

**REALIZATION OF LAW PROTECTION OF HUMAN RIGHTS CONDITION  
FOR STATE AND CITIZEN SAFETY**

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**Tatjana Gerginova PhD\***

**Abstract:** Security system of each country constitute the international legal documents and acts as well as national security that allow system is organized as a part of the state apparatus, which system will to enable to make possible the safety and independence of other states, as well as the law protection of basic human rights and freedoms. International documents for protection of human rights and fundamental freedoms, as well as legal acts of any national state determines the universal significance of human rights and freedoms, whose observance is an important factor of peace, justice and security necessary to ensure the development of friendly relations and cooperation among states, but also a precondition for progress on the establishment of lasting peace, security, justice and cooperation in Europe. Full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in ensuring lasting peace, security, justice and cooperation in Europe. The Treaty establishing the European Union, signed in Maastricht in 1992 stipulates that respect for human rights is one of the main prerequisites for membership in the European Union and the guarantees of human rights established and guaranteed by the European Convention on Human Rights, are respected by Union as general principles of Union law. One of the main objectives of the common foreign and security policy of the Member States of the European Union is the development of democracy and the rule of law and respect for human rights and fundamental freedoms. Republic of Macedonia in the processes of democratization incorporate the recommendations of the Council of Europe and other international institutions in finding appropriate effective mechanisms by which holders of public authority will exercise its powers with respect for and protection of human rights. Respect and protection of human rights legislation in line with international standards in this area, should be a primary task of each authority responsible for enforcing the law.

**Keywords:** rule of law, democracy, international and national human rights legislation.

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\* Faculty of security – Skopje; email: tanjagerginova@gmail.com.

## INTRODUCTION

Every modern democratic state seeks the right to edit all fields of social relations, and the field of security, because enduring and vital interest of every state is the state security and the security of its citizens. Legally regulation on the field of security, is the basic assumption for successfully organizing and operating of the security system. In this case, the right appears as a precondition for the effectiveness of that system, as well as border security system action. These bases security system comprising national legal acts and international documents and laws, in terms of the security system is organized as a part of the state apparatus in which each member state of the international community will respect basic human rights and freedoms, and will be denied the right to in any way endangers the interests of security and independence of other states.

In accordance with Universal Declaration of Human Rights, everyone has the right to life, liberty and security of person. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of general human origin. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the right to recognition everywhere as a person before the law. All people are equal before the law and are entitled without any discrimination to equal protection by law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. No one shall be subjected to arbitrary arrest, detention or exile (The Universal Declaration of Human Rights, 1948).<sup>1</sup>

## INTERNATIONAL-LEGAL PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

At the end of the Second World War, mainly among Western allies, despite the idea of creating a universal international organization providing the durability of world peace and security, it matures and the idea of internationalization of the protection of human rights. The creation of the United Nations on June 26, 1945 may mark a formal start of the process of universalization of human rights. The UN Charter, expresses the conviction that effective international protection of human rights is one of the assumptions underlying the maintenance of peace and security. Preamble of the UN Charter also contains a commitment of the UN to establish "faith in fundamental human rights, dignity and worth of the individual, the equality between men and women, and small and large

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1 For more about the Universal Declaration of human rights see: [www.humanrightsgeneration.eu/index.php](http://www.humanrightsgeneration.eu/index.php) or <https://www.un.org/en/documents/udhr>

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nations” and to promote human rights and to create incentives to protect fundamental freedoms of all people, regardless of their gender, race, language or religion. Although the founding conference in San Francisco because of disagreement on some of the great powers, primarily the U.S., as well as for general preoccupation with issues of peace and security, and the structure of new organization does not come to define human rights or they draw a precise catalog of freedoms and rights guaranteed by the Charter. However, Charter has great significance for international legal protection of human rights, because the first time in history a formal way expressed the need for internationalization of the protection of human rights, and thus to a kind of taking the responsibility of the international community in that direction. Moreover, Article 56 of the UN Charter obliges all member states to cooperate individually and collectively to achieve the objectives of the UN, which themselves include protection of human rights.

Many important international instruments protection of human rights and the UN Universal Declaration of Human Rights, which for the first time the issue of human rights and freedoms are edited out of the absolute sovereignty of states, i.e. the internal legal documents. UN General Assembly adopted the Declaration as a common ideal, which should reach all peoples and all nations, to every individual and every organ of the state have this declaration in mind, and with learning and education contribute to compliance these rights and freedoms, and thus gradually with national and international measures provide their universal and permanent recognition and application as among the peoples of Member States themselves and between the peoples of those territories under their competence. The process of European cooperation in security, not only pave the way for an end to Cold War East-West relations, but their relationship has brought the problems of human rights. Given that in guaranteeing and protecting human rights on both sides were quite different concepts, attempts by Western countries in the early 70-ies in the programs of the Conference on European Security and Cooperation, to introduce provisions on human rights, met with strong resistance from the Communist countries. The position of Western countries was that the process of disarmament and cooperation between the two blocks is also impossible if not followed with respect to certain standards and norms concerning the exercise of fundamental human rights. As a result of these efforts, the Conference on European Security and Cooperation in 1975 (CSCE)

Final Act was adopted in which Member States are obliged to the field of human rights and fundamental freedoms, acting in accordance with the Universal Declaration on the Rights of humans. Countries participating through the provisions of the Final Act, we recognize the universal significance of human rights and fundamental freedoms, whose observance is an important factor of peace, justice and well-being necessary for the

development of friendly relations and cooperation between and among all nations. In cooperation with the UN, participating countries will constantly promote their universal and effective respect. Meaning of this Act is that the first 35 European countries agreed, and expressed in a formal act, that respect for human rights and fundamental freedoms is an essential factor of peace, security and cooperation among European countries. The final document of the CSCE signed on January 19, 1989 in Vienna (The contents of this document can be found in "Human rights - fundamental documents" (fifty anniversary of the Universal Declaration of Human Rights) from 1948 to 1998, Skopje, 1998, p. 297 to 304).

is further strengthening the process of introducing the issue of human rights at the center of European security and cooperation. This document creates an institutional mechanism for protecting human rights. In the section entitled "Human Dimension of the CSCE" participating States took the obligation to exchange information and respond to requests to provide information on all matters relating to human rights. In fact this section states participating confirm the universal significance of human rights and fundamental freedoms, whose observance is an essential factor for peace, justice and security necessary to ensure that the development of friendly relations and cooperation between them and between all countries and they express commitment to guarantee the true realization of human rights and fundamental freedoms arising from the inherent dignity of the human person and are essential for his free and full development. In Copenhagen from 5 to 29 June 1990 was held meeting of the Conference on the Human Dimension of the CSCE, in accordance with the provisions of the Conference on the Human Dimension, contained in the Final Document of the Vienna meeting in the continuity of the CSCE. States participating, concluded that the CSCE process, greatly contributed to the implementation of the provisions of the Final Document and other documents of the CSCE and they found that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, and that their protection and promotion is based on freedom, justice and peace, the development of contacts between people, and addressing other issues like humanitarian character. The meeting in Copenhagen, the participating countries expressed their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in consolidate of lasting peace, security, justice and cooperation, they seek to establish in Europe. Furthermore Countries participating are determined to support and advance those principles of justice which form the basis of the rule of law. They believe that the rule of law means not only a formal legality which ensures fairness and consistency in implementation and enforcement of democratic order, but justice based on the recognition and full acceptance of the human person, as the largest value guaranteed by institutions which provide the framework for

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its full expression. They again confirmed that democracy is inherent part of the rule of law. They recognize the importance of pluralism with regard to political organizations. They confirm each other, to respect the rights of each free to choose and develop their political, social, economic and cultural systems in accordance with international human rights standards. In exercising this right, they will ensure that their laws, regulations, practices and policies comply with their obligations under international law to comply with the provisions of the Declaration on the Principles and other obligations within the CSCE. With this document, the participating countries and confirm their commitment to prohibit torture or other violent, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such acts, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices. They will also encourage existing institutions such as organizations of the UN and Council of Europe to continue and extend work that started in the field. Another very important international instrument for the protection of human rights is the Paris Charter for New Europe (1990) and this section relating to human rights, democracy and the rule of law. With this document, States Parties undertake to build, reinforce and strengthen democracy as the only system of government in their national states. And with this document states that: Human rights and fundamental freedoms are rights of all human beings are born, they are inalienable and guaranteed by law. Their protection and promotion are the first responsibility of government and their observance is an important protection against powerful state. Also, their enjoyment and full realization of the foundation of freedom, justice and peace. Democratic government is based on the will of the people as expressed regularly through free and fair elections. The basis of democracy make respect for human personality and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all social groups and equal opportunities for every individual.

The Declaration adopted at the Budapest Summit of 6 December 1994, despite the general commitment to strengthening the process of the CSCE / OSCE declaration important place is given to the human dimension of the CSCE / OSCE. Specifically in section VII of the document containing commitments to promote cooperation and dialogue within the human dimension by promoting the implementation of the commitments of participating States, through further strengthening the role of the Office for Democratic Institutions and Human Rights (ODIHR), and the role of NGOs in the realization and protection of human rights. In a special section dedicated commitment to cooperation as priorities to be achieved particularly defined as follows: the rule of law, abolishing the death penalty, prevention of torture, protection of national

minorities, the protection of ethnic minorities (especially Roma), tolerance and discrimination, protection of migrant workers, freedom of expression and media freedom, freedom of movement and protection of cultural heritage.

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III) (French) (Spanish) as a common standard of achievements for all peoples. It sets out, for the first time, fundamental human rights to be universally protected. In the preamble of the Universal Declaration of Human Rights and European Convention for the protection of human rights and fundamental freedoms, establishes connection between justice and peace in the world and respect for fundamental freedoms and which invoke the rule of law. In the third paragraph of the preamble of the Universal Declaration states that it is essential, human rights are protected by the rule of law. European Convention for the protection of human rights and fundamental freedoms, created by the Council of Europe in order to provide funds to implement the Declaration on Human Rights UN. The last paragraph of the preamble of the European Convention, it refers to the common European heritage composed of political traditions, ideals, freedom and rule of law, asserting that the governments of European countries are resolute in implementing the rights set out in the Universal Declaration. The reference in these texts of justice and peace in the world, indicates that both are "creations" of institutions - a global (United Nations) and other regional (Council of Europe), formed after World War II. United Nations as one of its main goals has the maintenance of international peace and security, and the Council of Europe as one of its main goals has the achievement of greater unity between its members.

Two important global agreements, which are also common under many different Human Rights, the International Charter on Economic, Social and Cultural Rights and the International Charter on Civil and Political Rights. These two agreements, together with the Universal Declaration of Human Rights, constitute International list of human rights. They are adopted by the UN General Assembly in 1966 to give legal force to human rights stipulated in the Universal Declaration of Human Rights.

Pertaining to the work of police officers and the following texts which are not legally binding, but reinforce the provisions of contracts and supported compliance with these requirements by establishing detailed standards for that purpose: Code of UN officials who enforce the law; Declaration on the Police Council of Europe, the UN Basic Principles on the use of force and firearms by officers who enforce the law, and the list of principles for the protection of all persons who are under any form of detention or imprisonment. Treaty on European Union, which entered into force on November 1, 1993,

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marks a new phase in EU policy towards human rights and democracy. The document addressing the problems of human rights principle of obligation, imposed by the preamble of the above documents, it is specifically and strictly defined obligation of the institutions of the Union, imposed by the text of the Treaty of Maastricht. Similar to the Council of Europe, respect for human rights is one of the main prerequisites for membership in the European Union. In Article 2 of the Maastricht Treaty stipulates that the guarantees of human rights established and guaranteed by the European Convention on Human Rights, are respected by the Union as general principles of Union law.

## **NATIONAL PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

Republic of Macedonia in the democratization processes incorporate the recommendations of the Council of Europe and other international institutions in finding appropriate effective legal mechanisms by which public authority holders will exercise their powers with respect for and protection of human rights. "The decision of the Council of the European Union of 30.01.2006 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Macedonia and repealing Decision 2004/518/EC"<sup>2</sup> in section 3.1 Short-term priorities<sup>3</sup>; The main priorities outlined the adoption of the Law on Police, and soon after as a political priority is designated as the principle of the "Democracy and the rule of law" which seeks to consolidate the rule of law across the country, in particular through the implementation of reforms in enforcement of the law ".

Respect for human rights is one of the main prerequisites for membership in the European Union. Actually guarantees established and guaranteed by international documents that recognize the universal significance of human rights and fundamental freedoms and whose observance established as an essential factor for the peace, justice, security and cooperation in Europe, observed by the European Union as general principles Union law.

Republic of Macedonia in the process of integration into the European Union is committed to support and promote the principles of justice, which are the basis of the rule of law. Republic of Macedonia to the principle of

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2 Source: website of the Secretariat for European Affairs of the Government <http://www.sei.gov.mk>.

3 In the decision under point 3. Priorities outlined: "The priorities of this European Partnership have been selected on the basis of realistic expectations that the country can complete them or take them substantially forward over the coming years. A distinction is made between short-term priorities, which are expected to be accomplished within one to two years, and medium-term priorities, which are expected to be accomplished within three to four years. "

“rule of law” does not mean only formal legality which ensures fairness and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and acceptance of the human person, as the largest value guaranteed by institutions which provide the framework for its full expression. Democracy is a typical part of the rule of law, democracy and the base make the respect of the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society and equal opportunities for each individual.

The principle of legality and the rule of law constitute a guarantee for professional reliability and a precondition for their effective implementation.

“Rule of law”, the rule of law is a value because its meaning is defined in the preamble of the Constitution, and as a fundamental value of the constitutional order in the Republic of Macedonia. This principle promotes democracy and the principle is a general condition for the realization of the security of the state and to protect the interests and safety of all citizens. Citizens’ rights and freedoms prescribed by the Constitution as a fundamental determinant to where they can act the authorities responsible for applying the law, and they are on the restriction of the violence by the state authorities. Rule of law is before the application of laws that maintain, nurture and promote democracy, which establish, nurture and maintain the basic and fundamental principles of state law - limit requisitioning against citizens and protection of the interests of all with fewer violations of the rights and liberties of every citizen. It is a concept embedded in the fabric of a legal state. The principle of the rule of law is based on several tenets: first, the primary importance of human rights and freedoms; secondly, the existence of limited government; Third, the separation of powers into legislative, executive and judicial; fourth, an independent judiciary; fifth legal security of the individual and citizen.(Skaric Svetomir: (2004) Comparative constitutional law and Macedonian, Skopje, p. 323-324).

Implementation of this principle requires full legal regulation of the functions and position of all state bodies responsible for the application of the law (Parliament, Government, Police, Ombudsman, courts, public prosecutor’s office), while their scope of responsibilities and powers, as well as very their organization, conduct, control over her job responsibilities for the performance of the functions regulated by laws and regulations. The need for legislation on the status and functions of the police and other authorities responsible for the use of the law, standing on the need in a democratic society to establish a clear framework for state intervention in social and individual relations for the protection of civil liberties and rights of possible injury by abuses in the exercise of power and society through the exercise of control over the work of the state and its organs.

Such objectives and guarantees will only be achieved if you know in advance which features will pursue certain state bodies, after which rules they act and what are the limits of their power in their action. Such objectives



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and guarantees can only be achieved by formally complete and precise legal regulation, and through public disclosure regulations. For their real achievement is necessary to establish an effective mechanism to control or supervise the work of administrative bodies. Basic principle of action of the authorities, is the legal regulation of their activity, which means that they can act solely on the basis and within its legal powers and thus strictly adhere to the procedures prescribed in the law. Their work is based on the established mechanism for supervision, various forms of control. Worldwide rule belief that despite the precise legal solutions necessarily need to establish some other mechanisms to control and influence over the work of state bodies in charge of law enforcement, and those other mechanisms are primarily limit the possibility of use of force by state authorities (such as police) and thus to achieve their greater responsibility for illegal use of force. Specifically in the Republic of Macedonia, on the basis of a needs assessment conducted and condition, comparative analysis<sup>4</sup> of research and analysis of the national Legislative framework and applicable international standards, was prepared draft mechanism for strengthening the system of external control over the police and other authorities<sup>5</sup> police powers and it is based on the following three pillars: the first pillar Improved role of the Public Prosecutor; second pillar strengthened role of the Ombudsman and the third pillar Independent Commission for supervision of the work of the police and other authorities with police powers. The proposed amendments include interventions in the Criminal Procedure Law, and the laws of the institutions that are responsible for control over the police; Public Prosecutor's Office, the Ombudsman, the new Commission oversight. Thus, this matter will be fully regulated and that in both segments; procedural and substantive.

Also is indispensably to establish an effective mechanism to control or supervise the work of administrative bodies. The control over the police should be carried by an authority which should have this three characteristics: the authority should be competent which means that it should be assessed, to establish evidence and to carry a reasonable assessment, the authority should be independent - the authority that implements control should be independent and impartial, that is no institutional or practical links with the police officers whose conduct is subject to control. The authority should take effective control, meaning that the authority should provide evidence to establish

4 OSCE mission in October 2007, organized two study visits for members of the working group. One group of experts visited Northern Ireland in order to investigate the mechanisms for supervision and complaints against law enforcement. The second group of experts visited Mah-Planck institute for international comparative criminal law in Germany, in order to explore the public prosecutor's control over law enforcement.

5 International documents aligned Proposed mechanism for strengthening the system of control see more of Dr. Tatiana Gerginova doctoral dissertation - "The police and the protection of human rights in the security system of the Republic of Macedonia", 2012, p. 240th

facts, to provide tangible evidence of potential criminal prosecution of the responsible police officers, witnesses to identify them and take statements to find the suspected police officers and led them to the proper procedure to fit the criminal, disciplinary and material responsibility. Control should take place in a timely manner. Timely response of the authorities in the investigation of occurrences of unlawful activities of police officers and instances of abuse and overstepping of police powers and human rights violations in the performance of police work, is considered essential in maintaining public trust in the relationship with the authorities and their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts. Police activity in a democratic society is based on public consent, trust and cooperation, in order to be effective. Accountability is a necessary component of democratic police activity. It is the public to have confidence in the state system of "policing the police."

It should be pointed out the importance in the establishment of external control over police work. External control is the best way to protect citizen interests and provides impartial justice in proceedings against ill-treatment by police officers; external control provides wide acceptability of decisions by the public, even when they are advantageous for police officers, strengthen external control public confidence in the objectivity and fairness of the proceedings on appeal to citizens' complaints police officers; This control is a guarantee that in the consideration of complaints of ill treatment by police officers will exclude the impact of the command staff.

As the legislative body of the citizens, the Parliament of the Republic of Macedonia has more means of control over administrative bodies which are of a political nature. Also, the government has a very important means of influence over the government authorities . It is very important and judicial control concerning the lawfulness of the final administrative acts in a particular administrative proceedings and judicial protection of guaranteed rights and freedoms of man and citizen as required by the constitution. It is also very important and the role of public prosecution. Total police action, a very important aspect represent its public relations.

This involvement of citizens in the exercise of police tasks, in turn, "compels" police acceptance form of influence society according to police work, and her candle greater opening towards the public and the citizens. Public influence police work through the formation of public opinion, as a set of relevant views, opinions and responding to the given environment of the individual or a multitude of issues related to police work. The influence of public opinion may occur as a direct or indirect form of pressure or condemnation by the public which can be directed towards requirements for certain changes in the police organization and some changes in her work.

Together with international instruments and national legislation, an integral element of the system of promotion and protection of

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human rights are non-governmental organizations. The emergence and development of non-governmental organizations, particularly those that are organized on a national level, expressing the democratic character of the respective society, but also affect the promotion of such a character.

In their work, NGOs have used a variety of methods and strategies. Among the most common are the following: conducting their own investigations into human rights abuses in specific cases; analyzes the realization of human rights in specific countries, regions or situations; compiling reports and their submission to national and international forums; presence of certain litigation; legal and material assistance to victims of human rights violations; filing complaints to national and international institutions for the protection of human rights; organizing public discussions; impact on public opinion in order to increase the sensitivity of society on issues of respect for human rights, as well as many other methods and techniques. In fact, NGOs appear in the function of an additional element of the institutional system to ensure the promotion and protection of human rights on the international and national level, because its activities contribute significantly to the performance of the relevant systems. NGOs continuously recorded cases of police abuses and violations of human rights and freedoms. Victims provide free legal advice as to their rights in terms of filing complaints with the available mechanisms: Internal Control Department, the Ombudsman, the Public Prosecutor etc.. NGOs observe and follow the way of processing complaints filed by the Ombudsman, the Public Prosecutor's Office and other control mechanisms, as a result, draw conclusions and recommendations for appropriate improvements and changes to the existing normative-legal framework or practice.

Within the municipalities on the territory in Republic of Macedonia local councils for prevention have been established which have an aim to establish approach of the police to the citizens, increasing the confidence and strengthening of the cooperation between the citizens and the police at the local level. The local council for prevention receives requests, information from the citizens, its view and identification of the problems and finding solutions for the problems which the citizens have at the local level.

In order to improve the access and the confidence of the citizens in the state institutions it is necessary strengthening of the relation between the governmental and the citizen section. It is necessary to maintain local coordinative appointmentsman over which the relation between the governmental and citizen section will be strengthened giving maximum help of the victims from police abuse. Participants of these meetings should be inspectors of sector for internal control in ministry for internal affairs, representatives of the ombudsman as well as representatives of the local council for prevention. With the law for ratification of the facultative protocol of the Convention against the torture of the Organization of the United nations by the Assembly

of Republic of Macedonia it is certified additional obligation of the ombudsman in National preventive mechanism enforcement. Namely, the function of the National preventive mechanism which has preventive role in the struggle against the torture the ombudsman gets it who has the possibility in doing this function to cooperate with non-governmental organizations.

## CONCLUSION

International documents as instruments for the protection of human rights establishes the relationship between justice and peace in the world, and respect for human rights and fundamental freedoms, and every international document refers to the principle of the rule of law. Human rights is essential to be protected by the rule of law. Democracy is a typical part of the rule of law and its basis is the respect for individual rights and human dignity.

Respect for human rights is one of the main prerequisites for membership in the European Union. The EC Treaty, which entered into force on 1 November 1993, marks a new stage in the EU's policy towards human rights and democracy. With this Agreement is determined that guarantees human rights established and guaranteed by the European Convention on Human Rights, are respected by the Union as general principles of Union law. Respect and protection of human rights legislation in line with international standards in this area, should be a primary task of any authority that is responsible for law enforcement in a democratic society.

Together with international instruments and national legislation, an integral element of the system of promotion and protection of human rights constitute the state authorities (Parliament, government, courts, public prosecution, Ombudsman) as well as non-governmental organizations.

It is a law regulating the status and functions of the police and other authorities responsible for the use of the law. This need stand on the need in a democratic society to establish a clear framework for state intervention in social and individual relationships to protect civil liberties and rights from possible injury by abuses in the exercise of power and control through the exercise of society the work of the state and its organs. It is also necessary to establish an effective mechanism to control or supervise the work of administrative bodies. Worldwide rule belief that despite the precise legal solutions necessarily need to establish specific mechanisms to control and influence over the work of state bodies in charge of law enforcement, and those other mechanisms are primarily limit the possibility of use of force by state authorities (such as police) and thus to achieve their greater responsibility for illegal use of force.

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