

**HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT**

HELP course on Prohibition of Ill-treatment in law enforcement, security and other coercive contexts

Ana Medarska-Lazova, Strasbourg, 22 June 2018

❑ Developed in cooperation with the project
“**Strengthening the implementation of European human rights standards in Ukraine**” of the Joint EU/CoE Programme Partnership for Good Governance

❑ Finalized in 2017



❑ Course author: **Eric Svanidze**, former CPT member, International consultant

SCOPE:

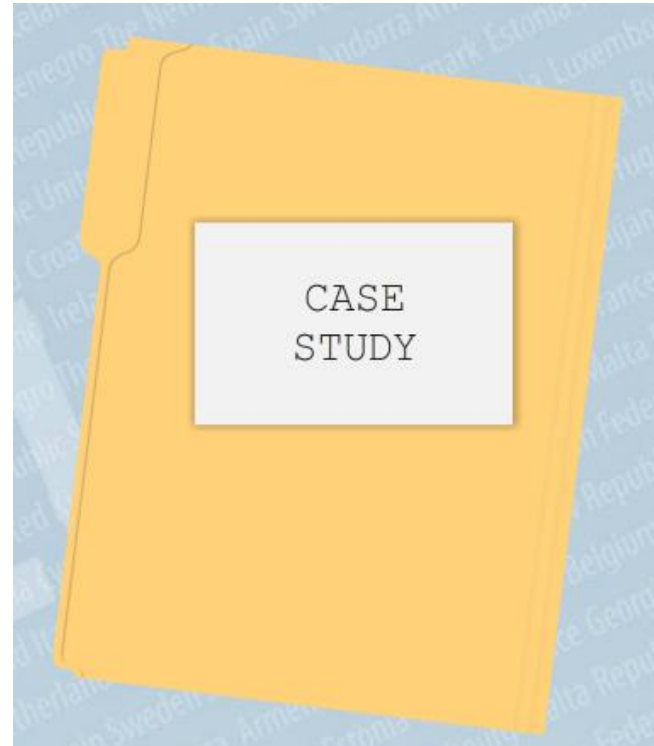
law-enforcement,
criminal justice,
related areas

(use of force, deprivation of liberty...)

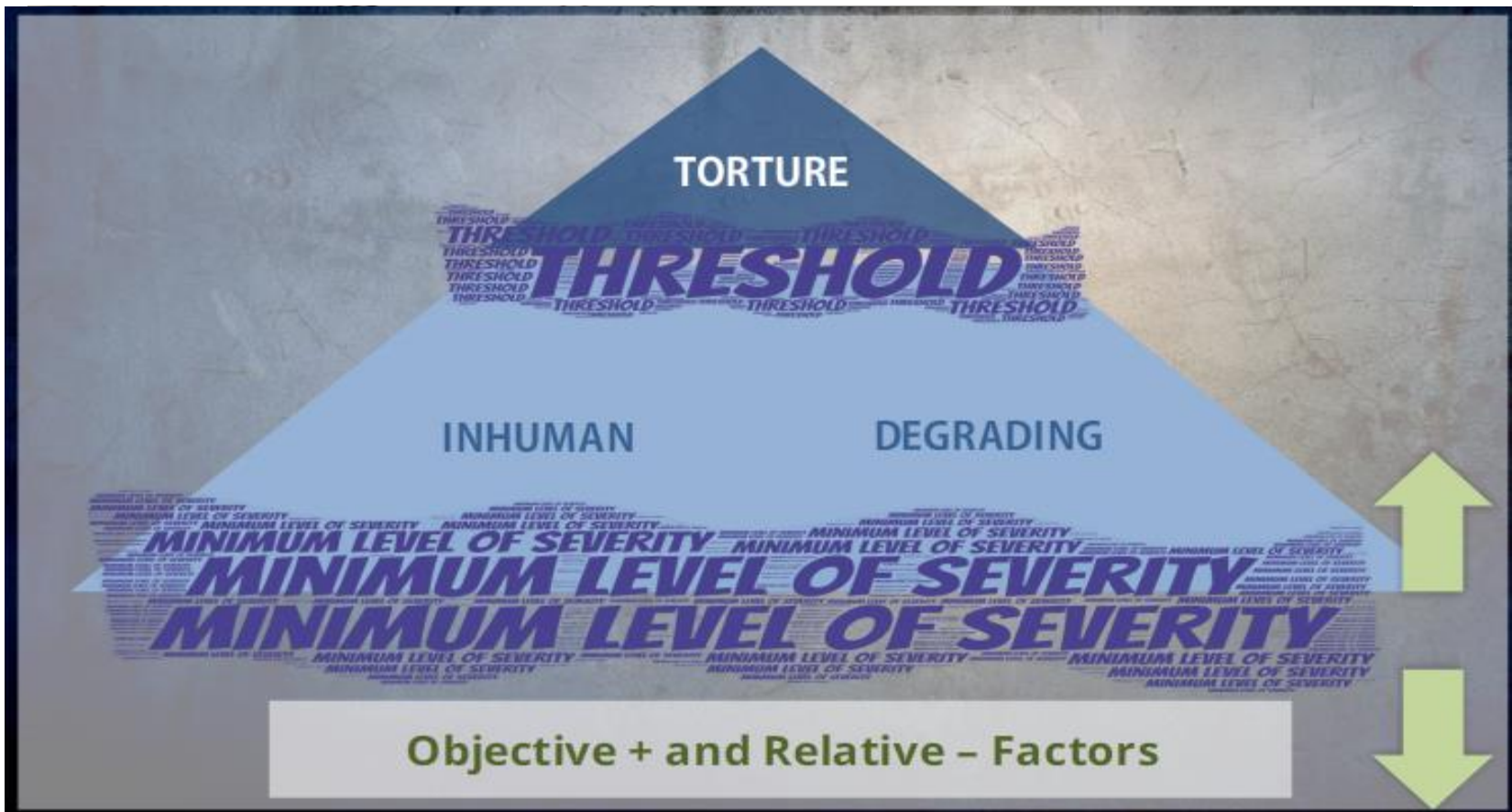
Relevant ECtHR case law + CPT standards



- Target audience:
 - **Judges**
 - **Prosecutors**
 - **Lawyers**
 - Law enforcement
 - NHRIs
 - Students
 - CSOs
- 6 substantive modules
- Summary
- Case study scenario



Module 1: Definitions and International Legal Framework



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Module 2: Conditions of detention. Medical treatment of detainees

Living (personal) space

Physical, material and other conditions

Medical treatment of detainees:

- Availability of care
- Diagnostics
- Medical records
- Therapeutic strategy
- Level of medical assistance

Physical, material and other conditions

Where no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for assessing adequacy of conditions of detention under the prohibition of ill-treatment. The non-exhaustive catalogue of such often interrelated factors includes:

Select each header below to review further details.

State of repair/Cleanliness

Hygiene

Access to natural/artificial light

Outdoor Exercise

Individual bed and bedding

Sanitary facilities

Ventilation and heating

Food



Module 3: Use of force and means of restraint

Physical force
Special means

Lawfulness and
further requirements

Distribution of the
burden of proof

Use of force and ill-treatment

The ECtHR has reinforced its interpretation of the definitional elements of the prohibition of ill-treatment with regard to use of force in its Grand Chamber judgment in [Bouyid v. Belgium](#).

The case concerned slapping of the applicants by police officers. The Court found that the use of force was not strictly necessary and that it was excessive. The Court also found that the use of force was not justified by the persons' own conduct. The Court concluded that the use of force was a violation of Article 3 of the ECHR. It classified the slapping as a violation of Article 3 of the ECHR.

Moreover, the ECtHR resolved uncertainty regarding possible differentiation between contexts of: the use of force and special means for the purpose of arrest or lawful detention; against persons deprived of their liberty; and maintaining public order or protection of others. The ECtHR wording outlining the standard of 'not be excessive' in cases of effecting an arrest or applying handcuffs and other immobilizing measures is not to be understood as a classifier 'absolute', but as one that operates with [very demanding wording](#).

RECURSE TO PHYSICAL FORCE

NOT STRICTLY NECESSARY

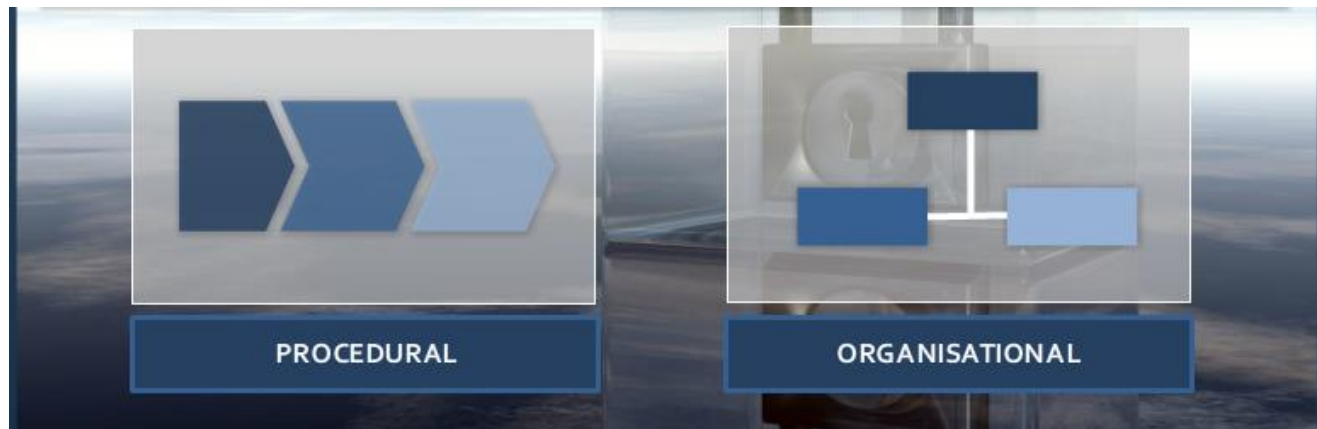
(DUE TO THE PERSONS OWN CONDUCT)

DIMINISHES HUMAN DIGNITY / VIOLATES ARTICLE 3 OF THE ECHR

Click 'Next' to continue. **CLOSE**

Module 4: Safeguards against ill-treatment

- Procedural (right to access to a lawyer, right to access to doctor, right to be informed on the rights...)
- Organisational (custody records, obligations of prosecutors and judges, role of prison services, complaints mechanism...)



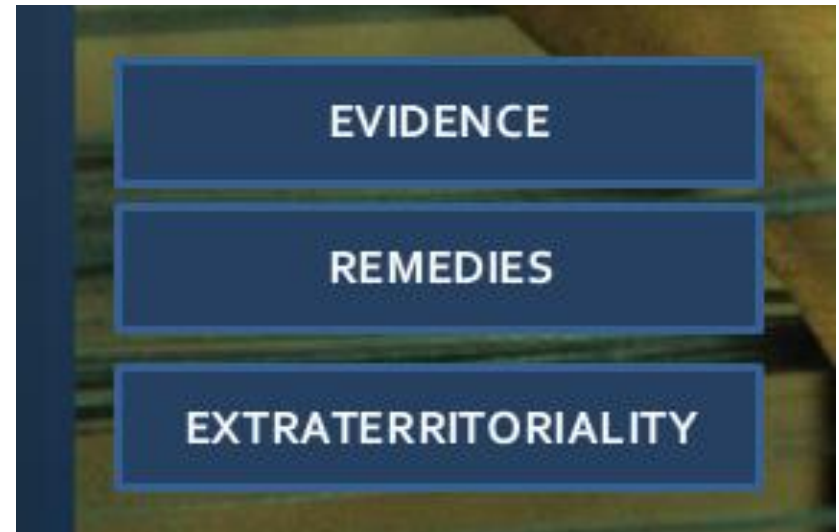
Module 5: Effective investigations

- Procedural limb
- Initiation of investigation
- Adequacy of punishment



Module 6: Interrelation with other rights

- A6 – Use of evidence obtained by ill-treatment
- A13 – Remedies
- A1 – Extraterritorial effect (non-refoulement)



Summary: Who does what?



Police

Investigators

Prosecutors

Judges

Lawyers

Medical professionals

HELP

Good training for good judgments

Thank you very much for your attention!

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