proposal for a vote of no confidence may be submitted by not less than ten deputies.
The vote of no confidence for the Government shall be performed three days at the earliest from the date the proposal to that effect had been submitted.
If the Government has received a vote of confidence, the proposal to vote on no confidence for the same reasons may not be submitted before a period of 90 days from the date of previous voting.

Article 98.**TERMINATION OF MANDATE**

The Government shall terminate its mandate when the mandate of the Assembly is terminated, when the Assembly is dissolved, when it submits its resignation and when it receives the vote of no confidence.
The Government which has received a vote of no confidence or whose mandate has been revoked because of the dissolution of the Assembly shall remain in office until the election of the new Government.

Article 99.**STATE ADMINISTRATION**

The affairs of the state administration shall be conducted by the ministries and the state administration authorities.

Certain tasks of the state administration may be transferred by law to the local self-government.

TRANSFER AND ENTRUSTING

Certain tasks of the state administration may be entrusted by decree to the local self-government, to the institutions and legal persons.

4. Courts of Law and Public Prosecutor**Article 100.****INDEPENDENCE AND AUTONOMY**

Courts of law (judiciary) shall be independent and autonomous.

Courts of law shall rule on the basis of the Constitution and the law.

Article 101.**JUDICIAL COUNCIL**

Courts of law shall adjudicate in a council, except in cases specified by law when a single judge shall rule.

JUDGES

Judicial functions shall be performed by the judge and jurors.

Article 102.**PUBLIC TRIALS**

Trial before the court of law shall be public.

In exceptional cases only the court may decide that the public shall not be allowed to attend the trial or any part thereof.

Article 103.**PERMANENT FUNCTION**

Judges shall have a life tenure.

A judge's tenure of office may be terminated at his own request or when he meets conditions for retirement, and if he should be sentenced to a prison sentence without the right of appeal.

A judge may be dismissed if he has been convicted of an offence making him unsuitable to perform judicial functions, or when he performs his judicial function unprofessionally and unconscientiously, or when he has permanently lost the working capacity for performing judicial

function.

A judge may not be transferred against his will.

Article 104.

SUPREME COURT

The Supreme Court shall be deemed to the highest instance court of law in the Republic.

Article 105.

PUBLIC PROSECUTOR

Public Prosecutor shall perform the tasks of criminal prosecution, shall apply legal remedies for protection of constitutionality and legality and shall represent the Republic in property and legal matters.

COMPETENCE

Public Prosecutor shall perform his function on the basis of the Constitution and law.

TERM OF OFFICE

Public Prosecutor shall be elected for the term of office of five years.

Article 106.

INCOMPATIBILITY OF FUNCTION

Judges and the Public Prosecutor may not be delegates or perform any other public function and neither engage in any professional activity.

Section IV

Constitutionality and Legality

Article 107.

CONSTITUTIONALITY AND LEGALITY

The law must be in conformity with the Constitution, and all other regulations and enactments must be in conformity with the Constitution and law.

Article 108.

VACATIO LEGIS

Statutes, other laws and general enactments shall be published prior to coming into force.

Statutes, other laws and general enactments shall come into force on the eighth day from the day of publication.

Exceptionally, when justified reasons shall prevail as prescribed during their adoption, provision

is made for the statutes, other laws and general enactments to come into force on the day of publication.

Article 109.

RETROACTIVE EFFECT

Statutes, other laws and general enactments may not have a retroactive effect.

Exceptionally, only certain provisions of statutes, if so required by the public interest, as prescribed when they were adopted, may have a retroactive effect.

Article 110.

LEGALITY OF INDIVIDUAL ENACTMENTS

The Court of law shall decide on the legality of particular enactments in an administrative suit, on the basis of which the state administration authorities and authorities with public authorisation are ruling on the rights and obligations, if for a certain matter no other judicial remedy has been prescribed.

Exceptionally, in certain types of administrative matters, administrative suit may be dismissed by decree.

Constitutional Court

Article 111.

COMPOSITION OF COURT

The Constitutional Court shall have five justices.

The term of office of a justice of the Constitutional Court shall be nine years and the justice may not be re-elected.

ELECTION

Justice of the Constitutional Court shall be elected from among the distinguished legal experts with at least 15 years of professional experience.

TERM OF OFFICE

President of the Constitutional Court shall be elected from among the justices of the Constitutional Court, for a term of office of three years.

INCOMPATIBILITY OF FUNCTION

President and justices of the Constitutional Court may not be deputies and perform any other public function and neither engage in any other professional activity.

Article 112.

TERMINATION OF FUNCTION

Justice of the Constitutional Court shall terminate his office for which he has been elected at his

own request, or after meeting the requirements for retirement, or if he is sentenced to a term of imprisonment without the right of appeal.

DISMISSAL

Justice of the Constitutional Court shall be dismissed from duty if he is sentenced for the offence which makes him unsuitable for the function or if he has permanently lost the capacity for performing his function of justice of the Constitutional Court.

SUSPENSION

The Constitutional Court may decide to suspend the justice of the Constitutional Court if against him criminal proceedings have been instituted and he shall not perform his function for the duration of the proceedings.

Article 113.

The Constitutional Court shall:

decide on the conformity of law with the Constitution;

decide on conformity of other regulations and general enactments with the Constitution and law;

determine whether the President of the Republic has committed a violation of the Constitution;

decide on constitutional complaints for violation, by individual enactments or deeds, of the freedoms and rights of man and citizen as prescribed by the Constitution, whenever this protection is not within the competencies of the Federal Constitutional Court and whenever some other legal remedy is not prescribed;

COMPETENCIES

rule on the conflict of competencies between the administrative and judicial authorities, on conflict of competence between these authorities and authorities of the local self-government and in conflicts of competencies between the units of the local self-government;

decide on conformity of statutes of a political party or association of citizens;

decide on banning of a political party and association of citizens;

decide on electoral disputes and disputes connected with a referendum, which are not within the competencies of the regular courts of law;

performs other task prescribed by the Constitution.

The Constitutional Court may rule on constitutionality and legality of laws which have ceased to be in force, if from the moment they have ceased to be in force until the procedure has been initiated a period of not more than one year has elapsed.

Article 114.

INITIATING PROCEEDINGS

All persons are entitled to initiate the proceedings of assessing the constitutionality and legality.

Proceedings before the Constitutional Court shall be initiated by state agencies and legal entities

after finding that their rights or interest have been violated by the act whose constitutionality and legality are being challenged.

The Constitutional Court may itself initiate the proceedings for assessing the constitutionality and legality.

Article 115.

CESSATION OF VALIDITY

When the Constitutional Court shall decide that the statute, other regulation or a general enactment is not in conformity with the Constitution or law, such a statute, other regulation or general enactment shall cease to be in force with the day of publication of ruling to that effect by the Constitutional Court.

PROVISIONS ORDER

During the proceedings and until the ruling, the Constitutional Court may order a suspension in the execution of an individual act or deed undertaken on the basis of the statute, other regulation or a general enactment whose constitutionality i.e. legality is being assessed, if such an execution would cause irreparable damage.

Article 116.

DECISION

The Constitutional Court shall decide by a majority of vote of the justices.

The decision of the Constitutional Court shall be generally binding and final.

Decision of the Constitutional Court shall be published together with the opinion of justices who did not vote in favour of the decision.

Whenever necessary, execution of the decision of the Constitutional Court shall be enforced by the Government.

Section V

Amendments to the Constitution

Article 117.

PROPOSAL OF AMENDMENTS

A proposal to amend the Constitution may be submitted by at least 10,000 voters, by not less than 25 deputies, by the President of the Republic and by the Prime Minister.

A proposal to amend the Constitution shall contain the provisions where amendments are requested and an adequate explanation thereof.

The Assembly shall decide on the proposal for amending the Constitution by the two-thirds majority of votes of all of its deputies.

If the proposal to amend the Constitution should not be adopted, the same proposal may not be

submitted again before one year has elapsed from the day the proposal was refused.

Article 118.

AMENDMENTS

The Constitution shall be amended by the Constitutional amendments.

DRAFT

The Assembly shall provide the draft of the amendment to the Constitution.

The Assembly shall decide on the amendment to the Constitution by the two-thirds majority of votes of all of its deputies.

Article 119.

SIGNIFICANT AMENDMENTS AND A NEW CONSTITUTION

If the proposal to amend the Constitution shall pertain to the provisions regulating the status of the country and the form of rule, if it restricts freedoms and right or if the adoption of a new constitution is proposed, with the day of adoption of the amendment to that effect the Assembly shall be dissolved and a new Assembly convened within 90 days from the day such an amendment was adopted.

The new Assembly shall decide by a two-thirds majority of votes of all the deputies only on those amendments to the Constitution which are contained in the adopted amendment, i.e. the adopted amendment for the promulgation of the new constitution.

Section VI
Final Provisions

Article 120.

CONSTITUTIONAL LAW

The Republic of Montenegro shall pass a constitutional law for purpose of enforcement of the Constitution.

The Constitutional law shall be adopted and shall come into force simultaneously with the Constitution of the Republic of Montenegro.

Article 121.

COMING INTO FORCE

The present Constitution shall come into force with the day of its promulgation.

Appendix I

Draft Law on Police of the Republic of Montenegro

LAW ON POLICE
Of The Republic of Montenegro

CHAPTER I
FUNDAMENTAL PROVISIONS

Article 1

By this Law police affairs, police organization, police authorities, legal-labor status and disciplinary liability of officials, and control of the police work, are regulated

Article 2

Police protects citizens rights and freedoms and other values established by the Constitution and according to this Law and other Regulations.

A citizen, who thinks that his rights and freedoms are violated in performing police duties or that he suffers damage is entitled onto court protection and compensation of the damage.

Article 3

Police is a Service of the Ministry of Interior which performs affairs established by this Law and other Regulations (in further text: police affairs)

The Ministry of Interior (hereinafter: the Ministry) in addition to police affairs, also performs other internal affairs stipulated by Law.

Article 4

Police affairs for the purpose of this Law are:

1. protection of life, rights and security of citizens;
2. protection of property;
3. prevention and detection of criminal offences, and infringements;
4. searching for persons who committed criminal offences, petty offences and infringements and their delivering to authorized bodies;
5. maintaining of public order and tranquility ;
6. safeguarding of meetings and other gatherings of citizens ;
7. safeguarding of certain personalities and buildings ;
8. traffic supervision and security control ;
9. State border supervision and safeguarding and performing of border control ;
10. control of circulation and sojourn of foreigners;
11. other affairs according to the Law and Regulations passed on its basis.

Police affairs from the Paragraph 1 of this Article are performed according to the Constitution and this Law, with respecting of international standards and all the regulations intended to protect the dignity of person and human rights and freedoms of citizens .

Article 5

Police undertakes urgent measures necessary for protecting of human lives, eliminating of immediate danger for people and property provided that these measures may not be undertaken on time by other competent authorities.

Police assists to public administration authorities, units of local government administration, judicial and physical persons in case of general danger caused by natural disasters and epidemics.

Article 6

If in carrying out of decisions of State organs, units of local government and judicial persons with public authorities meet resistance, the Police will assist these authorities at their justified request in order to secure carrying out of the decision.

Conditions and way of giving of assistance aimed to provide performing of the Decision is regulated by the act of Minister of Interior (hereinafter: The Minister).

Article 7

Police cooperates with the organs of local government units on undertaking the measures aimed to achieving of citizens and property safety.

Police also cooperates with other authorities and judicial persons with the scope of preventing of criminal offences, economy crime, petty offences and infringements, and detecting of the persons who committed them.

In order to achieve scopes from Paragraphs 1 and 2 of this Article, coordinating bodies can be established.

Article 8

Police informs the public directly or through media on events and occurrences which are generally interesting for citizens, likewise on measures which have been undertaken on that occasion.

Police directly informs citizens and juridical persons on issues from its competence for resolving of matters, which are concerning their immediate interest.

Information from Paragraph 1 and 2 of this Article gives Minister or Person authorized by him.

Giving of certain information from Paragraph 1 and 2 of this Article can be denied, only if that would mean violation of the Duty to protect secret (state, military, official), regarding the protection of safety and privacy of citizens.

Article 9

Chiefs of Police territorial organization units, submit the Annual Report on Work to the

Assembly of the Local Administration Unit and inform the Assembly, at its request, on events and occurrences, which are important for the security of that area .

Article 10

At least once a year the Minister of Interior (hereinafter: Minister) submits a report to the Parliament of the Republic of Montenegro on the Police work.

At the request of Government, Minister is obliged to submit separate Report on specific issues from the Police competence, undertaken measures and its results.

CHAPTER II ORGANIZATION OF THE POLICE

Article 11

In order to establish and deliver uniform working conditions, Ministry

1. gives developing, organizational and other directives for work ;
2. establishes personnel and educational needs;
3. makes plans on using of material-financial resources ;
4. makes and performs plans on construction and using of information systems ;
5. makes and performs plans on construction and using of secure-protected crypto system ;
6. makes and performs plans on construction and using of radio-communicating and phone-communicating system;
7. establishes needs and procures technical devices ;
8. organizes international cooperation ;
9. takes care of planning and carrying out of education, specialization and training for the Police needs;
10. organizes and carries out control, and
11. also, performs other affairs defined by Law.

Article 12

With the scope of carrying out of other Police jobs, Directorate General of the Police is established within the Ministry.

Beside jobs from Article 4 of this Law, tasks of the Directorate General of the Police are:

1. following and analyzing of the security situation and occurrences which favor crime originating and developing ;
2. harmonizing, directing and supervising of Police departments;
3. direct participation in carrying out of complex affairs from competence of Police departments ;

4. fulfilling of international contracts on police cooperation and other international contracts within its competence;
5. organizing and carrying out of giving of expert opinions;
6. establishing of conditions for educating of police officers ;
7. deciding on standards for equipment and material-technical devices;
8. taking care on willingness of Police officers to act in extraordinary conditions and according to special Regulations, and
9. informing of State authorities and public on actual security issues and circumstances .

Within the Directorate General of the Police, specialist organizational units will be informed.

Article 13

Police Directorate General is headed by State Deputy Secretary, Director General of the Police.

Director General of the Police is appointed by the Government of the Republic of Montenegro, at the proposal of the Minister.

Director General of the Police, for his work and work of the Police, is responsible to the Minister and Government.

Duty of Director General ceases by resign or releasing.

Director General can be released if he doesn't perform his job properly.

Director General must be given explanations for releasing in written form.

If Director General challenges the proposal, Government is obliged to establish Board which will establish facts concerning proposal for releasing.

Article 14

Within Directorate General of the Police, Police Board will be established as experts advisory Body for examining of issues and giving recommendations regarding application of regulations from the field of Police affairs.

By the Act of forming, composition, tasks and other issues, important for the work of Police Board, are defined.

Article 15

For performing Police affairs at the territory of The Republic of Montenegro, Police Head Offices, Stations and Departments are formed.

Police administrations and Police Stations are managed by Chief and Department by the Commander, who are responsible for the work of the organizational unit which they manage.

Article 16

Minister decides on competence, Head Offices and areas for which lower police organization units are established, by Book of Regulations, at proposal of State Secretary and Director general of the Police with agreement of the Government.

CHAPTER III

DUTIES AND AUTHORITIES OF THE POLICE

Article 17

Police jobs from Article 4 of this Law are performed by authorized officers of the Police (hereinafter: Police officers)

Police officer is obliged to undertake necessary actions in order to protect human lives even if in performing of such duties, his life is endangered

Article 18

Police authorities, measures for the purpose of this Law are:

1. gathering of the information;
2. inspection of vehicle, passengers and luggage;
3. temporary limitation of movement in certain space;
4. establishing the identity of persons and subjects;
5. inspection of buildings and rooms;
6. entering into someone else's apartment and other premises;
7. safeguarding and survey of the site of event;
8. summons to the police ;
9. bringing ;
10. escorting ;
11. giving warnings and orderings;
12. using of means of coercion;
13. using of somebody's else vehicle and means of communications
14. collecting, processing and using of personal data ;
15. inspection of persons;
16. inspection of vehicle, passengers and luggage ;
17. inspection of apartment and other premises ;
18. temporary taking away of objects;
19. depriving of freedom;
20. protecting of one who has suffered a loss, witnesses and other persons;
21. antiterrorist survey
22. insight into business books and other documentation ;and
23. other authorities established by Law.

Police authorities from the Paragraph 1 of this Article are applied by the police officer, according

to the police Code of Ethics which is a structural part of this Law.

Article 19

Ministry issues official badge and official identification card to a police officer.

Police officer is obliged to wear uniform on occasion of performing his duties in maintaining of public order and tranquility, controlling of traffic security on the roads, supervision and protection of state border or when he performs other jobs according to Police Operating Regulations .

Police officer may perform police activities by order of superior officer even without the uniform when the nature and circumstances of their performing requires that.

Article 20

Police officer is authorized to wear weapons and ammunition.

Weapons and ammunition, as well as the other means of coercion, police officer uses in conditions defined by this Law.

Article 21

In applying police authorities a police officer is obliged to act kindly by respecting dignity, reputation and honor of every person and other human rights and freedoms.

Article 22

Prior to the beginning of performing of police authority police officer is obliged to introduce himself by showing the official badge or official identification card.

Exceptionally the police officer shall not act in manner stipulated in Paragraph 1 of this Article if the real circumstances of performing of police authority indicate that it could imperil the performing of its objective. In that case police officer shall in course of the performing of police authority warn by a word: "Police!".

Following the cessation of the reasons from Paragraph 2 of this Article, police officer shall act in way stipulated by Paragraph 1 of this Article.

Article 23

Performing of police authority must be proportionate to the need for which that authority is undertaken.

Among a number of police authorities one shall perform the one which will reach the objective with least harmful consequences.

Article 24

Police officer applies police authorities at his own decision, by order of superior officer and by order of competent authority.

Police officer is obliged to perform the order of superior officer and order of competent authority, but he shall not perform them if by their performing he would commit a criminal

offence.

Police officer shall apply the authorities set forth by this Law also towards the military persons provided that this matter has not been stipulated by other regulation.

Article 25

Police authorities towards minors, younger adults and subjects of punitive-corrective protection of children and minors are applied by police officers who have been especially trained for the affairs of prevention of juvenile delinquency.

Exceptionally, this police authority may be applied by other police officer if, due to the circumstances of the case police officer from Paragraph 1 of this Article may not act.

Police authorities towards the minor are applied in presence of their parents or custodians, except if this is not possible because of special circumstances or urgency of acting, on which the parent or custodian shall be immediately informed.

1. Gathering of Information

Article 26

Police officer may gather the information from the citizens in order to prevent and detect the criminal offences, petty offences or infringements, or the persons who committed them.

Gathering of information from the same person can last as long as it is necessary to obtain requested information, but not longer than four hours.

The citizen is not obliged to give the demanded information.

Police officer is obliged to read record on given information, to the person who gave the information. That person can make comments onto the record, which police officer is obliged to bring into the record. Copy of record on given information will be issued to the person at his request.

2. Inspection of Vehicle, Passengers and Luggage

Article 27

Police officer is authorized to perform the inspection of a person, luggage and mean of transportation if that is necessary for detecting the objects that might be connected with the commitment of criminal offence or person who committed it, or which may serve as an evidence in criminal proceedings.

Inspection of the documents a person has on him includes the inspection of objects which are with the person or in his immediate vicinity or objects of the person on whose order or in whose escort they are transported.

During inspection police officers are authorized to use technical means and working dogs.

When undertaking the measures from Paragraph 1 of this Article, police officer is authorized to open by force locked vehicle or object the person has on.

Police officer shall temporarily take away objects which may be connected with the commitment of criminal offence or the person who committed it, or which may serve as evidence in criminal

or petty offence or to prevent committing of criminal offence or petty offence.

3. Temporary Restriction of Movement in Specific Space

Article 28

Police officer can temporarily limit, to the person, movement on certain area or building, in order to :

24. prevent committing the criminal offence, or infringement;
25. detect and capture the persons who committed criminal offence, or infringements;
26. detect and capture searched persons , and;
27. detect traces and objects which may serve as evidence in criminal offence, or petty offence proceedings.

Temporary restrictions of movement lasts until circumstances, for which this authority is performed, continue, but not longer than 12 hours.

4. Establishing the Identity of Persons and Identification Objects

Article 29

Authority of checking the sameness of a person shall be applied towards the person:

1. that should be deprived of freedom, brought, kept or sent to competent bodies;
2. person who is threatening and thus requires police treatment;
3. person who has to be searched or undertaken other measures and actions according to the Law;
4. who is found in someone else's apartment, premises or other rooms or in transportation means in which the inspection and inspection are done, provided that checking of identity is necessary;
5. person found in the space or in the premises in which the freedom of movement is temporarily limited provided that checking of identity is necessary;
6. who declares a commitment of a criminal offence, petty offence or infringement or persons who committed these acts, respectively who notifies data of interest for work of the police;
7. who, by his behavior provokes suspicion to be a person who committed criminal offence, , or infringement or that he intends to commit it. ;
8. a person who looks like person who is searched for ;
9. who is found at the site of commitment of criminal offence, or infringement;
10. who is in the place at which for security reasons it is necessary to establish the identity of all the persons or most of persons;
11. a person who does not posses identity card or there is suspicion that such document is in order, and

12. at justified request of official personnel of public administration, judicial or physical persons.

Police officer is obliged to inform the person about the reasons for checking his sameness.

Article 30

Checking of person's sameness is performed by the inspection of the personal identity card or other official document with a photograph.

Exceptionally from the provisions of Paragraph 1 of this Article, identity checking may be also performed on the basis of statement of the person whose identity has been checked.

Article 31

Identity is established by employment of methods and means of criminological tactics and technique, medical or other respective surveys.

With the scope of establishing the identity of a person the Police is authorized to publish a photo robot, drawing, photograph, video recording or description of the face.

When it is not possible to establish the sameness on other way, the Police is authorized to publish photograph of the person who may not give information about himself/herself or of a cadaver of the unknown person.

Article 32

The authority of establishing and checking the identity of objects is applied when it is necessary to establish the characteristics and properties of the object in the procedure as well as to establish the relation between the persons or events and objects.

Police is authorized to publicly announce the photograph, drawing, recording or description of the object if that is of significance for successful performing of the proceeding of establishing the identity of object.

Inspection of buildings and premises

Article 33

Police officer can carry out visual inspection on buildings and premises, if he disposes with data which point out justified suspicion that in such buildings or premises might stay searched persons or objects or traces in connection with crime offence which is prosecuted *ex officio* or petty offence.

Police officer will carry out inspection of building or premises in presence of the responsible person from the Governmental Agency, legal person or entrepreneur.

Record on facts and circumstances established on carrying out each of actions, which can be interesting for criminal or petty offence proceedings, likewise on found or deprived objects, will be composed.

Coming Into Somebody Else's Apartment and Other Premises

Article 34

Police officer can without order come into somebody else's apartment, other premises and buildings of Agencies and Organizations if:

13. The user, requests that from him;
14. Somebody requests assistance;
15. That is necessary in order, to capture person, caught in committing criminal offence
16. Person who is directly prosecuted for committed crime, is staying in the apartment, other premise or building;
17. Person, who, according to the Written Court Order has to be brought or be deprived of freedom , is staying in the apartment, other premise or building;
18. If that is necessary because of safety of persons and property, and
19. it is obvious, that evidences for conducting of criminal proceedings, would not be able to be delivered on some other way.

Police officer submits report in written form, on coming into someone else's apartment and other premises, to the superior police offices, and if measures concerning criminal offence , copy of Record will be delivered to the competent prosecutor or investigative judge.

7. Safeguarding and Survey of Site of Event

Article 35

When the police officer learns about commitment of criminal offence, petty offence, or other event due to which it is necessary to establish or explain the facts by immediate observation, police officer is authorized to safeguard the site of event until the arrival of investigative judge, inspects the site of event for sake of finding or securing the traces and objects which might serve as evidence, and collect the information regarding criminal offence, event, or person who committed it.

Police officer is authorized to retain the person, until arrival of the investigative judge or other authority, but not longer than six hours, for whom he estimates to be able to give information relevant for explanation of the event or for undertaking of rescue activities until the arrival of examining magistrate, but not longer than six hours, if it is likely that the information could not be obtained later or if the presence of person able to undertake rescue activities could not be provided.

In order to protect the interest of criminal proceeding or proceeding, police officer is authorized to forbid photographing of the place.

8. Summons

Article 36

If it is necessary for carrying out security jobs, Police can summon person for the sake of giving information.

Name, place and address of the organizational unit of the Police, must be indicated, in the notice of summons.

Police officer is obliged to tell to the person who responded to summons on not being obliged to give the requested information.

A person, who did not respond to summons, can be brought by force, only if he was warned on such a one possibility, by notice on summons.

It is not allowed to summon, for the same reason, a person who responded to summons, or was brought by force and refuses to give the information.

Article 37

Person who is staying in the apartment may be invited in period from 6.00 A.M. to 10.00 P.M.

Exceptionally, if there is a danger due to the postponing, police officer is authorized to invite the person, out of the period regulated by Paragraph 1 of this Article.

Article 38

Exceptionally Police officer is authorized to, invite the person verbally or by suitable means of communications, in which case is obliged to advise on reason of summons and with the agreement of that person also to transport him to the official premises.

Exceptionally, a Person also, may be invited through media, when that is necessary due to the risk of postponing, security procedures or when the invitation is addressed to a larger number of persons.

Summons of a minor will be carried out by delivering of notice on summons to the parent or trustee who will be present to delivery of notice on summons, except if that is excluded by reasons of preliminary proceedings, when giving of information will be carried out in the presence of other adult person .

9. Bringing of the person

Article 39

Police officer applies the authority of bringing of the person, to the Court or place defined by Court, on the basis of written order issued by competent Court,.

Person may be delivered from 6.00 A.M. to 10.00 P.M.

Exceptionally, it is allowed to bring the person , without written order, if:

- 1) wanted circular is sent out ;
- 2) it is necessary to establish the identity from the Article 29 of this Law.

Article 40

Provisions on bringing are not applied towards the person whose movement is significantly aggravated due to a disease, exhaustion or pregnancy and towards for whom there is a legitimate assumption that his health condition would be significantly deteriorated by bringing. Competent authority who gave the order on bringing must be informed on facts.

Provisions on bringing will not be applied towards the person that carries out such duties which must not be interrupted until suitable replacement is found.

Article 41

Police officer is obliged to inform the person to be brought, prior to bringing, about the reasons for bringing, and right to inform the family and lawyer.

10. Escorting**Article 42**

Escorting will be performed on the basis of order on bringing or order on depriving of freedom.

Escorting will be performed if it is necessary to escort and deliver one or more persons to some other police department or station or to some other authority outside of the starting place of escorting.

Sick or exhausted persons will not be escorted, women with visible pregnancy, except if the authority that ordered their escort explicitly requires so.

Police officers are responsible for the safety persons escorted by them and they are obliged to refuse every attack or attempt of attack on them, as well as the attempt of their releasing, by the third persons.

Police officer will deliver the escorted person to the authority to which the person was sent according to the escort order, and his belongings according to the list. Police officers who performed the escort will issue a certificate on transfer of persons and their belongings.

Having returned, police officers who have performed the escort submit in writing a report to superior officer about the performed transfer of persons.

11. Giving Warnings and Orders**Article 43**

Police officer will warn a person who, by his behavior, acting or failing to perform certain action, may put under risk, his security or security of other persons or property, disturb the peace or put under risk safety on roads or when it is clearly expected that such person might commit or cause the other person to commit a criminal offence, or infringement.

Article 44

Police officer will give the order, in order to:

prevent the danger for life and personal security of citizens;

1. eliminate the danger for property;
2. prevent the commitment of criminal offences, or infringements, capture persons who committed them and detect and safeguard the traces which may serve as evidence;
3. maintain of public order and peace or reestablish disturbed public order and peace;
4. establish safety of road traffic;
5. prohibit the approach or staying within the area or building where that is not permitted;
6. prevent and eliminate consequences , in case the of general danger caused by natural

disasters, epidemics or other forms of endangering the general safety.

12. Use of Means of Coercion

Article 45

Means of coercion for the purpose of this Law are: physical force, stick, means for binding of person, devices for compulsory stopping of motor vehicle, official dogs, chemical agents for temporary disabling, fire-arms, device for spurting forth the water, special vehicles and special types of weapon and explosive means.

The means of coercion may be used for:

1. prevention of escaping of person deprived of freedom or caught in performing the criminal offence for which the prosecution is undertaken *ex officio*;
2. subduing of resistance of person who disturbs public order and peace or that should have to be brought or deprived of freedom in cases set forth by the Law, and
3. repulsing an attack, repulsing person or from safeguarded building.

Police officer will always use the means of coercion proportionate to the danger which has to be eliminated and with the least of negative consequences towards the person against whom , the means of coercion will be used .

Prior to application means of coercion, police officer is obliged to warn the person against whom the requirements for application of some of coercion means were met.

Police officer will not act according the way described by Paragraph 4 of this Article, if such one action would put under risk performing of the official action.

Using of Physical Force

Article 46

Using of physical power for the purpose of this Law means the using of various grasps of martial arts or similar actions on body of another person, aimed at repelling the attack or subduing the resistance of the person by inflicting the least harmful consequences.

Physical force is applied in compliance with the rules of the skill of self-defense, and its application ceases as soon as direct attack or resistance of the person against which it was used, ceases.

Using of Stick

Article 47

Using of stick is allowed if milder forms of using of physical force are not successful or if they do not guarantee success, *and it lasts only while resistance is given.*

Use of Means for Binding

Article 48

Using the means of binding because is allowed, in order to:

1. prevent the resistance of person or repelling the attack directed t against police officer;
2. avoid the escape of person, and
3. prevention of self-injuring or injuring of other person.

Use of Devices for Compulsory Stopping of Vehicles

Article 49

Use of devices for compulsory stopping of vehicles is permitted for the sake of:

1. preventing of escaping of person who has been caught in performing of criminal offence for whom the prosecution is undertaken *ex officio*;
2. preventing of escape of person by vehicle who has been deprived of freedom or for whom there is an order on depriving of freedom;
3. preventing of illegal passing of state border by a vehicle; and
4. preventing of not permitted approach by a vehicle to the building or area where there are persons, safeguarded by police officer.

Use of Working Dog

Article 50

Working dog can be used as a mean of coercion in cases when:

conditions for using of physical force or stick were met;

conditions for using of fire-arms were met;

disturbed public order and peace are being reestablished.

In cases from Paragraph 1 item 2 of this Article official dog may be used without muzzle.

Use of Chemical Agents for Temporary Disabling

Article 51

Chemical agents of temporary disabling shall be used in the following cases:

when the public order and peace has been disturbed in a higher extent;

when the legal requirements use of fire-weapons , are fulfilled;

when the person should be deprived of freedom that has hidden or made barricades in the premises and treats or makes resistance by fire arms or dangerous tools, and

when that is necessary for depriving of freedom of person that holds another person as a hostage.

Use of chemical agents for temporary incapacitating is approved by Director General of the Police or person authorized by the him.

Use of Fire-Arms towards the Persons

Article 52

In performing the official task police officer may use fire-arms, only if by application of other

means of coercion he is not able to:

1. protect life of people;
2. prevent the escape of person found in committing the criminal offence for which the prosecution is undertaken *ex officio*, and for which the punishment of ten years' imprisonment or more severe punishment is prescribed;
3. prevent the escape of person deprived of freedom , or person for whom the order for depriving of freedom was issued due to the commitment of a criminal offence from Paragraph 2 of this Article;
4. check the immediate attack on him which imperils his life, and
5. block the attack on premise or person safeguarding by him.

Article 53

Use of fire-arms for protection of life of people in compliance with this Law is the use of fire arms for the protection of one or more persons, that was attacked by another or a number of other persons, and there is an immediate danger for life of the person or persons attacked.

Article 54

Application of fire arms aimed at prevention of escape of the person found in committing the criminal offence for which the prosecution is undertaken by official duty, and for which the prescribed punishment is imprisonment lasting ten years or more severe punishment, is its application during or immediately after the commitment of criminal offence aimed at preventing the escape of person found on the spot or in immediate vicinity where he undertook the actions of committing the criminal offence or where the consequences of such criminal offence occurred, respectively prevention of escape of person who has on him the objects used for committing the act or objects emerged by the commitment of the criminal offence.

Article 55

By use of fire arms aimed at preventing the escape of person that needs to be deprived of freedom, we understand the use of fire arms for prevention of escape of the person for whom it was explicitly said in order for depriving of freedom, respectively the order for retaining, conveying or escort, that police officer may apply fire arms in order to prevent the escape of such a person.

Prior to acting by the order for depriving of freedom, respectively retaining, conveying or escorting the person from Paragraph 1 of this Article, police officer shall warn such person that he shall use the weapon should such person attempt to escape.

Article 56

By use of fire arms aimed at refusing from oneself the immediate attack which imperils the life of police officer, we understand the use of fire arms aimed at refusing the attack by fire arms, dangerous tools or other object by which life may be endangered, attack by two or more persons, or attack on the spot and in time when the assistance may not be expected.

Attack by fire-arms on police officer for the purpose of Paragraph 1 of this Article is also the

very pulling of fire arms or attempt to pull it.

Pulling of fire-arms for the purpose of Paragraph 2 of this Article is the move with fire arms aimed at its bringing or putting into a position for use, and the attempt of pulling is the move made towards the fire arms.

Article 57

Use of fire-arms aimed at refusing the attack on premises or person that are safeguarded, is the use aimed at refusing the immediate attack and during the immediate attack on premises or person that are safeguarded.

Immediate attack on premises that are safeguarded is every action intended to damage those premises or their parts, or preventing the functioning of the premise by its damage, damage of devices in the premise, or in other way.

Immediate attack on person that is safeguarded is every attack by fire-arms, dangerous tools or other object by which a life of that person may be endangered, or attack by two or more persons.

Article 58

Prior to every use of fire-arms police officer is obliged to inform the citizen about it or to warn him by shooting in the air, when that is possible in given circumstances.

When using the fire arms police officer is obliged to keep the life of other persons.

Article 59

If the senior police officer or authorized officer is immediately in charge of performing the official task, fire-arms and other means of coercion shall be used only at his order.

Article 60

Police officer who used, respectively ordered the use of fire-arms is obliged to immediately inform the Minister about that.

Should the Minister assess that the use of fire-arms was illegitimate he is obliged to undertake not later than within 3 days the measures for establishing the responsibility of police officer who used respectively ordered the use of fire arms.

Use of Special Types of Weapons and Explosive Agents

Article 61

It is permitted to use special types of weapons and explosive agents when the requirements from Article 53 Paragraph 2 of this Law were met, provided that the use of other types of weapons was unsuccessful or that it does not guarantee success.

Special weapons and explosive agents are not permitted to use for preventing the escape of persons.

Explosive agents are not permitted to use towards persons in the mass.

Decision on use of special types of weapons and explosive agents shall be passed by Director General of the Police with the consent of the Minister.

Use of Fire-Arms in Pursuing of a Vessel

Article 62

Police officer is authorized to use fire-arms in performing the police affairs on the sea and in internal sailing routes if the pursued vessel does not stop after directed visible or audible invitation to stop from the distance which undoubtedly enables receipt of the invitation.

During the pursuit the crew of pursued vessel may be warned and intimidated by firing a shot in the air, above the vessel.

Should the vessel not stop even after firing shots, it is permitted to use the fire-arms also towards the vessel.

Police officer is obliged to safeguard the lives of the crew of pursued vessel in case from Paragraphs 2 and 3 of this Article.

Article 63

When the means of coercion were used in limits of authority the responsibility of police officer who used them is excluded.

When criminal proceedings are instituted against the police officer because of the use of means of coercion and other activities in performing the work, the ministry shall secure a free of charge legal aid in these proceedings.

Ministry shall secure free of charge legal aid also to the citizen who rendered assistance to police officer, if criminal proceedings were instituted against such citizen because of the action done in connection with rendering the assistance.

13. Use of Somebody Else's Vehicle and Means of Communications

Article 64

Police officer may use the means of communications and vehicle of judicial person or citizen, provided that he may not establish the communication or do the transportation, and in case of:

1. capturing the person who committed a criminal offence who is prosecuted immediately, and
2. transportation to the closest health institution of injured person who was a victim of criminal offence, traffic accident, natural disaster or other misfortune.

In the case of applying the authorities from Paragraph 1 of this Article the police officer shall show his identification.

Owner of means of communication or vehicle used by the police officer is entitled to compensation of costs and damage caused by their use.

14. Collecting, Processing and Using of Personal Data

Article 65

Police collects, processes and uses personal data and keeps records on personal and other data for the collection of which is authorized by this Law with until these data are necessary for

preventing and detecting of criminal offences, economy crime and petty offences and detecting the persons who committed them.

Police officers collect personal and other data in direct contact from persons to whom those data concern and by using of existing data files.

On applying the authority from Paragraph 1 of this Article, if such a way on, they would make impossible or difficult the carrying out of certain duty, police officers are not obliged to inform the person to whom these data concern

Article 66

Regarding police authorities, Police keeps records on:

- persons deprived of freedom for any reason;
- persons for whom there is a justified suspicion that they have committed a criminal offence, petty offence or infringement;
- committed criminal offences for which the prosecution is undertaken by official prosecution, economy offences, infringements and persons injured by these actions;
- inspectional persons and objects , and persons who are prohibited to enter into The Republic of Montenegro;
- checking of person's identity;
- person over whom establishing of identity is performed, dactiloscoped persons, photographed persons and DNA examinations;
- events
- used means of coercion;
- events;
- used means of coercion;
- citizens' petitions concerning the Police work, and
- complaints of citizens regarding the work of the Police, and
- persons, rooms, buildings and installations covered by antiterrorist inspection

Article 67

A person has got the right of inspection into files from the Article 66 of this Law :

- from Paragraphs 1, 4, 6, 9 and 10 immediately upon establishing of the file;
- from Paragraph 2 and 3 after bringing criminal charges, or submitting an application to begin petty offence proceedings ;
- from Paragraph 5 ,after action of identity checking is carried out;
- from Paragraph 7 ,after putting data into files;
- from Paragraph 12, after preliminary investigation proceedings is interrupted or criminal charges are brought

A police officer who is authorized to give information from Paragraph 1 of this Article is obliged to protect the identity of the person who gave the information.

Article 68

Personal data in files from Article 67 of this law are saved in:

- file under Paragraph 1, three years after bringing the decision on further proceedings against the person who is deprived of freedom and after is being released;
- file under Paragraph 2, five years after deadline when rehabilitation comes according to the force of Law under the condition that the person is not again denounced;
- file under Paragraph 3, five years after expiring of prosecuting for committed criminal offence;
- file under Paragraph 4, until finding the person or after establishing that further inspection is unnecessary;
- file under Paragraph 5, two years after procedure of identity checking is performed;
- file under Paragraph 9, ten years after using of coercion means;
- file under Paragraph 10, ten years upon receiving of citizens petitions, and
- file under Paragraph 11, five years after antiterrorist inspection is performed.

Article 69

Personal data can not be collected or used contrary to the scope prescribed by this Law and other Regulations which define the protection of personal data.

Article 70

Personal data which is collected and entered into files must be erased immediately in the case when reasons, more exactly conditions for which s personal data is entered into appropriate file, do not exist anymore and if data are collected contrary to the legal regulations.

Personal data which must be filed and saved as classified archive files is defined by separate Law.

15. Inspection of Persons

Article 71

Police officer is authorized to perform the inspection of person if that is necessary in order to find the objects:

1. which were used or intended to be used for committing of criminal offence, and
2. which appeared during commitment of criminal offence, and are going to be used as evidences in criminal proceedings .

By inspection of person, according to the Paragraph 1 of this Article is meant the inspection of clothing, shoes and personal things.

The inspection of person is performed on the way which does not put under risk his life and

health.

Inspection of person must be performed by the person of the same sex , except for urgent cases, when that is necessary for taking away of arms and objects which are suitable for attacking and self-injuring.

Inspection of the person will be performed on the basis of written Court order, and exceptionally without the Court order, if :

- legitimate suspicion exists , that he keeps with him arms or an object which is suitable for attacking or self-injuring
- a suspicion exists, that he will throw away, hide or destroy object which need to be taken away and can be used as evidence in the crime, petty offence or other proceedings .

If legitimate suspicion exists, that inspected persons holds with him objects which can be used as evidence in the crime and petty offence proceedings, police officer is authorized to detain the person until obtaining warrant for inspection but not longer than six hours.

16. Inspection of Vehicle, Passengers and Luggage

Article 72

Police officer is obliged to perform a inspection of vehicle, passengers and luggage when that is necessary for finding of objects:

1. which were used or intended to be used for commitment of criminal offence, economy crime or petty offence
2. which emerged by the commitment of a criminal offence, economy infringement or petty offence;
3. and which serve as evidence in criminal or other proceedings.

Inspection of mean of transportation for the purpose of Paragraph 1 of this Article means the inspection of all indoor and outdoor spaces, vehicle and object being transported by it.

Inspection of objects which person carries with him, includes objects which are with the person or in his immediate vicinity, or objects of person at whose order they are being transported and escorted by such person.

During inspection police officer can use technical devices and working dogs.

When applying authorities from Paragraph 1 of this Article, police officer is authorized to open by force locked vehicle or object the person has got with him.

If legitimate suspicion exists that inspected person has got with him , in the vehicle or in the luggage , the objects that may serve as evidence in criminal, petty offence and other proceedings, police officer is authorized to detain that person until obtaining the warrant for inspection but not longer than six hours.

17. Inspection of Apartment and Other Premises

Article 73

Police officer performs inspection of the apartment and other premises, searching for persons, objects or traces, based upon Warrant in written form issued by the Court or other body authorized for the performing of petty offence proceedings.

Prior to inspection police officer shall summon the person to whom inspection warranty concerns to benevolently deliver the requested person, or objects.

Inspection cannot be started without prior delivery of Warrant, likewise previous invitation to deliver persons or objects if inspection has to be performed in public premises.

As a rule, inspection is performed by the day and exceptionally by night in case it was started but not completed during the day.

18. Temporary Depriving of Objects

Article 74

Police officer will temporarily, without decision of the competent authority, deprive objects:

- which were used or intended for commitment of a criminal offence, economy crime or petty offence;
- which emerged by committing a criminal offence, economy crime or petty offence;
- which serve as an evidence in criminal, petty offence or other proceedings, and
- which the person deprived of freedom has got with him and may use them for self-injury, attack or to escape.

Police officer shall issue a certificate on temporary deprivation of objects. The certificate shall consist of the description and properties of temporarily deprived object according to which the object differs from the other ones and data on person from whom the object has been taken away.

Article 75

When due to the properties of temporarily deprived objects their safeguarding in the premises of police is not possible or it is significantly aggravated, temporarily taken away objects may be kept or secured in a respective way until the decision of the competent authority.

Following the cessation of reasons for which the objects were temporarily deprived of, provided that the provisions of other Law or decision of competent authority it was not stipulated differently, temporarily taken away objects will be returned to the person they have been taken away from.

Article 76

Police is authorized to sell temporarily deprived objects when the Court or other Authority of Public Administration is not competent for further treatment, provided that :

Objects are in the risk of decay or significant loss of value;

Safeguarding and maintenance of object is connected with disproportionate high risks and difficulties.

Temporary taken away objects can be sold if summoned person does not take them over during defined period of time but not shorter than one month and when the person is informed that the object shall be sold if does not take it over.

Temporarily deprived objects will be sold at the public auction.

If temporarily deprived object could not be sold on the public auction, or if it is obvious that auctions costs are going to be higher than amount obtained by auction or if there is risk of decay, temporarily deprived object will be sold by bargain.

If buyer is not found within one year temporarily deprived objects can be used for public welfare or be destroyed.

Financial resources acquired by selling of temporarily deprived objects are part of income to the budget of the Republic of Montenegro.

19. Depriving of Freedom

Article 77

Police officer is authorized to deprive of freedom a person for whom:

court passed the decision on detention or made an order for conveying;

there is a justified suspicion that he committed a criminal offence for which the detention is obligatory by the Law, and the wanted circular was posted out.

Police officer is obliged to inform the person deprived of freedom in his language or language which he understands about the reasons for depriving of freedom and to get him acquainted about the right not to declare anything.

Depriving of freedom is stipulated by a decision which obligatory consist of: personal data of person being deprived of freedom, time of depriving, grounds for depriving and instruction about the precept on remedy at law.

Decision on depriving of freedom is made by head of organizational unit which is handed to the person deprived of freedom within three hours from the beginning of the depriving of freedom.

Person deprived of freedom may lodge a complaint to Director General of the Police against the decision on depriving of freedom in cases from Paragraph 1 of this Article, within six hours.

Complaint against the decision on depriving of freedom does not stop its implementation.

Director General of the Police is obliged to make a decision about the complaint of person deprived of freedom within six hours from the receipt of the complaint.

At the request by person deprived of freedom police officer is obliged to inform his closest relatives about his depriving of freedom.

Person who is deprived of freedom without legal ground or longer than it is stipulated by Article 79, Paragraph 4 and Article 80, Paragraph 2 of this Law has got the right to compensation the damage.

Article 78

Person deprived of freedom is entitled to defender who is informed about the reasons for his

depriving of freedom and to whom is given the copy of Decision on Depriving of Freedom.

Defender is entitled to be present on hearings of the person deprived of freedom and to undertake all legal actions on behalf of him.

Before hearing of the person deprived of freedom, defender is entitled to perform private conversation with him which can be visually controlled.

Article 79

A person is deprived of freedom for criminal offences for which is prescribed penalty of imprisonment of 10 years or more severe penalty, or if person deprived of freedom is juvenile, blind, mute or deaf or incapable to successfully defend himself and did not personally appoint his defender, or when appointed defender does not come within three hours from summons, police officer will appoint the defender, *ex officio*, from the list delivered by Lawyers Bar of Montenegro.

Ex officio defender will be appointed to the person deprived of freedom for criminal offences for which is prescribed penalty of imprisonment of one year or more severe penalty, and who, because of his economic situation can not bear his defending expenses.

Data on appointing of defender, *ex officio*, will be included in the minutes on hearing of person deprived of freedom.

Police officer is obliged to immediately, and not longer then after 24 hours, escort person deprived of freedom to the examining magistrate or other authorized body.

If person deprived of freedom is escorted to the examining magistrate, at the same time will be brought criminal charges to the authorized magistrate with reasons and exact hour of depriving of freedom.

Article 80

Police officer may exceptionally deprive of freedom a person in order to establish the identity if he can not be identified by ID card checking, and person who disturbs public order and tranquility when there are elements of suspicion that the disturbing of public order and tranquility may continue and when the establishing of public order and tranquility may not be attained in other way or if that endangers the safety of other citizens.

Retaining of persons can not last longer than six hours, and exceptionally, not longer than twelve hours if within this time period it is not possible to establish the identity of the person or deliver him to the Body for petty offence proceedings.

Requirements to be met by the rooms for accommodation of persons deprived of freedom from Paragraph 1 of this Article is set forth by and act of minister.

Article 81

Premises intended for detaining of persons deprived of freedom, must satisfy necessary hygienic conditions and especially concerning the quantity of air, minimal area, lighting and ventilation.

Conditions which premises for the accommodating of persons deprived of freedom must satisfy, from the Paragraph 1 of this Article are established by the Act of Minister.

20. Protection of Injured Witness and Other Persons

Article 82

If legitimate reasons exist, police will, by undertaking the appropriate measures, protect injured witness and other persons who gave or can give information which are important for criminal proceeding or person who is in relationship with mentioned persons if they are endangered by the perpetrator of a crime or other persons.

Article 83

On submitting the written report regarding the contents of information for whose collecting, according the Law, Police is authorized, Police officer may refuse to give information on identity of the person, from whom he received the information if he estimates that by revealing the person's identity he would expose him to the serious life, health danger, or physical integrity danger and thus bring under risk his freedom and propriety.

Data on identity of the source are considered as official secret.

21. Antiterrorist Inspection of Premises, Buildings and Installations

Article 84

Police officers perform the antiterrorist inspection of premises, buildings and installations in order to provide general safety of persons and propriety in certain premises, buildings and installations likewise in traffic in order to provide safety of certain persons, buildings and secret information or for safety of public meetings and performances.

Antiterrorist inspection includes counter-sabotage, chemical-bacteriological-radiological and counter-surveillance inspection.

If endangering of general safety of persons or propriety is expected on certain space, building, area or in traffic, by extremely dangerous devices or means, or that already happened, police officers are authorized to empty the space, building, area or vehicle, forbid the access and perform the inspection directly or by using technical devices.

22. Inspection of Business Books and Other Business

Documentation

Article 85

Inspection of business books and other business documentation is performed if there are elements for suspicion that criminal act is committed or when that is necessary for detecting of criminal act, explaining of state of facts or detecting the traces of criminal act or data which might be useful for the successful implementation of criminal proceedings.

Inspection of business books and other documentation is performed on the basis of the written Court order, authorized body for implementing of petty offence proceedings or without order if there are reasons prescribed by law. Inspection of business books and other documentation by the state authorities is performed only on the basis of written Court order or body which is in charge for petty offence proceedings.

During inspection of business books, police officers are obliged to make official records on

performed inspection into business books and other documentation and to the citizens and juridical persons whose documentation was subject of the inspection they issue a certificate.

CHAPTER IV

POLICE MEASURES AND ACTIONS

Article 86

Police measures and actions , according this Law are :

public posting a reward;

public publishing of photography;

poligraphic testing ;

under cover work, surveillance and shadowing with using of technical devices with the scope of documenting, and

changing o insignias of documents and identity papers

1. Posting a Reward

Article 87

Police is authorized to publicly circulate the award for given information with the scope of :

detecting and seizing the person who committed a criminal act for which law prescribes the sentence of imprisonment longer than five years;

detecting of the person who disappeared;

other justified cases when informations provided by citizens are needed in order to perform activities from Article 4 of this Law.

Circulation of award may be published in media or in other appropriate way.

The person who delivered the information for award cirrculation is not entitled onto award if police already possessed the same information.

2. Public Announcement of Photograph

Article 88

The Police is authorized to publish in public, photographs of person who disappeared and the photograph of person against whom the decision was passed on performing the investigation aimed to establish the person's identity.

3. Polygraph Testing

Article 89

Police officer is authorized to apply polygraph testing over the person from whom the information is requested following the acquainting of that person with the operation of that device and provided that the person gives a written consent.

Police officer is obliged to stop the application of polygraph testing should the person, from whom the information was requested and who gave the written consent, declare to call the same off.

Article 90

The following shall not be subject to polygraph testing:

person who is intoxicated by alcohol, drugs or other psycho-active matters;

person with serious hearth disease;

person in a state of stress;

person who takes medicines for appeasement;

person who demonstrates obvious signs of mental illness or disarrangement;

person who experiences intensive physical pain;

pregnant or woman in childbed.

4. Recording on Public Places

Article 91

Recording on public places means permanent acoustic or video supervision over the public places where the criminal offences, petty offences or infringements are repeatedly committed, with the objective of their prevention.

When there is a danger that on occasion of public meeting endangering life and health of people and property may occur, police officer is authorized to perform recording or photographing of the public meeting.

Police shall publicly announce the intention to perform the activity from Paragraphs 1 and 2 of this Article.

5. Undercover Work, Surveillance and Shadowing with Use of Technical Equipment for Documenting

Article 92

Undercover work and cooperation are approved by Director General of the Police when there is a justified suspicion that the person performed, performs respectively prepares or organizes the commitment of a criminal offence for which the prosecution is undertaken *ex officio*, and hence the application of other authority would be coupled with severe difficulties.

Surveillance and undercover work with using of technical equipment for documenting is approved by Director General of the Police when there is a justified suspicion that the person against whom this authority is being undertaken is performing respectively preparing or organizing the committing of criminal offence for which the prosecution is undertaken *ex officio*.

6. Change of Insignia of Documents and Papers

Article 93

Change of insignia of the documents and papers is approved by Public Prosecutor of the Republic of Montenegro at a justified request by the Director General of the Police for every single case, when there is a justified suspicion that a person committed, commits, in other words, prepares or organizes the commitment of a criminal offence for which the prosecution is undertaken *ex officio*, and when by applying of other authorities it is not possible in order to prevent, detect or prove the commitment of a criminal offence or person who committed it.

Following the cessation of reasons for application of authorities from Paragraph 1 of this Article the authority that issued the paper with changed identification insignia is obliged to cancel it and submit to the General Police Administration.

Article 94

Permission in written form, from Article 93 of this Law shall not last longer than three months and for the justified reasons it may be extended every time for additional three months.

Application of the permission from Article 93 of this Law shall cease following the cessation of reasons for its application.

Should the criminal application not be submitted within six months as of the day of approval of the authorities from Article 41, its further application ceases and such way data are being destroyed.

Article 95

If data obtained by applying of measures from Article 93 and 94 of this Law are not necessary for conducting of criminal proceedings, or if State Prosecutor does not start criminal prosecuting, all collected material, likewise documents with changed insignias, will be destroyed under the supervision of the State Prosecutor and Record will be made about that.

CHAPTER V

LABOR RELATIONS

Application of Regulations

Article 96

Regulations on state employees are applied onto the position, rights, obligations and responsibility of police officers, if by this law and Regulations passed based upon it is not stipulated differently.

Act on systematization of employees posts will be passed onto the proposal of State Secretary with agreement of the Government.

Admission into Service

Article 97

Person who is admitted into Service, besides fulfilling conditions for admission into state

service, must:

1. have at least secondary level of education
2. be younger than 28 years of age, if he is going to be admitted at the employee s post of secondary level of education;
3. have special psycho-physical conditions, proved by doctor s certification from Medical center of Ministry, and
4. and be honest for performing of police jobs.

Person, not convenient for performing of police jobs who is sentenced for criminal offence for personal use or not honest motivations or person who is sentenced for the crime of endangering of traffic on roads under effect of alcohol, drugs or other substances with elements of violence, or other offence, which makes him not honest for performing of police jobs, or person whose attitude, habits or characteristics make him not convenient for performing of such kind of jobs.

Dignity for performing of police jobs is established by security check performed by competent organ.

A person who is going to be admitted into Police, before coming on to work, is obliged to bring document on his material situation.

Article 98

Person whose employment, within the organ of State Administration, or juridical person with public authorities, ceased because of aggravated violation of duty, can not be admitted to perform tasks of the police officer.

3. Official Titles, Professions and Ranks of Police Officers

Article 99

After employment, police officer takes the solemn oath in front of the Director general of the Police.

The text of the Oath says: I solemnly take The Solemn Oath that I will perform the Police tasks on conscientious, responsible, human and legal way and fulfill my tasks and respect citizens freedoms and rights.

Article 100

The employee attains the status of police officer by acquiring his rank.

Police officer attains his rank, depending of professional education, working experience, working post, passed examination and annual work evaluation.

Article 101

The following titles are provided for police officers:

1. policeman - beginning employee;
2. policeman;

3. policeman of the 1st class;
4. senior policeman;
5. senior policeman of the 1st class;
6. inspector;
7. inspector of 1st class;
8. independent inspector;
9. senior inspector;
10. senior 1st class inspector;
11. chief inspector.

Article 102

The following ranks are provided for police officers:

1. corporal;
2. sergeant;
3. sergeant major;
4. lieutenant;
5. captain, for ships officers – commander of vessel;
6. major, for ships officers– commanding officer of ship;
7. brigadier general, for ships officers – commanding officer of unit;
8. division general, and
9. general.

Article 103

Conditions for acquiring of the titles and ranks of police officers likewise those for employees are defined by the Government's regulation

4. Salaries of Police Officers

Article 104

Salary of police officer consist of basic salary and supplement .

Basis for calculating of basic salary of police officer is established in way defined by the regulations on government employees.

Article 105

Value of job complexity coefficient on posts of police officers is defined by Regulation of the Government.

Article 106

Police officers are also entitled to the supplementary salary for titles, successfulness on the work, specific working conditions, risk and responsibility

Supplements from Paragraph 1 of this Article are established in percentage of basic salary of the police officer.

Due to a specific, difficult working conditions, and nature of the work, officials of the Ministry are provided with at least 30% increased resources for salaries as related to the resources provided for the officials of other department of public administration.

5. Beginning employees**Article 107**

The service ceases to the beginning employee for police officer if:

1. he does not pass state examination or examination for the title of police officer in prescribed time limit, and
2. superior officer estimates during the beginning employee's beginning job that he shall not be able to complete the beginning job with success.

Article 108

Having passed the professional examination for work in public administration police officers attain the following titles:

With secondary education:

- policeman;
- policeman of 1st class;
- senior policeman, and
- senior policeman of 1st class.

2. With advanced education:

- inspector,
- inspector of 1st class, and
- independent inspector

3. With university education:

- senior inspector;
- senior inspector of 1st class, and
- chief inspector.

Article 109

After completing beginning job and passing of professional examination, officers of the Special Police Unit obtain the following ranks:

1. With secondary education:

- corporal;
- sergeant, and
- sergeant major.

2. With advanced education:

- lieutenant;
- captain, for ship officers – commander of vessel.

3. With university level of education:

- major, for ship officers – commanding officer of ship.
- brigadier general, for ship officers – commanding officer of unit;
- division general, and
- general.

6. Rights, Obligations and Responsibilities from Officer's Relation

Article 110

At admission to the work, employee of the Ministry is obliged to sign a work contract .

Article 111

Due to aggravated working conditions and nature of performing the activities the experience with social insurance of police officer is calculated with increased lasting so that each 12 months really spent in performing of activities of a police officer is calculated as 16 months of experience with social insurance.

Article 112

At the order of a superior officer a police officer is obliged to perform working activities lasting longer than full working time, if fulfilling of these jobs can not be postponed.

For jobs from the Paragraph 1 of this Article a police officer is entitled to a money award or leave according to the General Regulations on Labor and Collective Contract.

Article 113

Annual vacation of employee to the Ministry may be postponed or interrupted in order to fulfill the employee activities which cannot be postponed.

In case from Paragraph 1 of this Article, employee of the Ministry is entitled to the compensation of real costs caused by the postponing, or interruption of the holiday.

Article 114

Employee of the Ministry must not perform independent entrepreneurial activity.

Article 115

At the proposal by Director General of the Police the Minister may by a decision deprive police officer of application (use) of police authority and charge him with other affairs which correspond to his level of education if he:

1. does not apply police authorities in compliance with this Law and other Regulations passed on basis of this Law;
2. does not act in compliance with Article 8 of this Law;
3. performs the affairs from Article 111 of this Law, and
4. if it is established that he is a member of a political party.

Against the decision from Paragraph 1 of this Law the complaint may be lodged with the Minister.

When the decision from Paragraph 1 of this Article has become absolute police officer is deprived of employee identity card, badge, weapons and the uniform.

Article 116

Police officers must not be members of the political parties nor work politically within the Ministry.

Police officers shall not attend party meetings and other political gatherings, in uniforms, except if they are on duty.

Article 117

Police employee, who was proclaimed by the decision of medical board of the Ministry incapable of performing the activities of police employee due to the disease or injury which occurred in performing his jobs or in connection with performing the jobs, retains the salary and other rights from labor relation until passing the absolute decision on right to a pension, but not longer than three years as of the day of passing the decision on work unfitness.

Article 118

Police officer who loses his life in performing of jobs or in connection with performing of jobs, shall be buried in place determined by his family at the cost of the Ministry.

The costs from the Paragraph 1 of this Article shall include the following:

1. costs of transporting the mortal remains to the place of burial;
2. travel costs for two escorts;
3. costs of funeral outfit and grave place, if the family does not have the grave place.

In case from Paragraph 1 of this Article the family supported by perished police officer is entitled to a single pecuniary assistance in amount of last paid net salary of perished police officer increased for twelve times.

Article 119

The person who assists to the Ministry and on that occasion gets hurt, ill or unable to work, that is not insured on other grounds, enjoys all rights from social security during the treatment, and in case of disability and body damage caused by injury or disease is entitled to all rights from pension insurance at the cost of the Ministry as do the police officers.

The family of the person who suffers bereavement on occasion of rendering the assistance to the Ministry is entitled to the costs defined by Article 113 Paragraph 2 of this Law and a single pecuniary assistance amounting twelve average net salaries of the employees in the Republic of Montenegro in the previous three months.

Article 120

Board nominated by the Minister establishes the circumstances under which the police officer or person who rendered the assistance to the Ministry lost his life, as well as the circumstances under which the persons rendered assistance to the Ministry and consequences that originated on that occasion.

Article 121

Police officers are obliged to protect official data they have learned about in their job or in connection with performing the job.

Official data according to this Law is:

1. every data which was defined by the Law or regulations passed by virtue of the Law as state, military or official secret;
2. data and documents which were defined as business secret by the Law, regulations passed by virtue of the Law and general acts;
3. data and documents designated as employee, respectively business secret by other authorities or juridical persons, and
4. measures, actions, data and sources of information the announcement of which would be harmful for the interest of physical and juridical persons, as well as for successful performing of business activities.

Obligation of keeping the official data lasts even after the cessation of employment in the Ministry.

6. Transfer**Article 122**

For the good of the service, a police officer may be transferred to other employee post within the frame of his professional training, in the same or in different organizational unit of the Ministry, on the same or another working post.

Transfer to another job lasting one year is considered to be a temporary transfer.

Complaint against the decision on transfer does not defer its application

Article 123

Police officer temporarily transferred to the other place of job, which is more than 50 km away from place of residence, is entitled to:

1. Single money compensation amounting his average salary, during last three months, before transfer
2. salary, realized on the previous job, if it is more favorable for him;
3. seven days of paid leave, to visit his family, every three months and compensation of travel costs , for such visits
4. monthly compensation for separate living if he supports his family.

Article 124

Police officer, who is permanently transferred to the other place of work, which is more than 50 km away from his residence, beside rights from Article 123 of this law, is also entitled onto:

Travel and transfer costs, according to the attached bill, and

Suitable accommodation for him and his family, within the

Period of three years since his transfer

Rights from Paragraph 1 of this Article do not belong to the police officer who is transferred at his personal request and police officer transferred during the lasting of obligation resulting from the contract on education.

Article 125

Police officer may be sent to work abroad, on basis of established rules on the international police cooperation.

7. Education, Training and Specialization**Article 126**

Education, training and professional specialization of police officers (hereinafter referred to as: education) is carried out at Training and Specialization Center for officers of the Ministry.

Article 127

Police officer who was educated at the cost of the Ministry is obliged to stay after the successful education in the Ministry two times longer than the time spent on education or to reimburse the costs of education.

Police officer from Paragraph 1 of this Article, who by his fault does not terminate the education, is obliged to reimburse the costs of education.

8. Appraisals, awards and recognition**Article 128**

Work of police officers is appraised until the end of February of current year for the past

calendar year.

A police officer is appraised by a super police officer.

The appraisal is based on data concerning professional knowledge, skill, working discipline, and working characteristics (devotedness, neatness, independence, cooperation and persistence).

Article 129

In order to achieve objective recognition of obtained results and stimulate the success in the work, awards and recognitions, are granted to the police officer.

Awards or recognition of the Ministry are:

1. annual award;
2. special occasion award, and
3. letter of thanks.

Ministry may grant letters of thanks or recognition to units of local government, non governmental organizations and citizens.

9. Disciplinary Action

Article 130

Police officers are disciplinary responsible for violation of the official duty.

Article 131

Superior employee of the Ministry declares the measures of responsibility for minor breaches of employee duties:

1. handling with entrusted means of work contrary to regulations;
2. rude relation towards the parties and associates during the work;
3. missing from the work for certain period of time and leaving the work prior to expiration of working hours;
4. unscrupulous or slovenly keeping of official documents or data;
5. unjustified absence from work up to two days within one calendar year;
6. not wearing or in sloppy wearing of the official uniform or arms.
7. For violation of working duties from Article 1 of this Article a fine may be declared amounting 10 to 30% of monthly salary of the employee obtained in month in which it is being passed.
8. Against the decision on stated disciplinary measure from Paragraph 1 of this Article a complaint may be lodged to the Minister within eight days as of the receipt of the decision.

Article 132

Minister declares the measures of disciplinary responsibility for more serious breaches of official duty:

1. Violation of authorities and abuse of official position
2. disclosing data to unauthorized persons;
3. irregular and use of entrusted specified-purpose means for different purposes;
4. undertaking or failing to undertake any action with the objective of preventing or aggravating the proper functioning of the service;
5. conduct in service or out of the service contrary to the code of conduct and police ethics;
6. consuming of alcohol in working time or coming to work in drunken condition;
7. consuming of drug or other psycho-active substances;
8. putting forward false facts about the service;
9. repeating minor breaches (two or more minor breaches in one year);
10. refusing to execute the employee order or failing to execute employee order or underestimating the orders of the superior issued in performing or on occasion of performing the employee task;
11. arbitrary deserting the working place, place of attentive guard or place of safeguarding certain objects and persons;
12. independent deserting the unit or place determined for readiness;
13. issue or execution of orders by which the safety of people and property are endangered contrary to the Law;
14. failing to undertake or insufficient undertaking of measures for security of persons, property and entrusted objects;
15. every action, respectively failing to perform the action which makes impossible, prevents or aggravates the performing of employee tasks;
16. conduct which harms the reputation of service or damages the relations among the employees;
17. loosing or damaging of technical and other equipment;
18. revealing the employee or other secret set forth by the Law or general act;
19. failing to undertake measures and failing to render assistance, in scope of one's employee duties, to the employees of the Ministry and other necessary assistance to other public administration authorities;
20. obtaining personal and proprietary benefits for oneself or other person in connection with work contrary to Law;
21. dealing with the affairs which are incompatible with the official duty;
22. every action which represents criminal offence performed at work or in connection with

work;

23. issuing orders the execution of which would represent a criminal offence;
24. covering up the execution of a more serious violation of labor duties by the immediate superior, and
25. every form of corruption.

For violations of labor duties from Paragraph 1 of this Article disciplinary measures may be declared:

1. fine amounting 30 to 50% of monthly salary in period of one to three months, and
2. cessation of labor relation.

Against the decision from Paragraph 1 of this Article one may declare a complaint to the Minister within eight days as of the day of receipt of the decision.

Article 133

Disciplinary action for breaches of official duty from Article 131 of this Law shall be instituted by a superior official of the Ministry, and for the breaches of working duties from Article 132 of this Law disciplinary prosecutor at the proposal by a superior official of the Ministry.

Every official is entitled to initiative for the disciplinary action which must be justified.

Article 134

For violations of official duty for which the disciplinary measures are declared by the Minister, the proceeding is carried out and the decision proposed by the disciplinary court nominated by the Minister.

Article 135

For more serious breach of official duty, in addition to disciplinary sanctions stipulated by a general regulation, police officer may also be pronounced a disciplinary sanction of cessation of labor relation conditionally in period of three to twelve months.

Article 136

Police officer may be temporarily removed (suspended) from the service even before the disciplinary action have been started against him due to aggravated breach of official duty, if the breach itself and its consequences are of such character that his staying in service would significantly harm the interests of the service.

During the lasting of the removal, official of the ministry is entitled to compensation of one third of the salary, and if he maintains the family in amount of one half of the salary from previous month.

Article 137

Decision on removal is made by the Minister or by person authorized by him.

Disciplinary court shall make a decision on removal not later than in time limit of eight days as

of the day of instituting the disciplinary action.

Removal may last until the termination of disciplinary action, but not longer than twelve months.

Article 138

Police officer is entitled to a complaint against the decision on removal to the competent court in time limit of eight days as of the day of receipt of the decision.

Article 139

Police officer who has been removed is deprived of official badge, official identification card, weapons and other means entrusted to him for performing the work.

10. Cessation of the Job

Article 140

In addition to cases of cessation of the job by the force of Law stipulated by regulation on government employees, the service of official of the Ministry ceases:

1. when the competent authority establishes his right to pension due to a professional disability for work - as of the day of irrevocability of the decision;
2. when it is learned that the data on meeting the requirements from Article 91 Paragraph 1 items 1, 3 and 4 of this Law are false - as of the day of perception;
3. when he was sentenced for a criminal offence for which the prosecution is undertaken *ex officio*, except for criminal offences referring to traffic safety - as of the day of irrevocability of verdict;
4. if he refuses transfer - as of the day he had to report to a duty;
5. when it has been learned that he has acted contrary to provision of Article 109 of this Law - as of the day of perception of performing the forbidden activity.
6. When two disciplinary measures were proclaimed for more serious breaches of working duties in period of two years, or when five disciplinary measures were pronounced to him for minor breaches of working duties in period of three years.

Decision on cessation of service from Paragraph 1 of this Article is passed by the Minister.

Complaint against the decision from Paragraph 2 of this Article is not permitted.

CHAPTER VI

SUPERVISION AND CONTROL OF POLICE WORK

Article 141

Supervision and control of police work is performed by selected authorities and bodies, judicial institutions, special organizational units of the Ministry and Council for Civil Control over the Work of the Police.

Supervision

Article 142

Supervision of the legality of police work is performed by the Parliament of the Republic of Montenegro, through the competent body to which the general administration of the Police submits annual report on its work.

At the request by a competent body from Paragraph 1 of this Article the General Administration of the Police also submits special reports on specific works and concrete activities from their scope of activity.

Article 143

Members of competent body are obliged to obey the obligations that emerged from the degree of secret and confidentiality of protected data and knowledge to which they come in the proceeding of supervision of the legality of police work.

Internal Control of Police Work

Article 144

Internal control of police work is reformed by General Inspectorate for Protection and Control of Legality of work of Ministry's officials (hereinafter referred to as: General Inspectorate).

Article 145

General Inspectorate of the Police is managed by General Inspector put on a position by the Minister.

General Inspector is responsible for his work to the Minister.

Article 146

The affairs of internal control are:

1. Control of Lawfulness of Police work;
2. Financial control;
3. Supervision over the work of organizational units of the police and other services of the Ministry;
4. Control of Lawfulness and efficiency of the program, operations and measures performed by the police and other services of the Ministry;
5. Control of application of the authority; and
6. Other controls relevant for efficient and Lawful work of the Ministry.

Article 147

On performed control and results of the control General Inspector obligatorily submits the report to the Minister, submitting to Director General of the Police and Director General of the Administration for legal, administrative and affairs of inspection, report on performed control of work from their scope, with a proposal of measures.

Inspector General shall submit to the Minister the report on all issues significant for work of the Ministry, as well as all other information he gains through the control performed, with the proposal of measures.

Article 148

Minister is obliged to submit to the Government an annual report about all issues significant for work of the Ministry and results of the control performed.

Council for Civil the Control of Police Actions

Article 148

Council for civil control of police work (hereinafter: Council), is a professional-advisory body established by the decision of the Minister, the task is to:

assess the application of police authorities aimed at the performing of civil rights and freedoms;
monitor and analyze social role of the police, its Organization, availability of necessary equipment and efficiency aimed sat the performing of protection of citizens rights and freedoms,
and

initiates passing of programmers and measures of prevention for crime control.

Article 149

The Council gives the recommendations and opinions to the competent Parliament body of the Republic of Montenegro from Article 135 of this Law and to the Parliaments of Local Government Units and also may initiate the proceedings before the competent authorities of State administration.

The Council submits annual report to the Minister and special reports for every specific case.

Article 150

In performing the tasks from Article 144 of this Law the Council may be addressed by the citizens and the police officers.

Article 151

The Council consists of the President and four members who are appointed for a five year's term.

Professional associations propose one member each: Lawyers Bar of Montenegro, Medical Association of Montenegro and Association of Lawyers of Montenegro, Ministry of Justice of the Republic of Montenegro and the non governmental organizations.

Article 152

Physical or judicial person may lodge a complaint to head of competent police authority or immediately to Inspector General for Protection and Control of Police Work, when he believes that the police officer violated by his measure or action some right or made harm, not later that six months as of the day of performing of measure or action.

Inspector general, respectively the immediate head to whom the complaint or reproach was addressed, is obliged to perform the checking of the quotations of the complaint or reproach and to inform the person who submitted it about found state of facts and measures undertaken, not later than 60 days as of the day of receipt of complaint or reproach.

If the one who lodged the complaint or reproach has engaged a legal agent, Inspector general will enable him the participation in the proceeding of checking and establishing the state of facts regarding the complaint or reproach.

If the one who lodged the complaint or reproach is not satisfied with the answer of Inspector general, respectively immediate head, he may address the Minister in time limit of 15 days as of the day of receipt of the answer.

CHAPTER VII

FINANCING

Article 153

Means for work of the Ministry are provided in Budget of the Republic of Montenegro.

CHAPTER VII

SPECIAL PROVISIONS

Article 154

Specific health protection of police officers of the Ministry, regularly, is carried out and organized by Health Center of the Ministry, as a Health institution of the Republic of Montenegro.

Health Center also extends primary health protection to police officers of the Ministry and to members of their families and other insured persons, on the basis of their free choice of physicians and institution, as well as other health institutions which meets the requirements set forth for that by the Law.

To Health Center established and organized in compliance with Paragraphs 1 and 2 of this Article general regulations are applied regulating the establishment, activities and managing the health institutions, provided they are not contrary to the provisions of this Law.

Article 155

The Republic of Montenegro is responsible for the harm a police officer of the Ministry makes to third persons, except if it is proved that the police officer has acted according to the regulations on the way of carrying out of police tasks.

Article 156

Minister passes the regulations on mode of carrying out of police tasks and regulations for enactment of this Law within the scope of authorities stipulated by this Law.

CHAPTER IX

AUTHORITIES FOR PASSING THE REGULATIONS

Article 157

Government by its regulation:

1. prescribes the look of the uniform of police officers from Article 18 Paragraph 2 of this Law;
2. prescribes the types of arms and gear of the police officers from Article 19 of this Law;
3. establishes conditions for acquiring of ranks of police officers and conditions for acquiring of titles for officials of the Ministry from Article 98 of this Law;
4. prescribes criteria for establishing the allowances to the salary, their amount and mode of payment from Article 101 of this Law;
5. establishes officials' posts of Ministry's officials for which the duration of period of insurance is calculated in increased duration as stipulated in Article 111 of this Law.

Minister shall pass the regulations on:

1. conditions and mode of rendering assistance aimed at providing the performing from Article 5 of this Law;
2. look of the official badge and official identification card of police officer from the Article 18 Paragraph 1 of this Law;
3. taking along the weapons and ammunition from Article 19 of this Law;
4. mode of application of authorities of temporary depriving of freedom of movement from Article 26 of this Law;
5. mode of checking and establishing identity of persons and objects from Article 30 of this Law;
6. criteria for establishing the level of award from Article 30 and 31 of this Law;
7. mode of application of authority of insight into the business books and other documentation from Article 33 of this Law;
8. mode of application of authority of entering someone's domicile without court decision from Article 37 of this Law;
9. contents and mode of delivering the invitations from Article 43 of this Law;
10. mode of application of authorities of conveying from Articles 46 to 49 of this Law;
11. mode of application of authorities of escorting from Article 50 of this Law;
12. Mode of performing the authority of giving the warning and orders from Articles 51 and 52 of this Law;
13. technical characteristics of means of coercion from Article 53 of this Law and mode of their use;
14. appearance, contents and mode of keeping records from Article 74 of this Law;

15. mode of use of authority for inspection of persons, luggage and vehicle from Articles 81 and 82 of this Law;
16. type of measures and procedure of protection of victims of criminal offences and other persons from Article 88 of this Law;
17. systematization of officials' posts from Article 90 of this Law;
18. designation of type and degree of secret of data, mode of handling the secret data, special protective measures of keeping the secret data and keeping the official data from Article 116 of this Law;
19. conditions and mode of selection of police officer sent to work abroad and his rights, duties and responsibilities during the performing the service abroad from Article 120 of this Law;
20. education, training and professional specialization of police officers from Article 121 of this Law;
21. procedure of assessing and recording the marks of officials of the Ministry from Article 123 of this Law;
22. conditions and procedure of granting the award or recognition to officials of the Ministry from Article 124 of this Law;
23. procedure for establishing the disciplinary accountability of officials of the Ministry from Articles 125 to 134 of this Law;
24. determining health institutions from Article 150 of this Law;
25. mode of performing the internal supervision and control activity from Articles 136-147.

Minister with the consent of minister of health, passes the regulations on personnel and technical conditions of health institutions extending specific health protection to the officials of the Ministry.

The Government and the minister shall pass the regulations from Paragraphs 1 and 2 of this Article not later than six months as of the day of coming of this Law into force.

CHAPTER IX

TRANSITIONAL AND FINAL PROVISIONS

Article 158

Regulations passed on the basis of The Law on Internal Affairs ("Official Gazette of the Republic of Montenegro", issues 24/94 and 29/94), shall remain in force until the enactment of the Regulations the Government and Minister of Interior shall pass by virtue of this Law, provided that they are not contrary to the provisions of this Law.

Article 159

Officials of the Ministry, found in service on the day of coming of this Law into force, continue to work on their former labor posts and retain the titles and salaries according to former regulations, until passing of the decision on taking positions on employee posts according to

Regulation on Internal Organization and Work of the Ministry harmonized with the provisions of this Law, or until passing the decision on making them available.

Persons from Paragraph 1 of this Article, who will take positions to employee posts of police officers, acquire the titles from Article 96 of this Law according to the regulation of the Government.

Persons from Paragraph 1 of this Article, who, as of the day of coming into force of the Regulations on Internal Organization and Systematization of the Ministry, harmonized with the provisions of this Law, performed the activities of authorized official persons according with Law on Internal Affairs (“Official Gazette of the Republic of Montenegro”, issue 24/94), and who will not take positions on employees posts of police officers or be made available, are positioned to employees posts, respectively they are nominated to the positions established by Regulations on Internal Organization and Systematization of the Ministry harmonized with the provisions of this Law and regulations on government employees.

The Government will prescribe by Regulation the titles and positions of persons from Paragraph 3 of this Article and conditions of classification into the salary scales and values of coefficients of complexity of works of employees posts to which they are positioned.

Article 160

Starting from the day of coming of this Law into force, the Law on Internal Affairs (“Official Gazette of the Republic of Montenegro”, issues 24/94 and 29/94) is not in effect.

Article 161

This Law comes into force on the eighth day as of its publishing in the “Official Gazette of the Republic of Montenegro”, and it shall be performed as of January 1st 2002.