

# HUMAN RIGHTS AND LAW ENFORCEMENT

## BOOKLET OF HUMAN RIGHTS FOR POLICE





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## **Booklet of human rights for police**

### **Introduction**

All governing authorities have the obligation to protect the fundamental human rights and freedoms of the people they serve. This is as true for the governmental authorities in Kosovo as any other.

Police authorities, as part of the executive branch of government, have a unique role in society. In having the authority to enforce the law of the land, with force if necessary, the police have a great responsibility to use this authority with due care in order that the rights of all the people are protected. It is many times a delicate balance to maintain, but erring to one side or the other can have devastating consequences for the people affected, whether they are victims, accused, witnesses or bystanders.

In order to demonstrate how human rights protections are applicable in Kosovo, international human rights instruments and provisions from the applicable law in Kosovo have been included in this booklet. The information and legal provisions contained in this booklet have been specifically tailored to the work of the police.

Finally, I would like to thank those staff who contributed to the publication of this booklet, in particular Lumnije Shkodra, the National Court Monitor at the OSCE Office in Gjilan/Gnjilane.

It is my sincere hope that this booklet will serve as a useful reference in your important work. As part of the police force in Kosovo, you play an indispensable role in protecting human rights and maintaining the rule of law.

Henry W. McGowen  
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### **Abbreviations**

- PCPC** - PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO
- PCC** - PROVISIONAL CRIMINAL CODE OF KOSOVO
- JJC** - JUVENILE JUSTICE CODE OF KOSOVO
- ECHR** - CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
- ICCPR** - INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- CAT** - CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
- CRC** - CONVENTION ON THE RIGHTS OF THE CHILD
- CEDAW** - CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
- CERD** - CONVENTION ON THE ELIMINATION OF ALL FORMS OF THE RACIAL DISCRIMINATION

## **Police Investigation,**

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law (Article 5 (1) ECHR)

## **Arrest**

Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of (Article 14 (1) PCPC)

The reasons for his or her arrest; (Article 14 (1) (1) PCPC)

The right to legal assistance of his or her own choice; (Article 14 (1) (2) PCPC) and

The right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest. (Article 14 (1) (3) PCPC)

A person deprived of liberty under the suspicion of having committed a criminal offence shall be brought before a judge promptly and at the latest within 72 hours of the arrest and shall be entitled to a trial within a reasonable time or to release pending trial. (Article 14 (2) PCPC)

A person deprived of liberty enjoys the rights provided for in the present article throughout the time of the deprivation of liberty. These rights can only be waived if such

wavier is made in writing in an informed and voluntary manner. The exercise of these rights depends neither on the possible previous decision of the person to waive certain rights, nor on the time when he or she was notified about these rights. (Article 14 (3) PCPC)

If a person is caught in the act of committing a criminal offence prosecuted *ex officio* or is being pursued, the police or any other person shall be authorized to arrest him or her provisionally even without a court order. The person deprived of his or her liberty by persons other than the police shall be immediately turned over to the police or, where that proves impossible, the police or the public prosecutor must be immediately notified. The police shall act in accordance with Article 211 and 212 of the present Code. (Article 210 PCPC)

The police may deprive a person of liberty if there are reasons for detention under Article 281 paragraph 1 of the present Code, but shall be obliged to bring him or her without delay to a pre-trial judge to rule on detention on remand. (Article 211 PCPC)

Exceptionally the police can arrest and detain a person if: (Article 212 (1) PCPC)

There is a grounded suspicion that he or she has committed a criminal offence which is prosecuted *ex officio*; (Article 212 (1) (1) PCPC)

Arrest and detention is necessary to establish the identity of the person, to check an alibi or to collect information and items of evidence for the criminal offence in question; and (Article 212 (1) (2) PCPC)

There are reasons for detention under Article 281 paragraph 1 subparagraph 2 points (i) and (iii) of the present Code; or there is good reason to fear that the person might destroy evidence of the criminal offence (Article 281 paragraph 1 subparagraph 2, point (ii) of the present Code). (Article 212 (1) (3) PCPC)

The arrest and detention under paragraph 1 of the present article shall be authorized by the public prosecutor or, when due to exigent circumstances such authorization cannot be obtained prior to arrest, by the police who must inform the public prosecutor immediately after the arrest. (Article 212 (2) PCPC)

Upon arrest, the arrested person shall be informed: (Article 212 (3) PCPC)

Orally of the rights set forth in Article 214 of the present Code; and (Article 212 (3) (1) PCPC)

In writing of the other rights which he or she enjoys under the present Code. (Article 212 (3) (2) PCPC)

Detention under the present article may not exceed seventy-two hours from the time of arrest. On the expiry of that period the police shall release the detainee, unless a pre-trial judge has ordered detention on remand. (Article 212 (4) PCPC)

As soon as possible after the arrest and no later than six hours from the time of the arrest, the public prosecutor or an authorized senior police officer shall issue

to the arrested person a written decision on detention which shall include the first and last name of the arrested person, the place, date, and exact time of the arrest, the criminal offence of which he or she is suspected, the legal basis for the arrest and an instruction on the right of appeal. (Article 212 (5) PCPC)

The arrested person shall have the right to appeal a decision under paragraph 5 of the present article to the pre-trial judge. The police and the public prosecutor have a duty to

ensure that the appeal is delivered to the pre-trial judge. The appeal shall not stay execution of the decision. The pre-trial judge shall decide on the appeal within forty-eight hours of the arrest. (Article 212 (6) PCPC)

The arrested person has the right to communicate confidentially with defence counsel orally and in writing. Communications between an arrested person and his or her defence

counsel may be within sight but not within the hearing of a police officer. (Article 213 (3) PCPC)

An arrested person has the following rights: (Article 214 (1) PCPC)

1) To be informed about the reasons for the arrest, in a language that he or she understands; (Article 214 (1) (1) PCPC)

To remain silent and not to answer any questions, except to give information about his or her identity; (Article 214 (1) (2) PCPC)

To be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police; (Article 214 (1) (3) PCPC)

To receive the assistance of defence counsel and to have defence counsel provided if he or she cannot afford to pay for legal assistance; (Article 214 (1) (4) PCPC)

To notify or require the police to notify a family member or another appropriate person of his or her choice about the arrest; (Article 214 (1) (5) PCPC) and

To receive a medical examination and medical treatment, including psychiatric treatment. (Article 214 (1) (6) PCPC)

If the arrested person is a foreign national, he or she has the right to notify or to have notified and to communicate orally or in writing with the liaison office or the diplomatic

mission of the State of which he or she is a national or with the representative of a competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization. (Article 214 (2) PCPC)

An arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. (Article 215 (1) PCPC)

When an arrested person has not reached the age of eighteen years, the police shall notify the legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work. (Article 215 (2) PCPC)

When an arrested person displays signs of mental disorder or disability, the police shall notify a person nominated by the arrested person and the Centre for Social Work about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. (Article 215 (3) PCPC)

Notification of a family member or another appropriate person in accordance with paragraph 1 of the present article may be delayed for up to twenty-four hours where the public prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay if the arrested person is under 18 years of age or displays signs of mental disorder or disability. (Article 215 (4) PCPC)

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. (Article 5 (2) ECHR)

Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. (Article 5 (3) ECHR)

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. (Article 5 (4) ECHR)

Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation. (Article 5 (5) ECHR)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (Article 9 (1) ICCPR)

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (Article 9 (2) ICCPR)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (Article 9 (3) ICCPR)

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (Article 9 (4) ICCPR)

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. (Article 9 (5) ICCPR)

## **Interrogation**

At the first examination the defendant shall be promptly informed, in a language that he or she understands and in detail, of the nature of and reasons for the charge against him or her. (Article 11 (1) PCPC)

The defendant shall not be obliged to plead his or her case or to answer any questions and, if he or she pleads his or her case, he or she shall not be obliged to incriminate himself or herself or his or her next of kin nor to confess guilt. (Article 11 (2) PCPC)

Forcing a confession or any other statement by the use of torture, force, threat or under the influence of drugs, or in any other similar way from the defendant or from any other participant in the proceedings shall be prohibited and punishable. (Article 11 (3) PCPC)

An arrested person has the following rights: (Article 214 (1) PCPC)

To be informed about the reasons for the arrest, in a language that he or she understands; (Article 214 (1) (1) PCPC)

To remain silent and not to answer any questions, except to give information about his or her identity; (Article 214 (1) (2) PCPC)

To be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police; (Article 214 (1) (3) PCPC)

To receive the assistance of defence counsel and to have defence counsel provided if he or she cannot afford to pay for legal assistance; (Article 214 (1) (4) PCPC)

If the arrested person is a foreign national, he or she has the right to notify or to have notified and to communicate orally or in writing with the liaison office or the diplomatic mission of the State of which he or she is a national or with the representative of a competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization. (Article 214 (2) PCPC)

During all examinations by the police, an arrested person has the right to the presence of defence counsel. If defence counsel does not appear within two hours of being informed of the arrest, the police shall arrange alternative defence

counsel for him or her. Thereafter, if the alternative defence counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the public prosecutor or the police determine that further delay would seriously impair the conduct of the investigation. (Article 218 (1) PCPC)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (Article 14 (3) ICCPR)

To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (Article 14 (3) (a) ICCPR)

To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (Article 14 (3) (b) ICCPR)

To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (Article 14 (3) (f) ICCPR)

Not to be compelled to testify against himself or to confess guilt. (Article 14 (3) (g) ICCPR)

#### **Right to Defence Counsel,**

The defendant shall have the right to defend himself or herself in person or through legal assistance by a member of the bar of his or her own choice. (Article 12 (2) PCPC)

Subject to the provisions of the present Code, if the defendant does not engage a defence counsel in order to provide for his or her defence and if defence is mandatory, an independent defence counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant. (Article 12 (3) PCPC)

At the first examination the court or other competent authority conducting criminal proceedings shall inform the defendant of his or her right to a defence counsel, as provided for by the present Code. (Article 12 (5) PCPC)

In accordance with the provisions of the present Code, any person deprived of liberty shall have the right to the services of a defence counsel from the moment

of arrest onwards. (Article 12 (6) PCPC)

The arrested person has the right to communicate confidentially with defence counsel orally and in writing. Communications between an arrested person and his or her defence counsel may be within sight but not within the hearing of a police officer. (Article 213 (3) PCPC)

During all examinations by the police, an arrested person has the right to the presence of defence counsel. If defence counsel does not appear within two hours of being informed of the arrest, the police shall arrange alternative defence counsel for him or her. Thereafter, if the alternative defence counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the public prosecutor or the police determine that further delay would seriously impair the conduct of the investigation. (Article 218 (1) PCPC)

Everyone charged with a criminal offence has the following minimum rights: (Article 6 (3)ECHR)

to defend himself in person or through legal assistance of his own choosing or, if he has not

sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (Article 6 (3) (c) ECHR)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (Article 14 (3) ICCPR)

To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (Article 14 (3) (b) ICCPR)

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (Article 14 (3) (d) ICCPR)

## **Right to fair trial**

Any person suspected or charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time. (Article 5 (1) PCPC)

Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible. (Article 5 (3) PCPC)

The court, the public prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision. (Article 7 (1) PCPC)

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...) (Article 6 (1) ECHR)

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. (Article 6 (2) ECHR)

Everyone charged with a criminal offence has the following minimum rights: (Article 6 (3) ECHR) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (Article 6 (3) (a) ECHR) to have adequate time and facilities for the preparation of his defence; (Article 6 (3) (b) ECHR) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (Article 6 (3) (c) ECHR) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (Article 6 (3) (d) ECHR) to have the free assistance of an interpreter if he cannot understand or speak the language used in court. (Article 6 (3) (e) ECHR)

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (...) (Article 14 (1) ICCPR)

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. (Article 14 (2) ICCPR)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (Article 14 (3) ICCPR)

To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (Article 14 (3) (a) ICCPR)

To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (Article 14 (3) (b) ICCPR)

To be tried without undue delay; (Article 14 (3) (c) ICCPR)

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (Article 14 (3) (d) ICCPR)

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (Article 14 (3) (e) ICCPR)

To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (Article 14 (3) (f) ICCPR)

Not to be compelled to testify against himself or to confess guilt. (Article 14 (3) (g) ICCPR)

### **Presumption of Innocence**

Any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court. (Article 3 (1) PCPC)

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. (Article 6 (2) ECHR)

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. (Article 14 (2) ICCPR)

### **Police as witness in the legal system**

Everyone charged with a criminal offence has the following minimum rights: (Article 6 (3) ECHR) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (Article 6 (3) (d) ECHR)

To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (Article 14 (3) (e) ICCPR)

### **Torture/Violence**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. (Article 3 ECHR)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Article 10 (1) ICCPR)

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. (Article 2 (2) CAT)

An order from a superior officer or a public authority may not be invoked as a justification of torture. (Article 2 (3) CAT)

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. (Article 13 CAT)

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. (Article 14 (1) CAT)

Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law. (Article 14 (2) CAT)

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. (Article 15 CAT)

### **Juveniles**

When an arrested person has not reached the age of eighteen years, the police shall notify the legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work. (Article 215 (2) PCPC)

Notification of a family member or another appropriate person in accordance with paragraph 1 of the present article may be delayed for up to twenty-four hours where the public prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay if the arrested person is under 18 years of age or displays signs of mental disorder or disability. (Article 215 (4) PCPC)

The juvenile justice system shall emphasize the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the criminal offence. (Article 1 (1) JJC)

Minor offenders shall be considered for diversion measures where appropriate. (Article 1 (2) JJC)

Deprivation of liberty shall be imposed only as a last resort and shall be limited to the shortest possible period of time. During deprivation of liberty imposed as a penalty, a minor offender shall receive educational, psychological and, if necessary, medical assistance to facilitate his or her rehabilitation. (Article 1 (3) JJC)

A child participating in criminal proceedings shall be given an opportunity to express himself or herself freely. (Article 1 (4) JJC)

Every child deprived of liberty shall be treated with humanity for the inherent dignity of the human person, and in a manner which takes into consideration the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through the correspondence and visits, save in exceptional circumstances as defined by law. (Article 1 (5) JJC)

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before an independent and impartial court, and to prompt proceedings. (Article 1 (6) JJC)

The child's right to privacy shall be respected at all stages in order to avoid harm being caused to him or her by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a minor offender shall be published. (Article 1 (7) JJC)

In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. (Article 14 (4) ICCPR)

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (Article 16 (1) CRC)

States Parties shall ensure that: (Article 37 CRC)

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (Article 37 (a) CRC)

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (Article 37 (b) CRC)

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (Article 37 (c) CRC)

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. (Article 37 (d) CRC)

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. (Article 40 (1) CRC)

To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: (Article 40 (2) CRC)

No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed; (Article 40 (2) (a) CRC)

Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (Article 40 (2) (b) CRC)

To be presumed innocent until proven guilty according to law; (Article 40 (2) (b) (i) CRC)

To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; (Article 40 (2) (b) (ii) CRC)

To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians; (Article 40 (2) (b) (iii) CRC)

Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; (Article 40 (2) (b) (iv) CRC)

If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; (Article 40 (2) (b) (v) CRC)

To have the free assistance of an interpreter if the child cannot understand or speak the language used; (Article 40 (2) (b) (vi) CRC)

To have his or her privacy fully respected at all stages of the proceedings. (Article 40 (2) (b) (vii) CRC)

The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (Article 40 (3) (a) CRC)

Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. (Article 40 (3) (b) CRC)

### **Right to respect for private and family life**

Everyone has the right to respect for his private and family life, his home and his correspondence. (Article 8 (1) ECHR)

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic

well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (Article 8 (2) ECHR)

## **Discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. (Article 14 ECHR)

States Parties shall accord to women equality with men before the law. (Article 15 (1) CEDAW)

States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. (Article 15 (2) CEDAW)

In compliance with the fundamental obligations laid down in article 2 of this Convention States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (Article 5 CERD)

The right to equal treatment before the tribunals and all other organs administering justice; (Article 5 (a) CERD)

The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (Article 5 (b) CERD)

Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (Article 5 (c) CERD)

Other civil rights, in particular: (Article 5 (d) CERD)

The right to freedom of movement and residence within the border of the State; (Article 5 (d) (i) CERD)

The right to leave any country, including one's own, and to return to one's country; (Article 5 (d) (ii) CERD)

The right to freedom of thought, conscience and religion; (Article 5 (d) (vii) CERD)

The right to freedom of opinion and expression; (Article 5 (d) (vii) CERD)

The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks. (Article 5 (f) CERD)

#### **Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. (Article 13 ECHR)

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (Article 9 (4) ICCPR)

#### **Right not to be tried or punished twice**

No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court, if criminal proceedings against him or her were terminated by a final decision of a court or if the indictment against him or her was dismissed by a final decision of a court. (Article 4 (1) PCPC)

No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been

finally acquitted or convicted in accordance with the law and penal procedure of that State. (Article 4 (1) protocol 7 ECHR)

The provisions of the proceeding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of newly discovered facts, or if there has been a fundamental defect in the proceedings, which could affect the outcome of the case. (Article 4 (2) protocol 7 ECHR)

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. (Article 14 (7) ICCPR)

### **Slavery**

No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (Article 8 (1) ICCPR)

No one shall be held in servitude. (Article 8 (2) ICCPR)

### **Right to compensation**

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. (Article 9 (5) ICCPR)

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. (Article 14 (6) ICCPR)

### **Search warrant**

A search order shall be executed by the judicial police with the necessary assistance

of other police officers within forty-eight hours of the issuance of the order. (Article 241 (1) PCPC)

Before beginning the search, the judicial police shall provide the order to the person against whom the order is directed and such person shall be informed that he or she has the right to contact a lawyer who has the right to be present during the search. (Article 242 (1) PCPC)

If the person requests a lawyer to be present during the search, the judicial police shall postpone the search until the arrival of the lawyer, but no longer than two hours after the lawyer has been informed about the search. In the meantime the judicial police may restrict the movement of the person concerned and other persons in the premises that are about to be searched. In exigent circumstances the judicial police may begin the search even before the expiry of the time limit for the lawyer to arrive. (Article 242 (2) PCPC)

Before beginning the search the judicial police shall ask the person to surrender voluntarily the person or the objects sought. (Article 242 (3) PCPC)

Exceptionally, a search may start without the prior presentation of the order or the prior request for surrender of the person or objects sought if armed resistance is expected, or if the effectiveness of the search is likely to be undermined if it is not conducted instantly and without warning, or if a search is conducted on public premises. (Article 242 (4) PCPC)

During a search of a house or other premises the person whose house or other premises and property is being searched or a representative of such person shall have the right to be present. (Article 243 (1) PCPC)

During a search of a person, a house or other premises, two adult persons shall be required to be present as witnesses. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed. (Article 243 (2) PCPC)

A search of a female person shall only be carried out by a female and only female persons shall be witnesses. (Article 243 (3) PCPC)

The search of residential premises shall be carried out considerately, to avoid disturbing the peace. Locked premises, furniture or other objects may be opened forcibly only if their owner is not present or refuses to open them voluntarily. In opening these objects care should be taken to avoid unnecessary damage. (Article 243 (4) PCPC)

A search of a person may include an intimate search which shall be conducted by a qualified medical doctor or nurse in accordance with the rules of medical science and with full respect for the person's dignity. (Article 243 (5) PCPC)

If a search is conducted on the premises of a public entity, the head thereof shall be invited to attend the search. (Article 243 (6) PCPC)

A record shall be made of each search of a person, house or premises. Such record shall be signed by the person who has been searched or whose premises or property have been searched, his or her lawyer if present during the search and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be confiscated. The objects and documents confiscated shall be entered and accurately described in the record, and the same shall be indicated in the receipt, which shall be immediately given to the person whose objects or documents have been confiscated. (Article 243 (7) PCPC)

If during a search of a person, house or premises objects are found which are not related to the criminal offence which justified the search but which point to another criminal offence prosecuted *ex officio*, these objects shall also be described in the record and confiscated, and a receipt of confiscation shall immediately be issued. A notification thereof shall immediately be sent to the public prosecutor so that he or she can initiate criminal proceedings. The objects confiscated shall be returned immediately if the public prosecutor finds that there are no grounds for criminal proceedings, nor any other legal ground for confiscating the objects. (Article 244 PCPC)

Police may, if necessary and to the extent necessary, enter the house and other premises of a person and conduct a search without an order of the pre-trial judge if: (Article 245 (1) PCPC)

The person concerned knowingly and voluntarily consents to the search; (Article 245 (1) (1) PCPC)

A person is calling for help; (Article 245 (1) (2) PCPC)

A perpetrator caught in the act of committing a criminal offence is to be arrested after a pursuit; (Article 245 (1) (3) PCPC)

Reasons of safety of people and property so require; (Article 245 (1) (4) PCPC) or A person against whom an order for arrest has been issued by the court is to be found in the house or other premises. (Article 245 (1) (5) PCPC)

Evidence obtained by a search shall be inadmissible if: (Article 246 PCPC)

The search was executed without an order from a pre-trial judge in breach of the provisions of the present Code; (Article 246 (1) PCPC)

The order of the pre-trial judge was issued in breach of the procedure provided for by the present Code; (Article 246 (2) PCPC)

The substance of the order of the pre-trial judge was in breach of the requirements of the present Code; (Article 246 (3) PCPC)

The search was implemented in breach of an order of the pre-trial judge; (Article 246 (4) PCPC)

Persons whose presence is obligatory were not present during the search (Article 243 paragraphs 1 and 2 of the present Code); (Article 246 (5) PCPC)

### **Freedom of expression**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (Article 10 (1) ECHR)

The right to freedom of opinion and expression; (Article 5 (d) (vii) CERD)

The right to freedom of thought, conscience and religion; (Article 5 (d) (vii) CERD)

### **Freedom of assembly and association**

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. (Article 11 (1) ECHR)

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. (Article 11 (2) ECHR)

The right to freedom of peaceful assembly and association; (Article 5 (d) (xi) CERD)

## **CRIMINAL OFFENCES AGAINST OFFICIAL DUTY**

### **Abusing Official Position or Authority**

An official person who, with the intent to obtain an unlawful material benefit for himself, herself or another person or a business organization or to cause any damage to another person or business organization, abuses his or her official position, exceeds the limits of his or her authorisations or does not execute his or her official duties shall be punished by imprisonment of up to one year. (Article 339 (1) PCC)

### **Unauthorised Use of Property**

Whoever, without authorisation, uses money, securities or other movable property which have been entrusted to him or her in his or her duty or generally in his or her workplace or which have been made accessible to him or her because of his or her service or work or whoever confers such property on another person for unauthorised use shall be punished by a fine or by imprisonment of up to three years. (Article 342 PCPC)

### **Accepting Bribes**

An official person who solicits or accepts a gift or some other benefit for himself, herself or another person or who accepts a promise of a gift or some other benefit to perform within the scope of his or her authority an official or other act which he or she should not perform or to fail to perform an official or other act which he or she should or could have performed shall be punished by imprisonment of six months to five years. (Article 343 (1) PCPC)

An official person who solicits or accepts a gift or some other benefit for himself or herself or another person or who accepts a promise of a gift or some other benefit to perform within the scope of his or her authority an official or other act which he or she should have carried out or to fail to perform an official act which he or she may not perform shall be punished by imprisonment of three months to three years. (Article 343 (2) PCPC)

An official person who, following the performance or omission of an act provided

for in paragraph 1 or 2 of the present article, solicits or accepts a gift or some other benefit for himself, herself or another person in relation to such performance or omission shall be punished by a fine or by imprisonment of up to one year. (Article 343 (3) PCPC)

### **Giving Bribes**

Whoever confers or promises to confer a gift or other benefit on an official person, sothat such person perform within the scope of his or her official authority an official or other act which he or she should not have performed or fail to perform an official or other act which he or she should have performed or whoever serves as an intermediary in bribing an official person shall be punished by imprisonment of three months to three years. (Article 344 (1) PCPC)

Whoever confers or promises to confer a gift or other benefit on an official person sothat such person perform within the scope of his or her official authority an official or other act which he or she should perform or fail to perform an official or other act which he or she may not perform or whoever serves as intermediary in bribing an official person shall be punished by a fine or by imprisonment of up to one year. (Article 344 (2) PCPC)

When the perpetrator of the offence provided for in paragraph 1 or 2 of the present

article gave the bribe on the request of an official person and reported the offence before it was discovered or before knowing that the offence was discovered, the court may waive the punishment. (Article 344 (3) PCPC)

### **Trading in Influence**

Whoever requests, receives or accepts an offer or promise of any undue advantage for himself, herself or another person in consideration of the exertion of an improper influence by the perpetrator over the decision-making of an official person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result, shall be punished by a fine or by imprisonment of up to two years. (Article 345 (1) PCPC)

Whoever promises, offers or gives, directly or indirectly, any undue advantage to another person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of an official person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result, shall be punished by a fine or by imprisonment of up to one year. (Article 345 (2) PCPC)

### **Falsifying Official Documents**

An official person or a responsible person who, in an official or business document, official register or file, enters false information or fails to enter essential information or with his or her signature or official stamp certifies an official or business document, official register or file which contains false data or enables the compilation of such document, register or file with false contents shall be punished by imprisonment of three months to three years. (Article 348 (1) PCPC)

An official person or a responsible person who uses a false official or business document, official register or file as if it were true in his or her duty or business activity or who destroys, hides, damages or in any other way renders unusable the official or business document, official register or file shall be punished as provided for in paragraph 1 of the present article. (Article 348 (2) PCPC)

### **Unlawful Release of Persons Deprived of Liberty**

An official person who unlawfully releases another person deprived of liberty and entrusted to him or her, aids his or her escape or enables an unlawful connection or correspondence whose purpose is the preparation of escape shall be punished by imprisonment of three months to five years. (Article 350 PCPC)

### **Unlawful Appropriation of Property During a Search or Execution of a Court Decision**

An official person who, during a search of premises or a person or during the execution of a court decision, takes movable property with the intent of obtaining

an unlawful material benefit for himself, herself or another person shall be punished by imprisonment of six months to five years. (Article 351 PCPC)

## List of Human Rights Internet Sites and Web Addresses

OSCE - Organization for Security and Co-operation in Europe	<a href="http://www.osce.org">www.osce.org</a>
UN High Commissioner for Human Rights (Office of UNHCHR)	<a href="http://www.unhchr.ch">www.unhchr.ch</a>
United Nations	<a href="http://www.un.org">www.un.org</a>
Amnesty International	<a href="http://www.amnesty.org.uk">www.amnesty.org.uk</a>
UNICEF	<a href="http://www.unicef.org">www.unicef.org</a>
UNIFEM (CEDAW)	<a href="http://www.unfem.undp.org">www.unfem.undp.org</a>
Council of Europe	<a href="http://www.coe.int">www.coe.int</a>
Human Rights Internet	<a href="http://www.hri.ca">www.hri.ca</a>
ICRC – International Committee for the Red Cross	<a href="http://www.icrc.org/ihl">www.icrc.org/ihl</a>
International Humanitarian Law Kosovo Law Centre	<a href="http://www.kosovolawcentre.org">www.kosovolawcentre.org</a>
Council for Protection of Human Rights and Freedoms, Kosovo	<a href="http://www.albanian.com/kmdlnj/">www.albanian.com/kmdlnj/</a>
Belgrade Centre for Human Rights	<a href="http://www.bgcentar.org.yu">www.bgcentar.org.yu</a>
European Court of Human Rights Homepage	<a href="http://www.echr.coe.int">www.echr.coe.int</a>
IHF – International Helsinki Federation for Human Rights- Homepage Helsinki Committee, Kosovo	<a href="http://www.ihf-hr.org/koshc.htm">www.ihf-hr.org/koshc.htm</a>
Helsinki Committee, Belgrade	<a href="http://www.helsinki.org.yu/">www.helsinki.org.yu/</a>
CARE	<a href="http://www.care.org">www.care.org</a>
Human Rights Watch	<a href="http://www.hrw.org">www.hrw.org</a>



