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Setting up an active network of
independent non judicial human rights structures

Complaints against the police: their handling by the national human rights structures

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WORKSHOP DEBRIEFING PAPER

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Introduction

Co-financed by the Council of Europe (CoE) and the European Union (UE), the *"Peer-to-Peer Project"* consists of a work programme to be implemented by the Council of Europe's Directorate General of Human Rights and Legal Affairs (DGHL). The main tool of the programme is the organisation of workshops for staff members of the National Human Rights Structures (NHRSs), in order to convey information on the legal norms governing priority areas of NHRS action and to proceed to a peer review of relevant practices used or envisaged throughout Europe.

This workshop was organised in cooperation with the St Petersburg Humanitarian and Political Science "Strategy" Centre[2] on 20-21 May 2008, in St. Petersburg (Russian Federation). It was the second workshop organised within the framework of the "*Peer-to-Peer Project*".

27 staff members from NHRSs (Albania, Armenia, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Georgia, Hungary, Latvia, Lithuania, Luxembourg, Montenegro, Serbia, Slovak Republic as well as from Kosovo[3] and from the Human Rights Presidency of the Prime Ministry of Turkey), 7 Regional Russian Ombudsmen (Irkutsk Oblast, Krasnojarsky Kray, Mordovia Republic, Nenets Autonomous Okrug, Perm Oblast, Rostov Oblast, Samara Oblast) and one Provincial Ombudsman from Serbia (Vojvodina) attended the workshop. The following experts contributed to the workshop: the UN Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment, the Irish Human Rights Commissioner, representatives of the Committee for the Prevention of

[2] http://www.strategy-spb.ru/en

[3] *"All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."*

Torture (CPT), the French National Commission for a Security Code of Conduct (CNDS), the Hungarian Independent Police Complaint Commission, the World Organisation against Torture (OMCT) and a member of the Academy of the Ministry of the Interior of the Russian Federation.

Themes and aims of the workshop

The topic under consideration constitutes one of the priority themes of the Commissioner for Human Rights. As the Commissioner noted *"In a democratic society the police must be accountable and open to public scrutiny. Complaints about ill-treatment and misconduct by the police must be investigated effectively and in a transparent manner to ensure that the police enjoy the confidence of the public. Currently, there is a variety of different mechanisms for investigating police complaints in the member states of the Council of Europe. A few countries have set up bodies operating separately from the police. Many countries entrust public prosecutors to lead and supervise investigations carried out by the police. Another model is to have teams with specialised prosecutors and police officers. Several European states are also in the process of reforming their current procedures"*[4].

The main objective of this workshop was to discuss the way ombudsman institutions handle complaints against the police[5]. This took into account the fact that the existence of independent police complaints mechanisms is

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[4] *2nd quarterly activity report 2008 by the Commissioner for Human Rights, Thomas Hammarberg, 1st April to 30th June 2008, CommDH (2008)17.*

[5] *On this very same topic, the Commissioner's Office organised an expert workshop on police complaints mechanisms in Strasbourg on 26 and 27 May 2008. The participants included representatives of complaints mechanisms, the police, the prosecutor, government authorities, intergovernmental and non-governmental organisations as well as academic experts. The workshop shared experiences from current mechanisms and procedures in member States to assess their independence, effectiveness and transparency and to discuss the challenges encountered by police oversight bodies. The report of the workshop as well as the Commissioner's recommendation on the theme are available on the Commissioner's web site www.commissioner.coe.int*

rather the exception than the rule in Council of Europe member States and that in most countries it is the ombudsman who has to handle complaints against the police, alongside the police itself and the prosecutors.
The first session was dedicated to the United Nations (UN)[6] and Council of Europe norms and findings related to complains against the police in the Council of Europe member States. A special emphasis was put to the case law of the European Court of Human Rights ("the Court") and the Commissioner's reports, as well as to the reccomandations of the CPT[7].
The discussions than focussed on the need to find the best way to handle efficiently complains against the police, using the existing structures (session 2) and exploring the need for creating or not new specialised structures (session 3).[8]

As a follow-up to this event, it was decided to produce this workshop debriefing paper, which is sketched out around the three sessions of the workshop. The publication aims at summarizing the findings of the workshop and at providing practical information on the topic to the NHRSs, as well as references to documents concerning the role of NHRSs in dealing with complaints against police[9].

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[6] *Presentation by the UN Special Rapporteur on Torture, M. Nowak.*

[7] *Developed by A. Butala, member of the CPT, and former Deputy Ombudsman of Slovenia.*

[8] *See for more details, the list of participants and the programme of the workshop appended to this workshop debriefing paper.*

[9] *In 2009 the Commisioner issued an opinion concerning independent and effective determination of complaints against police, CommDH (2009)4.*

1]

Chapter 1
Norms and findings

This chapter assembles the most relevant international norms, as well as the findings of Council of Europe instances as they were discussed in the context of Working Session 1. It was a specific request by many NHRSs' staff members to dedicate a thorough presentation on this subject in this workshop debriefing paper, including extensive references to the case-law of the European Court of Human Rights.

Norms and Standards

COUNCIL OF EUROPE

- European Convention on Human Rights and Additional Protocols Article 2 - Right to Life and Article 3 - Prohibition of Torture
- Recommendation Rec(2001)10 of the Committee of Ministers to member States on the European Code of Police Ethics, adopted by the Committee of Ministers on 19 September 2001

Norms/Requirements for Police conduct
Paras 16 and 20: Police shall be responsible and accountable for their own actions; the Police organisation shall contain efficient measures to guarantee individuals' rights and freedoms as enshrined in the ECHR.
Paras 35 – 36: the Police shall respect everyone's right to life, shall not be involved in torture or inhuman or degrading treatment or punishment and shall only use force proportionately.

Accountability of police / complaint mechanisms
Paras 59 – 63: Police shall be accountable to the State, the citizens and their representatives and they shall be subject to efficient external control; public

authorities shall ensure effective and impartial procedures for complaints against the police; accountability mechanisms shall be promoted; and a code of ethics based on the Recommendation's principles shall be developed in member States and overseen by appropriate bodies.

- The Committee for the Prevention of Torture (CPT) Standards

Norms/Requirements for Police conduct
Para. 40: the CPT has advocated a trilogy of rights for persons detained by the police: the right of access to a lawyer; to a doctor; and the right to have the fact of one's detention notified to a relative or another third party.

Accountability of police / complaint mechanisms
Chapter I. Police Custody – para. 41: an independent mechanism for examining complaints about treatment whilst in police custody is an essential safeguard.
Chapter IX. Combating Impunity - para. 25: assessing the effectiveness of action taken when ill-treatment has occurred constitutes an integral part of the Committee's preventative mandate, given the implication that such an action has for future conduct.
Chapter IX. Combating Impunity - paras 27 – 42 are relevant.

In summary these paragraphs outline: prosecutorial authorities' legal obligation to undertake an investigation whenever they receive credible information that ill-treatment of persons deprived of their liberty may have occurred; incidences of the prosecution authorities failing to react to complaints or the fact that complainants are frightened to complain for fear of a link between the prosecutor and the official alleged to have committed the torture or IDTP; an adequate assessment of allegations of ill-treatment even in absence of physical marks by taking evidence from all persons concerned; and arranging prompt inspections and medical examinations as well as, if appropriate, a forensic medical examination.

Further, an investigation should be: *effective* (with those responsible for carrying out the investigation are independent from those implicated); *thorough* (including following all reasonable steps to secure evidence); *comprehensive* (all incidents and facts being taken in account and review during the investigation); conducted in a *prompt* and reasonably *expeditious* manner (with no unjustifiable delay) and should include a sufficient element of *public scrutiny*.
Lastly, sanctions imposed for ill-treatment should be adequate and when ill-treatment has been proven, the imposition of a suitable penalty should follow. Disciplinary proceedings provide an additional type of address against ill-treatment in addition to criminal proceedings.

- European Committee against Racism and Intolerance (ECRI) general policy recommendation no. 11 on combating racism and racial discrimination in policing, CRI(2007)39

Accountability of police / complaint mechanisms
Paras 9 and 10 ensure effective investigations, and adequate punishment, into alleged cases of racial discrimination or misconduct; provide for a body, *independent from the police and prosecuting authorities* entrusted with investigation of the alleged cases of racial discrimination and racially-motivated misconduct by the police.
Para 39 outlines the need for more flexible remedial mechanisms to address the type of racial profiling that results from institutional polices and practices, in addition to legal sanctions and remedies. This can include a policy audit carried out by an independent authority or a specialised body which the ERCI recommends be established (General Policy Recommendation No 2).
Para 53 outlines support mechanisms should be available to victims of alleged racial discrimination including a free helpline and advice on who to contact (e.g. social services or civil society organisations) regarding any complaint about police misconduct.
Paras 54 - 56 define "effective investigation" in paragraph 9 of the ECRI Recommendation as meeting the criteria of the European Court of Human

Rights and the CPT (as mentioned above) and adequate punishment for those responsible.

Explanatory notes of para. 10 of the ECRI Recommendation: (paras 58 – 61 and 84) An investigative body should exist, with necessary powers to be able to review cases of racial discrimination by the police alongside other structures for police misconduct and the prosecutor, which should create a system where the victim can bring a complaint in full confidence in an independent body whose main task is to control the police. (Also see OSCE *Guidebook on Democratic Policing*, summarised below). Further, the police should closely co-operate with the specialised body that the ECRI's General Policy Recommendation No. 2 (*ECRI Recommendation No. 2*) indicates. The suggested specialised body could take different forms: a national institution for protection for human rights; a specialised police Ombudsman; a civilian oversight commission on police activities; or the specialised body the ECRI recommends be established in its ECRI Recommendation No. 2. The body should also have alternative powers to help promote friendly settlement of disputes, monitor police activities and recommend improvements to relevant legislation.

Explanation of para. 13 of ECRI Recommendation: measures could be set up to encourage victims and witnesses to report racist incidents to different local agencies (not the police), who would be trained to act as intermediaries and may, if necessary feed the relevant information to the police.

- Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies
- Commissioner for Human Rights Viewpoint "There must be no impunity for police violence" (3 December 2007)
- Commissioner for Human Rights Viewpoint "Strong data protection rules are needed to protect the emergence of a surveillance society" (26 May 2008)

UNITED NATIONS

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of 10 December 1984

Norms/Requirements
Article 2: obligation on State Parties regarding prevention of acts of torture

Accountability of police / complaint mechanisms
Article 12: obligation on State Parties to ensure prompt and impartial investigation of acts of torture by competent authorities.
Article 13: State Parties to ensure an alleged torture victim has the right to complain to, and have his case promptly and impartially examined by, its competent authorities; protection is afforded to complainant and witnesses against ill-treatment or intimidation as a consequence of the complaint.
Articles 17 – 24: Committee against Torture (the *Committee*) established with specific mandate including the ability to review communications from individuals in the respective State Party's jurisdiction if the State Party declares that it recognises the competence of the Committee in this respect; reports required from State Parties on the measures taken to give effect to their undertakings under the Convention.

- Optional Protocol to the UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment (2002)

Accountability of police / complaint mechanisms
Note: UN Sub-Committee and NPMs (defined below) general oversight functions could extend to identification of repeated reports of police misconduct
Summary of Articles 1, 2, 4 and 11 establish: a system of regular visits undertaken by independent international and nationals bodies where people are deprived of their liberty in order to prevent torture or cruel, inhuman or

degrading treatment or punishment (*CIDTP*); a Sub-Committee to visit places of alleged incidences of torture or acts of CIDTP and assist national preventative mechanisms including: giving necessary advice/assistance, making recommendations and cop-operating in terms helping to prevent of acts of torture or acts of CIDTP.
Articles 17 – 23: Obligation on ratified State Parties to establish national preventative mechanisms (*NPMs*) against torture or acts of CIDTP and State Parties shall guarantee the functional independence of their NPMs as well as the independence of their personnel and ensure they have the necessary resources. Mandate of the NPMs is described in article 19 – 23[10].

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990
- Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979

Summary of Article 8
Law enforcement officials shall do their best to prevent violations of the law and the Code.

Accountability of police / complaint mechanisms
Law enforcement officials shall report suspect violations of the Code to superiors and other appropriate authorities. "Appropriate authorities" include internal, external or independent agencies with appropriate power to review grievances and complaints arising out of violations within the purview of the Code.

OSCE

- Guidebook on Democratic Policing, by the Senior Police Adviser to the OSCE Secretary General, Vienna, 2nd edition, May 2008.

[10] *Concerning OPCAT see the workshop debriefing paper on "Rights of persons deprived of their liberty: the role of national human rights structures which are OPCAT mechanisms and of those which are not".*

Accountability of police / complaint mechanisms
Paras 83-94: Oversight institutions may include: the executive, the legislature, the judiciary, human rights commissions, civilian complaint review boards or independent ombudsmen. The degree in which these oversight institutions are involved in the complaints process varies considerably. Similarly there is a large difference in the bodies' powers of punishment for police misconduct. Oversights mechanisms can be effected by internal control units or external agencies. Complaint data should be collected and analysed by both the police and external experts to identify the underlying causes of misconduct and to address these causes directly. External and internal oversight bodies need sufficient resources, legal powers and independence from executive influence; support from governments and police leadership; and lastly protection by law to conduct their independent operations.

Findings of Council of Europe instances[11]

RELEVANT CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

A. The specific requirements regarding the excessive use of force

1. Lawfulness
The first requirement is *lawfulness*. When the right to life is at stake, there is no place for vague laws. A legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect.

[11] *This part aims at providing the relevant criteria and does not claim to be exhaustive. The case-law of the Court is updated until 30 July 2008. As of 1 September 2008, the case-law on effective investigation regarding police misconduct is presented in the Regular Selective Information Flow sent to the Contact Persons of NHRSs by the NHRS Unit of the Directorate General of Human Rights and Legal Affairs of the Council of Europe.*

Examples

Makaratzis v. Greece, 20 December 2004

In view of the recent enactment of Law no. 3169/2003, the Court noted that, since the facts giving rise to the present application, the Greek State had put in place a reviewed legal framework regulating the use of firearms by police officers and providing for police training, with the stated objective of complying with the international standards for human rights and policing.

At the time of the events in issue, however, the applicable legislation was Law no. 29/1943, dating from the Second World War when Greece was occupied by the German armed forces (see paragraph 25 above). That statute listed a wide range of situations in which a police officer could use firearms without being liable for the consequences. In 1991 a presidential decree authorised the use of firearms in the circumstances set forth in the 1943 statute *"only when absolutely necessary and when all less extreme methods have been exhausted"*. No other provisions regulating the use of weapons during police actions and laying down guidelines on the planning and control of police operations were contained in Greek law. On the face of it, the above – somewhat slender – legal framework would not appear sufficient to provide the level of protection *"by law"* of the right to life that is required in present-day democratic societies in Europe.

Nonetheless, while accepting that the police officers who were involved in the incident did not have sufficient time to evaluate all the parameters of the situation and carefully organise their operation, the Court considers that the degeneration of the situation, which some of the police witnesses themselves described as chaotic (see, for example, Mr Manoliadis's statement – paragraph 17 above), was largely due to the fact that at that time neither the individual police officers nor the chase, seen as a collective police operation, had the benefit of the appropriate structure which should have been provided by the domestic law and practice. In fact, the Court points out that in 1995, when the event took place, a law commonly acknowledged as obsolete and incomplete in a modern democratic society was still regulating the use of weapons by State agents. The system in place did not afford

to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime. It was thus unavoidable that the police officers who chased and eventually arrested the applicant should have enjoyed a greater autonomy of action and have been left with more opportunities to take unconsidered initiatives than would probably have been the case had they had the benefit of proper training and instructions. The absence of clear guidelines could further explain why a number of police officers took part in the operation spontaneously, without reporting to a central command."

2. Proportionnality

The second core notion in the Court's case-law, is the requirement of *proportionality*. The Convention permits the use of force only in case of *absolute necessity*. *"Anti-terrorist operations [should be] planned and controlled by the authorities so as to minimise from their inception to the greatest extent possible, recourse to lethal force"* (*McCann v. United Kingdom*, 27 September 1995, para 194). The authorities are bound by their obligation to respect the right to life of suspects. They have to exercise the greatest of care when evaluating the information at their disposal before transmitting it to soldiers (*ibid*, para 210).

The Court examines not only whether the use of potentially lethal force against the applicant was legitimate but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to his life.

Examples

Makaratzis v. Greece, 20 December 2004

Turning to the facts of the present case, and having regard to the findings of the domestic court (see paragraphs 19 and 48 above), the Court accepts that the applicant was driving his car in the centre of Athens at excessive speed in an uncontrolled and dangerous manner, thereby putting the lives of bystanders and police officers at risk; the police were thus entitled to react on the basis that he was in charge of a life-endangering object in a public place. Alternative means to stop him were tried but failed; this was accom-

panied by an escalation of the havoc that the applicant was causing and by the lethal threat that he posed by his criminal conduct to innocent people. Further, the police officers pursuing the applicant had been informed by the control centre that he might well be armed and dangerous; they also believed that the movements which they saw the applicant make when he stopped his car were consistent with his being armed (see the accused police officers' statements, paragraph 17 above, and Mr Ventouris's and Mr Davarias's statements, paragraph 18 above).

Another important factor must also be taken into consideration, namely the prevailing climate at that time in Greece, which was marked by terrorist activities against foreign interests. For example, a group called the *"Revolutionary Organisation 17 November",* established in 1975, had committed, until it was dismantled in 2002, numerous crimes, including the assassination of United States officials (see paragraph 26 above). This, coupled with the fact that the event took place at night, near the American embassy, contributed to the applicant being perceived as a greater threat in the eyes of the police.Consequently, like the national court, the Court finds in the circumstances that the police could reasonably have considered that there was a need to resort to the use of their weapons in order to stop the car and neutralise the threat posed by its driver, and not merely a need to arrest a motorist who had driven through a red traffic light. Therefore, even though it was subsequently discovered that the applicant was unarmed and that he was not a terrorist, the Court accepts that the use of force against him was based on an honest belief which was perceived, for good reasons, to be valid at the time. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the performance of their duty, perhaps to the detriment of their lives and those of others (see *McCann and Others*, cited above, pp. 58-59, § 200).

However, although the recourse as such to some potentially lethal force in the present case can be said to have been compatible with Article 2 of the Convention, the Court is struck by the chaotic way in which the firearms were actually used by the police in the circumstances. It may be recalled that an unspecified number of police officers fired a hail of shots at the applicant's

car with revolvers, pistols and submachine guns. No less than sixteen gunshot impacts were found on the car, some of them attesting to a horizontal or even upward trajectory, and not a downward one as one would expect if the tyres, and only the tyres, of the vehicle were being shot at by the pursuing police. Three holes and a mark had damaged the car's windscreen and the rear window glass was broken and had fallen in (see paragraph 14 above). In sum, it appears from the evidence produced before the Court that large numbers of police officers took part in a largely uncontrolled chase.
Serious questions therefore arise as to the conduct and the organisation of the operation. Admittedly, some directions were given by the control centre to some police officers who had been expressly contacted, but others went of their own accord to their colleagues' assistance, without receiving any instructions. The absence of a clear chain of command is a factor which by its very nature must have increased the risk of some police officers shooting erratically.
The Court does not of course overlook the fact that the applicant was injured during an unplanned operation which gave rise to developments to which the police were called upon to react without prior preparation (see, *a contrario*, *Rehbock v. Slovenia*, no. 29462/95, §§ 71-72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible burden on the authorities (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

Nachova v. Bulgaria, 6 July 2005
It was undisputed that Mr Angelov and Mr Petkov had served in the Construction Force, a special army institution in which conscripts discharged their duties as construction workers on non-military sites. They had been sentenced to short terms of imprisonment for non-violent offences. They had escaped without using violence, simply by leaving their place of work, which was outside the detention facility. While they had previous convictions for theft and had repeatedly been absent without leave, they had no

record of violence (see paragraphs 13-15 above). Neither man was armed or represented a danger to the arresting officers or third parties, a fact of which the arresting officers must have been aware on the basis of the information available to them. In any event, upon encountering the men in the village of Lesura, the officers, or at least Major G., observed that they were unarmed and not showing any signs of threatening behaviour (see paragraphs 15-26 above).

Having regard to the above, the Court considers that in the circumstances that obtained in the present case any resort to potentially lethal force was prohibited by Article 2 of the Convention, regardless of any risk that Mr Angelov and Mr Petkov might escape. As stated above, recourse to potentially deadly force cannot be considered as *"absolutely necessary"* where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence.

In addition, the conduct of Major G., the military police officer who shot the victims, calls for serious criticism in that he used grossly excessive force.

(i) It appears that there were other means available to effect the arrest: the officers had a jeep, the operation took place in a small village in the middle of the day and the behaviour of Mr Angelov and Mr Petkov was apparently predictable, since, following a previous escape, Mr Angelov had been found at the same address (see paragraphs 17, 18, 23 and 24 above).

Juozaitiene and Bikulcius v. Lithuania, 24 April 2008

The first applicant's son, and the second applicant's son were found dead in a car with single gunshot wounds to their backs. The deaths had occurred as the police tried to chase a Ford Escort.

The Court acknowledged that the police officers tried to use alternative methods to stop the car. However, the need to continue shooting at the vehicle appeared to have been reduced by the fact – of which at least one officer had been aware – that the damage to the car's radiator would have eventually brought it to a halt.

The Court took account of the fact that the applicants' sons were killed in

the course of an unplanned operation which gave rise to developments to which the police were called upon to react without prior preparation. Nevertheless, the risk to the lives of the car passengers, considered in the light of the absence of an immediate danger posed by the driver and the ensuing lack of urgency in stopping the car, pointed to a measure of impulsiveness in the way the police officers handled the situation. The Court considered that their actions indicated a lack of caution in the use of firearms, contrary to what should be expected from law-enforcement professionals.
Finding that the deaths of the applicants' sons resulted from the use of force which was more than absolutely necessary in order to effect a lawful arrest, the Court held that there had been a violation of Article 2 as regards the death of the applicants' sons.

B. The duty to investigate

1. An effective investigation of allegations of ill treatment or violation of the right to life constitutes a procedural obligation under Articles 2 and 3
As the Court has stated in many occasions that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Boicenco v. Moldova*, no. 41088/05, § 102, 11 July 2006; *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, p. 3288, § 93; *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V, § 79).
The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum

is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *V. v. the United Kingdom* [GC], no. 24888/94, § 70, ECHR 1999-IX; *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, § 55; *Labita*, judgment, cited above, § 120; *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1517, § § 52 and 53; *Assenov and Others*, cited above, p. 3288, § 94; *İlhan v. Turkey* [GC], no. 22277/93, § 84, ECHR 2000-VII).

Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121; *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161).

It is further recalled that it is not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see *Klaas*, cited above, § 29).

If the Court cannot establish beyond reasonable doubt the violation of Articles 2 and 3 under the substantive angle, it may conclude that there was a violation of the abovementioned Articles under their procedural angle: "The Court recalls that where an individual makes an arguable assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation" (e.g. *Trajkoski v. the "FYROM*, 7 February 2008, para. 14).

2. The criteria for an effective investigation

An investigation under Articles 2 and 3, should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Corsacov v. Moldova*, no. 18944/02, § 68, 4 April 2006; *Labita*, cited above, § 131, ECHR 2000-IV; *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161; *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98).

The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to *"secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention"*, requires by implication that there should be an effective official investigation. An obligation to investigate *"is not an obligation of result, but of means"*: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Rus-*

sia, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

In light of what explained above, the following five principles of effective police complaints investigation have been developed in the case-law of the European Court of Human Rights on Articles 2 and 3 of the ECHR. *"There are two principal purposes of the five ECHR effective police complaints investigation principles. On the one hand, they have been developed to ensure that an individual has an effective remedy for an alleged violation of Article 2 or 3 of the ECHR. On the other hand, the principles are intended to protect against violation of these fundamental rights by providing for an investigative framework that is effective and capable of bringing offenders to justice"*[12].

The independence principle

The Court has been attentive to the need to ensure that the following conditions are met: namely that persons responsible for carrying out the investigation should be independent of anyone implicated in the impugned events and that the investigation should be conducted in an independent fashion by properly examining the evidence.

Examples

Yaremenko v. Ukraine, 12 June 2008

The Court further notes that the investigation into the applicant's allegations lacked the requisite independence and objectivity. The first questioning of the applicant about his alleged ill-treatment was conducted by the investigating prosecutor G., whom the applicant's wife, in her complaint of 12 February, clearly named among those who had coerced her husband. Moreover, in his refusal to institute criminal proceedings following the complaint of ill-treatment, prosecutor V., the head of the Kharkivsky District Prosecutor's Office, did not even mention prosecutor G., who was from the same District

[12] *Opinion of the Commissioner for Human Rights para. 31 Comm DH (2009)4*

Prosecutor's Office. What is more, when the applicant provided the names of the other alleged perpetrators from the Kharkivsky Police Department, they were questioned by their alleged accomplice - investigating prosecutor G. In the Court's opinion, these facts provide sufficient basis for it to conclude that the State authorities fell short of their obligation to conduct an effective and independent investigation into the allegations of ill-treatment as required by Article 3 of the Convention. Accordingly, it dismisses the Government's preliminary objection and finds that there has been a violation of Article 3 of the Convention in this respect.

Iambor v. Romania, 24 June 2008 (French version only)

The adequacy principle

The investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible.

Romanov v. Russia, 24 July 2008
The investigation must be thorough (cf *supra*), i.e. capable of leading to a determination of whether the force used to effect an arrest was or was not justified in the circumstances. It must be capable of explaining the cause of injuries sustained in custody. The investigation must be capable of leading to the identification and punishment of those responsible. This is an obligation not of result but of means. To that end, the authorities must have taken reasonable steps to secure the evidence concerning the incident, including eye witness testimony, forensic and medical evidence and an objective analysis of clinical findings including the cause of injuries.

Juozaitiene and Bikulcius v. Lithuania, 24 April 2008
The Court noted that the domestic authorities had concentrated their inquiry on one version only – that presented by the police – without discussing any further hypotheses, such as those raised by the applicants. Most

significantly, while the applicants expressed their doubts regarding the distance of the shooting, those doubts had not been scrutinised. No evidence had been submitted to the Court to show that the only possible account of events was that given by the police; the Government had not submitted any expert opinions on the correlation between the distance of the shooting and the trajectory of the bullets, or any similar evidence.

Trajkovski v. "the former Yugoslav Republic of Macedonia", 7 February 2008
In this case, the public prosecutor had based his conclusions uniquely on police officers' statements.
Lastly, the trial court's insistence in the subsidiary criminal proceedings that the applicant identify the other four police officers had been excessively formalistic. Instead of consulting official police records, which would have easily identified those police officers, the trial court rejected the applicant's complaint as incomplete and took no further action. Moreover, there was no explanation as to why the trial court had not continued the proceedings against Mr P.R. or taken any steps to hear witnesses suggested by the applicant or the doctor who had examined him.

Chember v. Russia, 3 July 2008
The Court notes at the outset that the investigation cannot be described as sufficiently thorough. The investigator did not commission a medical examination of the applicant or, for that matter, refer to any medical documents he could have obtained. The only named witnesses mentioned in the investigator's decision were Lieutenant D. and Junior Sergeant Ch., that is the applicant's commanders against whom his complaint had been directed. It is impossible to establish the relevance of statements of other witnesses who had not been identified in the decision by their names or rank. Even their number is uncertain: the Government submitted three statements by other servicemen, whereas the investigator's decision referred to "all the servicemen of the seventh company", that is a hundred individuals. Furthermore, it transpires that the investigator had not questioned those soldiers who could have been eyewitnesses to the alleged ill-treatment, such as the applicant's fellow serviceman P.

Camdereli v. Turkey, 17 July 2008
In the instant case, the Court observes that an investigation into the allegations of the applicant was initiated promptly by the public prosecutor's office. This investigation led to the committal for trial of the accused gendarme for the offence of ill-treatment. However, no information was submitted by the Government to demonstrate that Mr T.Ü. was suspended from duty while being investigated or tried (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). Moreover, the Court notes that the proceedings in question did not produce any result due to the application of Law no. 4616, which created virtual impunity for the perpetrator of the acts of violence (see, *mutatis mutandis*, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 147, ECHR 2004-IV (extracts), and *Abdülsamet Yaman*, cited above, § 59). In this context, the Court reiterates its earlier finding in a number of cases that the Turkish criminal law system has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents when the criminal proceedings brought against the latter are suspended due to the application of Law no. 4616 (see *Nevruz Koç*, § 54, cited above, *Yeşil and Sevim v. Turkey*, no. 34738/04, § 42, 5 June 2007). The Court finds no reason to reach a different conclusion in the present case.
In sum, the Court finds that the measures taken by the authorities failed to provide appropriate redress for the applicant (see *Okkalı*, cited above, § 78). She may therefore still claim to be a victim within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objections under this head and finds that there has been a violation of Article 3 of the Convention.

Vladimir Romanov v. Russia, 24 July 2008
Firstly, according to the Court, no evaluation was carried out with respect to the quantity and nature of the applicant's injuries in the view of the different versions of what had occurred during the relevant incident. In delivering his decision of 3 July 2001, the assistant prosecutor limited himself to the three medical reports which listed injuries sustained by the appli-

cant. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and de facto independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In the instant case, the three medical reports, drafted by a prison dermatologist or a group of doctors in the prison hospital, provided limited medical information and did not include any explanation by the applicant as regards his complaints.

Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authority. In particular, the Court notes that the assistant prosecutor's inquiry included excerpts from the testimonies given by several inmates allegedly present at the scene who stated that they had not seen the beatings. The Court finds it peculiar that the investigator had been unable to identify inmates who had been eyewitnesses to the beatings and who could have provided relevant information on the incident. It is further apparent from the decision of 3 July 2001 that the assistant prosecutor based his conclusions mainly on the testimonies given by the warders involved in the incident. Although the excerpt of the applicant's testimony was included in the decision of 3 July 2001, the investigator did not consider his testimony to be credible, apparently, because it reflected a personal opinion and constituted an accusatory tactic by the applicant. However, the assistant prosecutor's inquiry did accept as such the credibility of the warders' testimonies, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the testimonies, as those given by the applicant were deemed to be subjective, but not those given by the warders. However, the credibility of the latter testimonies should also have been questioned, as the prosecution inquiry had also sought to establish whether the warders were liable on disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

The Court also does not lose sight of the fact that the prosecuting authority

did not embark on an assessment of the proportionality of the force used against the applicant. Without any evidence from independent sources the assistant prosecutor nevertheless established that the applicant had, *inter alia*, physically resisted the warders. At no point during the inquiry did he endeavour to analyse the degree of force used by the warders and whether it was necessary and proportionate in the circumstances. Without subjecting the warders' testimonies to doubt, the investigator held that the warders had lawfully assaulted the applicant to put an end to his disruptive behaviour. In doing so, he disregarded a number of other factors – that medical evidence supported the applicant's allegations that the violence against him had continued after he had capitulated, that the beating had been wilful, and so on, all of which were material to the determination of whether the act complained of amounted to a breach of Article 3 of the Convention.
Finally, despite the fact that it has already ruled on the relevance of the judicial proceedings to the issue of the applicant's victim status (see paragraph 79 above), the Court also considers it noteworthy to mention that the domestic courts in their conclusions relied heavily on the findings made by the assistant prosecutor in his decision of 3 July 2001. Neither the Oktyabrskiy District Court nor the Ivanovo Regional Court questioned personally the eyewitnesses mentioned in the decision or the applicant or the warders who were the protagonists in the incident. Furthermore, the Court is struck by the fact that the domestic courts awarded the applicant compensation by relying on the mere lack of sufficient control on the part of the detention facility over the warders who "should have performed their duties safely.

Nadrosov v. Russia, 31 July 2008
The Court notes that in this case no evaluation was carried out with respect to the quantity and nature of the applicant's injuries. The Court observes that the applicant's mother asked for the applicant to be examined by a forensic doctor. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and de facto independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X).

In the instant case, the Court notes with regret that the assistant prosecutor omitted to request a medical examination of the applicant or at least to take statements from the emergency and hospital doctors attending the applicant. In delivering his decision of 10 November 2000, the assistant prosecutor did not even mention the medical reports which listed injuries sustained by the applicant. In this connection the Court is concerned that the lack of any "objective" evidence - which medical reports could have been – was subsequently relied on by the assistant prosecutor as a ground for his decision not to institute criminal proceedings against the police officers.

The promptness principle

*A **prompt response** by the authorities in investigating the complaints of ill-treatment is of the essence and is linked to the question of public confidence in the authorities adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.*

Examples

Juozaitiene and Bikulcius v. Lithuania, 24 April 2008

The Court noted that the investigation into the lawfulness of the shooting was not opened until almost 10 months after the incident. It was true that some fact-finding was carried out in the context of the criminal proceedings against the driver. However, those proceedings only dealt with the responsibility of the driver and made no assessment as to the circumstances and lawfulness of the use of force by SG. There had not therefore been a prompt investigation, as required by Article 2.

Kobets v. Ukraine, 14 February 2008

The Court noted that the Ukrainian authorities had been aware of the applicant's complaints from the outset, that is to say when the ambulance's doctor had informed the police about the applicant's allegations on 9 July 2002. However, the first decision concerning those allegations had not been taken until seven months later in February 2003. It had also taken

more than a year to bring criminal proceedings. Those proceedings lasted for nearly four years and were remitted on numerous occasions for further investigation. The latest decision of May 2006 pointed to inadequacies in the investigation and indicated a number of steps which should be taken. Apparently though, none of the recommendations in that decision had been followed up and the investigation was still pending. The Court therefore concluded that there had been a violation of Article 3 concerning the authorities' failure to carry out an adequate investigation into the applicant's allegations of ill-treatment.

The public scrutiny principle

Procedures and decision-making should be open and transparent in order to ensure accountability.

Examples

Ognyanova v Bulgaria, 23 February 2006

In this case, the lack of promptness and public scrutiny into the investigation gave further weight to the Court's conclusion that Article 2 was violated in this respect.

Chitayev v Russia, 18 January 2007

In this case, it was reiterated that the minimum standards as to effectiveness of an investigation defined by the Court's case-law also include the requirements that the investigation must be subject to public scrutiny. In particular the Court noted that the authorities failed to take a number of steps that appear essential for a proper conduct of the investigation. No attempts were made to order and carry out a forensic medical examination of the applicants, to inspect the scene of the incident or to identify and question the relevant officials. It further does not appear that either the applicants or their representatives were granted access to the materials of the investigation, or even provided with a copy of the decision of 7 January 2002. In such circumstances the Court is bound to conclude that the authorities

failed to carry out a thorough and effective investigation into the applicants' arguable allegations of ill-treatment while in detention. Accordingly, there has been a violation of Article 3 of the Convention on that account.

The victim involvement principle

There must be a sufficient element of public scrutiny of the investigation; ***the victim must be involved in the procedure*** *to the extent necessary to safeguard his or her legitimate interests.*

Examples

Victor Savitchi v. Moldova, 17 June 2008

The Court must also have regard to the manner in which the domestic authorities examined the applicant's complaint about ill-treatment. It notes that the Prosecutor's Office and the Râşcani District Court limited their examination to the questioning of several police officers who had participated in the applicant's arrest and who denied his allegations of ill-treatment. They appear to have ignored the applicant's statements that the video of the arrest contained evidence in support of his allegations, which, in the Court's view, is surprising, since that would normally be the first and most reliable piece of evidence for the examination of such a complaint. It is to be noted that the Bălți Regional Court in its judgment of 5 June 2001 concluded from the video evidence that the applicant has been surrounded by police officers, his hands had been twisted and he was kicked in the area of the liver. The sound of blows could still be heard even when the applicant was not being filmed (see paragraph 14 above). In the light of the above, the Court concludes that there has been both a substantive and procedural violation of Article 3 of the Convention.

Chember v. Russia, 3 July 2008

The Court further finds that the applicant's right to participate effectively in the investigation was not secured. The investigator did not hear him in person; the applicant's version of events was not even mentioned in his de-

cision. Since no criminal proceedings were instituted, the applicant was not able to claim formally the status of a victim or exercise the procedural rights attaching to that status.

Nadrosov v. Russia, 31 July 2008
Further, the Court finds that the applicant's right to participate effectively in the investigation was not secured. It transpires from the assistant prosecutor's decision of 10 November 2000 that the investigator did not hear the applicant in person and that he did not even consider mentioning his version of events in the decision. In fact, it is apparent from the decision of 10 November 2000 that the assistant prosecutor based his conclusions solely on the testimonies given by the police investigator who had been assigned to the applicant's criminal case and a police officer who had taken part in the applicant's arrest. The assistant prosecutor accepted too readily their denial that force had been used against the applicant. The Court also cannot but note the glaring contradictions in the assistant prosecutor's findings and his selective and somewhat inconsistent approach to the assessment of evidence. Without statements from the truck drivers or the applicant or any evidence from independent sources the assistant prosecutor, nevertheless, assumed that the applicant could have sustained injuries in the fight with the truck drivers. The Court notes that while the assistant prosecutor may not have been provided with the names of individuals who may have witnessed the applicant's arrest at the bus stop on 29 October 2000 or who could have seen the applicant at the police station, he could have been expected to take steps of his own initiative to ascertain possible eyewitnesses. Furthermore, he took no meaningful measures to determine the identity of other police officers who had taken part in the applicant's arrest and his subsequent interrogation in the police station. The Court therefore finds that the assistant prosecutor's failure to look for corroborating evidence and his deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, § 106).

The requirement of an effective investigation for racially motivated violence

The Court has stressed that when investigating deaths at the hands of State agents, they have the duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice could have played a role in the events. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence. The Court has recently acknowledged that this requirement extends to allegations that acts of violence by State Agents were motivated by racism.

Examples

Nachova v. Bulgaria, 6 July 2005

In this case the Court finds that the authorities failed in their duty under Article 14 of the Convention taken in conjunction with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events. It follows that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 in its procedural aspect.

The principles set out in Nachova were reiterated by the Court in all cases related to allegation regarding racially motivated violence. Like in Nachova, in Bekos and Koutropoulos v. Greece (13 December 2005), in Secik v. Croatia (31 May 2007), in Stoica v. Romania (4 March 2008), the Court found a violation of Article 14 read in conjunction with Article 3 when the evidence indicating the racial motives behind the police officers' actions is clear and neither the prosecutor in charge with the criminal investigation nor the Government could explain in any other way the incidents or, to that end, put forward any arguments showing that the incidents were racially neutral (for the non establishement of a racist attitude beyond any reasonable doubt see for instance Zelilof v. Greece of 24 May 2007).

FINDINGS OF THE COMMITTEE FOR THE PREVENTION OF TORTURE (CPT)

The above mentioned requirements are also refferred to by the CPT considers that, for an investigation into possible ill-treatment by law enforcement officials to be effective:

- the persons responsible for and carrying out the investigation should be independent from those implicated in the events,
- the investigation must be capable of leading to a determination of whether force used was or was not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned,
- all reasonable steps should be taken to secure evidence concerning the incident, including inter alia eyewitness testimony, forensic evidence, and, if applicable, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death,
- the investigation must be conducted in a prompt and reasonably expeditious manner,
- a sufficient element of public scrutiny of the investigation or its results should be required to secure accountability in practice as well as in theory,
- in the context of criminal investigations, all pieces of information which may be indicative of the commission of other criminal offences should be fully taken into account,
- disciplinary culpability of law enforcement officials involved in instances of ill-treatment should be systematically examined, irrespective of whether the misconduct of the officers concerned constitutes a criminal offence.

The allegations should be adequately assessed by taking evidence from all persons concerned and arranging in good time for on site inspections and or specialist medical examinations (even if no visible external injuries injuries).
Forensic reports should be of requisite quality. Access to a forensic examina-

tion should not be dependant on authorisation by an invetsigating authority. The decision as to whether the conduct of the officers concerned is criminal in nature should be made by the competent prosecution and/or judicial authorities and not by a serving police officers
Where a law enforcement official and a detainee in his/her charge make counter allegations, steps should be taken to ensure that the equitable nature of proceedings is manifest.
Strict time limits within wich public prosecutors must determine whether complaints against the police which are transmitted to them are to the subject of a preliminary investigation[13].

FINDINGS OF THE COMMISSIONER FOR HUMAN RIGHTS

In light of the rights protected by Articles 2 and 3 of the ECHR, the Commissioner has highlighted that instances of impunity of State agents are examples of non-compliance with the Rule of Law: *"We cannot resign ourselves and tolerate impunity for the perpetrators and instigators of criminal acts like these. The security forces must fully honour their role of guaranteeing the security of all, and the allegations of unlawful conduct on their part must be fully elucidated; In short, any action of the authorities and law enforcement agencies must strictly comply with the guarantees of the rule of law."*[14]
The Commissioner observed in many countries that the legal and organisational measures taken so far to prevent torture and ill-treatment were not sufficient to significantly reduce the number of allegations of excessive use of force by the police at the moment of apprehension and ill-treatment or abuse during arrest or questioning; those remain frequent and continue to feature prominently in reports by both international and national human

[13] *Further requirements can be found in the document "Selected extracts from CPT reports concerning police complaints mechanisms, a selection made by the Secretariat of the CPT". This document was distributed to the participants in this Workshop.*

[14] *Alvaro Gil-Robles speech before the Parliament of the Republic of Chechnya, 26 February 2006, Grozny.*

rights organisations. *"The failure to investigate and prosecute allegations of ill-treatment effectively and efficiently continues to contribute to a climate of impunity"*[15]. The Commissioner regrets when the number of prosecutions is extremely low in comparison to the number of reports of ill-treatment: *"If a prosecutor decides not to raise charges against an abusive officer, the decision can in theory be appealed to a higher prosecutor, and, at a later stage, to a court of law. However, in practice it appears very difficult to prosecute police officers. The fact that during the period in question (2003 – 2006) there was not one single conviction of a police officer, would seem to bear this out. [...] The Commissioner regrets the fact that no independent body has been established to investigate police misbehaviour. The independence of the body in charge of investigating allegations of improper police behaviour is essential for the effectiveness of the system. The creation of such a body would also enhance the climate of trust and confidence in the police force"*[16]

He calls on the authorities to reinforce the eradication of impunity through conducting effective investigation and prosecution: *"Intensify efforts to eradicate cases of police brutality through training, effective investigation and prosecution of such cases"*[17]. For instance, although there are internal mechanisms established to deal with alleged incidents of police malpractice, the Commissioner calls on the authorities to set up independent monitoring and complaints bodies for this purpose. The independence of such monitoring bodies can only be ensured effectively if they are placed outside police and ministry structures[18]. In certain circumstances, he recommends to change

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[15] *Report by the Commissioner for Human Rights on his visit to Albania from 27 October to 2 November 2007, CommDH(2008)8, para.33.*

[16] *Memorandum to the Polish Government Assessment of the progress made in implementing the 2004 recommendations ofthe Council of Europe Commissioner for Human Rights, CommDH(2007)13, paras 20-28.*

[17] *Report by the Commissioner for Human Rights on his visit to Poland from 18 to 22 November 2002, para. 60.2.*

[18] *Report by the Commissioner for Human Rights on his visit to Germany from 9 to 11 and 15 to 20 October 2006, CommDH(2007)14, para. 39.*

the composition of complaints boards in order to render them completely unbiased: *"Modify the composition of the complaints boards responsible for investigating cases of alleged misconduct by police officers, in order to ensure the impartiality of such boards"*[19]; to implement and promote independence of investigation bodies[20]. For instance in Denmark, the Commissioner noted that at local level Chief Constables represent both the police and the prosecution; in their latter function the Regional Prosecutors are their superiors. He concluded that given such close ties between the prosecution service and the police the independence and role of the Police Complaints Boards was vital in Denmark and his recommendation was to strengthen the independence and role of the Boards by awarding it greater influence over the activity of the prosecution service in investigating and deciding on complaints against the police.[21]

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[19] *Report by the Commissioner for Human Rights on his visit to Slovenia from 11 to 14 May 2003, CommDH(2003)11, para. 86.*

[20] *Statement by Thomas Hammarberg to the Parliamentary Assembly in response to the report, "Council of Europe Commissioner for Human Rights –stocktaking and perspectives", 5 October 2007.*

[21] *Memorandum to the Danish Government Assessment of the progress made in implementing the 2004 recommendations ofthe Council of Europe Commissioner for Human Rights, CommDH(2007)11, paras 61-63.*

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Chapter 2

The role of NHRSs in handling complaints against the police

Participants examined experiences and practices from different countries, at the national and regional levels, exploring the role of Ombudsman offices in handling complaints against the police, their added value and means of actions, and also examined the advantages of specialised independent mechanisms. Assessments of the situation in Estonia, Spain and Georgia were presented. The Ombudsman of the Oblast of Perm in the Russia Federation and the Provincial Ombudsman of Vojvodina gave their contributions concerning the role of regional structures.

Three main means of action emerged:

1. Dealing with complaints against the police

The Public Defender in Georgia (also "PDG") has dealt with a large number of complaints against police since 2005:
2005 – 685 complaints
2006 – 965 complaints
2007 – 396 complaints

The complaints against the police can be brought by a citizen personally or sent by him/her by regular mail at the division of reception of citizens and their complaints, which with other 2 divisions (division of administrative law and social-economical issues, division of freedom and equality) is coordinated with the Department of Monitoring and Investigation. The complaint is then given to an employee of the PDG. A complaint shall be examined within the period of no more than one month. First a lawyer of

the PDG invites a complainant at the PDG office or visits him/her (especially if the alleged facts took place in the region), interviews him/her on the details of the case, takes from him/her the written explanation and if necessary requests the additional information. The Public defenders' employees may request information from other state bodies as well. A lawyer of the Public Defender examines and analyzes the evidence (documentation) and prepares a subsequent legal opinion. Based on the results of the examination, the Public Defender of Georgia may send recommendations to those public authorities, public officials or legal persons whose activities have caused the violation. He may also send all materials on the case to the competent authorities with a recommendation to institute criminal proceedings (mainly to the Prosecutor General's office).

In general, Ombusmen cannot be involved in criminal proceedings (e.g. the Estonian Chancellor of Justice). In the same vein, the Ombudsman of Spain cannot perform an individual examination of any complaints that are pending judicial ruling.

2. Supervision of relevant legislation

NHRSs may review legislation concerning police work via their annual reports or by specific recommendations.

For instance, the Georgian Public Defender, may include analysis and a legal opinion on a specific case in the report which he submits to the Parliament twice a year.

According to the Estonian law, the police can detain a person either under criminal law or under administrative law (detention in order to check someone's identity). The Chancellor of Justice noted that the current administrative law does not povide for a sufficiently clear basis on administrative detention. The Chancellor of Justice presented a draft act to the Minister of Internal Affairs in that respect.

Along the same lines, the Ombudsman of Spain has recommended that the Ministry of Interior gives priority to the reform of the legislation dated 1993, by which weapon regulations were approved.

3. Visits to police stations and detention centres

In 2007 and 2008 advisers to the Estonian Chancellor of Justice conducted eight inspection visits to different police detention centers. One of the topics, that the Chancellor of Justice focuses on, is the health gear issues in police detention centers. He observed that Estonian police has not enough funding to provide medical services in police detention centers and also that there is a lack of legal regulations concerning this matter. Thus he organised a meeting between the Ministry of Internal Affairs, the Ministry of Social Affairs and the Police Board and the Health-care Board, and several proposals were made to the participants. One of them aimed at launching a draft act with specific requirements to be met by the police when providing medical services to detained persons. In addition, the Chancellor of Justice has an agreement with the Ministry of Internal Affairs in accordance with which all information about death cases that occur in police detention centers should be sent without a delay to the Chancellor of Justice by e-mail. The same agreement applies to prisons.

By article 19 of the organic law on the Public Defender of Georgia *"The Public Defender shall verify the state of protection of human rights and freedoms in pre-trial detention facilities and in other places of deprivation of liberty. He shall meet and talk personally with arrested or detained persons and the convicted; he shall check the relevant documentation, confirming the legality of holding such persons in the above-mentioned institutions".*

While monitoring, the Public Defender has the right: a) to have access to detention facilities, as well as to other places of derivation of liberty without impediment; b) to demand and receive any information, document or other material required for examination; c) to obtain explanation on the issue from any public official.

In 2005 – appr. 1800, in 2006 – 856 and in 2007 – 1513 unexpected visits were conducted by the PDG monitoring Group in police offices and temporary detention facilities.

The positive result of the monitoring should be highlighted, such as:

1. The beating and torture of detainees by the police staff in the temporary detention facilities are practically eliminated, although the above mentioned facts still take place in police offices.
2. In 2006 on the basis of the Public defender's recommendation 3 temporary detention facilities were closed and 11 were refurbished.
3. The management of the registration journals of detainees was improved. Thanks to the intervention of the Public defender's representatives, disciplinary sanctions were applied to Police officers, who indicated incorrectly the time of bringing in and taking out of detainees.

3]

Chapter 3
Need to set up specialised independent bodies dealing with complaints against the police

Participants also examined the advantages of the existence of specialised independent mechanisms. The following national experiences were presented.

France The legislators chose the option of establishing a new special independent body: the *Commission Nationale de Déontologie de la Sécurité* (National Commission for a Security Code of Conduct) under Law n° 2000-494 of 6 June 2000. The Commission can ask ministers to refer a case to the inspectorate of the ministry concerned in order to carry out studies, verifications or investigations that could throw light on a case. Individuals responsible for security on the territory of the Republic and their servants or agents shall communicate to the Commission all information and documents that can be of use in carrying out its task. Public employees and the managers of private firms carrying out security operations shall obey to summons on the part of the Commission and answer its questions. The Commission entrusts one or several of its members with verifications on the spot, in public places and on professional premises, notice having been given in advance. In exceptional cases the Commission can decide to carry out an inspection without prior notice if it considers that the presence of the persons concerned or those having authority over them is not necessary.

In order to remedy the breaches found and to prevent them from occurring again, the Commission addresses an opinion or recommendation to the authorities concerned, who are obliged to answer by a deadline fixed by the Commission. In the absence of such an answer, or if the recommendation has not been followed, the Commission draws up a special report that

is published in the "*Journal Officiel*" of the French Republic. If the facts referred to the Commission lead it to assume that a criminal offence has been committed, it informs the Public Prosecutor. In the case of breaches that could give rise to disciplinary proceedings the Commission must forthwith bring them to the knowledge of the persons having disciplinary powers. The Commission can propose to the Government any modification to the existing legislation or regulations in its field of competence.

Hungary The Chairman of the Independent Police Complaints Commission of Hungary (created in 2007), Jenö Kaltenbach, spoke of the absence of a democratic tradition in his country, discriminatory practices against the Roma people and the slow progress towards the establishment of independent monitoring bodies. The Independent Police Complaints Commission is composed of five members with experience in human rights protection. They are nominated by two parliamentary commissions, the Commission for Human Rights and the Commission for the Police and are elected by the parliament with a 2/3 majority for a period of 6 years and are not re-eligible. The Commission has investigatory powers including free access to any official building or room of the police. It submits a report to the Chief of the Hungarian Police with a recommendation. The latter is not binding but the Chief of the Police is obliged to justify the refusal of the Commission's recommendations.

Greece In the CPT report following its visit to Greece in 2008, it was written that the Greek authorities are in the process of introducing new legislation concerning the investigation and punishment of disciplinary offences by members of the Hellenic Police Force. This draft law lays down the procedures to be followed by the bodies competent to hear complaints against police officers, as well as the sanctions to be incurred for various types of disciplinary offences. However, this new legislation omits introducing an independent complaints mechanism. Complaints by the public entailing

allegations of disciplinary offences continue to be submitted to officers of the Hellenic Police, and the superior officer of the alleged perpetrator may still carry out investigations into certain offences. The CPT recommended that the Greek authorities should take the necessary steps to establish an independent police complaints mechanism[22].

[22] *Cfr CPT/Inf (2009) 20*

Conclusions

The participants noted that the police is not an administration like others:

- it is demanding, dangerous, and a high degree of discretion is required;
- there is a high degree of solidarity among the staff: they go through dangers together;
- there is a "military" discipline;
- the police is the main protector of both the individual and the State;
- there is a temptation by the State to influence the police;
- the police has extraordinary means at its disposal such as lethal weapons and surveillance;
- distinguishing feature: the police officers can be involved in investigation against themselves.

Thus the handling of complaints against the police requires specificity:

- need to clarify the norms binding police action;
- need to rely more on technology; recording police interrogations;
- use of legal presumption, reversing the burden of proof;
- protect whistle blowers;
- involve media.

Participants shared there views *vis à vis* the "dilemma" discussed, i.e. "which body should handle police complaints?". The existing bodies have different mandates and the legal and instututional organisation is different in each country. The participants agreed that there cannot be a unique model which could be applied in all member States of the Council of Europe for the complaints against the police. According to a specific situation in the country, an adequate solution must be found, either through the development of the competences of the Ombudsman office in this field, or through a specific independent mechanism.

In both cases, the body in charge of handling the complaints against the Police should be fully independent (legal basis, composition, appointment of its members, etc.). The body should have adequate means (financial, human resources, etc.) and appropriate competences to be able to handle complaints against the police (investigative powers, relations with the prosecutor, etc.).

The above-mentioned common features for an independent police complaints body (ICPB) can be summarised by quoting the already mentioned opinion of the Commissioner for Human Rights, which lists the following basic standards:

- The ICPB must be transparent in its operations and accountable.
- Sufficient public funds must be available to the ICPB in order to enable it to perform its investigative and oversight functions.
- The should be representatives of minority population and make arrangements to consult all concerned in the police complaints system.
- The IPCB should respect police operational independence and support the head of police as the disciplinary authority for the police service.
- The IPCB should have responsibility for the investigation of complaints in which Article 2 or 3 of the ECHR is engaged or an issue of criminal or disciplinary culpability arises.

As a concluding remark, it is to be reaffirmed that *"an independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body should form a pivotal part of such a system"*[23] .

[23] *Comm. DH (2009)4.*

Appendixes

List of background documents

COUNCIL OF EUROPE

- European Convention on Human Rights and Additional Protocols
  http://www.echr.coe.int
- Case-law of the European Court of Human Rights
  http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
  http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm
- Recommendation Rec(2001)10 of the Committee of Ministers to member States on the European Code of Police Ethics, adopted by the Committee of Ministers on 19 September 2001
  http://www.coe.int/t/cm/home_en.asp
- The CPT Standards
  http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf
- Commissioner for Human Rights Viewpoint "There must be no impunity for police violence" (3 December 2007)
  http://www.coe.int/t/commissioner/Viewpoints/071203_en.asp
- Commissioner for Human Rights Viewpoint "Strong data protection rules are needed to protect the emergence of a surveillance society" (26 May 2008)
  http://www.coe.int/t/commissioner/Viewpoints/080526_en.asp
- Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against police, CommDH (2009)4.
  http://www.coe.int/t/commissioner/WCD/searchOpinions_en.asp#
- ECRI general policy recommendation no. 11 on combating racism and racial discrimination in policing, CRI(2007)39
  http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp

- Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies
  www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism

UNITED NATIONS

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of 10 December 1984
  http://www2.ohchr.org/english/law/cat.htm
- Optional Protocol to the UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment (2002)
  http://www2.ohchr.org/english/law/cat-one.htm
- Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979
  http://www2.ohchr.org/english/law/codeofconduct.htm
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990
  http://www2.ohchr.org/english/law/firearms.htm

The Association for the Prevention of Torture (APT)

- The Impact of External Visiting of Police Stations
  A study published by the APT
  http://www.apt.ch

Workshop programme

MONDAY, 19 MAY 2008
Arrival of the participants at the Conference Center in Pushkin and dinner starting 19.00

TUESDAY, 20 MAY2008

8.45 – 9.15 **Opening of the Workshop**
Alexander Sungurov, Director, Saint Petersburg Center for Humanities and Political Studies "Strategy"
Igor Michaylov, Ombudsman of St. Petersburg
Vladimir Lukin, Ombudsman of the Russian Federation
Markus Jaeger, Deputy to the Director, Head of the NHRS Unit, Office of the Council of Europe Commissioner for Human Rights

9.15 – 13.00 **UN and Council of Europe monitoring of human rights violations by the police in Council of Europe member States**
Introductory statement by Eric Sottas, Director, World Organisation against Torture, chair of the session
Manfred Nowak, UN Special Rapporteur on Torture & Head of Police Visiting Commission, Vienna: Findings of the UN monitoring bodies as regards Council of Europe member States
Irene Kitsou-Milonas, Legal advisor to the Council of Europe Commissioner for Human Rights: Findings of the Council of Europe monitoring bodies

Discussion

10.45 – 11.15 Coffee break

Discussion continued

13.00 – 15.00 Lunch break (Pushkin Conference Center)

15.00 – 18.00 **Handling of complaints against the police in Council of Europe member States: The role of non-judicial bodies, including their interaction with the judiciary as well as with other non-judicial bodies involved and their cooperation with the international monitoring bodies**
Introductory statement by Markus Jaeger, chair of the session
Jaanus Konsa, Specialist for Police Matters, Office of the Chancellor of Justice, Estonia: Assessment of the situation in Estonia
Lia O'hegarty, Commissioner, Irish Human Rights Commission: Assessment of the situation in Ireland
Petar Teofilovic, Ombudsman of Voijvodina: Assessment of the situation in Vojvodina

Discussion

16.15 – 16.45 Coffee break

Carmen Marin, Advisor on the Defense and Home Affairs Area, Office of the Ombudsman of Spain: Assessment of the situation in Spain
Vladimir Lukin, Ombudsman of the Russian Federation: Assessment of the situation in the Russian Federation

Discussion continued

18.00 **Close of the session**

19.00 Dinner at the Restaurant Admiralty in the Ekatarina Park

WEDNESDAY, 21 MAY 2008
9.00 – 13.00 **Need to set up specialised independent bodies to deal with complaints againts the police ?**
Introductory statement by Ales Butala, Member of the CPT and former Deputy Ombudsman of Slovenia, chair of the session
Dominique Commaret, Member, National Commission for a Security Code of Conduct, former Advocate General at the Cassation Court, France
Jenö Kaltenbach, Chairman, Independent Police Complaint Commission, Hungary

Discussion

10.45 – 11.15 Coffee break
Grigol Giorgadze, Head of Investigations and Monitoring Department, Office of the Georgian Ombudsman
Tatiana Margolina, Ombudsman of the Oblast of Perm, Russia

Discussion continued

13.00 – 14.00 Lunch break (Pushkin Conference Center)

14.00 – 15.00 **Winding-up of the workshop** by Markus Jaeger

15.00 **Close of the workshop**
by Alexander Sungurov and Vladimir Lukin

15.00 – 18.00 Sight-seeing in Pushkin

20.00 Dinner (Pushkin Conference Center)

THURSDAY, 22 MAY 2008

Departure from Pushkin

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Workshop debriefing papers 2008

"Rights of persons deprived of their liberty: the role of national human rights structures which are OPCAT mechanisms and of those which are not"
9 -10 April 2008 Padua (Italy)

"Complaints against the police: their handling by the national human rights structures"
20-21 May 2008 St. Petersburg (Russian Federation)

"Protecting the human rights of irregular migrants: the role of national human rights structures"
17 -19 June 2008 Padua (Italy)

"The promotion and protection by national human rights structures of freedom of expression and information"
21-23 October 2008 Padua (Italy)

"The role of national human rights structures in promoting and protecting the rights of persons with disabilities"
2-3 December 2008 Budapest (Hungary)

Workshop debriefing papers 2009

"The protection of the rights of Roma people by the national human rights structures"
24-25 February 2009 Budapest (Hungary)

"The role of national human rights structures in case of non-execution of domestic judgments"
24 - 26 March 2009 Padua (Italy)

"The role of national human rights structures as regards anti-terrorists measures"
09 - 11 June 2009, Padua (Italy)

"The role of the ombudsman in the defence of social rights in times of economic crisis"
2-4 September 2009 St. Petersburg (Russian Federation)

"The protection and promotion by national human rights structures of the rights of the elderly"
15-16 September 2009 Budapest (Hungary)

"The protection of separated or unaccompanied minors by national human rights structures"
20 - 22 October 2009 Padua (Italy)

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This project aims at setting up an active network of independent non-judicial human rights structures in Council of Europe member States.