COMBATING ILL-TREATMENT AND IMPUNITY

Rights of detainees and obligations of law enforcement officials – 11 key questions and answers

2nd Edition

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COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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Cover design and layout: Documents and Publications Production Department (SPDP), Council of Europe
Cover photo: Shutterstock

© Council of Europe, August 2017
Printed at the Council of Europe

The first edition of this publication was financed by the European Union and the Council of Europe as part of the European Union/Council of Europe Joint Programme "Combating ill-treatment and impunity" in 2010.

The 2nd edition of this brochure was prepared and published within the framework of the Council of Europe project "Support to Criminal Justice Reforms to the Republic of Moldova", funded by the Government of Denmark.

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PREFACE

Absolute prohibition of torture and inhuman or degrading treatment or punishment[1] clearly results in the need to combat impunity where it is breached. Contemporary concerns surrounding impunity have been based on many recent complaints received by international human rights mechanisms citing failures by states to properly hold to account the perpetrators of ill-treatment.

The European Court of Human Rights ("**the Strasbourg Court**"), for example, continues to make a considerable number of adverse judgments in this area, despite its clear elaboration of the relevant standards over many years. Thus, by the beginning of 2016, in addition to 1842 substantive breaches of Article 3 of the European Convention on Human Rights ("**ECHR**")[2], there were 662 findings of violation in respect of the procedural aspect of the same Article imposing the requirement for states to effectively investigate allegations and other indications of ill-treatment.[3] The problem has also been highlighted by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"), particularly in its 14th General Report[4] and in many of its visit reports.

Against this background, in 2009-2013 the Council of Europe designed and implemented a set of consecutive Joint Programmes with the European Commission respectively entitled 'Combating ill-treatment and impunity' and 'Reinforcing the fight against ill-treatment and impunity'. The first edition of this brochure was prepared in 2009 under the former Programme. Besides that it is addressing this issue through a number of other thematic and country-related projects. The second edition has been accordingly prepared within the framework of the Council of Europe Project "Support to Criminal Justice Reforms in the Republic of Moldova", funded by the Government of Denmark.[5] This brochure is based on the key international human rights instruments addressing the prohibition of ill-treatment and basic rights of persons deprived of their liberty. The standards outlined in the brochure predominantly originate from the ECHR and an extensive and permanently developing case law jurisdiction of its mechanism – the Strasbourg Court. They are supplemented and further specified by the standards of the CPT,

1. Hereinafter – collectively referred to as "ill-treatment".
2. Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment.
3. Overview 1959-2015 ECHR, European Court of Human Rights, p. 9.
4. See its section entitled 'Combating Impunity'.
5. The author is a short-term international consultant to the Project.

which is acting on the basis of the corresponding Convention.[6] In addition, international standards and requirements on the subject are based on the instruments developed under the auspices of the United Nations, such as the International Covenant on Civil and Political Rights, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as observations, general comments and jurisprudence of their treaty bodies. The set of particular standards and instructions known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) that has been endorsed by the UN General Assembly is also very important in this regard.[7]

The current (second) edition has been developed with the view of its update in line with the advancement of the case law of the Court and development of derivative standards that had taken place since 2009, including the Guidelines of the Committee of Ministers of the Council of Europe on Eradicating impunity for serious human rights violations[8] and the substantial section of the CPT's 23rd General Report called 'Documenting and reporting medical evidence of ill-treatment'.[9]

The brochure focuses upon ill-treatment by law enforcement officials[10] and initial stages of deprivation of liberty.[11] It addresses both substantial and procedural aspects of the prohibition, such as conditions of detention, medical assistance, investigation of allegations or other representations of ill-treatment. Article 3 of the ECHR does not exhaust the rights and standards which detainees should enjoy in hands of police. Consequently, the brochure

6. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
7. See UN General Assembly resolution of 4 December 2000 and the "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (The Istanbul Principles).
8. Adopted by the Committee of Ministers of the Council of Europe on 30 March 2011, at the 1110th meeting of the Ministers' Deputies.
9. CPT/Inf (2013) 29, paras. 71-84.
10. If not specified to the contrary hereinafter, a reference to police applies to other law-enforcement agencies and *vice versa*.
11. However, many principles and standards, in particular those of procedural character, are relevant for penitentiary and other possible areas where torture or other forms of ill-treatment might occur. It should be mentioned that the obligation to investigate also expands over the ill-treatment administered by private individuals. See *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgi*a, ECtHR judgment of 3 May 2007, application no. 71156/01, paras. 96 and 97. However, these aspects of the prohibition fall outside the scope of the publication.

briefly outlines the main features and standards of the legal environment in which deprivation of liberty and criminal process should take place. It provides answers to eleven key questions which introduce each section of the brochure. In addition, it might have useful application in other areas, such as the prison systems, and in relation to the procedures for protection of other human rights, including combating impunity for other serious human rights violations.

The publication concerns the rights of detainees[12] and, therefore, outlines the corollary obligations of law enforcement officials and authorities in general. The majority of the relevant standards are envisaged and supported by national legislation of the Council of Europe member states. At the same time, the international human rights instruments and the practice of their implementation suggest that they can be directly invoked whenever a detainee or other persons concerned feel that they would benefit from it.

1. ARE THERE ANY EXCEPTIONS TO THE PROHIBITION OF ILL-TREATMENT?

Similar to Article 5 of Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, as well as other relevant international instruments, Article 3 of the ECHR clearly prescribes that:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

No exceptions may be applicable to this provision. Article 15 of the ECHR expressly forbids any derogation from it even 'in time of war or other public emergency threatening the life of the nation'.

Thus, any use of torture or inhuman or degrading treatment or punishment is **absolutely prohibited in all circumstances** including the challenging context of the fight against terrorism and other grave crimes.[13] This principle has

12. Although the brochure predominantly operates with the term 'detainee', the procedural and some other relevant standards also apply to those subjected to or at risk of ill-treatment without being deprived of their liberty by police.
13. See *Gafgen v. Germany*, ECtHR (Grand Chamber) Judgment of 1 June 2010, application no. 22978/05, para. 120.

been upheld by the Strasbourg Court, CPT and endorsed by specific international instruments.[14]

Consequently, **regardless of grounds for detention or crimes a detainee is suspected of he or she should not be ill-treated**.

2. WHAT AMOUNTS TO ILL-TREATMENT?

The ECHR and other European instruments do not offer definitions of torture, inhuman or degrading treatment or punishment. However, there is an immediate answer to the question that is provided by common sense and the contemporary understanding of these words. It normally allows an ordinary person to identify torture or to presume that a particular treatment is inhuman or degrading and is, therefore, unacceptable. Thus, one should be guided by the **spirit and general meaning of the notion of ill-treatment**. It does not matter what is or what could be perceived as 'usual' or 'appropriate' by particular persons or groups in this respect.[15]

At the same time, such answer does not delineate specific characteristics of ill-treatment. In the absence of particular criteria, it would be difficult to combat it and put the prohibition of torture and inhuman and degrading treatment into operation. These criteria are developed in the case law of the Strasbourg Court, as well as jurisprudence of other international human rights mechanisms.

First of all, ill-treatment presupposes certain **severity of physical pain or mental suffering**. In a case of torture, its magnitude is very high. Such pain or suffering are generated by means of special methods or particular circumstances. Examples include beatings on the soles of the feet;[16] electric shocks, hot and cold water treatment, blows to the head and threats concerning the ill-treatment of the victim's children;[17] poor conditions and harsh regime of

14. See *Zelilof v. Greece*, ECtHR judgment of 24 May 2004, application no. 17060/03, para. 42; *Tomasi v. France*, ECtHR judgment of 27 August 1992, application no. 12850/87, para. 115; *Chahal v. the United Kingdom*, ECtHR judgment of 15 November 1996, application no. 22414/93, para. 79; 15th General Report on the CPT's activities, CPT/Inf (2005) 17, preface; Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, adopted on 11 July 2002, guideline IV; General Comment N2, CAT/C/GC/2, para. 3.
15. Due to remaining wrong perceptions or other such reasons particular officers or even detainees might consider certain forms of ill-treatment as being normal.
16. See *Salman v. Turkey*, ECtHR Judgment of 27 June 2000, application no. 21986/93.
17. See *Akkoç v. Turkey*, ECtHR Judgment of 10 October 2000, applications no. 22947-48/93. The threats applied to the victim in this case are an illustration of mental suffering that can amount or contributed to torture.

imprisonment applied with punitive purposes;[18] rape of a detained female by the police officers and prosecutors;[19] repeated beating of a young female confronted for several hours with several male policemen.[20]

As far as inhuman and degrading components are concerned, the gravity or intensity of pain or mental suffering is also considerable but less serious than in cases of torture. The level of severity can be illustrated by distress or anguish caused by a recourse to physical force (hit in the face with a truncheon) which has not been made strictly necessary by victim's own conduct[21]; obliging the male detainee to strip naked regardless of the presence of a female officer[22]; inadequacy of medical treatment provided to the detainee[23]; cumulative effect of inadequate conditions of detention including an overcrowding, lack of ventilation and proper sanitary facilities;[24] use of prohibited methods of questioning, in particular real and immediate threats of deliberate and imminent ill-treatment during an interrogation;[25] unjustified and unnecessary strip search of a suspect on apprehension ;[26]unjustified placement of a defendant in a barred dock during a public trial.[27]

Even this brief and far from being exhaustive catalogue suggests that in addition to the severity factor there are some other key characteristics that specify and differentiate the elements of the prohibition of ill-treatment.[28] As regards torture, these features are a **deliberate infliction** of respective physical or mental pain or suffering for the **purposes of obtaining confession or information, punishing or intimidating particular persons**, or for any reason based on **discrimination**. The indicated components are key aspects of the definition of torture incorporated in Article 1 of the

18. See *Ilascu and others v. Moldova and Russia*, ECtHR Judgment of 8 July 2004, application no. 48787/99.
19. See *Maslova and Nalbandov v. Russia*, ECtHR Judgment of 24 January 2008, application no. 839/02.
20. See *Menesheva v. Russia*, ECtHR Judgment of 9 March 2006, application no. 59261/00.
21. See *Mrozowski v. Poland*, ECtHR Judgment of 12 May 2009, application no. 9258/04.
22. See *Valasinas v. Lithuania*, ECtHR Judgment of 21 July 2001, application no. 44558/98.
23. See *Sarban v. Moldova*, ECtHR Judgment of 4 October 2005, application no. 3456/05.
24. See *Peers v. Greece*, ECtHR Judgment of 19 April 2001, application no. 28524/95.
25. See *Gafgen v. Germany*, ECtHR (Grand Chamber) Judgment of 1 June 2010, application no. 22978/05.
26. See *Weiser v. Austria*, ECtHR Judgment of 22 February 2002, application no. 2293/03.
27. See *Ramishvili and Kokhreidze v. Georgia*, ECtHR Judgment of 27 January 2009, application no. 36378/02.
28. 'Treatment' and 'punishment' are different categories, but the latter in many cases, especially an imprisonment, implies or involves treatment as well. It should be noted that even the Strasbourg Court not always distinguishes between them.

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The 'inhuman' constituent of the prohibition points to implications of **uncivilized nature of physical or mental suffering** that result from the treatment concerned. The 'degrading' element is related to very specific feelings associated with **debasing and humiliating effects** of particular ill-treatment. Unlike torture, breaches of inhuman and degrading limbs of the prohibition do not necessarily require an intention in respect of the suffering caused.

At the same time, it should be kept in mind that not all objectionable or unpleasant aspects of treatment or punishment constitute a violation of Article 3 of the ECHR.[29] The prohibition does not concern permissible sanctions and other lawful measures such as adequate detention, appropriate handcuffing, and proportionate use of force.

Both the common sense and the indicated characteristics of ill-treatment suggest that there are two main sets of problems that are relevant to the context of law-enforcement activities. These are:

- a recourse to physical force which has not been made strictly necessary by victim's own conduct or abuses leading to infliction of proscribed mental suffering;
- an inadequacy of conditions of detention and medical assistance.

3. IS IT ALLOWED TO USE FORCE OR PSYCHOLOGICAL COERCION AGAINST DETAINEES?

The exhaustive list of situations when it might be necessary to use physical force, special means or weapons actually includes **resistance during an apprehension, violent behaviour or escape**.[30] However, it is just one of the conditions under which such actions are permissible and can be justified.

Secondly, a suspect to detain or a detainee to restrain should pose an **imminent risk to the physical inviolability or comparable values and rights of police officers or other persons**. In case of a use of lethal force against a

29. See *Ocalan v. Turkey*, ECtHR [GC] Judgment of 12 May 2005, application no. 46221/99, para. 181.
30. See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

person, it is a life that should be at stake due to the threat posed by him or her.[31]

Thirdly, there should **be no other reasonable possibility for averting the danger** except of having recourse to such means. Use of force in the context of tactics of illicit trickery, disregard of normal procedures and incitement to resistance could also amount to a breach of this requirement.[32] As far as lethal or potentially lethal force is concerned, the right to life protected by Article 2 of the ECHR requires that its use should be absolutely necessary. The test to meet is stricter than the requirement of reasonability. There should be no acknowledged alternative but using such force against the person who poses a risk to one's life.[33] In case of use of force or non-lethal means or weapons, it should be proportionate, not more than strictly necessary to address relevant incidents.[34]

Even if a use of force, special means or firearms is unavoidable, law enforcement officials shall **minimize damage and injury**, ensure that an **assistance and medical aid** are rendered to any of affected persons at the earliest possible moment, and their **relatives or close friends are notified** accordingly. Besides that they are obliged **to report such incidents** to their superiors. The reports shall be dealt by the competent authorities responsible for administrative review and judicial control.[35]

As regards permissible methods of psychological influence, warnings of the intent to use force and remainders about legitimate consequences are those that can and should be applied with sufficient time for the warning to be observed, when possible.[36] However, any **intimidation with deliberate ill-treatment, verbal abuse or insult, other kinds of unlawful threats** also amount to violation of the prohibition and should be excluded.[37]

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31. Ibid., principle 9. See also *Nachova v. Bulgaria*, ECtHR Judgment of 06 July 2005, applications no. 43577/98, 43579/98.
32. See *Shamayev and others v. Georgia and Russia*, ECtHR Judgment of 12 April 2005, application no. 1704/06.
33. See the previous endnote.
34. Ibid.
35. See *supra* note 23, principles 5, 6 and 22.
36. Ibid., principles 5 and 10.
37. See *supra* note 26, see also; *Selmouni v. France*, ECtHR Judgment of 28 July 1999, application no. 25803/94; *Bekos and Koutropoulos v. Greece*, ECtHR judgment of 13December 2005, application no. 15250/02.

4. WHAT ARE THE CONDITIONS A DETAINEE IS ENTITLED TO?

Police custody for criminal suspects should be of a short duration. It is expected that a detention in hands of police should be limited to the period between its outset and an appearance of suspect before a judge, as provided for by Article 5.3 of the ECHR. The standard length of this interval is 48 hours.[38]

Nevertheless, **conditions of detention in police** premises must meet certain basic requirements. According to the international standards they should be clean; of a reasonable size for the number of persons they are used to accommodate; have adequate ventilation, access to natural light, and artificial lighting that is sufficient to read. Further, detention premises should be equipped with means of rest such as a fixed chair or bench. Persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Detainees should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held for extended periods (24 hours or more) should be provided with appropriate personal hygiene items and, as far as possible, be offered outdoor exercise every day.[39]

As regards facilities used for temporary detention of remand prisoners or other categories of persons deprived of their liberty (those punished for petty crimes, vagrants, etc.), where detainees spend more than a couple of days, their conditions have to comply with additional requirements.[40] Thus, instead of one full meal per day that would be enough for a short stay, such inmates should be offered food - sufficient in quantity and quality - at normal meal times. The requirement of providing an access to outdoor exercise for at least one hour per day becomes mandatory.[41] **For longer stays, detainees are entitled to full-fledged prison conditions**.

38. Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, rule 14.2.
39. See 6th General Report on the CPT's activities, CPT/Inf (96) 21 para. 47.
40. There is an issue of running such establishments by authorities unrelated to police, but it falls outside the scope of the publication.
41. See the CPT's Report on the visit to Georgia from 6 to 18 May 2001, CPT/Inf (2002) 14, para. 61.

It is to be noted, that the CPT has recently fine-tuned its minimum standards for personal living space in prison establishments. It has been outlined as 6 m^2 of living space for a single-occupancy cell + sanitary facility; 4 m^2 of living space per prisoner in a multiple-occupancy cell + fully-partitioned sanitary facility, at least 2m between the walls of the cell, at least 2.5m between its floor and ceiling. Moreover, these parameters are to be assessed in combination with state of repair and cleanliness, access to natural light, ventilation and heating, sanitary facilities, outdoor exercise and purposeful activities, as well as other factors, including the individual's personal constitution.[42]

5. IS THERE AN OBLIGATION TO PROVIDE A MEDICAL TREATMENT DURING POLICE CUSTODY?

Any deprivation of liberty leads to a lack of ability of the persons concerned to take care of their medical problems, if any. That is why the detaining authorities are under the obligation to provide them with an **adequate medical assistance**. However, the scope of that obligation is adjusted to the relatively short duration of police custody. Under the prohibition of ill-treatment and the right to life police authorities are accordingly obliged to address any medical emergency (threats to life, and health in general, pain, other complications) and a need for treatment of chronic or other diseases, including those requiring regular care.[43]

Due to the shortness of police custody, it cannot be expected that stations or other police subdivisions will maintain medical units or staff. The latter should be available at temporary detention facilities. But its limited capacities do not normally allow for providing a treatment that would be sufficient for the whole range of possible medical needs of different detainees. When needed, the detaining authorities are obliged to provide for **timely involvement of public health care services, relevant specialised doctors or, if the detainee so wishes, access to his or her own doctor**. The authorities should ensure that the medically prescribed scope or type of treatment (outpatient, inpatient, provision of medication) is fully met regardless of logistical or security implications requiring an escort, guard and other arrangements.[44] As to the quality and scope of the healthcare to be ensured to persons deprived of

42. See 'Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44.
43. See *Sarban v. Moldova*, ECtHR Judgment of 4 October 2005, application no. 3456/05, paras.78-91.
44. Ibid., see also *Boicenco v. Moldova*, ECHR Judgment of 11 July 2006, application no 41088/05, paras. 112-119.

their liberty, it is to be equivalent to not the best civilian clinics but a hospital of average standard) in the country concerned.[45] However, this standard does not justify a denial of reasonable specific arrangements obtained by the detainee on own expenses.

In addition to the health care considerations, an appropriate access to medical services is one of the safeguards against ill-treatment.[46]

6. WHAT ARE THE PARTICULAR ENTITLEMENTS THAT PROTECT FROM ILL-TREATMENT?

The prohibition of torture, inhuman or degrading treatment or punishment expands above and beyond a delineation of their characteristics. There is an important set of barriers that should dissuade those minded to ill-treat from doing so and prevent it in general.[47]

The key role is attributed in this regard to the **fundamental legal safeguards** that include the following rights:

- to have the fact of the detention notified to a **relative or other third party** of the detainee's choice;[48]
- to **access to a lawyer**, that should include a scheme of effective legal aid for persons who are not in a position to pay for it, the right to talk to the lawyer in private and benefit from his presence at interrogations;[49]
- to **access to a doctor**, which in addition to any medical examination carried out by a doctor called by the police authorities should embrace the right to be examined by a doctor of the detainee's own choice and forensic doctors; all medical examinations should be conducted out of the hearing and – unless the doctor expressly requests otherwise in a given case – out of the sight of police or other non-medical staff; their results should be properly recorded and available to the detainee

45. See *Goginashvili v. Georgia*, ECtHR Judgment of 4 October 2011, application no. 47729/08.
46. See below.
47. 6th General Report on the CPT's activities, CPT/Inf (96) 21, para. 15. See also 2nd General Report on the CPT's activities, CPT/Inf (92) 3, para. 36.
48. *Pavlenko v. Russia*, Judgment of 1 April 2010, application no. 42371/02. For foreign citizens it includes a notification of consulates.
49. It should applicable to persons required to stay with the police regardless of their status. 12th General Report on the CPT's activities, CPT/Inf (2002) 15, para. 41.

and lawyer;[50] it is to be noted that, according to the most recent CPT standards, whenever injuries are consistent with allegations of ill-treatment that information is to be immediately and systematically brought to the attention of the relevant authority, regardless of the wishes of the detainee; if a detained person is found to bear injuries which are clearly indicative of ill-treatment but refuses to reveal their cause or gives a reason unrelated to ill-treatment, his/her statement should be accurately documented and reported by the medic concerned to the authority concerned together with a full account of the objective medical findings;[51]

- to have the fact of the detention **properly recorded** in a comprehensive and accurate manner with such records being accessible for the detainee and lawyer;
- to be **explicitly informed about the rights** concerned in a language understood by the detainee and provided with a form setting them straightforwardly out; detainees should be asked to sign a statement attesting that they have been informed of their rights.[52]

These rights should apply as from the **outset of deprivation of liberty**.[53] Even short delays in providing access to a lawyer or doctor or unjustified

50. See *Mammadov (Jalaloglu) v. Azerbaijan*, ECtHR judgment of 11 January 2007, application no. 34445/04, para. 74. Protocol *Mehmet Eren v. Turkey*, ECtHR judgment of 6 April 2004, application no. 21689/93, para. 355. See also the CPT's Report on the visit to Albania carried out from 23 May to 3 June 2005, CPT/Inf (2006) 24, para. 49; CPT's Report on the visit to Georgia carried out from 6 to 18 May 2001, CPT/Inf (2002) 14, para. 30; para. 123 of the Istanbul Protocol *Mehmet Eren v. Turkey*, ECtHR judgment of 6 April 2004, application no. 21689/93, para. 355.
51. 23rd General Report 'Documenting and reporting medical evidence of ill-treatment' CPT/Inf (2013) 29, paras. 71-84.
52. See 12th General Report on the CPT's activities, CPT/Inf (2002) 15, para. 44.
53. In order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period (a number of hours) a detained person's access to a lawyer of his/her choice or to apply analogous exceptions to the right to have the fact of detention notified to a third party. Such exceptions should be clearly defined and subject to strict limitations and accompanied by further appropriate guarantees (e.g. any delay to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case, judge or prosecutor). For the same reasons, it may be necessary that the examination of a person in custody by a doctor of his/her own choice is carried out in the presence of the doctor appointed by the competent authority. See 12th General Report on the CPT's activities, CPT/Inf (2002) 15, para. 41CPT's Report on the visit to France carried out from 14 to 26 May 2000, CPT/Inf (2001) 10, para. 35.

and prolonged postponement of notification of custody can fall short of the requirements.[54]

7. WHAT TO DO IF SUBJECTED TO ILL-TREATMENT?

The range of domestic competent authorities and procedures available for complaining on or addressing ill-treatment varies in different countries. However, there are common requirements that any national framework has to satisfy in this regard.

International standards envisage several options for triggering the domestic mechanisms. Detainees can simultaneously or selectively:

- benefit from the fundamental legal safeguards[55] and **notify about ill-treatment their relatives, lawyer or doctor**;[56] complain **when brought before prosecutors or judges** that are under the duty to take resolute action in response to allegations or other indications of ill-treatment;[57]
- insist on an immediate transfer to penitentiary establishments and **alert prison officials or health services** that are obliged to record allegations of ill-treatment and injuries, if any, and transmit these accounts to the competent authorities;[58]
- register and send **complaints or any written representations to the competent authorities** and designated bodies, as well as request under the right to respect for correspondence provided for by Article 8 of the ECHR that such mail be transmitted without undue delay in a sealed envelope or another manner excluding its censorship.[59]

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54. See *Mammadov (Jalaloglu) v. Azerbaijan*, ECtHR judgment of 11 January 2007, application no. 34445/04, para. 74; Yüksel v. Turkey, ECtHR judgment of 20 July 2004, application no. 40154/98, para. 27.
55. See above.
56. See the advanced standards on reporting the results of medical screening by doctors outlined in answers to the preceding question.
57. 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para. 28. See also *Ahmet Özkan and Others v. Turkey*, ECtHR judgment of 6 April 2004, application no. 21689/93, para. 359; *Taraburca v. Moldova*, Judgment of 6 December 2011, application no. 18919/10.
58. See footnote 52 above, also the CPT's Report on the visit to Azerbaijan carried out from 24 November to 6 December 2002, CPT/Inf (2004) 36, para. 26; CPT's Report on the visit to Albania carried out from 13 to 18 July 2003, CPT/Inf (2006) 22, paras. 45-49; CPT's Report on the visit to Lithuania from 17 to 24 February 2004, CPT/Inf (2006) 9, para. 96.
59. The range can be supplemented by providing an opportunity to contact the bodies by telephone and other means of communication. See Opinion of the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, concerning independent and effective determination of complaints against the police, ommDH(2009)4, para. 46. Hereinafter - the CEHRC's Opinion.

In parallel, it is important to secure evidence by means of requesting forensic examination or insisting on detailed description of injuries or other medical consequences of ill-treatment by prison or other doctors involved.

There is a variety of international protection mechanisms with the Strasbourg Court being the most relevant for pursuing claims of particular violations. However, it should be taken into account that according to Article 35.1 of the ECHR, this Court can deal with a matter after all available and effective domestic remedies are exhausted. That is why it is advisable to use appropriate national mechanisms first.[60]

8. HOW TO PURSUE THE CLAIMS OF ILL-TREATMENT?

Types of domestic mechanisms relevant for dealing with the claims of ill-treatment are determined by a character of violation and scope of measures required. In general, avenues for solving substantial inadequacies amounting to ill-treatment, similarly to other human rights violations, should provide **timely and direct redress, both preventive and compensatory remedies**, as well as offer adequate safeguards for an independent and impartial review and provide sufficient prospects of success.[61]

Thus, the most typical avenue for addressing an inadequacy of conditions of detention or medical assistance and other kinds of unpremeditated ill-treatment is to **complain to superiors** within police structures or supervising **bodies and judiciary**.[62] The latter option includes initiation of immediate or subsequent civil procedures for remedying a violation and damages, and, as a rule, it is the only remedy that meets the standard of effectiveness.

As regards physical or psychological abuse, excessive use of force and other forms of deliberate ill-treatment, the competent authorities are under the obligation to respond to such accounts by launching necessary **investigations**. Therefore, such claims can be pursued through criminal and

60. The Strasbourg Court can be engaged without exhausting domestic remedies, but the applicant is obliged to demonstrate their ineffectiveness or unavailability, or refer to special circumstances such as total inaction of state authorities in the face of serious allegations. See *Selmouni v. France*, ECtHR's Judgment of 28 July 1999, application no. 25803/94, para. 76; *Assenov v. Bulgaria*, ECtHR Judgment of 28 October 1998, application no. 24760/94, paras. 102.
61. See Melnik v. Ukraine, ECtHR judgment of 28 March 2006, application N 72286/01; *Petukhov v. Ukraine*, ECtHR judgment of 21 October 2010, app. N 43374/02.
62. Occasionally such matters can constitute a subject of investigations too. See *Ramishvili and Kokhreidze v. Georgia*, ECtHR Judgment of 27 January 2009, application no. 1704/06, para. 80.

disciplinary procedures carried out by **police complaints mechanisms, investigative or prosecuting authorities**.

Recognised or alleged **victims of ill-treatment are expected to cooperate** with the competent authorities, testify or participate in other investigative actions and procedures. Besides that, they are supposed to **represent their legitimate interests** in the course of effective investigations or **defend them** against a failure to meet this obligation.[63] That is why it is important to be aware of the specific requirements and standards developed in this regard.

9. WHAT ARE THE REQUIREMENTS AN INVESTIGATION INTO ILL-TREATMENT SHOULD COMPLY WITH?

The duty to investigate deliberate ill-treatment as well as other serious human rights violations also has an absolute character.[64] In short, an investigation must **establish the facts of the case** and, if the allegations or other indications of ill-treatment prove to be true, **identify** and **punish those responsible** by means of eventual proceedings. In order to be **adequate and effective** an investigation into ill-treatment has to meet a set of particular criteria. For these reasons it should be:

- **independent**, meaning that the officials responsible for the investigation, those assigned to its steps or taking substantial decisions should be neither from the same police subdivisions, and in general, cannot be part of the same public authority, or otherwise closely linked (professionally interrelated, subordinated) to those implicated in the events[65] nor accountable for prosecuting the complainant;[66]

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63. See endnote 3 above. On the obligation concerned see *Maslova and Nalbandov v. Russia*, ECtHR Judgment of 24 January 2008, application no. 839/02, para. 91; *Zelilof v. Greece,* ECtHR judgment of 24 May 2004, application no. 17060/03, para. 55; *Altun v. Turkey*, ECtHR judgment of 1 June 2004, application no. 24561/94, para. 71; *Ayder and Others v. Turkey*, ECtHR judgment of 8 January 2004, application no. 23656/94, paras. 122-129.
64. See the answer to question 1 above and Guidelines of the Committee of Ministers of the Council of Europe on Eradicating impunity for serious human rights violations. adopted by the Committee of Ministers of the Council of Europe on 30 March 2011 at the 1110th meeting of the Ministers' Deputies.
65. See *Rehbock v. Slovenia*, ECtHR Judgment of 28 November 2000, application no. 29462/95, para. 74; *Mikheev v. Russia*, ECtHR Judgment of 26 January 2006, application no. 77617/01, para. 115.
66. See *Barabanshchikov v. Russia*, ECtHR Judgment of 8 January 2009, application no. 36220/02, para. 48; *Toteva v. Bulgaria*, ECtHR Judgment of 19 May 2004, application no. 42027/98, para. 63; *Najafli v. Azerbaijan*, Judgment of 2 October 2012, application no. 2594/07; *Taraburca v. Moldova*, Judgment of 6 December 2011, application no. 18919/10; CPT's Report on the visit to Albania carried out from 23 May to 3 June 2005, CPT/Inf (2006) 24, para. 50.

- **thorough**, i.e. include 'all reasonable steps' and genuine efforts for reaching the outlined objectives; the standard inventory of evidence to be assembled[67] contains detailed and exhaustive testimonies of victims; their medical, preferably forensic examination; appropriate questioning and, if needed, detection of those implicated; appropriate witness statements, possibly including statements of other detainees, custodial staff, members of the public, law enforcement officers and other officials; examination of the scene for material evidence, including implements used in ill-treatment; examination of custody records, decisions, case files and other documentation related to the incident;[68]
- **prompt** in terms of securing necessary evidence including those that might be lost or become weaker, as well as timely accomplishment of procedures needed for taking a final decision or punishment of those implicated;[69]
- **subject to scrutiny** by the victim and his or her lawyer, who should be consistently informed of a progress of the investigation and principal decisions taken, entitled to request investigating actions, challenge its omissions or conclusions by means of an appropriate judicial review.[70]

In addition, an investigative framework should **exclude any immunity or other formal barriers** against investigations,[71] ensure that the **victims or**

67. See *Khadisov and Tsechoyev v. Russia*, ECtHR judgment of 5 February 2009, application no. 21519/02, para. 114; *Bati and Others v. Turkey*, ECtHR judgment of 3 June 2004, applications nos. 33097/96 and 57834/00, para. 134; Istanbul Protocol, paras. 88-106; the CEHRC's Opinion, para. 69; 14th General Report on the CPT's activities, CPT/Inf (2004) 28 para. 33.
68. Particular investigations of ill-treatment might require some additional or specific investigative actions and procedures.
69. See *Mikheev v. Russia*, ECtHR's Judgment of 26 January 2006, application no. 77617/01, para. 109; *Yaman v. Turkey*, ECtHR Judgment of 2 November 2004, application no. 32446/96, paras. 57, 59.
70. See *Ognyanova and Choban v. Bulgaria*, ECtHR Judgment of 23 February 2006, application no. 46317/99, para. 115; *Chitayev and Chitayev v. Russia*, ECtHR Judgment of 18 January 2007, application no. 59334/00, para. 165; *Hugh Jordan v. the UK*, ECtHR Judgment of 4 May 2001, application no. 24746/94, para.132; *Khadisov and Tsechoyev v. Russia*, ECtHR judgment of 5 February 2009, application no. 21519/02, para. 122; *Gharibashvili v. Georgia*, ECtHR Judgment of 29 July 2008, application no. 11830/03, para. 74; *Slimani v. France*, ECtHR Judgment of 24 July 2004, application no. 57671/00; *Ramishvili and Kokhreidze v. Georgia*, ECtHR Judgment of 27 January 2009, application no. 1704/06, para. 80.
71. See *Hugh Jordan v. the UK* , ECtHR Judgment of 4 May 2001, application no. 24746/94, para.135. In this particular case the ECtHR did not find the circumstances concerned to be significant for the purposes of investigations, however.

witnesses benefit from protective measures including a provisional suspension of those implicated from the service or official duties.[72]

10. WHAT WOULD BE AN ADEQUATE PUNISHMENT FOR PERPETRATORS OF ILL-TREATMENT AND LEGAL REDRESS FOR VICTIMS?

It is for domestic legislation and courts to determine the sanctions for those guilty of ill-treatment. International standards do not offer any formal scales of penalties that should be applicable to a perpetrator of torture, inhuman or degrading treatment or punishment.[73] However, they require that relevant crimes are to be **appropriately classified** according to a **legislation specifically establishing criminal responsibility** for torture or other forms of deliberate ill-treatment[74] and a punishment be **proportionate to the gravity of ill-treatment**.[75] Any evident inadequacy of sanctions imposed on its perpetrators falls short of the obligation to deter under the prohibition in issue and combating impunity for serious human rights violations in general.[76] Finally, international standards **oppose amnesties, pardons, other measures of clemency** towards perpetrators of deliberate ill-treatment. [77]

In addition, a victim of ill-treatment is entitled to an **adequate compensation of pecuniary and non-pecuniary damages**. According to Article 13 of the ECHR, a possibility to seek such compensation through civil or administrative procedures should provide the victim with an effective remedy

72. See *Yaman v. Turkey*, Judgment of 2 November 2004, application no. 32446/96, para. 55. See also *Bekos and Koutropoulos v. Greece*, Judgment of 13 December 2005, application no. 15250/02, para. 54. Istanbul protocol, para. 80.
73. 14th General Report on the CPT's activities, CPT/Inf (2004) 28, para. 44.
74. See *Okkali v. Turkey*, ECtHR Judgment of 16 October 2006, application no. 52067/99, para. 73; *Bekos and Koutropoulos v. Greece*, ECtHR judgment of 13 December 2005, application no. 15250/02, para. 54. See also, *mutatis mutandis*, the observations of the Grand Chamber in *Oneryildiz v. Turkey*, ECtHR Judgment of 24 November 2004, application no. 48939/99, at para.116; *Valeriu and Nicolae Rosca v. Moldova*, judgment of 20 October 2009, application 41704/02.
75. *Ali and Ayşe Duran v. Turkey*, ECtHR Judgment of 8 April 2008, application no. 42942/02, para. 66; *Paduret v. Moldova*, ECtHR judgment of 5 January 2010, application 33134/03.
76. CPT's Report on the visit to Albania from 23 May to 3 June 2005, CPT/Inf (2006) 24, para. 54; *Valeriu and Nicolae Rosca v. Moldova*, judgment of 20 October 2009, application 41704/02.
77. See *Yaman v. Turkey*, ECtHR Judgment of 2 November 2004, application no. 32446/96, para. 55; General Comment N2, CAT/C/GC/2, para. 5; *Enukidze and Girgvliani v. Georgia*, Judgment of 26 April 2011, application no. 25091/07.

'notwithstanding that the violation has been committed by persons acting in an official capacity'.[78]

11. WHAT ARE OTHER BASIC RIGHTS DETAINEES OR SUSPECTS ARE ENTITLED TO?

The prohibition of ill-treatment is a key component of the wider human rights framework that applies to law enforcement activities. Articles 5 and 6 of the ECHR and the respective rights to liberty and security and a fair trial aiming at the protection of detainees and those charged with criminal offences are of particular importance in this regard.[79] The Strasbourg Court has emphasised 'the dramatic impact of the deprivation of liberty on the fundamental rights of the person concerned'[80]. At the same time, it stresses that this category of individuals enjoys relevant rights and entitlements endorsed in the ECHR.[81]

In fact, Article 5 of the ECHR establishes **the presumption in favour of liberty**.[82] It stipulates that **a detention can be applied only as an exceptional measure** provided that there are prevailing reasons and specific arguments that validate it.

It contains an **exhaustive list of grounds for deprivation of liberty** that cannot be expanded domestically.[83] It can be applied after a conviction by a competent court; for non-compliance with its lawful order or obligations prescribed by law; as a preliminary measure in the course of criminal procedure; for the purposes of educational supervision of minors and bringing them before competent legal authority; against vagrants, persons with

78. See also the criteria of effectiveness of remedies outlined in the answer to question 8 above.
79. The right to fair trial and Article 6 of the ECHR also apply to civil proceedings, which fall outside the scope of the subject-matter of the publication.
80. See *Ramishvili and Kokhreidze v. Georgia*, ECtHR Judgment of 17 January 2009, application no. 1704/06, para. 128.
81. Persons deprived of their liberty are entitled to other rights and freedoms. See *Hirst v. the United Kingdom*, ECtHR [GC] Judgment of 6 October 2005, application no. 74025/01, para. 69. Some of them, e.g. the right to respect to family life and correspondence, are of direct relevance to the prohibition of ill-treatment. Their elements form part of the legal safeguards considered above.
82. See Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, rule 3.
83. On the exhaustive character of the list see *Labita v. Italy*, ECtHR Judgment of 6 April 2000, application no. 26772/95.

mental illnesses, and alcoholics, as a measure countering infectious diseases; and in the context of deportation or extradition procedures.[84]

In addition to an existence of at least one of these grounds, a deprivation of liberty is allowed only if further requirements and preconditions are met. It should be **lawful and carried out in accordance with the procedure prescribed by law**. Firstly, it means that a detention should be applied in accordance with domestic legal provisions, including those related to a length of police custody that starts from the moment of actual and not formalised apprehension.[85] Secondly and in addition, it should meet the guarantees against arbitrary deprivation of liberty deriving from the ECHR. Their list includes the ban on an unacknowledged detention.[86] The ECHR also implies that the legal framework on detention must be precise and regulations shall not be classified or otherwise unavailable for the public.[87] In other words, detainees and their representatives should know what to expect and plead for.

Article 5.2 of the ECHR pursues the same rationale and requires that any detainee should know the reasons for his or her deprivation of liberty. For these purposes, the person concerned **must be promptly told, in a simple, non-technical language that he or she can understand, the essential legal and factual grounds for the detention**.[88]

This safeguard, in its turn, is a necessary prerequisite for testing the legality of the detention. Article 5.4 of the ECHR envisages that any detainee can **apply to a court to challenge the lawfulness of the detention**. The right to judicial review of legality of detention is relevant to all categories of detainees. However, it does not apply automatically. These judicial proceedings have to be initiated by a detainee or by the lawyer or, if appropriate, by another authorised representative.

This process should meet although not full-fledged, but at least the basic requirements of a fair trial. Among other entitlements, a detainee, if requested, should be able to benefit from an effective legal assistance,

84. See *Riera Blume and Others v. Spain*, ECtHR Judgment of 9 March 1999, application no. 37680/97.
85. See *K.-F. v. Germany*, ECtHR Judgment of 27 November1997, application no. 25629/94.
86. See *Menesheva v. Russia*, ECtHR Judgment of 9 March 2006, application no. 59261/00, para. 87.
87. See *Amuur v. France*, ECtHR Judgment of 25 June 1996, application no. 19776/92; *Gusinskiy v. Russia*, ECtHR Judgment of 19 May 2004, application no. 70276/01.
88. *Kerr v. the United Kingdom*, ECtHR Admissibility decision of 2 December 1999, application no. 40451/98.

submit the claims to an appropriate court and, if not released, receive substantiated answers to the arguments in favour of liberty.[89]

The lawfulness of detention **shall be decided speedily**. The question of timeliness of review depends on all the circumstances of the case and there is no formal time-frame stipulated by international standards. However, it should be taken into account that in comparatively straightforward cases the period of three weeks is considered to be too long.[90]

Furthermore, it is required that the grounds and arguments against release, which may vary or cease to exist over the time, should be continuously present. That is why the right to judicial review envisages that a prolonged detention can be **challenged at intervals**. Depending on the grounds and particular reasons for detention these periods differ. Nonetheless, it should be noted that for remands in custody the expected interval of such review is set at one month.[91]

In addition, the right to liberty and security envisages that **criminal suspects should benefit from further specific guarantees**. They are laid down in paragraphs 1 (c) and 3 of Article 5 of the ECHR. It is understandable since it is the most common ground for deprivation of liberty that involves different hazards, including a risk of being subjected to deliberate ill-treatment.

Suspects can be detained only upon a **reasonable suspicion of having committed an offence**.[92] In other words, it is markedly stipulated that there must be facts or information that would objectively suffice for suspecting the person of a particular crime.[93]

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89. Ibid., see also E v. Norway, ECtHR Judgment of 29 August 1990, application no. 11701/85, para. 50.
90. See *Rehbock v. Slovenia*, ECtHR Judgment of 28 November 2000, application no. 29462/95; *Sarban v. Moldova*, ECtHR Judgment of 4 October 2005, application no. 3456/05.
91. It can be inferred from the analysis of rules 17.2 and 19.2 of Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.
92. It should be noted that for the purposes of Articles 5 and 6 of the ECHR the terms 'offence' and 'criminal charges' are provided with an autonomous meaning and they do not depend solely on their domestic understanding. Certain actions that domestically are not considered as criminal offences but might result in severe penalties or entail relevant procedures are falling under the terms concerned. See *Menesheva v. Russia*, ECtHR Judgment of 9 March 2006, application no. 59261/00, paras. 90-98.
93. For a prolonged detention such suspicion should meet certain evidential requirements. See Labita v. Italy, ECtHR Judgment of 6 April 2000, application no. 26772/95, paras 155-161. Besides that, a suspicion should concern a particular crime and not some undesirable conduct or prevention of crime in general. See *Jecius v. Lithuania*, ECtHR Judgment of 31 July 2000, application no. 34578/97.

Besides the judicial review under Article 5.4, detained criminal suspects enjoy a preceding automatic procedural safeguard provided for by Article 5.3 of the ECHR. It stipulates that they should be **promptly brought before a judge** regardless of their own motions. The expected period for fulfilling this requirement is set at 48 hours from the moment of actual apprehension.[94] A criminal suspect should be freed unless there are substantial reasons for believing that he or she would either abscond, or commit a serious offence, or interfere with the course of justice, or the release could pose a serious threat to public order. Moreover, there should be no possibility of using alternative measures to address these concerns.[95] Court decisions on remanding in custody or prolonging it must substantiate the risks and reasons by reference to concrete factual circumstances and indicate the arguments for refusing bail or other alternatives to detention.[96]

Subject to the periodic review[97], a remand in custody and all the procedures up to the eventual sentencing should be concluded **within reasonable time**.[98] What is reasonable depends on the particularities of the case and international instruments do not envisage any formal periods in this respect. However, the case law of the Strasbourg Court has established a requirement of 'special diligence' meaning that a detained person is entitled to have the case given priority and conducted with particular expedition. The proceedings should be completed **without periods of substantial inactivity**.[99]

The right to a fair trial is another wide-ranging collection of requirements that are closely intertwined with the law enforcement activities. Although such aspects of the right as an independent and impartial tribunal, public hearings and judgment, reasoned decision, are relevant to the court process

94. See supra note 29 and related comments.
95. Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, para. 7.
96. Ibid., paras. 8 and 9. See also *Trzaska v. Poland*, ECtHR Judgment of 11 July 2000, application no. 25792/94, paras. 63-69.
97. See supra note 75 and related comments.
98. These requirements are envisaged both by Article 5.3 and Article 6.1 of the ECHR. The former covers the period that runs until the date of judgment of the trial (first instance) court and the latter also embraces eventual appeals procedures. The indicated essence of the special diligence standard under Article 6.1 as regards procedures concerning persons deprived of their liberty does not differ from the intensity required by Article 5.3.
99. Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paras. 22-24; see also *Punzelt v. Czech Republic*, ECtHR Judgment of 25 April 2000, application no. 31315/96, paras. 71-82.

only, the majority of other guarantees are put into effect as from the official notification of a criminal charge, detention or other measures which carry the implication of it.[100]

It is noteworthy that the overall principle of fair trial has a direct relevance to the prohibition of ill-treatment. It was the spirit and the concept of fairness inbuilt in Article 6.1 of the ECHR that provided a basis for its interpretation as including **the ban on use of testimonies as well as real (material) evidence recovered through ill-treatment or disregard of access to a lawyer, notification of custody and other safeguards**.[101] Such occurrences seriously undermine fairness of procedures regardless of an impact of such evidence on their outcome against the person concerned.[102] The same kind of general considerations **rule out any method of investigation that actively incites a crime.** This concerns actions of undercover officers instigating an offence that would not otherwise have been committed.[103]

There is a catalogue of specific rights applicable to those charged with a criminal offence. It is enshrined in paragraphs 2 and 3 of Article of the ECHR and starts with the **presumption of innocence.** This is a composite principle that places the burden of proof on prosecuting authorities, includes the **right to remain silent** and provides for the **privilege against self-incrimination**.[104] Accordingly, criminal suspects and those already accused cannot be obliged to testify or illegally compelled to provide evidence against themselves. This rule does not concern documents acquired pursuant to a warrant, as well as

100. On the autonomous meaning of the term see supra note 75. On the moment a person is considered as being 'charged' see *Eckle v. Germany*, ECtHR Judgment of 15 July 19882, application no. 8130/78, paras. 73
101. Article 15 of the Convention Against Torture, outlaws a use of evidence obtained in violation of the prohibition of ill-treatment. See *Harutyunyan v. Armenia*, ECtHR Judgment of 28 June 2007, application no. 36549/03: *Jalloh v. Germany*, ECtHR Judgment of 11 July 2006, application no. 54810/00; *Pavlenko v. Russia*, Judgment of 1 April 2010, application no. 42371/02; *Gafgen v. Germany*, ECtHR (Grand Chamber) Judgment of 1 June 2010, application no. 22978/05
102. *Harutyunyan v. Armenia*, ECtHR Judgment of 28 June 2007, application no. 36549/03, paras. 63, 66.
103. See *Teixeira de Castro v. Portugal*, ECtHR Judgment of 9 June 1998, application no. 25829/94.
104. See *Saunders v. the United Kingdom*, ECtHR Judgment of 17 December 1996, application no. 19187/91; *Telfner v. Austria*, ECtHR Judgment of 20 March 2001, application no. 33501/96. However, these stipulations do not exclude an inference of guilt from silence and statutory presumptions if they are applied within the framework of fair procedures. See Philips v. United Kingdom, ECtHR Judgment of 5 September 2001, application no. 41087/98.

breath, blood and other samples, which might be obtained from the accused through the use of lawful powers and appropriate procedures.[105]

This presumption also means that a person is innocent unless and until sentenced by a competent court. No one should be declared or deemed guilty in terms of premature statements by judges or other public officials.[106] It is also breached when those acquitted are denied compensation due to 'remaining suspicion' or 'questioned innocence'.[107]

According to Article 6.3 (a) of the ECHR, an accused shall be **promptly and in a language he/she understands informed about the nature and causes of charges against him or her**. As distinct from the notification on the reasons of detention under Article 5.2, it should provide sufficient details that allow preparing an effective defence. Normally, this requirement is fulfilled by a submission of a copy of the document set up in the course of bringing charges.[108]

The stipulation on notification of charges introduces and actually represents an element of the wider obligation to provide those accused with an **adequate time and facilities for the preparation of a defence** as required by Article 6.3 (b). The scope of the requirements on the subject is supplemented by **the right to legal assistance**. According to Article 6.3 (c), an accused should be provided with a possibility to defend himself/herself in person or through legal assistance of his/her own choosing and, if he/she has not sufficient means to pay – to be given it free. Consequently, an accused must have an opportunity to benefit from: a confidential access to a lawyer as from the early stages of investigation[109]; access to the documentation[110] and all the material evidence against or in favour of the accused being disclosed[111]

105. See *Saunders v. the United Kingdom*, ECtHR Judgment of 17 December 1996, application no. 19187/91, para 69; *Jalloh v. Germany*, ECtHR Judgment of 11 July 2006, application no. 54810/00.
106. See *Allenet de Ribemont v. France*, ECtHR Judgment of 10 February 1995, application no. 15175/89.
107. See *Sekanina v. Austria*, ECtHR Judgment of 25 August 1993, application no. 13126/87.
108. Though, in uncomplicated cases an appropriate oral explanation could suffice. See *Kanasinski v. Austria*, ECtHR Judgment of 19 December 1989, application no. 9783/82.
109. See *Murray (John) v. United Kingdom*, ECtHR Judgment of 8 February 1996, application no. 18731/91. The requirement has been introduced for the general purposes of defence that might include arguments of ill-treatment, however. This standard is similar to the preventive safeguard developed under the prohibition of ill-treatment. See above.
110. See *Kanasinski v. Austri*a, ECtHR Judgment of 19 December 1989, application no. 9783/82.
111. See *Rowe and Davis v. United Kingdom*, ECtHR Judgment of 16 February 2000, application no. 38901/95.

with enough time and appropriate conditions to consult them and present a position.[112]

Under Article 6.3 (e), those who do not understand or speak the language used in the procedures should benefit from **free interpretation**.

There are specific rules that govern **examination of witnesses and securing relevant evidence** in the course of preliminary procedures and trial. An accused should be put on equal level with the prosecution in this regard. This standard includes a presentation of evidence, calling witnesses and examination of those invited by the prosecution, including anonymous ones.[113]

It should be kept in mind that even a very early and isolated failure to meet these standards may have a decisive and irreparable effect on fairness of the whole proceedings.[114]

While in respect of many other rights, including the prohibition of ill-treatment, the entitlement to an **enforceable compensation** is implied in an obligation to provide a victim with an effective remedy,[115] the rights to liberty and security and fair trial have been furnished with special provisions to this end. Victims of illegal deprivation of liberty and miscarriage of justice should be able to remedy the related damages in accordance with Article 5.5 of the ECHR and Article 3 of its Protocol 7 respectively.

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These are the answers to the key questions, knowing which both detainees and police officers, prison officials as well as legal professionals and the public in general, should be able to benefit from better understanding of the prohibition of ill-treatment and some other basic human rights that are applicable in the context of law enforcement activities.

112. See *Hadjianastassiou v. Greece*, ECtHR Judgment of 16 December 1992, application no. 12945/87.
113. See *Doorson v. Netherlands*, ECtHR Judgment of 26 March 1996, application no. 20524/92.
114. See *Pishchalnikov v. Russia*, ECtHR Judgment of 24 September 2009, application no. 7025/04.
115. See section 10 above.

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This publication, produced by the Human Rights National Implementation Division of the Directorate General of Human Rights and Rule of Law, presents key questions and answers covering the rights of detainees. Knowledge of the subject-matter will help both detainees and police officers, as well as legal professionals and the public in general, to benefit from better understanding of the prohibition of ill-treatment and some other basic human rights that are applicable in the context of law-enforcement activities.

Prems 124817

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