

# EFFECTIVE INVESTIGATIONS

INTO DEATH OR ILL-TREATMENT  
CAUSED BY SECURITY FORCES



DEPARTMENT FOR  
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## EFFECTIVE INVESTIGATIONS

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### CAUSED BY SECURITY FORCES

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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In cases where the European Court of Human Rights finds a violation of the procedural aspect of Articles 2 (right to life) and/or 3 (prohibition of torture) of the Convention for failure to conduct an effective investigation into breaches, verified or alleged, by security forces of these fundamental rights, a continuing obligation exists to carry out such investigation, which, in practice, requires the authorities speedily and ex officio to re-examine the case files to avoid further action becoming time barred and, where the investigation remains feasible, to reopen or resume it.

The present factsheet focuses on the following major elements of effectiveness of investigations, established in the Court's case-law and supervised by the Committee of Ministers: independence; adequacy; promptness; investigating special motives of crime; independent oversight; and reparation for victims. It sets out a number of examples of measures adopted and reported by States, in the context of the execution of the European Court's judgments, in order to safeguard and reinforce effectiveness of investigations.

## 1. INDEPENDENCE

*The Convention requires that investigations be carried out, from the outset, by independent bodies. To meet this requirement, the investigating body must have a sufficient degree of independence – both institutional and practical – from the authorities that are subject to investigation. This implies that the question of independence will have to be considered in the light of the relation between the State agents/authorities allegedly responsible for the events and those who carry out the investigations.*

<p>The Ombudsperson and its Torture Prevention Unit as well as the Internal Affairs and Complaints Service as an independent investigative body monitor all incidents of alleged ill-treatment by law enforcement authorities, including complaints against illegal actions and omissions of State officials.</p>	<p>ALB / Pihoni (74389/13)</p> <p><a href="#">Judgment final on 13/05/2018</a></p> <p><a href="#">Action Plan</a></p>
<p>The Special Investigative Service (SIS) was established in 2007 as an independent body reporting to the Prosecutor General to investigate alleged acts of ill-treatment by the police. The Head of the SIS is appointed by the President of the Republic, upon the Prosecutor General's recommendation. The SIS Department for the Investigation of Torture conducts preliminary investigations into cases of ill-treatment. According to the 2015 amendments to the Criminal Procedure Code, victims' complaints now result in a public criminal prosecution and no longer in a private criminal prosecution. Allegations of ill-treatment by the military are investigated by the Investigative Committee, an institutionally and structurally independent body established in 2014.</p>	<p>ARM / Virabyan (40094/05)</p> <p><a href="#">Judgment final on 02/01/2013</a></p> <p><a href="#">Action Plan</a></p>
<p>The Criminal Procedure Code of 2011 provides that State attorneys are in charge of conducting criminal investigations into allegations of ill-treatment and that police can only act upon the State attorneys' orders.</p>	<p>CRO / Mader (56185/07)</p> <p><a href="#">Judgment final on 21/09/2011</a></p> <p><a href="#">Action Plan</a></p>
<p>The Independent Authority for the Investigation of Allegations and Complaints against the Police was established in 2006 to carry out <i>proprio motu</i> investigations into allegations of ill-treatment. It submits its files and results to the Attorney-General for decision.</p>	<p>CYP / Shchukin and Others (14030/03)</p> <p><a href="#">Judgment final on 29/10/2010</a></p> <p><a href="#">Final Resolution CM/ResDH(2014)93</a></p>
<p>To grant independent investigations into the circumstances surrounding the death of suspects taken into police custody, the General Inspection of the Security Forces, an independent body, was established in 2012 to investigate crimes allegedly committed by police officers.</p>	<p>CZE / Eremiasova and Pechova (23944/04)</p> <p><a href="#">Judgment final on 16/05/2012</a></p> <p><a href="#">Final Resolution CM/ResDH(2014)69</a></p>

<p>Following a constitutional amendment of 2018, the Prosecutor General is elected by Parliament for six years and is accountable only to Parliament. Furthermore, the State Inspector Service became operational in 2019 investigating crimes of torture, ill-treatment and several other crimes committed by law enforcement agents. The State Inspector is also elected by Parliament for six years and accountable only to Parliament.</p>	<p><i>GEO / Tsintsabadze group (35403/06)</i></p> <p><a href="#">Judgment final on 18/03/2011</a></p> <p><a href="#">Action Plan</a></p>
<p>A central internal investigation unit was set up at the Bavarian Criminal Police Office in 2013, which performs its duties in an independent and objective manner, separate from the daily operational activities of the Bavarian Police, ensuring independence of investigations into acts of police riot control units when members do not wear name tags or other individually identifying signs and in the absence of video footage. Thus, the unit carrying out the investigation is not linked in hierarchical, institutional, or practical terms to a police unit accused of misconduct.</p>	<p><i>GER / Hentschel and Stark (47274/15)</i></p> <p><a href="#">Judgment final on 09/02/2018</a></p> <p><a href="#">Action Report</a></p>
<p>The Internal Security Bureau was established in 2015 to conduct investigations into actions of prison officials and officials from the institutions subordinated to the Ministry of the Interior, including the police. This Bureau is institutionally independent from the police and prison authorities. It is supervised by the Minister of the Interior, has a separate budget, its own premises, and regional units.</p>	<p><i>LVA / Holodenko group (17215/07)</i></p> <p><a href="#">Judgment final on 04/11/2013</a></p> <p><a href="#">Final Resolution ResDH(2018)382</a></p> <p><i>LVA / Balajevs (8347/07)</i></p> <p><a href="#">Judgment final on 28/07/2016</a></p> <p><a href="#">Action Report</a></p>
<p>The Criminal Procedure Act and the State Prosecution Service Act were amended in 2007 and in 2011 to delegate the competence of conducting investigations into allegations of ill-treatment by police agents first to public prosecutors organised as a special task group and later to the newly established Special Department for the Investigation and Prosecution of Officials within the State Prosecutor's Office. This department operates under the principle of professional and operational autonomy and has exclusive jurisdiction to deal with alleged criminal offences committed by officials of the police, military police, and intelligence services.</p>	<p><i>SVN / Matko (43393/98)</i></p> <p><a href="#">Judgment final on 02/02/2007</a></p> <p><a href="#">Action Report</a></p> <p><i>SVN / Franciska Stefancic (58349/09)</i></p> <p><a href="#">Judgment final on 24/01/2018</a></p> <p><a href="#">Action Report</a></p>
<p>Since 2015, according to a decision of the General Prosecutor's Office attached to the High Court of Cassation and Justice, investigations into complaints about State agents are to be carried out exclusively by prosecutors attached to the superior courts and not by the judicial police. These prosecutors are selected among those who, in the performance of their duties, are not called upon to supervise the activity of the judicial police.</p>	<p><i>ROM / Barbu Anghelescu No.1 (46430/99)</i></p> <p><a href="#">Judgment final on 05/01/2005</a></p> <p><a href="#">Final Resolution CM/ResDH(2016)150</a></p>
<p>In order to carry out investigations into alleged abuses following actions of security forces during anti-terrorist operations in the Northern Caucasus, in 2007-2008 special investigating units were set up in the Investigative Committee's Directorate in the Chechen Republic. Those units' supervision was ensured by the Central Office of the Investigative Committee.</p>	<p><i>RUS / Khashiyev and Akayeva group (57942/00)</i></p> <p><a href="#">Judgment final on 06/07/2005</a></p> <p><a href="#">Interim Resolution CM/ResDH(2015)45</a></p>

With regard to the investigations into the deaths of Iraqi nationals during the occupation of southern Iraq by UK Armed Forces, the Ministry of Defence established, in 2010, an investigative process that combined criminal investigations by the Iraq Historic Allegations Team (IHAT) with an inquest-style inquiry (termed a Fatality Investigation) by a retired High Court judge and/or judicial oversight by a designated judge of the High Court. After its restructuring in 2012, the IHAT was found to be sufficiently independent in a High Court judgment from 2013.

*UK / Al-Skeini and Others  
(55721/07)*

[Judgment final on  
07/07/2011](#)

[Final Resolution  
CM/ResDH\(2016\)298](#)

The State Bureau of Investigations (SBI), an independent law-enforcement executive body, was established in 2016 to carry out investigations into crimes committed by high-ranking officials, judges and law enforcement officers and started working in 2018. Within the Prosecutor General's Office, a Department for Procedural Guidance in Criminal Proceedings falling under the competence of the SBI exercises procedural control over the pre-trial investigations carried out by the SBI and handles the prosecution of these cases.

*UKR / Kaverzin group  
(23893/03)*

[Judgment final on  
15/08/2012](#)

[Action Plan](#)

*UKR / Afanasyev group  
(38722/02)*

[Judgment final on  
05/07/2005](#)

[Action Plan](#)

*UKR / Belousov (4494/07)*

[Judgment final on  
07/02/2014](#)

[CM Decision 2019](#)

## 2. ADEQUACY

*The Convention requires that investigations be carried out adequately. The investigating authorities should have expertise and powers that could lead to the determination of all the relevant facts, as well as the identification and, if appropriate, punishment of those responsible.*

The Human Rights Defender (HRD) which was established in 2003 carries out a civilian oversight over the army. The HRD regularly monitors places of deprivation of liberty under the authority of the Ministry of Defence and established a specialised department for the protection of rights of servicemen which, inter alia, reviews their complaints and provides legal advice. The HRD's office 24/7 toll-free hotline enables military servicemen and civilians to report any issue related to the armed forces.

*ARM / Muradyan  
(11275/07)*

[Judgment final on  
24/02/2017](#)

[Action Plan](#)

In order to ensure the collection of forensic evidence in due time, the Attorney General issued, in 2014, instructions on the procedure to follow in case of alleged ill-treatment by police. The plaintiff is to be examined by a forensic pathologist within 24 hours from the complaint or from the moment the police became aware that such ill-treatment may have occurred. Incidents must be reported to the Attorney General and the President of the Authority for the Investigation of Allegations and Complaints Against the Police. In 2017, a legal amendment provided that such medical examinations must be carried out in accordance with the Istanbul Protocol's Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

*CYP / Khani Kabarra  
(24459/12)*

[Judgment final  
05/09/2018](#)

[Action Plan](#)

Following a reform of the Prosecutor's General's Office in 2016, its Torture Combating Department was tasked to conduct investigations in complex cases, to supervise investigations conducted by territorial Prosecutor's Offices, to provide guidance and to provide support to all subordinated prosecutors on ill-treatment issues involving security forces. Furthermore, a Specialised Prosecutor's Office on Combating Organised Crime with dedicated anti-torture sections, was established to investigate cases of aggravated ill-treatment and torture. Prosecutors in the anti-torture sections are exclusively assigned to ill-treatment cases and are not involved in any joint work with police or other law-enforcement agencies.

*MDA / Corsacov group  
(18944/02)*

[Judgment final on  
04/07/2006](#)

[Final resolution  
CM/ResDH\(2018\)463](#)

*MDA / Levinta (17332/03)*

[Judgment final on  
16/03/2009](#)

[Action Report](#)

Following a judgment concerning a fatal incident involving Royal Netherlands Army personnel deployed abroad, the military criminal justice administration with regard to operations involving military personnel in high-risk areas was evaluated by a specially appointed Committee. Measures were taken regarding consultation and training, in particular the establishment of investigation teams; the improvement of communication between commanders, military police detachments and public prosecutors; the production of instructions of steps to follow after the use of lethal force. An investigation manual which includes an overview of key issues and possible courses of action for investigations during military operations was established by the Public Prosecution Service to improve, amongst other things, the coordination with local criminal justice authorities and coalition partners in military areas of operations, the collection of evidence and the preservation of records.

*NDL / Jaloud (47708/08)*

[Judgment final on  
20/11/2014](#)

[Final Resolution  
CM/ResDH\(2018\)47](#)

<p>In 2008, the Ombudsman's Office created a special unit tasked with examining complaints about law enforcement agents' actions. A decree on the medical examination of persons apprehended by the police was adopted by the Minister of Internal Affairs in 2012. In 2014, the General Prosecutor issued guidelines for proceedings regarding deaths caused and ill-treatment inflicted by police officers or other public officials.</p>	<p><i>POL / Dzwonkowski group (46702/99)</i></p> <p><a href="#"><u>Judgment final on 12/04/2007</u></a></p> <p><a href="#"><u>Final Resolution CM/ResDH(2016)148</u></a></p>
<p>In 2015, a Strategy for the conduct of effective investigations in cases of ill-treatment by state agents (police officers, penitentiary staff, gendarmes) was adopted by the Prosecutor's Office attached to the High Court of Cassation and Justice. Effective prevention and detection of ill-treatment in prison were also enhanced through professional training activities and the oversight of interventions by the National Prison Administration. Furthermore, regulations on documentation and reporting of medical evidence of ill-treatment were adopted.</p>	<p><i>ROM / Predica group (42344/70)</i></p> <p><a href="#"><u>Judgment final on 07/09/2011</u></a></p> <p><a href="#"><u>Final Resolution CM/ResDH(2017)291</u></a></p>
<p>The requisite diligence and impartiality of investigations into alleged ill-treatment by the police was underlined in the Federal Court's well-established case-law. As regards the Canton of Geneva in particular, a general service inspection was established in 2008, dealing with grievances against police agents.</p>	<p><i>SUI / Dembele (74010/11)</i></p> <p><a href="#"><u>Judgment final on 26/09/2016</u></a></p> <p><a href="#"><u>Final Resolution CM/ResDH(2016)175</u></a></p>



## 3. PROMPTNESS

*The Convention also requires that investigations be carried out promptly. The investigating authorities must be able to react and promptly initiate the investigation which is vital notably for securing evidence. A particular challenge in this context is the risk of the potential offences under investigation becoming subject to prescription (see section 3.a).*

<p>Time-limits are set for the completion of the preliminary inquiry and investigation. In 2017, the provision on the automatic closure of a criminal investigation due to its length was repealed and acceleratory remedies for victims and accused persons were introduced. The road map adopted in July 2017 envisaged more reforms, notably specialized prosecutors to investigate complaints of ill-treatment by police and the automatic transmission of all these complaints to the Prosecutor's Office.</p>	<p><b>BGR / S.Z. (29263/12)</b></p> <p><a href="#">Judgment final on 03/06/2015</a></p> <p><a href="#">Action Plan</a></p>
<p>According to the 2007 Public Prosecution Law, in order to prevent excessively lengthy investigations into alleged ill-treatment by police agents, public prosecutors are obliged to take procedural steps within 30 days after a complaint is filed. Pursuant to the 2010 Code of Criminal Proceedings, prosecutors must decide on the substance of a criminal complaint within three months. In case of delays, the prosecutor must inform the plaintiff and a superior prosecutor. In order to prevent arbitrariness, the Criminal Procedure Act introduced a right to appeal to the superior prosecutor in 2013.</p>	<p><b>MKD / Jasar group (69908/01)</b></p> <p><a href="#">Judgment final on 15/05/2007</a></p> <p><a href="#">Final Resolution CM/ResDH(2018)72</a></p> <p><b>MKD / Kitanovski group (15191/12)</b></p> <p><a href="#">Judgment final on 22/04/2015</a></p> <p><a href="#">Action plan</a></p>
<p>In order to ensure prompt investigations in case of casualties due to the use of firearms by police officers, the incident is to be reported to the superiors, who must record it in writing and communicate this information within 48 hours to the public prosecutor. The duty system of the State Criminal Investigation Department was improved in order to ensure speedy arrival at the place of incident. All investigations that cannot be carried out by the Department will be conducted by the Internal Investigations Bureau of the police of the region concerned or by members of a neighbouring police force.</p>	<p><b>NDL / Ramsahai (52391/99)</b></p> <p><a href="#">Judgment final on 15/05/2007</a></p> <p><a href="#">Final Resolution CM/ResDH(2010)178</a></p>
<p>As concerns alleged ill-treatment of civilians and of deaths having occurred during anti-terrorist security forces operations in the 1990s, a Circular of the Ministry of Justice of 2003 underlined the need that public prosecutors (and not members of security forces) conduct criminal investigations promptly. The requirement of an administrative authorisation to initiate criminal investigations involving members of security forces in cases of alleged ill-treatment and torture was abolished in 2003.</p>	<p><b>TUR / Aksoy group (21987/93)</b></p> <p><a href="#">Judgment final on 18/12/1996</a></p> <p><a href="#">Interim Resolution ResDH(2005)43</a></p> <p><a href="#">Final Resolution CM/ResDH(2019)51</a></p>
<p>In order to improve promptness of investigations into ill-treatment cases the Code on Criminal Procedure was amended in 2016 to require public prosecutors and judges to give priority to such cases. In 2017, the Ministry of Justice issued a circular requiring public prosecutors to conclude investigations into allegations of torture within 180 days and into excessive use of force within 120 days and setting a time limit of 370 days for the completion of criminal proceedings regarding such crimes. Delays in</p>	<p><b>TUR / Bati group (33097/96)</b></p> <p><a href="#">Judgment final on 03/09/2004</a></p> <p><a href="#">Action Report</a></p>

<p>proceedings may result in negative consequences for the responsible public prosecutor's or judge's future promotion perspectives.</p>	<p><i>TUR / Aksoy group</i> (21987/93)</p> <p><a href="#"><u>Judgment final on 18/12/1996</u></a></p> <p><a href="#"><u>Final Resolution CM/ResDH(2019)51</u></a></p>
<p>To speed up inquest proceedings, including inquests into the death of prisoners, the following measures were taken: appointment of a High Court judge as the presiding coroner to provide guidance; appointment of additional coroners in 2016 so that all judicial positions were filled; allocation of more complex inquests to higher tier judges; appointment of a new counsel to the coroners' advisory panel; reduction of adjournments, improved case management and allocation; appointment of investigative support staff for coroners; establishment of a monitoring mechanism to ensure that investigations are complete and statements provided speedily. In 2015, after a review of the coroners' service, 13 recommendations to improve efficiency and reduce delay in inquest proceedings were made, accepted, and implemented by the end of 2016.</p>	<p><i>UK / McDonnell (19563/11)</i></p> <p><a href="#"><u>Judgment final on 06/12/2016</u></a></p> <p><a href="#"><u>Final Resolution CM/ResDH(2016)356</u></a></p>
<h3><b>3.a. Relation between promptness and prescription</b></h3>	
<p>The Collegium of the Prosecutor's Office supervises the diligence of the investigation conducted, while a law abolishing pardons for ill-treatment was adopted in 2018 as a clear sign that ill-treatment will not be tolerated. A comprehensive system of safeguards has been included in the draft Code of Criminal Procedure, laying down, inter alia, strict time-limits for pre-trial proceedings. It is planned to abolish the statute of limitations in the Criminal Code for acts of torture.</p>	<p><i>ARM / Muradyan</i> (11275/07)</p> <p><a href="#"><u>Judgment final on 24/02/2017</u></a></p> <p><a href="#"><u>Action Plan</u></a></p>
<p>To ensure that criminal proceedings do not become time-barred, since 2020, the prescription is suspended after the first-instance judgment for the remaining duration of the proceedings. Sentences imposed on public officials for torture may not be suspended. Disciplinary investigations against police officers and carabinieri are initiated, conducted, and concluded independently from criminal proceedings concerning the same facts and can be put on hold pending the outcome of the latter.</p>	<p><i>ITA / Cestaro group</i> (6884/11)</p> <p><a href="#"><u>Judgment final on 07/04/2015</u></a></p> <p><a href="#"><u>Action Report</u></a></p>
<p>To remedy the ineffective investigations into the use of lethal force during the crackdown on anti-governmental demonstrations in December 1989 and in June 1990, the adopted measures comprised the following: In March 2012, the statutory limitation period for intentional offences against life was removed and allowed the investigations in these cases to be continued. In addition, in the 2014 Criminal Code and Code of Criminal Procedure legal avenues were made available to the investigating authorities allowing them to overcome any refusal to co-operate from the bodies holding evidence linked to the investigations.</p>	<p><i>ROM / Association "21 December 1989" group</i> (33810/07+)</p> <p><a href="#"><u>Judgment final 28/11/2011</u></a></p> <p><a href="#"><u>Action Plan</u></a></p>

## 4. VICTIM PARTICIPATION AND PUBLIC SCRUTINY

*The Convention requires that investigations into deaths or ill-treatment caused by security forces agents permit the participation of victims (or their relatives as the case may be), to the extent necessary, to safeguard their legitimate interests. Such participation should comprise the possibility for them to gain access to the investigation file, albeit not automatically to all elements therein. The issue of legal aid may arise in this context. Another issue is the necessity of reasoning decisions to terminate the investigation. Regarding public scrutiny more generally, the imperatives of securing accountability and of maintaining public confidence in the authorities' response call for a careful balancing between publicity and confidentiality.*

<p>Victims' procedural rights (such as: the right to appeal decisions concerning suspension of proceedings, non-initiation of investigations by the prosecutor, prolongation of the investigation; the right to be informed of the state of the proceedings and to have access to copies of the acts and evidence located in the prosecutor's file) were introduced in the Code of Criminal Procedure in 2017. Furthermore, guidelines of the General Prosecutor's Office issued in 2018 provided for specific assistance to victims and witnesses of criminal offenses.</p>	<p><b>ALB / Pihoni (74389/13)</b></p> <p><a href="#">Judgment final on 13/05/2018</a></p> <p><a href="#">Action Plan</a></p>
<p>The right of victims to information regarding an on-going investigation was introduced in the Criminal Procedure Code in 2014, granting them, as a matter of principle, access to case-file material. The new Inter-Agency Council for Combating Torture and Ill-treatment underlined the importance of effective legal aid for victims. Following amendments adopted in 2018 and a subsequent clarifying ruling of the Constitutional Court, a prosecutor's refusal to grant "victim status" to someone, may be appealed before the superior prosecutor and ultimately a court in relation to all types of criminal offences. A Victim and Witness Coordination Service was created within the Prosecutor's Office to support and protect the interests of victims and witnesses during the proceedings.</p>	<p><b>GEO / Tsintsabadze group (35403/06)</b></p> <p><a href="#">Judgment final on 18/03/2011</a></p> <p><a href="#">Action Plan</a></p>
<p>With regard to the use of lethal force during the crackdown on anti-governmental demonstrations in December 1989 and in June 1990, in the context of new investigations, progress updates were regularly published on the website of the Public Prosecutor's Office for the families of victims. In addition, there has been an increased engagement with applicants and an intention to hear all injured parties again as the new investigation progresses.</p>	<p><b>ROM / Association "21 December 1989" group (33810/07+)</b></p> <p><a href="#">Judgement final on 28/11/2011</a></p> <p><a href="#">Action Plan</a></p>
<p>The 2005 Code of Criminal Procedure provides for victim participation and for an automatic right for judicial review if public prosecutors decide not to prosecute cases of alleged abuses by members of security forces.</p>	<p><b>TUR / Ahmet Özkan and Others (21689/93)</b></p> <p><a href="#">Judgment final on 10/11/2004</a></p> <p><a href="#">Interim Resolution CM/ResDH(2005)43</a></p>
<p>With regard to the deaths of Iraqi nationals during the occupation of southern Iraq by UK Armed Forces, the investigative process that combined criminal investigations by the Iraq Historic Allegations Team (IHAT) with an inquest-style inquiry (termed a "Fatality Investigation") involved the victims' families and was accessible to the wider public. In 2016, the High Court set out principles to be considered when assessing, following the IHAT investigation, whether it is appropriate, reasonable, and proportionate to conduct a "Fatality Investigation", having due regard to the human cost and the likelihood to be able to reach a clear conclusion as to the circumstances in which the person died.</p>	<p><b>UK / Al-Skeini and Others (55721/07)</b></p> <p><a href="#">Judgment final on 07/07/2011</a></p> <p><a href="#">Final Resolution CM/ResDH(2016)298</a></p>

In relation to public scrutiny and information of the victims' families with regard to investigations of deaths in Northern Ireland during security forces operations in the 1980's and 90's, the Public Prosecution Service adopted a policy to provide the reasons for non-prosecution and those decisions are subject to judicial review. Furthermore, legal aid was made available for the representation of the victims' families. Once it is established, the new single independent investigative body, the Historical Investigations Unit will also have dedicated staff aimed at involving the next of kin from the beginning of the process.

*UK / McKerr group  
(28883/95)*

[Judgment final on  
04/08/2001](#)

[Action Plan](#)

The 2012 Criminal Procedure Code of Ukraine improved victim participation, including inter alia the rights to: provide explanations and to submit evidence; receive information related to the proceedings; examine case materials and to obtain copies of documents; be represented; file requests and challenge the decisions, actions or inactivity of investigators, prosecutors or judges; take part in the trial and lodge appeals.

*UKR / Gongadze  
(34056/02)*

[Judgment final on  
08/02/2006](#)

[Action Plan](#)

## 5. INVESTIGATING SPECIAL MOTIVES OF CRIME

*For investigations into deaths and ill-treatment to be effective special care should be taken to explore possible racist or other discriminatory motives. Other motives, such as those behind attacks on journalists or other media actors, may call for a specific response. Ensuring that such motives are adequately investigated may also require amendments to relevant criminal laws.*

<p>In 2011 the Criminal Code was amended and included as an aggravated circumstance, to a homicide and bodily injuries, racist or xenophobic motives. These provisions allow the investigating authorities to examine whether possible racist motives are at the origin of the excessive use of force by security forces.</p>	<p><i>BGR / Nachova and Others (43577/98)</i></p> <p><a href="#">Judgment final on 06/07/2005</a></p> <p><a href="#">Final Resolution CM/ResDH(2017)97</a></p>
<p>To improve the effectiveness of investigations into discrimination and hate crime cases in the context of violent attacks of LGBTI activists and Jehovah's Witnesses during marches/assemblies, the Public Defender's mandate was widened in 2010 to private individuals: Legal entities and individuals are both obliged to provide information about acts of alleged discrimination within 10 days. In case the subsequent Public Defender's recommendation is not followed, the plaintiff is entitled to refer the case to the courts, according to the Civil Procedure Code. In 2018, penalties for crimes committed on discriminatory grounds were increased in the Criminal Code.</p>	<p><i>GEO / Identoba and Others group (73235/12)</i></p> <p><a href="#">Judgment final on 12/08/2015</a></p> <p><a href="#">Action Plan</a></p>
<p>In 2012, by a circular addressed to police agents, the Chief of Police requested that complaints concerning racist behaviour be treated in priority. In a subsequent circular issued in 2014 the Chief of Police noted the obligation of the police authorities to investigate the possible existence of grounds concerning national origin, religion, sexual orientation, age, disability or any other discriminatory behaviour underlying a person's ill-treatment.</p>	<p><i>GRC / Makaratzis group (50385/99)</i></p> <p><a href="#">Judgment final on 20/12/2004</a></p> <p><a href="#">Government Communication</a></p>
<p>In 2019 a new protocol on police tasks relating to the handling of hate crime included a list of bias indicators, facilitating the identification of this type of crime. A network of hate crime specialists has also been set up. It is composed of officers from each regional police department, headed by an officer at the national headquarters. Besides overseeing fight against hate crime, they are tasked with organising regular training for police officers. Furthermore, "mentors" must be appointed at each police station in order to assist police agents in identifying hate crime.</p>	<p><i>HUN / Balázs group (15529/12)</i></p> <p><a href="#">Judgment final on 14/03/2016</a></p> <p><a href="#">Action Report</a></p>
<p>In relation to investigations into racially motivated ill-treatment of Roma, since 2006, criminal law provides that racial motivation is a statutory aggravating factor the incidence of which has to be investigated upon, on the authority's own motion in a given case.</p>	<p><i>ROM / Barbu Anghelescu No.1 (46430/99)</i></p> <p><a href="#">Judgment final on 05/01/2005</a></p> <p><a href="#">Final Resolution CM/ResDH(2016)150</a></p>
<p>The Criminal Code was amended in 2015-2016 to include criminal liability for crimes targeting journalists, such as murder or attempted murder, taking hostages, threats of violence, intentional damaging of property. In addition, the criminal liability for obstructing lawful professional activities of a journalist was strengthened.</p>	<p><i>UKR / Gongadze (34056/02)</i></p> <p><a href="#">Judgment final on 08/02/2006</a></p> <p><a href="#">Action Plan</a></p>

## 6. INDEPENDENT OVERSIGHT OF INVESTIGATIONS

*The domestic system must ensure the availability of an independent mechanism to deal with complaints relating to the conducting of an investigation. The investigatory bodies must therefore give reasoned decisions for their acts to allow adequate oversight. Bearing in mind the diversity of national legal systems and the varying roles of the relevant institutions, the following may be of greater or lesser relevance depending on the States: the investigative guidance and oversight by the prosecuting authorities; the role of investigating judges; the role of other State bodies, for example the courts or national human rights institution/ombudsperson; the possible role of the national parliament or a parliamentary structure.*

<p>A prosecutor's decision to terminate an investigation is subject to an appeal within the prosecutor's service. Judicial review is also available in cases involving allegations of grave crimes.</p>	<p><b>GEO / Gharibashvili (11830/03)</b></p> <p><a href="#">Judgment final on 29/10/2017</a></p> <p><a href="#">Final Resolution CM/ResDH(2017)287</a></p>
<p>In 2017, a National Investigation Mechanism was set up within the Ombudsman's Office mandated to collect, record, assess and transmit to the competent bodies complaints relating to law enforcement agents' and detention facility staff's actions with regard to ill-treatment, illegal use of firearms, unlawful behaviour with racist motivation or discriminatory treatment. Moreover, the Ombudsman may decide to investigate the allegations himself <i>proprio motu</i> or on request or to refer them to the competent disciplinary body. The Ombudsman may also request the reopening of an administrative investigation in cases where the European Court has found the initial investigation to be ineffective.</p>	<p><b>GRC / Makaratzis group (50385/99)</b></p> <p><a href="#">Judgment final on 20/12/2004</a></p> <p><a href="#">Action report</a></p>
<p>A database of all on-going criminal proceedings was set up in January 2011. It serves as a tool for strengthening the prosecutorial supervision over criminal proceedings. In addition, in 2010 the Prosecutor General issued a decree aiming at enhancing prosecutorial supervision in respect of criminal proceedings concerning alleged offences by State officials and drafted methodological guidelines on this topic. To ensure promptness in investigations, the Prosecutor General Office regularly assesses the relevant statistical data and assigns priority to certain types of investigations. Since 2010, investigations against state officials are continuously assigned priority status for enhanced supervision.</p>	<p><b>LVA / Holodenko group (17215/07)</b></p> <p><a href="#">Judgment final on 04/11/2013</a></p> <p><a href="#">Final Resolution CM/ResDH(2018)382</a></p>
<p>In 2018, a review body within the Ombudsman's Office, including independent members from civil society, was created. Its task is to monitor and review the procedures aimed at investigating and holding accountable law enforcement agents for any wrongdoing amounting to ill-treatment.</p>	<p><b>MKD / El-Masri (39630/09)</b></p> <p><a href="#">Judgment final on 13/12/2012</a></p> <p><a href="#">Final Resolution CM/ResDH(2019)369</a></p>
<p>Following shortcomings in the investigation into the killing of a Turkish Cypriot journalist, the role of the Attorney General in police investigations was strengthened in 2006 when he was granted the power to supervise or direct investigations carried out by the General Directorate of the Police Forces, if he considers this to be necessary.</p>	<p><b>TUR / Adali (38187/97)</b></p> <p><a href="#">Judgment final on 12/10/2005</a></p> <p><a href="#">Final Resolution CM/ResDH(2010)12</a></p>

## 7. REPARATION FOR VICTIMS

States should take all appropriate measures to establish accessible and effective mechanisms which ensure that victims of serious human rights violations receive prompt and adequate reparation for the harm suffered.<sup>1</sup> The different forms of redress cited below, such as financial compensation and formal apologies, may usefully supplement the States' obligation to reopen/resume/continue investigations, including in situations where this obligation cannot be successfully met.

Following ineffective investigations into war crimes and the European Court's findings in *B. and Others*, the applicants requested reopening of the impugned proceedings for damages. In the reopened proceedings, the applicants were awarded approximately EUR 30,000 each, in respect of non-pecuniary damages due to emotional suffering resulting from the death of their relative in the hands of State agents. Furthermore in *M. and Others*, the applicants, before the European Court's judgment, had requested reopening of civil proceedings following a domestic judgment finding an individual guilty of war crimes under command responsibility, including the killing of the applicants' relatives. Domestic courts awarded approx. EUR 30,000 to each of them, in respect of non-pecuniary damages as a result of emotional suffering due to the death of their relative in the hands of agents of the state.

*CRO / Skendžić and Krznarić group (16212/08)*

[Judgment final on 20/04/2011](#)

[Action Plan](#)

Following the excessive use of force by police during violent demonstrations following the parliamentary election of 2009, Government and Parliament expressed their regrets for the inappropriate reaction of the national law enforcement bodies and the judiciary following the impugned events. Furthermore, a special government committee was set up to award compensation at national level to identified civilian victims. This compensation was not considered a substitute for pecuniary or non-pecuniary damages that could additionally be awarded by domestic courts.

*MDA / Taraburca group (18919/10)*

[Judgment final on 06/03/2012](#)

[Final Resolution CM/ResDH\(2018\)464](#)

In 2018, in view of the fact that the applicant's complaint concerning ill-treatment in the context of CIA renditions had become time-barred, the Foreign Minister issued a written apology on behalf of the government to the applicant expressing unreserved regret for the tremendous suffering and damage inflicted on him as a result of the improper conduct of the authorities. In 2018, the applicant's claim for non-pecuniary damage of a symbolic one Euro was recognised by domestic civil courts, which thus officially acknowledged that impugned facts took place.

*MKD / El-Masri (39630/09)*

[Judgment final on 13/12/2012](#)

[Final Resolution CM/ResDH\(2019\)369](#)

As concerns the violations found in the context of the fight against terrorism, mainly in the South-East of Turkey, under the state of emergency between 1987 and 2002, the applicants were given the opportunity to claim compensation before a special compensation commission or before administrative courts on the basis of a new Law on Compensation of 2004 which provided a right to compensation on the grounds of the State's liability for losses caused in the fight against terrorism. This law supplemented and gave more precise effect to the State's liability for damages caused by administrative acts, as a special *lex temporalis*, stipulating that the provisions of this legislation were retroactively applicable to events taking place after 1987 and before 2004.

*TUR / Aksoy group (21987/93)*

[Judgment final on 18/12/1996](#)

[Final Resolution CM/ResDH\(2019\)51](#)

<sup>1</sup> See notably Guideline XVI, Committee of Ministers [Guidelines on Eradicating Impunity for Serious Human Rights Violations](#), adopted by the Committee of Ministers on 30 March 2011 at the 1110<sup>th</sup> meeting of the Ministers' Deputies.

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