

**The normative and
practical obstacles to
effective prosecution of
ill-treatment by official
persons**

Bulgaria report

Bulgarian Helsinki Committee
2017

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1. QUESTIONNAIRE

1. 1. Overview of the criminal legal system and regulation of the police

1.1.1. Brief description of the criminal legal system (in about 500 words the most typical characteristics of the criminal process in your jurisdiction and tendencies for change since 2000)

Criminal legal matters in Bulgaria are regulated by a Criminal Code¹ (which sets the main crimes and punishments) and a Criminal Procedure Code (which provides for the procedures for determining guilt/innocence and for imposing punishments).² The court criminal proceeding is three instance proceeding and depending on the type of the crime the first instance can be either district or regional court, the second instance is either regional or appellate court and the third instance is Supreme Cassation Court. There is a respective prosecution office at each court.

The guiding principles applied to criminal process are: independence of the judges, prosecutors and investigating authorities and rule of law,³ equality of all parties before the law and competition of opposing parties,⁴ discovering the objective truth,⁵ inner conviction in issuing a decision of the authorities based on full and objective investigation of all circumstances of the case, ⁶ right to legal aid,⁷ presumption of non-guiltiness,⁸ inviolability (physical integrity) of the detained persons,⁹ direct impression of the evidence by the court, prosecutors, investigating authorities,¹⁰ publicity of the court sessions,¹¹ reasonable time of the proceedings. ¹²

In Bulgaria the judiciary structure corresponds approximately to the administrative division of districts and regions. There are 28 administrative courts, 28 regional courts (with civil and criminal panels in each of them) and 113 district courts (with civil and criminal panels (or judges) in each of them). There are no specialised courts or chambers dealing specifically with areas related to children apart from family chambers or judges

1 Bulgaria, Criminal Code (Наказателен кодекс) (1.05.1968), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/1589654529>.

2 Bulgaria, Criminal Procedure Code (Наказателно-процесуален кодекс) (29.04.2006), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135512224>.

3 Bulgaria, Criminal Procedure Code (Наказателно-процесуален кодекс) (29.04.2006), Art. 10.

4 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 11, Art.12.

5 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 13.

6 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 14.

7 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 15.

8 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 16.

9 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 17

10 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 18.

11 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 20.

12 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 396, para.1, item 3

(within the civil panels in district and regional courts) which deal only with family issues including parental rights over the children in case of divorce.

There are three military courts and prosecution services (in Sliven, Plovdiv, Sofia) dealing with crimes perpetrated by military servants (as of 2015) and police servants (until 2008).¹³ Cases against police servants were transferred to civil courts as it was estimated that some military courts have very low workload and should be closed down. Arguments about better access to justice for the victims in the civilian courts were also raised. The military court has a status of a regional court¹⁴ and its decisions are appealed before the Military Appellate Court in Sofia and its decisions - before the Supreme Cassation Court.¹⁵

The criminal system and proceedings are excessively formal, conservative, complicated and very often too slow. The tendencies during the last five years (2009-2015) are directed towards: achieving more objective, transparent and effective appointment of representatives of the Supreme Judicial Council which manages all matters related to judiciary, ensuring real independence of the judiciary, elaboration of a new Criminal Code, restructuring of the courts because of the significant difference in their workload.

1.1.2. Brief description of how the police and penitentiary system are regulated (structure of the police, basic principles of police conduct and obligations of police officers)

Police activities are regulated by the Ministry of Interior Act which sets the main responsibilities and rights of police officers, the structure of police departments and the disciplinary proceedings rules against police officers.¹⁶ The basic principles of police conduct are: respecting the Constitution, the laws and the international treaties; respecting the rights and freedoms of the citizens and their dignity; publicity; accountability; political neutrality; objectivity; protection of information and sources of information; protection of the officers during the implementation of their duties and cooperation with other state and municipal bodies, citizens and legal entities.¹⁷

The activity of the Ministry of Interior is monitored by bodies provided for in the legislation.¹⁸ The main departments in the Ministry of Interior are: "Internal security", "Migration", "International operational cooperation", "Special courier service", "Bulgarian ID", "National 112 system", and others in charge of international projects.¹⁹ Police bodies are the department "National Police", department "Fighting Organised Crime", department "Border Police" and regional departments.²⁰

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14 Bulgaria, Judiciary Act (Закон за съдебната власт) (7.07.2007), Art. 95, para.2, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135560660>.

15 Bulgaria, Criminal Procedure Code (29.04.2006), Art. 397.

16 Bulgaria, Ministry of Interior Act (Закон за министерството на вътрешните работи) (27.06.2014), available at: <http://www.lex.bg/bg/laws/ldoc/2136243824>.

17 Bulgaria, Ministry of Interior Act, Art. 3.

18 Bulgaria, Ministry of Interior Act, Art. 3.

19 Bulgaria, Ministry of Interior Act, Art. 43a.

20 Bulgaria, Ministry of Interior Act, Art.57.

The penitentiary system is regulated by the Execution of Punishments and Detention Act.²¹

1.1.3. Description of the legal provisions regulating official misconduct (criminalization of ill-treatment torture, sanctions)

There are two ways of imposing sanctions for ill-treatment – disciplinary and criminal. The first ones fall under the Ministry of Interior Act (Art.194-215) and they are imposed when a violation of police officers' duties is identified. Disciplinary sanctions are imposed when the provisions of the Ministry of Interior Act were not implemented and when duties, powers and ethical code rules of the police officers have not been implemented. Disciplinary sanctions are: reprimand, written warning,²² prohibition the person to be raised in position for a period of 1 up to 3 years, warning for dismissal²³ and dismissal. Disciplinary proceedings are opened even in cases when the violation is prosecuted in criminal proceedings.²⁴In the cases when the violation is also a crime the disciplinary sanction is imposed after the sentence in criminal proceedings enters into force.²⁵The Ministry of Interior Act does not require the superior who opens disciplinary proceedings and has suspicions that the violation is a crime to inform the prosecutor.

The second option is imposing a sanction/punishment after initiating a criminal proceeding by the military prosecutor before the military court (until 2008) and by the district prosecutor before the relevant district court (after 2008) under one of the following articles of the Criminal Code:

1. According to Art.142a, para.1 of the Criminal Act whoever **deprives of liberty another person unlawfully** is to be punished with imprisonment up to 6 years. If the deprivation of liberty was perpetrated by a state servant or public person in violation of his/her services/functions the punishment is imprisonment from 2 to 8 years.²⁶ If the deprivation of liberty was against a pregnant woman, minor or adolescent the imprisonment is 3 to 10 years.²⁷ If the deprivation of liberty was perpetrated in a way which is painful or dangerous for the health of the victim or it has lasted more than 48 hours, the imprisonment is 3 to 12 years.²⁸

21 Bulgaria, Execution of Punishments and Detention Act (Закон за изпълнението на наказанията и задържането под стража) (1.06.2009), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135627067>.

22 According to the Ministry of Interior Act, Art. 199, written warning is imposed when the police officer systematically perpetrates insignificant violations of the discipline like arrival at work late, leaving work earlier, bad or incorrect implementation of an order, gaps in studying and implementing the provisions related to his/her job.

23 According to the Ministry of Interior Act, Art. 202, warning for dismissal is imposed when the violations of the work discipline are heavy and they caused significant pecuniary damages to the Ministry of Interior.

24 Bulgaria, Ministry of Interior Act, Art. 194, para. 3.

25 Bulgaria, Ministry of Interior Act, Art. 195, para. 4.

26 Bulgaria, Criminal Code, Art.142a, para.2.

27 Bulgaria, Criminal Code, Art.142a, para.3.

28 Bulgaria, Criminal Code, Art.142a, para.4.

2. According to Art. 131, para.1, item 2 and item 12 of the Criminal Code if a police officer causes **corporal injury** the punishment is 3 to 15 years imprisonment if the injury is severe, 2 to 10 years of imprisonment if the injury is moderate and up to 3 years if the injury is light. The excessive use of force by the police officer would fall under this article. It is the only article that mentions specifically police officers as perpetrators of violence. When the injury was caused by a police officer the crime should be always prosecuted under Art. 131 (as it specifies police officers as perpetrators while they are at work). In cases when there was not any injury but pain and suffering were caused again this is recognized as light corporal injury and the punishment is up to 1 year imprisonment or probation.²⁹ In case the perpetrator of light corporal injury is a civilian he/she should be punished with up to 2 years of imprisonment or probation.³⁰ In case no injury was caused by a civilian apart from pain and suffering the punishment is imprisonment up to 6 months or probation, or fine EUR 50 to 150.

3. According to Art. 143 of the Criminal Code whomever **forces** another person to do, to not do or to suffer something against his/her will by using violence or threats or by misusing his/her power is to be punished with imprisonment up to 6 years.

The Criminal Code provides that a person who perpetrated a crime might be released from criminal prosecution and sanctioned with administrative sanction - fine (BGN 1,000 to 5,000, EUR 500 to 2,500) when all following conditions are at place:

- a) the punishment for the crime is deprivation of liberty up to 3 years or other lighter punishment, when the crime is perpetrated with malice and up to 5 years imprisonment or lighter punishment when it is perpetrated because of negligence;
- b) the perpetrator is not sentenced for a crime prosecuted under the general rules³¹, and was not released from criminal responsibility before;
- c) the pecuniary damages of the crime had been restored.³²

This provision cannot be applied in cases of severe corporal injury or death, when the perpetrator was drunk and when the crime was perpetrated against a person who is representative of an authority (public servant) while he/she was implementing his/her duty.³³

1.1.4. Preventive measures and solutions (analysis with a view to the international standards)

According to the last report of the Committee for the Prevention of Torture (CPT), at the time of the 2015 visit, the only independent outside monitoring body authorised to carry out visits to places of detention was the National Preventive Mechanism (NPM) which,

29 Bulgaria, Criminal Code, Art. 131, para.1, item 12.

30 Bulgaria, Criminal Code, Art.130, para.1

31 Crimes prosecuted under general rules are those that are prosecuted by public prosecutor obligatory (Art.268 of the Criminal Procedure Code). In cases of corporal injuries these are severe and moderate injuries. Light corporal injuries are prosecuted only when the victim initiates the criminal proceedings.

32 Bulgaria, Criminal Code, Art.78a, para.1.

33 Bulgaria, Criminal Code, Art. 78a, para.7.

as the delegation was informed at the outset of the visit, was facing a reduced budget in comparison with the previous year, and was thus only able to carry out a limited number of visits. The CPT delegation also noted that the NPM-related tasks were carried out by the staff members of the Ombudsman's Office who continued to perform other duties such as dealing with complaints. In this connection, reference might be made to paragraph 11 of the Guidelines on national preventive mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in November 2010, according to which: "The necessary resources should be provided to permit the effective operation of the NPM".³⁴

With amendments of the Ombudsman Act (enforced on 11 May 2012) the Ombudsman was empowered to implement the functions of a National Preventative Mechanism under the Facultative protocol of the UN Convention against torture and other forms of cruel, inhuman and degrading treatment or punishment (ratified in 2011 in Bulgaria).³⁵ The Ombudsman has the powers to inform the prosecution offices when he/she has data about perpetrated crime.³⁶ The Ombudsman can act in his/her own initiative when he/she estimates that necessary conditions for protection of the rights and freedom of the citizens are not at place.³⁷ The Ombudsman receives complaints,³⁸ performs checks,³⁹ and replies to complaints,⁴⁰ sends recommendations for restoration of rights,⁴¹ mediates between authorities and victims,⁴² sends recommendations and suggestions for removal of obstacles of protection of human rights.⁴³

In its 2014 report the Ombudsman (after visiting 21 police stations) emphasized again (as in 2012 and 2013) the following problems regarding the detention in police stations: "the lack of sufficient room for detention and its equipment; overcrowding; lack of space; lack of separate sanitary facilities only for the detainees; lack of sufficient access to light and ventilation; lack of cleaning/hygiene materials; different practices in keeping documentation and the way it is reported; different practices in ensuring food; problems in ensuring adequate medical care; the regime during the detention and the access to information about their rights of the detainees." ⁴⁴ In terms of medical care the report

34 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*, p.9, available in English at: <http://www.cpt.coe.int/documents/bgr/2015-36-inf-eng.pdf>.

35 Bulgaria, Ombudsman Act, Art.19, para.1, item 11, section 2 (enforced on 11.05.2012), available at: <http://lex.bg/bg/laws/ldoc/2135467520>.

36 Bulgaria, Ombudsman Act, Art.19, para.1, item 11, section 1.

37 Bulgaria, Ombudsman Act, Art.19, para.1, item 11, section 3.

38 Bulgaria, Ombudsman Act, Art.19, para.1, item 1.

39 Bulgaria, Ombudsman Act, Art.19, para.1, item 2.

40 Bulgaria, Ombudsman Act, Art.19, para.1, item 3.

41 Bulgaria, Ombudsman Act, Art.19, para.1, item 4.

42 Bulgaria, Ombudsman Act, Art.19, para.1, item 5.

43 Bulgaria, Ombudsman Act, Art.19, para.1, item 6.

44 Ombudsman, *2014 Annual Report as National Preventative Mechanism*, p.43, available in Bulgarian at: http://www.ombudsman.bg/documents/NPM_Report_2014_FINAL.pdf.

states that the legislation does not provide for the way in which the medical care should be provided and that the Ministry of Interior and Ministry of Healthcare have no agreement about this which hinders the provision of medical care in practice.⁴⁵

1.1.5. Brief outline of the mechanisms for dealing with ill-treatment and torture (eg.criminal action, civil action, complaints procedures, disciplinary procedures, exclusion of evidence)

A person (including a police officer) may be detained by police officers when: they have data that he/she has perpetrated a crime (Art.72, para.1, item 1); when he/she after being warned hinders the police officers to fulfill their duties (item 2) and when it is impossible his/her identity to be identified (item 4).⁴⁶ A detainee may file a complaint against unlawful detention before the court and the court should issue a decision immediately.⁴⁷

Criminal action - In case of ill-treatment the complainant may ask for a medical doctor while in the police department to examine him/her to register the traumas. Then he/she may use the medical document after being released to file a complaint against the police officers at the local district court under the general order according to the Criminal Code. Even in case he did not ask for a medical doctor and had not been examined he has the right to file a complaint for ill-treatment but it is less likely to be successful.

The victims may also file a complaint for compensation in a criminal proceeding. This should be done until or during the first court hearing of the criminal proceeding takes place.⁴⁸ If there is not any court criminal proceeding opened, he/she has no rights for asking compensation as civil proceedings are always dependent on criminal proceedings and their outcome.

Disciplinary action - The complainant can also file a complaint to the director of the Police Department. During disciplinary proceedings the victim has no rights according to the Ministry of Interior Act.

1.1.6. Special oversight institution (if any)

The only special oversight institution since 2012 is the National Preventative Mechanism which is applied by the Ombudsman's Office.⁴⁹

2. The experience of police ill-treatment and torture in your jurisdiction

2. 1. Statistical data

45 Ombudsman, *2014 Annual Report as National Preventative Mechanism*, p.47-48.

46 Bulgaria, Ministry of Interior Act, Art.72, para 1.

47 Bulgaria, Ministry of Interior Act, Art 72, para.4.

48 Bulgaria, Criminal Procedure Code, Art. 85, para.3.

49 Bulgaria, Ombudsman Act (1.01.2004), Art. 19, para.1, item 11, section 2, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135467520>.

2.1.1. Number of registered ill-treatment and torture cases (ill-treatment, forced interrogation, unlawful detention, torture or other types of relevant crime) broken down by year since 2000 (or later if the data is not available)

Statistical data about the number of perpetrated crimes and proceedings about them is gathered by the National Statistical Institute (NSI). However, the NSI does not gather detailed data about each paragraph of any article of the Criminal Code.⁵⁰ Crimes, perpetrated by police officers are provided for in certain paragraphs of certain articles. In this way there is no unified statistical data at national level about the crimes perpetrated by police officers. The researcher has sent requests to military courts, regional courts and the Ministry of Interior asking about the number of complaints, the number of indictment acts and the number and type of sentences issued.

According to the courts that replied to a special request (42 out of 144) cases about ill-treatment are 212 (for the period 2000-2015, military courts replied for the period 2000-2008, while the civilian courts replied for the period 2009-2015), according to the Ministry of Interior - there were 1,146 complaints (for the period 2000-2015) and cases (both criminal and disciplinary) initiated, out of which 475 for unlawful detention, 483 for corporal injury, 188 for forced interrogation.⁵¹

2.1.2. Statistical information on the outcome of the investigations into complaints of ill-treatment and torture

According to the courts (that replied) out of 212 cases at least 172 were for "light corporal injury" and the outcome is that 101 fines were imposed and 28 police officers were sentenced to conditional imprisonment probably for moderate or severe corporal injury and unlawful detention (the replies do not specify this).⁵²

According to the Ministry of Interior 138 criminal proceedings against police officers were initiated of which 40 were for "light corporal injury" and 4 - for ill-treatment during interrogation (Art. 143); 93 pre-trial criminal proceedings were ceased and one was stopped. Apart from these, 1,099 disciplinary proceedings were initiated because of complaints of detainees. Out of all 1,146 complaints, 97 complaints against unlawful detention were found unreasoned, 158 complaints against corporal injury were found

50 Bulgaria, National Statistical Institute, <http://www.nsi.bg/bg/content/3744/%D0%BF%D1%80%D0%B5%D1%81%D1%82%D1%8A%D0%BF%D0%BB%D0%B5%D0%BD%D0%B8%D1%8F-%D0%BF%D0%BE-%D0%B3%D0%BB%D0%B0%D0%B2%D0%B8-%D0%BE%D1%82-%D0%BD%D0%B0%D0%BA%D0%B0%D0%B7%D0%B0%D1%82%D0%B5%D0%BB%D0%BD%D0%B8%D1%8F-%D0%BA%D0%BE%D0%B4%D0%B5%D0%BA%D1%81-%D0%B8-%D0%BD%D1%8F%D0%BA%D0%BE%D0%B8-%D0%B2%D0%B8%D0%B4%D0%BE%D0%B2%D0%B5-%D0%BF%D1%80%D0%B5%D1%81%D1%82%D1%8A%D0%BF%D0%BB%D0%B5%D0%BD%D0%B8%D1%8F-%D0%B8-%D0%BF%D0%BE-%D0%B8%D0%B7%D1%85%D0%BE%D0%B4-%D0%BD%D0%B0>

51 Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015, signed by Zlatko Todorov.

52 See Annex 1.

unreasonable and 45 complaint against forced interrogation were found unreasonable (altogether 300).⁵³ Out of the rest 846 internal investigations carried out by the directors of police departments the sanctions imposed to police officers were: 3 officers were reprimanded, 18 received written warning, 75 were sanctioned with written warning for dismissal, 7 were sanctioned with prohibition to participate in the contest for raising in their position and 18 were dismissed (altogether 121).⁵⁴The Ministry of Interior does not provide information about the rest 725 cases (presumably they are not related to such violations the research is interested in).

2.1.3. Success rate of prosecutions

This rate could not be estimated by the replies that the courts and the ministry provided. They claim that investigations were opened for each complaint. So this is 1,146 (Ministry of Interior) and 212 (by the courts).

The criminal prosecutions for 15 years (2000-2015) are 138 according to the Ministry of Interior. According around 30 % (42 out of 144) of the courts and not for all 15 years (as they have been working on these cases since 2009), it is 212.

2.1.4. Sanctions for ill-treatment

The sanctions as a result of 1,099 disciplinary proceedings according to the Ministry of Interior are: 3 officers were reprimanded, 18 received written warning, 75 were sanctioned with written warning for dismissal, 7 were sanctioned with prohibition to participate in the contest for raising in their position and 18 were dismissed.⁵⁵ As a result from the criminal proceedings according to the Ministry of Interior 48 officers were sanctioned with fines and 11 - with deprivation of liberty (meaning that the person is sentenced to imprisonment, but the enforcement is suspended).

According to the courts that replied (less than 30 % of all) 101 officers were sanctioned with a fine and 28 – with deprivation of liberty.

2.1.5. Number of perpetrators

The researcher received information about at least 121 police officers disciplinary sanctioned according to the Ministry of Interior, and 59 officers sentenced in criminal proceedings – altogether 180 during the period 2000-2015.

On the other hand the courts that replied (42 out of 144, 4 military courts (3 still operating and one closed down) replied for the period 2000-2009 and 38 civil courts replied for the period 2009-2015) to the request provided information about at least 101 police officers

53 Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015, signed by Zlatko Todorov.

54 Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015, signed by Zlatko Todorov.

55 Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015, signed by Zlatko Todorov.

sentenced with fines and 28 – with deprivation of liberty – altogether 129 sentenced police officers in criminal proceedings.

2.1.6. Significant cases or court decisions

The last cases before the ECtHR against Bulgaria are examples of the regular practice in terms of police brutality and violence. (See also the chapter **Investigation of complaints of torture and ill-treatment, section 1**)

In 2014, ECtHR found one violation of Article 2 of the European Convention on Human Rights (ECHR) (right to life) and a number of violations of Article 3 (protection against torture, inhuman or degrading treatment) in cases against Bulgaria.

In *Dimitrov and Others v. Bulgaria* of 1 July 2014 (application no. 77938/11), the Court found a violation of Articles 2 and 3 of the Convention. The application was filed by the relatives of the deceased Angel “Chorata” Dimitrov in connection with his death, which occurred during police detention in a raid carried out by a regional organised crime unit on 10 November 2005. ECtHR held that facts accepted as proven in the case indicate that Mr. Dimitrov was ill-treated by civil servants and ruled a violation of Article 3 of the Convention. ECtHR decided that the case should be reviewed in the light of Article 2 of the Convention, regardless of the fact that the exact cause of Mr. Dimitrov’s death and the existence of a direct causal relation between the force used against him and his death were being contested. The Court also held that the responsibility of the state under Article 2 may be invoked even when the authorities, while conducting a raid, have not taken all possible measures to avoid or limit the risk of accidental loss of human life. The Court decided that the criminal proceedings did not result in establishing all circumstances related to clarifying the responsibility of the individuals who had caused the victim’s death. It expressed concern with regard to the lack of investigation of the more general picture and with regard to possible attempts on behalf of those involved to cover the incident. The Court recommended a single procedure on the establishment of civil servants’ responsibility in such situations, in order to maintain public trust in justice and refute doubts that the police had wanted the physical elimination of the victim. The Court awarded 50,000 EUR in non-pecuniary damages, a total of EUR 17,000 in respect of the costs and expenses incurred in the domestic proceedings, and EUR 3,681 and BGN 130 in respect of costs and expenses incurred in the ECtHR proceedings.⁵⁶

In the case of *Anzhelo Georgiev and Others v. Bulgaria* of 30 September 2014 (application no. 51284/09), ECtHR held a violation of the substantive and the procedural aspects of Article 3 of the Convention due to the use of excessive force by police officers during a police raid of an Internet service provider on 18 June 2008. The application was submitted by company employees who claimed that during the raid police officers forced them to lie on the ground and then hit and kicked them and even used electroshock batons against some of them. The Court decided that the preliminary investigation had not established the exact circumstances of the incident, the reasons for the use of force by the officers, the degree and the type of the injuries inflicted on the applicants, and that no convincing

⁵⁶ Bulgaria, Bulgarian Helsinki Committee, Human Rights in Bulgaria, 2014, p.9-10, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf.

arguments had been submitted to justify the force used. The Court awarded each of the three applicants EUR 2,500 in non-pecuniary damages.⁵⁷

In the case of *Stoev and Others v. Bulgaria* of 11 March 2014 (application no. 41717/09), ECtHR held a procedural violation of Article 3 due to the fact that the Bulgarian authorities had not conducted an effective investigation of a case of battery, threat of murder and robbery by park wardens of the applicants on 5 December 2000 at an artificial lake at the village of Asparukhovo, near Karnobat. The Court established that the treatment of the applicants was sufficiently severe to fall within the scope of Article 3 of the Convention, and that the authorities had had the obligation to carry out a comprehensive and effective investigation of applicants' claims. ECtHR held that despite the fact that the Bulgarian authorities had initiated criminal proceedings and had carried out certain investigative actions, the duration of the criminal proceedings – more than ten years – is a cause of concern. The authorities had not demonstrated diligence and had not done anything to identify the persons responsible or to find a missing key witness, despite the applicants' requests. Although two of the alleged perpetrators had been identified, the investigation was against an unknown person the whole time. This, as well as the fact that the investigation had been suspended on multiple occasions, allowed it to be terminated in 2011 when the statute of limitations expired. The Court awarded a total of EUR 11,000 in non-pecuniary damages and EUR 1,128 in respect of costs and expenses.⁵⁸

2. 2. Criticism concerning the legal system and practice plus specific issues

(based on CPT reports or other international or national bodies, ECtHR and domestic cases, statistics, analyses, studies, etc. – referenced opinion required)

The last 2015 **Committee of the Prevention of Torture** (CPT) report on Bulgaria states that “the rising number of allegations of deliberate physical ill-treatment of persons detained by the police leads the CPT to conclude that men and women (including juveniles) in the custody of the police continue to run a significant risk of being ill-treated, both at the time of apprehension and during subsequent questioning. Very little progress, if any, has been made as regards guaranteeing the practical implementation of the legal safeguards against police ill-treatment. The vast majority of persons interviewed by the delegation stated that they had not received information about their rights after being detained by the police, had not been able to notify a third party of their custody and had not benefited from the presence and the services of a lawyer from the very outset of their deprivation of liberty. Furthermore, the delegation received a number of allegations that medical examination of persons in police custody was limited to a few general questions; no physical inspection took place, the injuries were usually not recorded and the examination itself was often performed in the presence of police officers, with detainees usually being handcuffed. The CPT reiterates its recommendations that the Bulgarian

57 Bulgaria, Bulgarian Helsinki Committee, Human Rights in Bulgaria, 2014, p.9-10, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf.

58 Bulgaria, Bulgarian Helsinki Committee, Human Rights in Bulgaria, 2014, p.9-10, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf.

authorities take the necessary steps to ensure that legal provisions guaranteeing the safeguards against ill-treatment are applied in practice. Furthermore, the Committee recommends ensuring that medical examination of detained persons and recording of injuries respect the principle of medical confidentiality.”⁵⁹

The CPT also states that “in the report on the 2014 visit, the CPT expressed serious concern about the fact that the vast majority of the Committee’s long-standing recommendations, some of them dating back to the very first periodic visit to Bulgaria in 1995, remained unimplemented. These included recommendations on ill-treatment (both in the police and prison context), inter-prisoner violence, prison overcrowding, material conditions of detention in investigation detention facilities (IDFs) and prisons, prison health-care and staffing levels, as well as discipline, segregation and contact with the outside world. Consequently, the CPT has decided, in the course of its 84th plenary meeting in July 2014, to set in motion the procedure provided for in Article 10, paragraph 2, of the Convention.”⁶⁰

In the light of the facts found during the 2015 visit, a public statement concerning Bulgaria was issued on 26 March 2015.⁶¹ The Committee’s aim in making this public statement was to motivate and assist the Bulgarian authorities, and in particular the Ministries of the Interior and Justice, to take decisive action in line with the fundamental values to which Bulgaria, as a member state of the Council of Europe and the European Union, has subscribed.

Open Society Foundation performs regular monitoring of 80 police departments in the country and issues reports about it. In its last report concerning the period August 2010- May 2011 it concludes that about six of the indicators of the project there was not a solution found since the last similar project had been carried out. These problems are: informing the detained about their rights; keeping the documentation about the detentions; ensuring medical care of the detained persons; ensuring an interpreter of the detained persons; equipment of the rooms for detentions and creating work conditions for police officers. ⁶² The report states that the police officers still do not inform orally sufficiently the detained persons about their rights (p.17-18), the provision of legal aid is still problematic as it is either not ensured from the moment of the detention or the ex officio lawyers on duty refuse to ensure it when called (p. 19), the medical care is also

59 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*, p.5, available in English at: <http://www.cpt.coe.int/documents/bgr/2015-36-inf-eng.pdf>.

60 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*, p.7.

61 The text of the public statement concerning Bulgaria can be found at: <http://www.cpt.coe.int/documents/bgr/2015-03-26-eng.htm>.

62 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011*, 2010-2011, p.4, available in English at: http://www.osi.bg/cyeds/downloads/Grajd_nabljudenie_policia_ENG.pdf.

problematic as it is not clear who should ensure it (p.20-21) and the documentation kept about the detainees still has significant gaps (p.24).⁶³

An interesting finding is that during this monitoring only 3 signals of ill-treatment were identified after 1,035 visits have been performed during a 10-month period of monitoring (p.15).⁶⁴ However the report also states that: "In the period August 2010 – May 2011 custody visitors registered two times less complaints against alleged abuse of force by the police than in the previous phase of the project, which marks an improvement on this criterion. The smaller number of complaints alleging abuse of force however does not necessarily mean that police violence as a whole has declined. An analysis⁶⁵ of the cases of police violence publicized by the media in the last 7 years suggests that: In 2009 and 2010 the cases of police violence reported by the media have increased; Most acts of violence were committed outside police stations, rather than in detention premises (the ratio is almost 4 to 1); In 2009 and 2010 media reported for the first time cases of police violence that happened at people's homes and in police vehicles."⁶⁶

2.2.1. Procedural status of the victim

Is there any concern as to the status of the victims of police ill-treatment? (e.g. rights victims should have but they do not, or the practical shortcomings of the otherwise good-quality legal framework)

Under the Criminal Procedure Code the victim is a person who suffered pecuniary and non-pecuniary damages of the crime.⁶⁷ The rights of the victim during the pre-trial proceedings are: to be informed about all rights during the criminal proceedings; to be protected and his/her relatives to be protected; to be informed about the developments of the criminal proceeding; to participate in the proceedings; to pose questions and objections; to complain against all acts that lead to seizure of the proceeding; to have a lawyer.⁶⁸ The investigating body that initiates the proceeding informs immediately the victim about the proceeding.⁶⁹ The victim's rights can be exercised from the moment he/she asks to participate in the pre-trial proceeding and points out his/her address for notification.⁷⁰

The victim who has suffered damages of a crime which is investigated under the general rules has the right to participate in the court proceeding as a **private prosecutor**.⁷¹

63 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011*, 2010-2011, p.16.

64 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011*, 2010-2011, p.4.

65 The analysis was presented in March 2011 and is available in Bulgarian at: http://osi.bg/?cy=10&lang=1&program=1&action=2&news_id=411.

66 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011*, 2010-2011, p.16.

67 Bulgaria, Criminal Procedure Code, Art. 74.

68 Bulgaria, Criminal Procedure Code, Art. 75.

69 Bulgaria, Criminal Procedure Code, Art. 75, para.2 (adopted on 28.05.2010).

70 Bulgaria, Criminal Procedure Code, Art. 75, para.3.

71 Bulgaria, Criminal Procedure Code, Art. 76.

If criminal proceedings are not initiated by the public prosecutor or the latter refuses to press charges the private prosecutor cannot initiate them by him/herself.

The application for participation in the proceedings as a private prosecutor may be written or oral. It should contain information about the victim and the circumstances on which it is based and should be submitted until the court investigation starts before the first instance court.⁷² The private prosecutor maintains the prosecution together with the prosecutor and may continue do so even after the public prosecutor stops doing that.⁷³ The rights of the private prosecutor are: to be informed about the proceeding and to have copies of the documents; to present evidence; to participate in the court proceeding; to pose questions and objections; to complain against acts of the court when they violate his/he rights and interests (including first instance court sentence).⁷⁴

The victim who has suffered damages of a crime which is investigated only when he/she applies for this is a **private complainant**. He/she may initiate proceeding and maintain prosecution before the court.⁷⁵ The complaint should be written and should contain information about the private complainant, for the person against whom it is submitted and about the circumstances of the crime. A state fee is paid at the submission of the complaint and it could be submitted only within a 6-month period after the victim learned that the crime has been committed or after the victim was notified that the pre-trial proceeding was ceased because the crime is to be investigated only after submission of complaint of the victim (not under the general rules).⁷⁶

The rights of the private complainant are: to read all documents of the proceedings and to make copies of them; to present evidence; to participate in the court proceeding; to pose questions and objections; to complain against all acts of the court that violate his/her rights and interests. He/she might also be constituted as indicter during the court proceeding.⁷⁷

The victim has the right to ask for cooperation of the Ministry of Interior for gathering evidence and data, which he/she cannot do by him/herself.⁷⁸

2.2.2. Investigation of complaints of torture and ill-treatment

1. Is there any criticism as to the independence of the investigation of police ill-treatment or torture cases? If so, please explain the merits of the concerns.

Criticism about the independence and effectiveness of investigation of police ill-treatment and torture cases is indisputable.

A 2011 study carried out by a human rights lawyer Margarita Ilieva, working at the Bulgarian Helsinki Committee, contains a detailed overview of the ECtHR cases about

72 Bulgaria, Criminal Procedure Code, Art. 77.

73 Bulgaria, Criminal Procedure Code, Art. 78.

74 Bulgaria, Criminal Procedure Code, Art. 79.

75 Bulgaria, Criminal Procedure Code, Art. 80.

76 Bulgaria, Criminal Procedure Code, Art. 81.

77 Bulgaria, Criminal Procedure Code, Art. 82.

78 Bulgaria, Criminal Procedure Code, Art. 83.

police brutality against Bulgaria for the period 1998-2010.⁷⁹ According to it 27 decisions were issued by the ECtHR for this period. In two cases the ECtHR could not determine that the violence was perpetrated by police officers as the evidence was not sufficient but convicted Bulgaria for inadequate investigation. In one case the violence was not found significant but convicted Bulgaria for the complete refusal to investigate. In all other 24 cases Bulgaria was convicted for police brutality and the lack of adequate investigation. In 9 cases the 10 detained persons were murdered, in one case a person was shot but not murdered, in 16 cases (where the victims are 20) the violence amounted to torture and inhuman and degrading treatment. In 3 cases the police officers refused to provide lifesaving medical care. Three of the victims are children (14-17), 16 victims are young people (19 to 29) and 4 victims are people at the age 30-36. In three cases the victims are 62 to 72. Eleven of the victims are Roma. The total amount of compensation paid for these cases is BGN 906.000 (EUR 464,615).⁸⁰ In all cases the ECtHR found that the investigation was inadequate and ineffective.

The only human rights NGO (Bulgarian Helsinki Committee) that monitors every year the rates of police violence by interviewing people at the pre-trial detention facilities or prisons presented in its 2014 annual report its findings.⁸¹ In January 2015, BHC researchers interviewed at the Vratsa, Pazardzhik, Lovech and Stara Zagora prisons inmates whose pre-trial proceedings were initiated after 1 January 2013 on the use of force during their detention by the police and their subsequent transfer to police precincts. All prison inmates in the four prisons who were detained at police stations and whose pre-trial proceedings were initiated after 1 January 2013 were interviewed by BHC. They replied to the questions whether they were victims of illegal use of violence by the police. The data from the four studies are presented in the table below in the last column. The other columns refer to previous studies in the same prisons with prison inmates who were detained around 2 years before the interviews – so the data for 2013 refers to police detention that happened in 2011, the data for 2012 refers to detention that happened in 2010 etc. The table presents the comparison about the number of detainees who were interviewed while already in prison about the use of illegal force by police against them at the time of detention and inside the police station. .

	2010	2011	2012	2013	2014
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79 Bulgaria, Margarita Ilieva, *Police violence in Bulgaria through the ECHR's eyes – unlawfulness and lack of punishments* (Полицейското насилие в България през погледа на Европейския съд по правата на човека– безправие и безнаказаност), available in Bulgarian at: <http://policebrutality.bghelsinki.org/about/>.

80 Bulgaria, Margarita Ilieva, *Police violence in Bulgaria through the ECHR's eyes – unlawfulness and lack of punishments* (Полицейското насилие в България през погледа на Европейския съд по правата на човека– безправие и безнаказаност), available in Bulgarian at: <http://policebrutality.bghelsinki.org/about/>.

81 Bulgaria, Bulgarian Helsinki Committee, *Human Rights in Bulgaria, 2014*, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf.

At the time of detention	26.2 %	27.1 %	24.6 %	22.0 %	23.0 %
I n s i d e the police station	17.4 %	25.5 %	18.0 %	23.3 %	22.4 %

In comparison to 2013, the data does not reveal any positive dynamics in the complaints from use of force by police officers during detention and inside the police station where it is completely unacceptable. As a whole, the complaint levels in both cases are very high. According to the data, presented in the table above over 1/3 of detainees who were subsequently sentenced to effective imprisonment were ill-treated either at the time of detention or afterwards, or in both cases. Some cases involve inflicting severe pain with the purpose of coercing information or for punishment, i.e. torture.⁸²

2. Do you think if the investigative body fails to carry out a thorough investigation the available remedies offer effective avenues for the victims to have the perpetrators punished? If not, what are the reasons for the shortcomings?

Certainly an effective remedy is not at place. The reasons are:

- Lack of sufficient number of witnesses (apart from police officers) and lack of provision of protection to them;
- Lack of sufficient safeguards that the rights of the detainee will be implemented;
- Lack of access to quality legal and medical aid of the detainee;
- Lack of real and clear investigation of the claimed allegations of the detainees.

3. Are there any legal provisions prohibiting or limiting psychological ill-treatment or torture (e.g. threatening with ill-treatment or torture, or threatening pre-trial detention if a suspect remains silent)?

A clear and direct prohibition of torture and ill-treatment is not available in the Bulgarian legislation.

According to Art.142a, para.1 of the Criminal Act whoever **deprives from liberty another person unlawfully** is to be punished with imprisonment up to 6 years. If the deprivation of liberty was perpetrated by a state servant or public person in violation of his/her services/functions the punishment is imprisonment from 2 to 8 years.⁸³ If the deprivation of liberty was against a pregnant woman, minor or adolescent the imprisonment is 3 to 10 years.⁸⁴ If the deprivation of liberty was perpetrated in a way which is painful or dangerous for the health of the victim or it has lasted more than 48 hours, the imprisonment is 3 to 12 years.⁸⁵

- According to Art. 131 of the Criminal Code if a police officer causes **corporal injury** the punishment is 3 to 15 years imprisonment if the injury is severe, 2 to 10 years of

82 Bulgaria, Bulgarian Helsinki Committee, Human Rights in Bulgaria, 2014, p.6, available in English at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf.

83 Bulgaria, Criminal Code, Art.142a, para.2.

84 Bulgaria, Criminal Code, Art.142a, para.3.

85 Bulgaria, Criminal Code, Art.142a, para.4.

imprisonment if the injury is moderate and up to 3 years if the injury is light. When the injury was caused by a police officer the crime should be always prosecuted under Art. 131 (as it specifies police officers as perpetrators while they are at work). In cases when there was not any injury but pain and suffering were caused again this is recognized as light corporal injury and the punishment is up to 1 year imprisonment or probation.⁸⁶ In case the perpetrator of light corporal injury is a civilian he/she should be punished with up to 2 years of imprisonment or probation.⁸⁷ In case no injury was caused by a civilian apart from pain and suffering the punishment is imprisonment up to 6 months or probation, or fine EUR 50 to 150.

According to Art. 143 of the Criminal Code whomever **forces** another person to do, to not to do or to suffer something against his/her will by using violence or threats or by misusing his/her power is to be punished with imprisonment up to 6 years.

4. How long does the whole legal procedure typically last (from the day an investigation was launched against officers who have allegedly ill-treated or tortured a victim until the delivery of the final court decision)?

The research is not in a position to gather such reliable information. However, the legal procedures reviewed under the research lasted excessively long (from 4 to 20 years).

2.2.3. Medical examination and medical documentation

1. Is there an obligation for the police officials to examine those detained upon admission or is it carried out only upon complaint/request?

The medical examination is to be carried out **only upon request or when the detained person's healthcare situation requires so**. Formally the right to access to medical care of detained persons in police departments is provided for in Art. 74, para.2, item.3 (v) of the Ministry of Interior Act and Art. 21 of the Instruction 8121з-78 of 24 January 2015 of the Ministry of Interior about the order for detention, equipment of the detention rooms and the order in them (ИНСТРУКЦИЯ № 8121з-78 ОТ 24 ЯНУАРИ 2015 Г. ЗА РЕДА ЗА ОСЪЩЕСТВЯВАНЕ НА ЗАДЪРЖАНЕ, ОБОРУДВАНЕТО НА ПОМЕЩЕНИЯТА ЗА НАСТАНЯВАНЕ НА ЗАДЪРЖАНИ ЛИЦА И РЕДА В ТЯХ В МИНИСТЕРСТВОТО НА ВЪТРЕШНИТЕ РАБОТИ).⁸⁸

Under the Ministry of Interior Act the police officers should issue an order for detention upon admission and to inform the detained person about his/her right to medical care. The detained person signs a declaration where he/she declares that he/she is informed about his/her right and **whether he/she would like to be examined by a doctor** (Art. 74, para.3, Ministry of Interior Act). Under Art. 21 of the Instruction medical examination is to be done upon request of the detained person or when his/her health situation requires so. Request for medical examination may also be submitted by a parent, guardian, lawyer,

⁸⁶ Bulgaria, Criminal Code, Art. 131, para.1, item 12.

⁸⁷ Bulgaria, Criminal Code, Art.130, para.1

⁸⁸ Bulgaria, Ministry of Interior, Instruction 8121з-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them (ИНСТРУКЦИЯ № 8121з-78 ОТ 24 ЯНУАРИ 2015 Г. ЗА РЕДА ЗА ОСЪЩЕСТВЯВАНЕ НА ЗАДЪРЖАНЕ, ОБОРУДВАНЕТО НА ПОМЕЩЕНИЯТА ЗА НАСТАНЯВАНЕ НА ЗАДЪРЖАНИ ЛИЦА И РЕДА В ТЯХ В МИНИСТЕРСТВОТО НА ВЪТРЕШНИТЕ РАБОТИ), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2136426770>.

diplomat (in case the detained person is a foreigner). For each medical examination a document is to be issued by the doctor who carried it out. A copy of this document should be given to the detained person or to his lawyer. The results of the medical examination and the prescriptions should be entered by the police officer on duty in the book for medical examinations and prescriptions and signed by the doctor. If the detained person declared his/her wish to be examined by a doctor upon his/her choice he/she should be given this opportunity and he/she should pay for this him/herself. Police officer may be present at the examination only upon request by the doctor and this should be registered in the medical document and the book. This officer should be the same gender as the detained person.

If the examination shows reasonable doubts about ill-treatment, physical abuse, illegal use of auxiliary means and weapons the police officer who was present at the examination should report in written to the director of the police department.⁸⁹ If the doctor has not requested the presence of a police officer at the examination the officer should stand in front of the door and should be prepared to cooperate and check the detained person after the examination for objects he/she might have obtained during the examination.⁹⁰ If medicines were prescribed to the detained person after the examination he/she takes them under the control of the police officers.

In cases when the healthcare situation of the detained person requires medical examination or when he/she requested it but later refused it, the detained person declares this in written in the presence of the doctor in the medical document. If the detained person refuses to declare this, a witness signs the document to declare his/her refusal to be examined.⁹¹

2. Is there any criticism regarding the possibility of, or the quality of, the medical examination upon admission to a police station? If yes, please explain the concerns raised in this matter.

Yes. A 2011 Open Society Foundation report underlines that medical care of the detainees is problematic especially when they are drug/alcohol addicts.⁹² According to this report when the detained person has no health insurance or permanently resides elsewhere medical assistance is usually provided by the emergency medical centres or the emergency units at the local hospitals as there are not any legal provisions about who should be summoned as a doctor and who should pay for such a visit if the case is not an emergency case.⁹³

89 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 21, para.6.

90 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 21, para.7.

91 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 21, para.9.

92 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011* , 2010-2011, p.4, available in English at: http://www.osi.bg/cyeds/downloads/Grajd_nabljudenie_policia_ENG.pdf.

93 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011* , 2010-2011, p.20.

3. What is the status of the medical doctors examining the victims? Has the status of the medical doctors examining the victims ever been criticized? If so, what is the reasoning of the criticism?

Usually the doctors are either working at the emergency centres or the emergency units at the local hospitals.⁹⁴ Very rarely they are GPs (personal doctors of the detainee). There are also police doctors but no reliable information about their number/share/activities is available.

4. If it is possible for the victim to request a doctor of their own choosing, what is the proportion of examinations carried out by independent doctor?

If the detained person declared his/her wish to be examined by a doctor upon his/her choice he/she should be given this opportunity and he/she should pay for this him/herself.⁹⁵ There is not any public information about what the proportion of these examinations. Presumably it is very low as they are paid and time consuming as the doctors should travel to the place of detention.

5. If it is possible for the victim to request a doctor of their own choosing, is there any evidence that the quality of these examinations is better than those carried out by doctors employed by the police or the penitentiary?

No, no.

Do doctors receive special training on how to document injuries in case of possible or alleged ill-treatment or torture? (i.e. do doctors know which factors will be treated as relevant by the forensic medical experts, the prosecution or the court?)

The regular students who study medicine at the university take an obligatory course (during the 6th or the 5th year) in forensic medicine and deontology (45 hours lectures and 30 hours practice).⁹⁶ The course includes teaching in theory and practice of making examinations, estimating the possible reasons and means of causing trauma or death and the legal aspects of the forensic assessment.

2.2.4. Prosecution by the complainant

1. If it is possible for the victim to act as “prosecutor” under any circumstances (basic rules to be detailed under I.5.), how frequently is this special legal remedy used?

In practice very often the cases that were initiated were initiated because the victim did that and he/she stayed in the role of a private complainant as the majority of the cases identified in the research is of light corporal injury and these cases are only possible to be prosecuted upon a complaint of a private complainant. When the injury was caused by a police officer the crime should be always prosecuted under Art. 131 (as it specifies

94 Bulgaria, Open Society Foundation, *Independent Custody Visiting at Police Detention Facilities 2010–2011*, 2010-2011, p.20.

95 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them, Art. 21, para.4.

96 For example, Schedule at the Medical University, Plovdiv, available in Bulgarian at: http://meduniversity-plovdiv.bg/images/MU_PLOVDIV_TEXT/03MEDICINE_FAC/Programi/2014/medici_-_II.pdf, p.278-286. Also Schedule at the Medical University in Sofia, available in Bulgarian at: http://medfac.mu-sofia.com/sites/default/files/programmes_of_study/plan_credits_practice/2015_16_medicina_ucheben_plan.pdf.

police officers as perpetrators while they are at work). In cases when there was not any injury but pain and suffering were caused, again this is recognized as light corporal injury and the punishment is up to 1 year imprisonment or probation.⁹⁷

In case the perpetrator of light corporal injury is a civilian he/she should be punished with up to 2 years of imprisonment or probation.⁹⁸ In case no injury was caused by a civilian apart from pain and suffering the punishment is imprisonment up to 6 months or probation, or fine EUR 50 to 150.

2. Is there any difference in the success rate of the cases prosecuted by prosecutors as opposed to those prosecuted by (supplementary) private prosecutors?

Definitely. The data gathered by the courts in Bulgaria upon requests shows that the majority of the cases initiated against policemen for ill-treatment are for light injury (around 170). This is a crime prosecuted under personal request of the victim i.e by private complainants. However, there is no data about whether the victims were constituted as such in the proceedings. Data about the share of victims who were constituted as private complainants in cases that are not against police officers is not gathered and publicly available.

The success of the cases for light injuries is disputable as the majority of them were finished with a fine of BGN 500 up to 1200 (EUR 250 to 600) (data was received for 101 fines out of 212 cases, of which at least 172 were for corporal injury). Fine is an administrative sanction applied when the crime is too light to be criminally prosecuted.

On the other hand the other punishments that were probably applied for a moderate/severe injury amount to conditional imprisonment for 1,5 up to 3 years which actually is a lighter one in practice. These punishments are 28 according to the data provided by courts (out of 144 asked 42 replied as of 18 of December 2015) and 11 according to the data provided by the Ministry of Interior.

3. Are there any powers or rights a (supplementary) private prosecutor should have beyond her existing powers?

Yes, the right to prosecute any crime (not only the light corporal injury) perpetrated by police officers instead of the prosecutor and to be entitled to the rights to gather evidence effectively and to participate in all proceedings.

2.2.5. Consequences

1. Is it possible for an officer to continue to be employed as a police officer after they have been found guilty of a criminal offence involving ill-treatment or torture of a person?

Yes, this is the rule even after ECtHR decisions were published. Upon special request for the research the Ministry of Interior replied that during the period 2000-2015 there were 1,099 disciplinary proceedings and 138 criminal proceedings against police officers for ill-treatment. As a result only 11 officers were sentenced to deprivation of liberty and only 18 were dismissed.⁹⁹

97 Bulgaria, Criminal Code, Art. 131, para.1, item 12.

98 Bulgaria, Criminal Code, Art.130, para.1

99 Written reply 812100-88855, Ministry of Interior, dated 26.11.2015, signed by Zlatko Todorov.

The data received from the courts in Bulgaria differs a lot from the data provided by the Ministry of Interior. However, still the majority of the officers found guilty continue to be employed at the same police department.

2. Is there any criticism of the gravity of typical sanctions imposed in ill-treatment or torture cases?

None of the police officers who perpetrated the violence in the ECtHR cases was sentenced effectively. In one case they were sentenced with the shortest possible period of conditional imprisonment (*Nikolova and Velichkova v. Bulgaria*). In the other case in which the police officers were ever accused, the Supreme Cassation Court did not find them guilty for the physical abuse over a 14-years-old boy (as a result of which the child lost one of his kidneys) who the officers recognized wrongly as a “perpetrator” (*Ivan Vasilev v. Bulgaria*). In the third case accused police officers who had to be convicted by the court in fact were not as the proceedings were prolonged and the deadlines for the proceedings were over (*Vasil Petrov v. Bulgaria*). In the fourth case indictment acts were initiated against the police officers but the military court brought them back to the prosecution offices with arguments that the ECtHR did not find valid (*Shishkovi v. Bulgaria*). In the other cases no action was taken against the police officers who had perpetrated the abuse. None of the officers who participated in the abuse in 27 cases has been disciplinary sanctioned either. Some of the officers were even raised in their position (*Nikolova and Velichkova v. Bulgaria*).¹⁰⁰

3. Analysis of the relevant provisions of the legal system with a view to a hypothetical case

3. 1. The facts of the hypothetical case

The complainant was riding his motorbike at 10.00 p.m., when he was stopped by the police for a check of his ID and blood alcohol level. The complainant insisted that he had not committed any violation of the traffic rules, so the police had no legal basis to perform the check on him. The officers told him that if he did not comply with their instructions, they would use coercive measures and take him to the police station. The complainant told the officers that he would undergo the test if his friend, a former police officer confirmed that the officers had the right to perform it without any reasonable suspicion of a violation. He stepped aside and attempted to make the cell phone call to the lawyer, when Officer “A” started to behave aggressively and kicked him. At this stage Officer “B” tried to calm down his colleague.

At this point, the complainant kicked towards one of the officers then tried to run away, and in his attempt to escape he pushed Officer “A” aside. Officer “A” fell to the ground, but officer “B” started to chase the complainant and finally managed to stop him by

100 Bulgaria, Margarita Ilieva, Police brutality in Bulgaria through the ECHR’s eyes – unlawfulness and lack of punishments (Полицейското насилие в България през погледа на Европейския съд по правата на човека– безправие и безнаказаност), available in Bulgarian at: <http://policebrutality.bghelsinki.org/about/>.

grabbing his clothes. The two officers forced the resisting complainant to the ground and handcuffed him. After he was on the ground, they started to hit him. The reinforcement that was called in by Officer "B" arrived and joined their colleagues in beating and kicking the complainant. An officer knelt on the complainant's back, while another forced his truncheon against his neck, thus compressing his throat. The complainant lost consciousness. Eventually, he was driven to the police station. In the police car, two officers sat next to him (one on each side), and slapped him from time to time during the 15-minute drive to the station.

At the police station an alcohol test was administered to the complainant. The complainant was over the legal limit. He was placed in custody until the morning. In the middle of the night he was taken to the basement of the police station, where two officers slapped and hit him and then took him back to his cell. In the morning he was interrogated regarding suspected offences of driving with excess alcohol and attempted violence against a police officer. The officer interrogating him was not one of those involved in the beatings. After the interrogation, he was released.

The complainant suffered the following injuries: a contusion and a haematoma on the right cheek, another over the right eye, a further one behind the right knee, several abrasions and contusions on the chest and the belly, and a brain commotion. The complainant wants action to be taken against the officer in respect of his ill-treatment.

Based on the questions below, please outline the most probable course of action of the investigation into the complainant's claim of police ill-treatment in your jurisdiction. In relation to all the questions please outline the most important legal provisions, and also indicate whether the most probable course of action would be based on these laws and the practice (that may be in line or in contradiction with the law).

Please, indicate the legal basis of your answers in footnotes whenever it is possible.

3. 2. Recording of police action¹⁰¹

1. Would there be a recording of the actions of the police in the street (stopping and apprehension) e.g. through body or dash board cameras?

Most probably no. Under the Road Traffic Act after the police officers gives a signal the driver should stop slowly at the far right lane or where the officer showed to.¹⁰² The minister of Interior determines the services that would control the implementation of the traffic rules and the technical condition of the vehicles and regulate the traffic if needed, keep registers of the persons who violate the rules and their violations and punishments, prevent crashes and other violations.¹⁰³

While implementing their duties these officers may: stop the vehicles; check ID and driving licenses, and all other documents related to driving; take these documents and stop the vehicle if the driver seems like he/she has taken alcohol or other drug,¹⁰⁴ take the person in the police department when he participated in a road accident when this is needed for the accident to be investigated,¹⁰⁵ use recording systems to prove the exact time and place of the violation,¹⁰⁶ designate places of control of the implementation of the rules by placing signs or video-monitoring (adopted in 2008),¹⁰⁷ designate such places and informing publicly by using mass media or the website of the Ministry of Interior that certain part of a road would be monitored (2015).¹⁰⁸ For ensuring safety of the traffic the following measure can be applied: temporary taking away of the driving license of a person for whom it is estimated that he/she does not meet the medical and psychological criteria for being a driver; who drives with over 0.5 thousandth alcohol estimated with medical examination or a device and also at a refusal to be checked with device and to give blood for examination – up to the point when the issue is solved but not longer than 6 months.¹⁰⁹ Body and dash cameras are used in Bulgaria, but there is not any publicly available information about the number of places they are used.

101 For the purpose of this research 10 persons had been interviewed during the period 15 October-15 November 2015. Five of them are human rights lawyers, 2 of them are forensic doctors, 2 are criminal judges in Regional and District Court, 1 is district prosecutor. The human rights lawyers have experience of 6 up to 25 years with such cases and one of them has been a judge for 5 years before becoming a lawyer. The judges have 16 years of experience in the second largest city, the prosecutor has also 16 years of experience. One of the forensic doctors has been working for 20 years with human rights lawyers in researching and providing expertise in police brutality cases and the other one has 10 years of experience in such cases.

102 Bulgaria, Road Traffic Act, Art. 103.

103 Bulgaria, Road Traffic Act, Art. 165, para.1, items 1,2,6,7.

104 Bulgaria, Road Traffic Act, Art. 165, para.2, items 1,2,3,4.

105 Bulgaria, Road Traffic Act, Art. 165, para.2, item 5.

106 Bulgaria, Road Traffic Act, Art. 165, para.2, item 6. The law does not specify the type of recording. The aim of the recording is definitely monitoring of the violations of the traffic rules and not the police actions. However, as in practice this is done by video recording it is possible that it would provide evidence for violations against civilians performed by police officers.

107 Bulgaria, Road Traffic Act, Art. 165, para.2, item 7.

108 Bulgaria, Road Traffic Act, Art. 165, para.2, item 8.

109 Bulgaria, Road Traffic Act, Art. 171.

2. Would there be a recording of what happened in the police car?

No.

3. Would there be a recording of what happened in the custody cell and in other parts of the police station?

According to the interviewees no, as the violence happens always where there are not any cameras. And if there is some recording it would be "lost" immediately. According to the 2014 Ombudsman's report as National Preventative Mechanism as a result of their monitoring in 21 police stations they put accent on the need of installing signal systems in the places of detention as they would ensure the safety of the detainees. The report states that there are still places of detention where no video monitoring system is installed. ¹¹⁰

According to the law the persons placed in the detention rooms should be monitored constantly – directly or via a system of video-monitoring and they should be informed about this in advance.¹¹¹ After an assessment of the system for physical protection in detention rooms and along the way for detention of the persons and at the entrances cameras should be installed to produce mandatory video-recording and to ensure security. ¹¹²

4. Would there be a recording of the interrogation?

Under the Ministry of Interior Instruction the rooms for interrogation should be equipped with devices for audio and video recording which is mandatory used to allow control of the detainees' behavior in terms of implementation of the internal rules order and his/her rights. ¹¹³ The recordings are to be kept in the department for 30 days. ¹¹⁴

Under Art. 237 of the Criminal Procedure Code (enforced on 28.05.2010) in the written protocol of the interrogation all data from the interrogation should be entered and the detained should sign it to verify that everything stated there is true.

However, the interviewees had not heard or seen any video and audio recording of interrogations of detainees in practice.

5. Would outsiders (e.g. people walking on the street) be entitled to record the police action by their cell phones or other suitable equipment? Would the person subject to the measure be entitled to do so?

According to Art.32 of the Constitution of the Republic of Bulgaria, there is a prohibition of filming, making pictures and recordings of the actions of a citizen without his/her notification and consent. In this case the police officers are public figures and thus they

110 Bulgaria, Ombudsman, 2014 Annual Report as National Preventative Mechanism, p.44.

111 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 37, para.2.

112 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 63.

113 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 75, para.1, item. 4.

114 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 75, para 2.

might be recorded without any consequences for the persons who do this. However, in practice, in this case it is likely that the phone of the victim would be taken and the pictures – erased.

6. With regard to all the different types of recording above: would it be possible for the officers to turn off the cameras at any point? If there would be a recording, for how long would it be kept and would the authority investigating the ill-treatment claim and the victim have unhindered access to it?

Yes, it is possible and more likely that the police officers turn off the cameras. According to the law the recording should be kept for 30 days and the investigating authority and the victim should have unhindered access to it.

Under Art. 238 both upon request of the detained person and the investigating authority an audio recording of the interrogation can be done about which the detained person is to be informed before the interrogation.¹¹⁵ Audio-recording of part of the interrogation or repeating of part of the interrogation for the purpose of audio recording is prohibited.¹¹⁶ After the interrogation the audio recording should be heard by the detained person. Additional explanations and testimonies are reflected by audio-recording and the interrogated person confirms at the end that it reflects accurately his testimonies.¹¹⁷ The investigating authority should produce a protocol about the interrogation even when there is an audio-recording which should include the informing of the detained person about the audio-recording.¹¹⁸ The recording is attached to the protocol and a note is issued with information about the number of the case, the names of the investigating person and the detained person, the date of the interrogation and this note is signed by both persons.¹¹⁹ The audio-recording might be heard only for the purpose of the investigation with permission of the prosecutor and in the presence of the detained person and after each hearing it has to be sealed again.¹²⁰ Both the written protocols and audio-recordings contain personal data: three names of the detained person, date and place of birth, citizenship, nationality, education, family status, employment, place of residence, place of work.¹²¹ The same procedure is followed in preparing a video-recording.¹²²

However, the interviewees had not heard or seen any video and audio recording of interrogations of detainees in practice.

3. 3. Medical examination and medical documentation

1. Would the complainant always be examined by a doctor upon admission to the police station or at any other time (e.g. what happens if he complains that he was beaten up during the interrogation)?

115 Bulgaria, Criminal Procedure Code, Art. 238, para.1.

116 Bulgaria, Criminal Procedure Code, Art. 238, para.3.

117 Bulgaria, Criminal Procedure Code, Art. 238, para.4 and 5.

118 Bulgaria, Criminal Procedure Code, Art. 239.

119 Bulgaria, Criminal Procedure Code, Art. 239, para.3.

120 Bulgaria, Criminal Procedure Code, Art. 239, para.4.

121 Bulgaria, Criminal Procedure Code, Art. 237, Art. 238, para.2.

122 Bulgaria, Criminal Procedure Code, Art. 240.

No. The medical examination is to be carried out **only upon request or when the detained person's healthcare situation requires so**.¹²³ Under the Ministry of Interior Act the police officers should issue an order for detention upon admission and to inform the detained person about his/her right to medical care. The detained person signs a declaration where he/she declares that he/she is informed about his/her right and whether he/she would like to be examined by a doctor.¹²⁴ Under Art. 21 of the Instruction medical examination is to be done upon request of the detained person or when his/her health situation requires so. Request for medical examination may also be submitted by a parent, guardian, lawyer, diplomat (in case the detained is foreigner).

The 2014 Ombudsman report as National Preventative Mechanism the medical care of detainees is an issue of serious concern as there is not any agreement between the Ministry of Healthcare and the Ministry of Interior and the medical examinations are performed by emergency units or doctors from the local hospitals but the examinations are superficial and formal.¹²⁵ According to the Ombudsman the detainees are well informed about all their rights.¹²⁶

According to the interviewed doctors¹²⁷ either the examination would be formal or the record would be formal.

2. Would he have to ask for it, or is it mandatory?

He has to ask for it by filling in the declaration. And according to the interviewed doctors the detainee should insist strongly to be examined objectively in practice. An exception from this rule is when there is a possible "institutional conflict" – when the detainee would be transferred or was transferred from another police department, prison or pre-trial detention facility. Then the examination is done almost in all cases.

3. If a medical examination would take place, would it be by a doctor employed by the police or would it be in an independent civilian health care institution? Would it be possible for the victim to request to be examined by a civilian doctor or be transferred to a civilian hospital for the purposes of the examination?

Different police departments have different practice. It is more likely that the detainee would not ask for an examination (judging by the declarations filled). If he asks for it, the examination would be most likely performed by doctors working at the local emergency centre (and he would be transferred there) or a doctor employed by the police. The least possible option is that the detainee asks for a doctor by his choice and is examined by him/her.

4. Would someone from the police be present at the examination? If yes, would it be those officers who have apprehended the complainant, or different officers? Would the complainant or the doctor have the right to request that police officers escorting the complainant to leave so that they were out of sight and/ or hearing?

123 Bulgaria, Ministry of Interior Act, Art.74, para. 2, item 3 (v), and Art. 21 of the Instruction 81213-78 of 24 January 2015 of the Ministry of Interior about the order for detention, equipment of the detention rooms and the order in them.

124 Bulgaria, Ministry of Interior Act, Art.74, para.3.

125 Bulgaria, Ombudsman, 2014 Annual report as National Preventative Mechanism, p. 47.

126 Bulgaria, Ombudsman, 2014 Annual report as National Preventative Mechanism, p. 48.

127 The doctors work as forensic doctors and are not employed by the police.

According to the interviewees someone from the police would be more probably present. The only provision concerning the presence of the police officer during the examination provides that it is allowed **only** upon request of the doctor. This means that if the doctor does not request for such a presence the police officers should not be present.

5. If there would be a medical examination, would the doctor ask the complainant about the reason for his injuries and would he/she be likely to record the injuries accurately?

Most probably the doctor would ask the complainant, but the record is very less likely to be done accurately in practice. The record depends on the competence of the doctor and the level of his/her relationship to the police officers. The most probable option is that the record would reflect more accurately the explanations of the police officers.

6. Would the doctor record what he/she thinks to be the most plausible origin of the injuries if that differs from what the complainant states (e.g. if the complainant is afraid to tell what has happened)?

No. Usually the doctors would record what the detainee states and what the police officers state.

7. Would photographs be taken by the doctor or by another member of the relevant law enforcement agency of the injuries of the victims?

No. There is no such practice or obligation.

8. Would the doctor forward the medical documentation to the prosecutor (or to any other entity responsible for the investigation of police brutality) if
- a) the complainant complained of ill-treatment,
 - b) injuries are detected but the complainant did not allege to have been subject to ill-treatment?

In the general case no. If the doctor is independent he might deliver the document of the examination to the detainee. In this regard there is a discrepancy between the law and the practice.

9. Would the complainant receive a copy of the medical files? If so, would it be free of charge?

The detainee might receive a free of charge copy of the medical file if the doctor who examined him is close to the police officers (as the file would contain information that is "comfortable" for the police). However, the content of this file would be disputable according to the interviewed forensic doctors. In the rest of the cases, according to the interviewed lawyers the detainee could receive his medical file if he especially requests for this and insists. In most cases he would not receive the file (this applies to files produced both by police and civilian doctors).

10. Could the complainant submit opinions by experts commissioned by them, or is only the opinion of the expert appointed by the investigating authority taken into account?

He could submit opinions if he is constituted as a private prosecutor or private complainant by the investigation authority.

11. Would the forensic opinion be conclusive as to the decision of the court, i.e. is it required for the expert to establish that what the complainant said about the way the injuries had been sustained were true beyond reasonable doubt for the court to sentence the suspect, or is it enough if the forensic expert opinion provides that it is possible that the victim's story is true?

It is more likely that the forensic opinion would have a leading (dominant) evidence force (compared to some testimonies of witnesses pointed out by the complainant for example), especially when there is no other opposing forensic opinion. It is enough if the forensic expert opinion provides that it is possible that the victims' story is true.

12. Could the complainant be prosecuted (e.g. for "false accusation") for telling the doctor that he has been ill-treated if the accused officers are acquitted or the criminal investigation is terminated for want of evidence?

Yes, it is likely. The crime is regulated in Art. 286 of the Criminal Code.

3. 4. Right to a lawyer

1. Would the complainant have a right to a lawyer whilst in police detention?

The right to access to a lawyer is provided for in Constitution, Ministry of Interior Act, the MIR Instruction in case of detention and the Criminal Procedure Code.

The Constitution provides that everyone has the right to a lawyer **from the moment of his/her detention or the moment when he/she is accused**.¹²⁸ And it further provides that the meetings between the detained/accused and the lawyer and their communication should be private.

The interviewees are of the opinion that the detainee would have access to a lawyer if and when he is accused. In the meantime he might be interrogated as a witness without a lawyer.

2. Would the complainant's lawyer be present at the interrogation from the very first moment of the interrogation?

The Ministry of Interior Act provides that the **detained person has the right to access to a lawyer from the moment of his/her detention**.¹²⁹ The detained person has to declare whether he/she would like to exercise this right or not in a declaration which is to be signed together with his/her detention order. Every detained person immediately after detention is informed about his/her right to access to lawyer.¹³⁰ If the person expresses wish to have access to lawyer, he/she declares this in written and the declaration is kept in his file at police and one copy of it is to be given to him/her.¹³¹ If the detained person declared this wish, legal aid is to be **provided either by a lawyer he specifically chose**

128 Bulgaria, Constitution of the Republic of Bulgaria, Art. 30, para.4, available in Bulgarian at: <http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?g=&n=4&p=0034&s=001>.

129 Bulgarian Ministry of Interior Act, Art. 74, para.2, item 6 (b).

130 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 15, para.1, item 2.

131 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 15, para.2.

whom he/she would pay or by an ex officio lawyer under the Legal Aid Act.¹³² In a visible place at each police department a list of lawyers on duty and the Legal Aid National Bureau contact details should be put.

If the detained person would like to receive legal aid under the Legal Aid Act the police officer on duty should inform immediately on the phone lawyer chosen by the detainee and report the details about the detention of the person.¹³³ The exact time when the lawyer is informed should be written in the declaration that the detained person fills in. The exact time when the lawyer came in the police department is to be entered in the book for visits kept there.¹³⁴ In 2011 the Prosecutor General issued an Instruction about the actions of the pre-trial proceedings bodies towards lawyers (Инструкция на главния прокурор относно действията, които могат да извършват органите на досъдебното производство по отношение на адвокати).¹³⁵ According to Art. 7 of this Instruction the access to a lawyer should be carried out in a separate room immediately after the detention which means 2 hours after the detention and before the first interrogation. The lawyer should be ensured with immediate access to the detainee within 30 minutes after he/she appeared in the place of detention (Art.8).

Under the Criminal Procedure Code the lawyer may participate in the criminal proceedings either at the moment of detention or when the detainee is accused.¹³⁶ The investigation authority is obliged to inform the accused that he/she has the right to lawyer and ensures the direct contact between the accused and the lawyer. The detained person is likely to have a lawyer if he/she asks for a lawyer, this is duly documented and it is daytime. The problem in practice is that the detainees are not always informed about the right to a lawyer and their request is not documented properly (sometimes the police officers just dictate to the detainee to fill in the declaration with “no” in the fields where they need to ask for a lawyer, doctor, third person to be informed to avoid bigger workload). The other problem is that the detained person could be detained for several hours without any accusation but because there is “data that he had committed a crime” that is not presented to him/her. This may not be documented at all by the police officers and the detained person would be released without having the opportunity to prove that he/she has been detained. If the detention happens during night time it is likely that even when the detainee asked for a lawyer and efforts were made lawyer to be ensured this would not happen especially in small towns because of lack of lawyers of duty or low motivation of lawyers to reply to such requests and lack of punishments for such

132 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 15, para.5.

133 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 15, para.7.

134 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them , Art. 15, para.8.

135 Bulgaria, Prosecutor General, Instruction 134/11.04.2011 about the actions of the pre-trial proceedings bodies towards lawyers (Инструкция на главния прокурор относно действията, които могат да извършват органите на досъдебното производство по отношение на адвокати), available at: <http://svak.lex.bg/news.html&pn=15&id=964>.

136 Bulgaria, Criminal Procedure Code, Art. 97.

refusals. The investigating authority cannot perform any investigating actions with the participation of the accused before he has kept that obligation.¹³⁷

3. Are there any rules establishing a minimum period between informing the lawyer about the scheduled interrogation and the actual start of it?

Under the Ministry of Interior Act the lawyers requested by the detained persons should be called immediately. However there is no requirement that police officers should wait for them as although there are investigating policemen at the Police Departments it is not clear whether they would act so fast to initiate a pre-trial proceeding so that to ensure that the person is accused. No investigating actions can be done before the lawyer comes (under the Criminal Procedure Code).

4. Would the police wait for the arrival of the defence lawyer before starting the interrogation?

If the detained person is accused, the investigating authority should wait for the defence lawyer to come. In practice, in most cases the detained persons are treated as witnesses at the beginning and then the police officers have no obligation to wait until their lawyer comes.

5. Would the complainant have the possibility to consult the lawyer before the interrogation starts?

In practice no. According to Art. 7 of the General Prosecutor Instruction the access to a lawyer should be carried out in a separate room immediately after the detention which means 2 hours after the detention and before the first interrogation. The lawyer should be ensured with immediate access to the detainee within 30 minutes after he/she appeared in the place of detention (Art.8).

The interviewees were not aware of this Instruction as it is not published in the general website where all legislation is published.

6. Would the lawyer be likely to take any action in relation to the complainant's claim of ill-treatment (insisting that it be placed on the record, taking photographs, filing a report with the competent authority, etc.)?

It very much depends on the lawyer-detainee subjective relationship. There is no specific requirement in the law for that.

7. Would there be any difference in the course of action in relation to all the above depending on whether the lawyer was a retained or a legal aid lawyer?

Yes, it is more likely that a lawyer chosen and paid by the complainant would take action and submit a complaint. While if the lawyer is ex officio it is not that likely. Standards for quality, assessment and control over the ex officio legal aid were adopted only in 2014.¹³⁸ According to them the ex officio lawyers should consult the clients about their rights, should discuss with them their strategy for legal protection, should get acquainted to the case file, are not allowed to receive any remuneration from the client and should work

137 Bulgaria, Criminal Procedure Code, Art. 97, para.2.

138 National Bureau for Legal Aid, *Standards for quality, assessment and control over the ex officio legal aid*, instruction letter 14-03-26, dated 29.04.2014 of the chairperson of the National Bureau for Legal Aid, Elena Cherneva- Markova, available in Bulgarian at: <http://www.nbpp.government.bg/images/20150224134212.pdf>.

with the best possible quality. The assessment of their work by the National Bureau for Legal Aid is done on the basis of the type of the case, the legal and factual complexity of the case, the number of lawyer's interventions (complaints, appeals etc.), the outcome of the case and the contribution of the lawyer to it. However, the Bureau has not published any report about the quality of the legal aid on its website.

An NGO 2004 study for the quality of legal aid underlines that the quality of the *ex officio* legal aid is consistently and significantly lower than the paid legal aid and that the State should ensure appropriate conditions for *ex officio* lawyers to raise the quality of their work.¹³⁹

A 2011 article reflecting discussion of leading human rights lawyers about the legal aid puts accent on the significant problem with the funding. According to it the average remuneration of an *ex officio* lawyer per case is BGN 183 (EUR 91).¹⁴⁰

3. 5. Right to inform a third person

1. Would anyone inform a third party of the fact that the complainant has been arrested by the police? If so, who would call the third person, the police or the complainant?

Under the Ministry of Interior Act the detained person has the right to inform a third party and declares in written whether he/she would like to do so.¹⁴¹ Under the MOI Instruction the police officer on duty is obliged immediately to inform this person.¹⁴²

2. What would be the latest time that the third person would be informed? What would happen if the person nominated by the complainant was not available?

The third person should be informed immediately after the detained person points him/her out. The law is silent what happens if this person is not available.

The interviewees are of the opinion that the third person would be not be informed in the majority of the cases. The researcher did not find any information about challenging the violation of this right. Presumably this is not done because of the difficulty to prove the factual situation of attempts to connect to the third person and his/her unavailability at a certain moment.

3. 6. Investigation of the complaint of ill-treatment

1. What are the possible avenues by which investigation of the complainant's claim of ill-treatment would start? (E.g. would the doctor send the medical documentation to the competent authority, would the lawyer make a claim, would the interrogating officer report to his/her superiors or the prosecution, etc.?)

139 Martin Gramatikov, Open Society Institute, *Quality of the legal aid and standards for ex officio legal aid*, 2004, p.28, available in Bulgarian at: http://www.gramatikov.com/research/kachestvo_pravna.pdf.

140 Legal world (specialized on-line magazine), *The main problem of the ex officio legal aid is the remuneration of the lawyers*, 24.06.2011, available in Bulgarian at: <http://www.legalworld.bg/23702.osnovniiat-problem-na-pravnata-pomosht-e-v-lipsata-na-pari.html&orderby=2>.

141 Bulgaria, Ministry of Interior, Art.74, para.2, item 6 (g), para.2.

142 Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015 about the order for detention, equipment of the detention rooms and the order in them, Art. 15, para.9.

The most possible avenue is that the lawyer submits a complaint to the prosecutor or the detainee submits a complaint after being released or transferred to the pre-trial detention facility.

2. Which state organ would investigate the alleged ill-treatment? (police, prosecutors, special part of the prosecutor service, special judge, special independent body, etc.) If there is any special feature about the investigative body's role, competence or independence, please elaborate on this aspect.

Until 2008 – military prosecutor. After that – district prosecutor. There is not any difference in their obligations in terms of investigation of police ill-treatment. If the complaint is submitted to the director of the police department he would initiate a disciplinary proceeding. The Ministry of Interior Act does not oblige the director to report to the prosecutor.

3. If there is a special body/institution for investigating such complaints, could any other investigative organ investigate the case under any circumstances? If so, can the evidence collected in course of its action be used by the prosecutor/court?

There is not any special body.

4. Would there be any remedy against a decision that no criminal action should be taken against the police officers?

Yes, it can be appealed before the regional prosecutor. If the appeal is rejected the private prosecutor cannot be pursued under the law.

5. Does the complainant run the risk of being accused by the officers of violence against them if he files a complaint against the officer?

Yes. It is probable.

3. 7. Procedural status of the complainant

1. Would the complainant have a legal standing in any criminal proceedings taken against the police officers? If so, what rights would the complainant have?

Yes. Under the Criminal Procedure Code the victim is a person who suffered pecuniary and non-pecuniary damages of the crime.¹⁴³ The rights of the victim during the pre-trial proceedings are: to be informed about all rights during the criminal proceedings; to be protected and his/her relatives to be protected, to be informed about the developments of the criminal proceeding; to participate in the proceedings; to pose questions and objections; to complain against all acts that lead to seizure of the proceeding; to have a lawyer.¹⁴⁴ The investigating body that initiates the proceeding informs immediately the victim about the proceeding.¹⁴⁵ The victim's rights can be exercised from the moment he/she asks to participate in the pre-trial proceeding and points out his/her address for notification.¹⁴⁶

143 Bulgaria, Criminal Procedure Code, Art. 74, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135512224>.

144 Bulgaria, Criminal Procedure Code, Art. 75.

145 Bulgaria, Criminal Procedure Code, Art. 75, para.2 (adopted on 28.05.2010).

146 Bulgaria, Criminal Procedure Code, Art. 75, para.3.

The victim who suffered damages from a crime which is investigated under the general rules has the right to participate in the court proceeding as **private prosecutor**.¹⁴⁷

The application for participation in the proceedings as a private prosecutor may be written or oral. It should contain information about the victim and the circumstances on which it is based and should be submitted until the court investigation starts before the first instance court.¹⁴⁸ The private prosecutor maintains the prosecution together with the prosecutor and may continue do so even after the prosecutor stops doing that.¹⁴⁹ The rights of the private prosecutor are: to be informed about the proceeding and to have copies of the documents; to present evidence; to participate in the court proceeding; to ask and object; to complain against acts of the court when they violate his/he rights and interests.¹⁵⁰

The victim who suffered damages of a crime which is investigated only when he/she applies for this is a **private complainant**. He/she may initiate proceeding and to maintain prosecution before the court.¹⁵¹ The complaint should be written and should contain information about the private complainant, for the person against whom it is submitted and about the circumstances of the crime. A state fee is paid at the submission of the complaint and it could be submitted only within a 6-month period after the victim learned that the crime has been committed or after the victim was notified that the pre-trial proceeding was ceased because the crime is to be investigated only after submission of complaint of the victim (not under the general rules).¹⁵²

The rights of the private complainant are: to read all documents of the proceedings and to make copies of them; to present evidence; to participate in the court proceeding; to pose questions and objections; to complain against all acts of the court that violate his/her rights and interests. He/she might also be constituted as indicter during the court proceeding.¹⁵³

2. If the complainant was a member of a vulnerable group, would he be heard under special circumstances?

No.

3. Would the victim be entitled to any kind of protection measures? (who can have access to victim's personal data recorded in the case files, what happens if there is a real risk of retribution by the perpetrators, etc.)

No, there are no protection measures.

3. 8. Prosecution by the complainant

1. Would it be possible for the complainant to act as "private prosecutor" against the police officers? If yes, under what legal conditions?

147 Bulgaria, Criminal Procedure Code, Art. 76.

148 Bulgaria, Criminal Procedure Code, Art. 77.

149 Bulgaria, Criminal Procedure Code, Art. 78.

150 Bulgaria, Criminal Procedure Code, Art. 79.

151 Bulgaria, Criminal Procedure Code, Art. 80.

152 Bulgaria, Criminal Procedure Code, Art. 81.

153 Bulgaria, Criminal Procedure Code, Art. 82.

If a criminal proceeding is opened by prosecutor, the complainant might participate as a private prosecutor upon his request. This is valid in case the crime identified is for moderate corporal injury or forced interrogation. If it is a case of light corporal injury then it is prosecuted only upon complaint of the victim and the victim would be "private complainant".

If prosecution by the complainant is possible, is it a prerequisite that the police officers be formally charged in the criminal proceedings or does he have an independent right to initiate criminal proceedings against them? Does the qualification of the crime by the prosecutor have any relevance in terms of the availability of (supplementary) private prosecution? (e.g. in Hungary a person falsely accused of having committed a crime may not act as a private prosecutor, on the basis that the primary aim of sanctioning false accusation is to protect the justice system, and not the falsely accused person)

In this particular case it is most probable that criminal proceedings would be initiated for light corporal injury which is a crime which is prosecuted only upon complaint of the victim. Then the victim would be "private complainant". In case the injury is moderate, the complainant may be constituted as "private prosecutor".

2. If prosecution by the complainant is possible, would legal representation be mandatory? Would the complainant be entitled to legal aid? If so, under what conditions?

Legal representation is not mandatory and the complainant will be entitled to legal aid only if he declares and proves low income.

3. If prosecution by the complainant is possible, would there be any problems for the complainant in doing so, for example, restrictive time limits?

Yes, there are restrictions about the type of the complaint, a fee and a time limit.

The complaint should be written and should contain information about the private complainant, for the person against whom it is submitted and about the circumstances of the crime. A state fee is paid at the submission of the complaint and it could be submitted only within a 6-month period after the victim learned that the crime has been committed or after the victim was notified that the pre-trial proceeding was ceased because the crime is to be investigated only after submission of complaint of the victim (not under the general rules).¹⁵⁴No similar restraints are in place for private prosecutors.

4. Would there be any relevant differences between the rights of the public prosecutor and those of the private prosecutor?

According to the law – no. In practice it is highly likely that the authorities would not cooperate to a private complainant or private prosecutor the way they would do this for investigation authority or public prosecutor.

5. Apart from prosecution, what other remedies for the police ill-treatment might be available to the complainant?

If the proceeding is ceased, the complainant might submit a complaint under the Liability of the State and Municipalities for Damages Act. This is applicable in the

¹⁵⁴ Bulgaria, Criminal Procedure Code, Art. 81.

following cases: detention when its prosecution was rejected by the court and in all other cases under Art. 5, para.1 of the ECHR; violation of rights of Art. 5, para. 2-4 of the ECHR; accusation when the person was found not guilty or the criminal proceeding was ceased because it was initiated after the timelimit was over or it was not committed by the accused, when the punishment was imposed when the person was found not guilty, etc.¹⁵⁵

3. 9. Evidentiary issues

(please indicate if there are any differences in cases prosecuted by private prosecutor)

1. Would police officers involved in the incident be required to write a report on the police measure/use of means of restraint?

Most probably yes.

2. Could these reports be used as evidence in any criminal prosecution of the police officers? If so, would there be any difference in terms of the “evidentiary force” of these reports compared to evidence provided by the complainant?

The reports would most probably be used in the criminal prosecution and most probably the “evidentiary force” of the reports would be bigger than the testimonies of the complainant.

3. Would all the police officers involved in the incidents of ill-treatment be heard as witnesses?

Yes, the police officers involved in the incidents of ill-treatment would be heard as witnesses.

4. Would the complainant and the police officers be confronted (would they be cross-examined) in any criminal proceedings?

Yes, the complainant and the police officers would be confronted in the criminal proceedings.

5. Would identity parades be held in the case? Would it be done in person or by showing photographs?

Yes, identity parades would be held but identifying by picture is not a practice in Bulgaria. Identifying in person would be held more probably during the pre-trial proceedings.

6. Would the doctor(s) who examined the detained person be heard as witnesses?

Yes, most probably the doctors who examined the detained person would be heard as witnesses.

7. Would the complainant have the right to propose any question to be asked of other witnesses in the proceedings?

The complainant has the right to propose questions if he is constituted as private prosecutor/complainant.

8. What would happen if the complainant alleged that he had been subjected to ill-treatment in order to extract a confession? In a prosecution of the complainant

¹⁵⁵ Bulgaria, Liability of the State and Municipalities for Damages Act (01.01.1989), Art.2, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2131785730>.

for assault on the police, would the allegation of ill-treatment by the police be relevant to whether the evidence of his interrogation was admissible or to the weight given to that evidence (assume for the purpose of this question that the complainant confessed to assaulting the police in the interrogation)?

If this is proved, it would have an effect of an extenuating circumstance (meaning that it would be taken into account more seriously than any other circumstance). The trial court would assess whether the allegation of forced interrogation is true or not.

9. Is there any relevant difference in the procedure where a police officer is accused of assaulting an accused compared to where a person is accused of assaulting a police officer (eg., higher evidential threshold, difference in the level of sentence/sanction, etc)?

It is very less likely that any criminal proceedings would be initiated in case the police officers assaulted the complainant.

3. 10. Conclusions

With regard to the ways in which police ill-treatment is dealt with in your jurisdiction, please identify those things that work well and those things that do not work well, i.e. that increase or decrease the efficiency of investigation of ill-treatment and torture. Include in your answer laws, procedures, practical arrangements and institutions and provide statistical evidence if probable.

1. Reliable and disaggregated data about cases of police ill-treatment is not collected and analysed by any state authority.
2. Rights to lawyer, medical examination and informing a third person although provided for in legislation are not sufficiently guaranteed and are rarely implemented in practice. The main reasons for this situation is that there are not any official detailed regulations about the way in which the connection between the detainee and the lawyer, doctor or third person should be achieved and there is not any special oversight body to monitor regularly and systematically how these rights are implemented.
3. The number of ill-treatment criminal proceedings initiated is very low and in cases when they are opened it is mainly upon complaint of the victim.
4. There are no effective procedural safeguards of the rights of the complainant during the criminal proceedings.
5. The majority of the initiated criminal proceedings are for "light corporal injury" and the sanctions for the perpetrators are administrative fines (mainly around EUR 250-500). There is no publicly available information about whether they were paid in practice.
6. Even when police officers were sentenced to deprivation of liberty it is conditional (meaning that the imprisonment is suspended for a certain period of time unless the person is not sentenced again usually within 3 years after he is sentenced). The absurd situation is that most probably these sentences were held in cases of moderate or severe corporal injury but then the perpetrators are not punished in practice and their sanctions appear to be even lighter than paying a fine.

7. All cases before the ECtHR about lack of effective investigation of ill-treatment were won by the victims and there were no sanctions imposed to the police officers who perpetrated ill-treatment and sometimes death after them.