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Prohibition of Torture

Training manual on Article 3 ECHR for Macedonian judges and prosecutors

Prepared by Ivana Roagna and Danica Djonova

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Introduction

How to use this Manual

This Manual has been developed within the framework of the Project "Increasing judicial capacity to safeguard human rights and combat ill-treatment and impunity "CAPI", running from December 2016 to May 2018 as part of the Horizontal Facility for the Western Balkans and Turkey. The latter is a co-operation framework of the Council of Europe and the EU aiming at supporting South East Europe and Turkey to comply with European standards. With this project the Council of Europe, as the leading European Institution in promoting and setting European human rights standards and practices, intends to contribute to the efforts of the country to strengthen the capacities of legal professionals to safeguard human rights and combat ill-treatment and impunity.

One of the objectives of the Project is to increase the knowledge and skills of the judiciary (Judges and Prosecutors) in investigating and adjudicating cases where deprivation of liberty or allegations of torture or inhuman or degrading treatment are at stake. The present work is one of the outputs produced by the Project, namely training manuals on articles 5 and 6 (both civil and criminal limbs) ECHR, reasoning of judgments, adult training methodology and techniques, as well as a moot court scenario and instructions on how to run this type of activity.

The idea was to make available to the Academy of Judges and Public Prosecutors material to be used for in-person pre and in-service training of Judges and Prosecutors to enable them to apply human rights principles and norms in the exercise of their daily professional activities. The ultimate goal of these educational resources and activities is to strengthen the protection of human rights in and through domestic legal procedures.

This Manual aims to assist current and future trainers of the Academy for Judges and Public Prosecutors in delivering pre and in-service training on article 3 ECHR. Its use requires, as a prerequisite, that trainers familiarise themselves with the principles of adult education and training methodologies and techniques illustrated in the Manual on Training Methodology developed under the same Project. The present work is in fact based on a training methodology that encourages participants to play an active role, contributing their professional expertise to the joint study of how to apply international human rights standards effectively. The idea around which it was developed is that of co-operative learning, when people learn through working together to seek outcomes that are beneficial both to themselves and to all members of the group. In addition to favouring ownership of knowledge and skills, co-operative learning promotes higher achievement and greater productivity, and greater social competence and internalization of results. The activities proposed in this manual require great participation and engagement: resistance can only be overcome if there is a supporting environment which is perceived as not judgmental and focuses on processes rather than final solutions.

In terms of substance, use of this work requires a solid understanding of the

Convention system and its principles of interpretation. This, of course, in addition to specific knowledge of the subject matter, that cannot be confined to the information provided in this Manual. The suggested readings indicated, thus, represent the essential minimum in order to run the course.

As always, it is for the facilitators to use their experience and talents to guide the audience through the course and at all times assess and reassess the needs of the participants. Accordingly, the materials proposed can and should be used with a substantial degree of flexibility: presentations, examples, case studies and role plays may need to be tailored and customized to reflect relevant legal systems and address issues of particular interest.

The present Manual is composed of two parts. The first part comprises of seven (7) Units, broken down into steps, and instructions for conducting a 2-day course (general module) for candidate judges and prosecutors (pre-service training), and a 1-day training (specific module) comprising of five (5) Units, to be used within the context of continuous education on article 3 ECHR. It goes without saying that the specific module requires, as a prerequisite, the knowledge of the main features of article 3 ECHR as well as the principles of interpretation of the ECHR. Each module contains guidance for the organization of the sessions, including opening and closing, as well as self-assessment exercises. Additional training aids such as questions for discussion, planning charts, exercises, case studies and role plays are also available. These tools should in no way limit the facilitator's freedom to introduce other useful and thought-provoking questions and exercises, provided that they are aimed at meeting the learning objectives of the various sessions. The proposed questions are merely indicative of what can be asked. There may well be occasions when some facilitators will find it difficult to put too direct a question to the participants and when it might be preferable, in order to obtain the same results, to ask questions in a more indirect way.

The time allocated to each session is indicative but not final, as it might be influenced by the response or interest of the audience, also in relation to recent cases or developments. Exceptionally, the exercises presented in the manual may be too complex. In such situations, it is the task of the trainers the needs of the participants and to adjust the material provided so that it is adequate and meaningful to them at that time.

The training proposed for the pre-service training is to be complemented with the moot court that was developed under the present Project on articles 3, 5 and 6 ECHR and which is presented as a separated output, together with an accompanying guidebook on how to run this type of exercise.

We hope that this manual only represents the beginning of a fruitful training experience where your expertise, creativity and passion can make the difference!

Structure of the curriculum

The curriculum of the general module has been structured into session, each of them subdivided into steps. The table below summarized the content and duration of each stage.

Note that in addition to the sessions indicated, it would be advisable to end Day with short session during which a quickly recap the topics discussed, of the knowledge learned and the expertise gained takes place. At the beginning of day 2 participants should be asked whether they have any questions from the previous day that would need to be answered before proceeding with new topic. This introductory session should also provide a link with what has been done on day 1 and what lies ahead.

Unit I - Introduction and opening of the course Duration: 1 hour	
Step 1 –15 -30 minutes	Introduction of participants
Step 2 – 15 minutes	Expectation and self-assessment of knowledge
Step 3 – 5 minutes	Presentation of the agenda
Step 4 – 10 minutes	Pre-course knowledge assessment

Unit II - Introduction to the key concepts under article 3 ECHR Duration: 2 hours 15 minutes	
Step 1 – 5 minutes	What is torture for you?
Step 2 – 55 minutes	Key features of the prohibition of torture under article 3 ECHR
Step 3 – 1 hour 15 minutes	Definitions of terms and interplay between article 3 and 8 ECHR

Unit III – Burden of proof Duration: 1 hour	
Step 1 – 15 minutes	The standard of proof
Step 2 – 45 minutes	Injuries in custody

Unit IV – Substantive limb of article 3 ECHR: positive and negative obligations Duration: 2 hours 40 minutes	
Step 1 – 20 minutes	Definitions and examples
Step 2 – 30 minutes	The Osman test
Step 3 – 1 hour 50 minutes	Substantive positive obligations: application of the Osman test

Unit V – The procedural limb of article 3 ECHR

Duration: 2 hours 15 minutes	
Step 1 – 1 hours 15 minutes	What are procedural obligations?
Step 2 – 30 minutes	Features of effective investigations
Step 3 – 30 minutes	What is your role in protecting human rights?

Unit VI – Interplay between article 3 and other ECHR provisions Duration: 2 hours 10 minutes	
Step 1 – 15 minutes	Use of evidence in criminal proceedings - introduction
Step 2 – 45 minutes	Use of evidence in criminal proceedings - exercises
Step 3 – 30 minutes	Interplay between article 3 and article 2 ECHR
Step 4 – 40 minutes	Violence against women and domestic violence

Unit VII - Closing of the training Duration: 30 minutes	
Step 1 – 10 minutes	Post-course knowledge assessment
Step 2 – 20 minutes	What did I learn? How did I learn?

Specific module

Unit I - Introduction and opening of the course Duration: 20 minutes	
Step 1 – 5 – 15 minutes	Introduction of participants and expectations
Step 2 – 5 minutes	Presentation of the agenda
Step 3 – 10 minutes	Pre-course knowledge assessment

Unit II – Burden of proof Duration: 1 hour	
Step 1 – 15 minutes	The standard of proof
Step 2 – 45 minutes	Injuries in custody

Unit III – Substantive limb of article 3 ECHR: positive and negative obligations Duration: 2 hours	
Step 1 – 10 minutes	Definitions and examples
Step 2 – 20 minutes	The Osman test
Step 3 – 1 hour 30 minutes	Substantive positive obligations: application of the Osman test

Unit IV – The procedural limb of article 3 ECHR Duration: 2 hours 15 minutes	
Step 1 – 1 hours 15 minutes	What are procedural obligations?
Step 2 – 30 minutes	Features of effective investigations
Step 3 – 30 minutes	What is your role in protecting human rights?

Unit V - Closing of the training Duration: 30 minutes	
Step 1 – 10 minutes	Post-course knowledge assessment
Step 2 – 20 minutes	What did I learn? How did I learn?

Keys to symbols and headings used to present activities

Time provides a general indication of the time needed to run the whole activity, including the debriefing and discussion, when applicable. You will need, however, to make your own estimate of how much time you will need: for instance, if you are working with many small groups reporting back to plenary, then you will have to allow more time for each to feedback. If the group is large, then you will need to allow time for everyone to have an opportunity to contribute to the debriefing and evaluation.

Objectives relate to the competence-based learning objectives in terms of knowledge, skills, attitudes and values.

Key points gives an indication of the key points to be used in the course of the activity, for instance during the discussion or in the debriefing. They normally represent the knowledge-imparting component of the activity

Material indicates the tools needed to run the activity.

Resources and readings necessary to conduct the session.

Methodology and instructions for how to run the activity.

Debriefing provide help on how to conduct the debriefing of an activity.

Tips for facilitators are guidance notes and explanations about the method and content.

General module

Unit I - Introduction and opening of the course

1 hour

Learn about other participants
State expectations
Illustrate purpose, format and methodology of training
Identify knowledge and expertise present in the group
Establish an environment that is conducive to training
Set baseline of individual knowledge

Manual on training methodology

Step 1 - Introduction of participants

15 minutes/30 minutes

The tone of the training is set from the very first moment the participants arrive at the venue. There are a number of ways to ensure that participants are introduced to one another. Even when participants already know each other it is important that they have time to 'form' as a group at the beginning of a session. This helps create an environment which is cooperative and conducive to participatory training.

The methodology can be chosen depending on whether most of the participants already know each other (The Little known Fact) or not (Interviews, True or False). For the first option you can consider 15 minutes in total, for the second you can consider up to 30 minutes.

The Little Known Fact: *ask participants to share their name, department or role in the organisation, length of service, and one little known fact about themselves. This "little known fact" becomes a humanising element that can help break down differences such as grade/status in future interaction.*

Interviews: *ask participants to get into twos. Each person then interviews his or her partner for 5 minutes while paired up. The interview should touch on who, what, where, when and should also include something personal about the person (i.e. hobby, favourite movie…). When the group reconvenes, each person introduces their interviewee to the rest of the group.*

True or False: *ask your participants to introduce themselves and make*

three or four statements about themselves, one of which is false. Now get the rest of the group to vote on which fact is false. As well as getting to know each other as individuals, this exercise helps to start interaction within the group.

 Do not worry if this activity takes less time than foreseen due to the fact that participants already know each other! The time left will certainly become an asset in the course of the training!

Step 2 – Expectations and self-assessment of knowledge

🕘 15 minutes

 Coloured post-its (3 colours), computer and projector, flipchart paper and markers, tape, small box

Drawing - Expectation tree

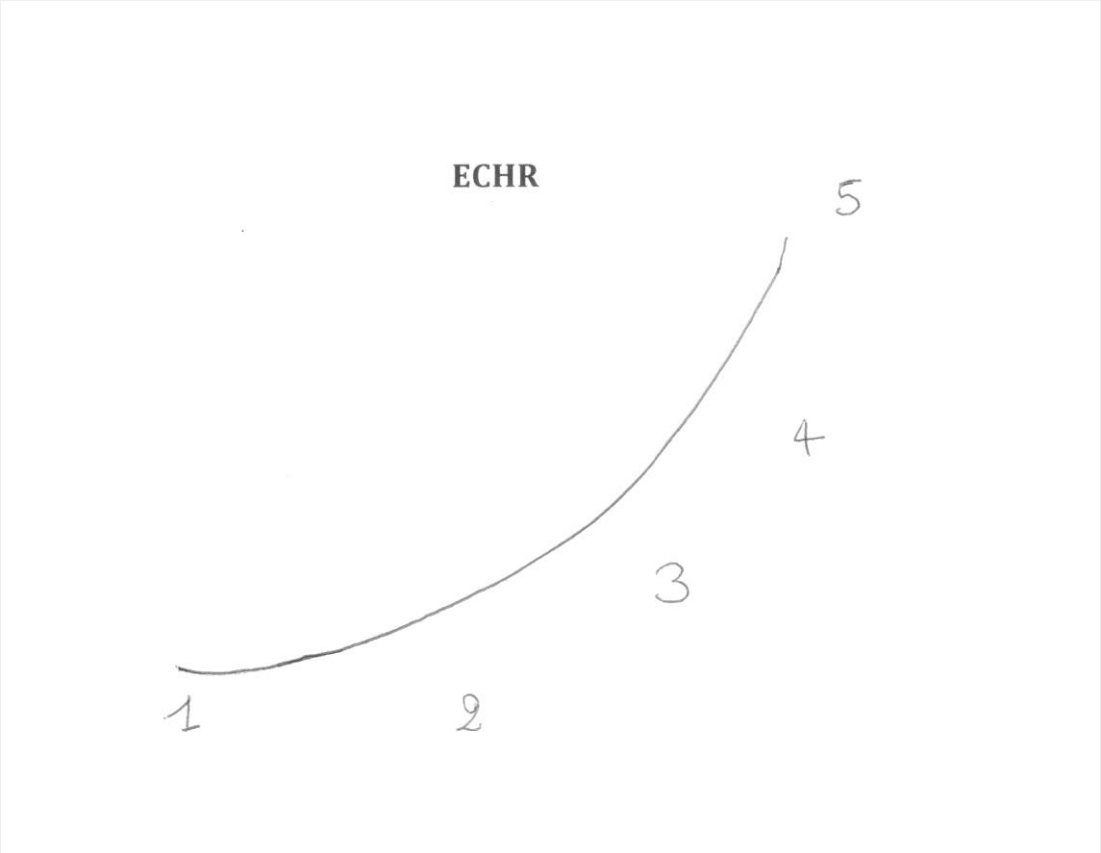
Draw structure of a tree on a flip chart paper hung to the wall.
Ask trainees to write on coloured post-its (2 colours) previously attached on their sitting desks their expectations and fears concerning the training course.
Clarify colours for expectations and fears.
Invite participants to post the slips on the flipchart, expectations to the treetop, fears to the trunk.
The trainer structures the cards so repeated expectations and fears become visible.

 *Trainer quickly reads the cards, discusses expectations (pointing out those that will not be met due to time constraints and the programme) and gives further information regarding the fears.*

 *It should be possible to revisit this expectation tree at the end of the course and discuss which expectations and fears were fulfilled or not. In this case, trainees are asked to remove post-its with expectations that were fulfilled and the cards with fears that were not significant; these cards are put in a small box below the tree.*

Self-assessment of knowledge and expertise

Draw diagram with a rising curve numbered from 1 to 5 on flipchart hung on wall, as shown below. Alternatively, use slide 1 in the Annex.



Ask trainee to write on third coloured post-it previously attached on their sitting desks their name and the numbers corresponding to highest point in knowledge of the ECHR as per the above scheme where

1 = No knowledge
2 = Basic knowledge
3 = Good knowledge
4 = Excellent knowledge
5 = Human Rights Expert

Invite participants to post the slips on the respective flipchart. Structure the cards so that the average knowledge becomes visible.

Trainer commends the wealth of knowledge or expertise already available, inviting its share within the groups, and emphasises that also those that have little to share, in fact can bring their point of view of "trainees" to the group, thus enabling it to grow. It should be possible to revisit these charts right at the end of the course, asking participants to appreciate the knowledge and expertise gained in the course by moving up the chart their post-its.

Step 3 – Presentation of the agenda

5 minutes

Navigate participants through the agenda and introduce the format of the training. Comment the agenda making reference to the expectations and fears (i.e. in relation to the self-assessment test).

Step 4 - Pre-course knowledge assessment

10 minutes

Multiple choice test annexed

Test

Distribute test. Ask participants to write their name on it. Explain to participants that this is a self-assessment tool aimed at helping identify what they know and what knowledge or understanding they need to deepen. Inform participants that results of the test will be used as baseline and that same test will be administered again at the end so as to measure progress.

Correct tests in plenary (each participant corrects own test).

Collect tests – they will be again distributed at the end of the post-training test for comparison.

Unit II – Introduction to the key concepts under article 3 ECHR

2 hours 15 minutes

Copies of the ECHR for all participants (to be used throughout the training).

Differentiate forms ill-treatment can take
Compare forms of ill-treatment as to correctly qualify them
Learn definitions of different forms of ill-treatment in the light of the ECtHR case-law
Sensitize participants to their particular role in protecting and promoting human rights
Apply the standards in real-life situations
Balance competing interests and rights

The prohibition of torture: A guide to the implementation of Article 3 of the ECHR available at http://www.coe.int/en/web/human-rights-rule-of-law/human-rights-handbooks

Additional suggested reading

Factsheets on Terrorism, Secret detention sites, Domestic violence, Violence against women, Detention and mental health, Detention conditions and treatment of prisoners, Hunger strikes in detention, all available at http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets

Prohibition of Torture, Inhuman or Degrading Treatment or Punishment under the European Convention on Human Rights (Article 3), Interrights available at http://www.interights.org/document/104/index.html

Step 1 What is torture for you?

5 minutes

Flipchart/board, markers.

Brainstorming

Invite participants to read the text of article 3 ECHR from the Convention you distributed. Ask participants to indicate ideas/concepts that they associate with the prohibition of torture. Note down keywords without commenting.

Keep the flipchart visible (stand-alone or hung on the wall) also in the course of the discussion of the scenarios that follow.

Main ideas will normally encompass:

absolute right/prohibition
everybody
everywhere
non derivable/no exceptions
dignity
fear, anguish, pain
vulnerability
state responsibility
fundamental right
democratic society
purpose of ill-treatment (i.e. extracting confession)

physical integrity
mental integrity
vulnerability of the victim
features of the victim (age, sex, other factors)
CPT and CPT standards
Constitutional guarantee

 *It should be possible to revisit the result of the next activity in the light of the keywords written on the flipchart. Normally, during brainstorm, participants express an overall approach which is much more in line with the general prohibition of torture under the ECHR than during the quiz exercise, where they feel personally involved.*

Step 2 Key features of the prohibition of torture under article 3 ECHR

55 minutes

 Hand-out or ppt (slides 2 to 6)

 ***Dilemmas***
Project on the screen the following scenario (also known as the ticking bomb scenario) or, alternatively, use slide no. 1 in the Annex:

A police officer is interrogating a man who is suspected of having planted multiple bombs in a number of buildings in a densely populated area, where there are skyscrapers, schools and a hospital. The bombs are due to explode in less than 30 minutes. Evacuation operations have started but the area is so vast and populated that it is unlikely to be able to free it before detonations. A police officer is interrogating the suspect.

After having given the time to the participants to read on the scenario, ask them the following questions:
How far can the police officer go to find out where the bombs are planted?
Would it be acceptable to you if the interrogator slaps the suspect in the face in order to 'encourage' him/her to reveal where the bombs are placed?
When participants discuss the interrogator's possible courses of action, they will almost certainly accept, to a certain extent, the violation of human rights in this case.

Then these additional questions can be asked
Do you think this police officer should be prosecuted/punished?
What should the punishment be?

 *The discussion will inevitably focus on the goal of the investigators and the competing interests at stake (i.e. life of hundreds of other innocent lives) and people will be focussed on rescuing other citizens rather than protecting the suspect's freedom from torture. Beatings or other "light" forms of violence might be found acceptable.*

Prompt participants to think if they would stick to the same position if the suspect is:

- *a woman*
- *a member of a minority group in the country of the participants*
- *a foreigner*
- *an 80-year-old, sick man*
- *a known terrorist with a criminal record*

 *Possible misconceptions arising from the discussion*

The most likely misconception with this case is that the participants accept the use of violence by the officer and, in addition, fail to recognise that it is a human rights violation. That it is so must be emphasised, quoting article 3 ECHR and referring to the result of the brainstorming. (Gafgen v. Germany, Bouyid, v. Belgium).

Another possible argument is that the life of the unaware, innocent citizens is more important than any human rights violation. However, if a human rights violation is accepted this time, what happens the next time and then the next? Where do you draw the line? How do you decide when it is no longer acceptable? This is a difficult discussion. A human rights violation is never legal according to international standards. These are irrefutable facts, but in reality they can sometimes be difficult to comprehend. Confusion with regard to the use of force may be a problem. After all, international instruments do not forbid the use of force, even lethal force, provided the force used is proportionate to the threat posed and is absolutely necessary (article 2 ECHR). Some participants might therefore argue that in this case the use of force is acceptable (and legal). However, international standards are not intended to be interpreted in this way. Hurting one person to try and save the life of another is not their intention. Force can only be used to save life when the danger is imminent.

It is possible that the participants say they need more information to deal with this case, in order to get round the problem. The trainer can give as many details as they need, providing the main substance of the case is not altered.

In discussing whether or not the police officer should be punished the trainer

should relate to the concepts of: 'the punishment should fit the crime'; who is ultimately responsible, and perhaps efficiency.

If appropriate, the trainer can finish the discussion by asking if beating the suspect will get the right results. The answer is no. After all, the fear of further physical pain will lead the suspect to tell the police officer anything s/he wants to hear. This is, of course, not necessarily the truth.

After discussion of the first scenario is over proceed with the next case

Guided discussion
Project on the screen/distribute the following scenario

Carlos is a foreign national. He is arrested on suspicion of planning a terrorist attack. The police tapped his telephone and found out that he was organising a bomb attack on the country's national airport. That would cost thousands of lives and would seriously damage the country's economy. The police knows that Carlos was cooperating with others but they do not know with who. And they know that these others are very well capable to carry out the bomb attack as planned.... They interrogate Carlos but he does not say a word. So they decide to put a bit of pressure on him by interrogating him for hours and not allow him to sleep. They also keep him in isolated detention to prevent that he communicates with his 'colleagues'. As he stays irregularly in the country they prepare his deportation to his country, which is known to torture suspects of terrorism as Carlos.

Ask the participants the following question:
Do you find anything in this situation to be a violation of Article 3?


Answers by the audience might be divided:

- *The interrogation for hours and deprivation of sleep represent/do not represent torture (Ireland v. UK)*
- *The deportation would/would not be in violation of Article 3 - countries party to the Convention cannot be held responsible for human rights violations in other countries; most certainly countries cannot be expected to be obliged to accept the presence of a dangerous terrorist on their territory (Soering v. UK).*

Key points (ppt slides from 3 to 6)

Absolute nature of the right (linked with non-derogability under article 15 ECHR) regardless of either (i) the conduct or circumstances of the victim or the nature of any offence or (ii) the nature of any threat to the security of the State.

Article 3 enshrines fundamental value of a democratic society.

Applies to everyone within the jurisdiction of the State (article 1 ECHR).

National authorities cannot afford to be complacent when understanding what it means to respect and enforce this provision (article 1 ECHR, positive obligations of the State).

National context to be added

The prohibition on torture is not only contained in the ECHR, but often embodied in Constitutions. Furthermore it is included in a number of other international instruments (Article 5 of the 1948 Universal Declaration of Human Rights, the 1998 Rome Statute of the International Criminal Court, declaring torture committed as part of a widespread or systematic attack against civilians to be a crime against humanity, the four 1949 Geneva Conventions, article 7 of the 1966 UN International Covenant on Civil and Political Rights, the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), is regarded as customary international law, and is considered to be jus cogens.

ECHR enjoys extraterritorial application if deportation to a non-contracting State will expose the person to violation of article 3 ECHR.

In a number of cases concerning the expulsion of undesired aliens (Chahal v the United Kingdom (1996) at para. 79-80 and N. v Finland (2005) at para. 59 and others), the Court has made clear that, also in non-refoulement cases the prohibition provided by Article 3 against torture, inhuman or degrading treatment or punishment is absolute, and the activities of the individual in question past or possibly in the future, however undesirable or dangerous, cannot be a material consideration.

Case-law reference
Gafgen v. Germany, Judgment of 1.06.2010 [GC]

Mr Gafgen was placed under surveillance and arrested after collecting a substantial ransom for an eleven-year-old boy who had been abducted. He was questioned by the police and initially gave false information about the boy's whereabouts and the identity of his abductors. The questioning was adjourned till the following morning, by which time the police were concerned that the boy's life was in great danger from the cold and a lack of food. On the orders of the deputy chief of police, the officers questioning the applicant warned him that he would suffer considerable pain at the hands of a specially trained person unless he disclosed the boy's whereabouts. As a result, the applicant revealed the precise location of the child. He later accompanied

the police officers to the scene, where the boy's body was found, and confessed that it was he who had kidnapped and killed the child. He was charged with the boy's abduction and murder. The trial court decided to exclude the confessions and statements he had made during the investigation as having been obtained under duress, but ruled that the evidence obtained as a result of the confessions was admissible. In returning a guilty verdict, it noted that, despite being informed at the beginning of his trial of his right to remain silent and that none of his earlier statements could be used as evidence against him, the applicant had nevertheless again confessed to the abduction and killing of the boy. The trial court's findings of fact were essentially based on that confession, but were also supported by evidence – including the body and tyre tracks – secured as a result of his initial confession and by evidence obtained through the surveillance operation. The applicant was sentenced to life imprisonment. His appeal on points of law was dismissed by the Federal Court of Justice and the Federal Constitutional Court refused to examine a constitutional complaint, although it did endorse the trial court's finding that threatening the applicant with pain in order to extract a confession was prohibited under domestic law and violated Article 3 of the Convention. The two police officers involved in threatening the applicant were later convicted of coercion and incitement to coercion while on duty and given suspended fines. A claim for compensation against the authorities for the trauma allegedly caused by the police's investigative methods is still pending. Before the European Court the applicant complained that he had been subjected to torture when questioned by the police and that his right to a fair trial had been violated by the use of evidence secured as a result of his confession under duress.

Decision of the ECtHR

According to the findings of the domestic criminal courts, a police officer had threatened the applicant with physical violence which would have caused him considerable pain in order to make him reveal the abducted child's whereabouts. The applicant had therefore been subjected to sufficiently real and immediate threats of deliberate ill-treatment. The prohibition of treatment contrary to Article 3 was absolute and applied irrespective of the conduct of the person concerned, even if the purpose was to extract information in order to save someone's life. The applicant's treatment must have caused him considerable mental suffering and the threats would have amounted to torture had they been carried out. However, the questioning had lasted only ten minutes and had taken place in an atmosphere of heightened tension and emotions as the police officers, who were completely exhausted and under extreme pressure, believed that they had just a few hours to save the boy's life. The threats of ill-treatment had not been put into practice or shown to have had any serious long-term consequences for the applicant's health. The Court therefore considered that the treatment to which the applicant was subjected during his interrogation was inhuman.

Bouyid v. Belgium, Judgment of 28 September 2015 [GC]

The applicants, two brothers, one of whom was a minor at the material time, were questioned separately by the police concerning unrelated incidents. They each alleged that they had been slapped in the face once by police officers. They lodged complaints and applied to intervene as civil parties, but their suits were unsuccessful.The medical certificates provided by the applicants, which had been drawn up on the day in question shortly after the applicants' departure from the police station, mention erythema and bruising which could have been caused by slaps to the face.

Decision of the ECtHR

Overturning the Chamber's unanimous decision, the Grand Chamber emphasised that the administration of a slap by a police officer to a person who is completely under his control constitutes a serious attack on the latter's dignity. A slap to the face has a considerable impact on the person receiving it, because it affects the part of the person's body which expresses his individuality, manifests his social identity and constitutes the centre of his senses – sight, speech and hearing – which are used for communication with others. Given that it may well suffice that the victim is humiliated in his own eyes for there to have been degrading treatment within the meaning of Article 3, a slap – even if it is isolated, not premeditated and devoid of any serious or lasting effect on the person receiving it – may be perceived as a humiliation by the person receiving it. When the slap is administered by police officers to individuals who are under their control, it highlights the superiority/inferiority relationship. The fact that the victims know that such an act is unlawful, constitutes a breach of moral and professional ethics by the officers and is unacceptable, may furthermore arouse in them a feeling of arbitrary treatment, injustice and powerlessness. Moreover, persons who are held in police custody or are even simply taken or summoned to a police station for an identity check or questioning – as in the applicants' case – and more broadly all persons under the control of the police or a similar authority, are in a situation of vulnerability. The authorities who are under a duty to protect them flout this duty by inflicting the humiliation of a slap. The fact that the slap may have been administered thoughtlessly by an officer who was exasperated by the victim's disrespectful or provocative conduct was irrelevant. The Grand Chamber therefore departed from the Chamber's approach on this point. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. In a democratic society ill-treatment is never an appropriate response to problems facing the authorities. The police, specifically, must "not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (European Code of Police Ethics). Furthermore, Article 3 of the Convention imposes a positive obligation on the State to train its law-enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no one is subjected to torture or treatment that runs counter to that provision. Lastly, the first applicant had been a minor at the material time. It is vital for law-enforcement officers who are in contact with minors in the exercise of their duties to take due account of the vulnerability inherent in their young age. Police behaviour towards minors may be

incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control. In conclusion, the slap administered to each of the applicants by the police officers while they were under their control in the police station did not correspond to recourse to physical force that had been made strictly necessary by their conduct, and had thus diminished their dignity. Given that the applicants referred only to minor bodily injuries and had not demonstrated that they had undergone serious physical or mental suffering, the treatment in question could not be described as inhuman or, *a fortiori*, torture. The Court therefore found that the present case involved degrading treatment.

Soering v. the United Kingdom, Judgment of 7 July 1989.

The applicant was a German national; he was charged with capital crime and was serving a sentence in the UK. An order for the applicant's extradition to Virginia in the United States was issued. Therefore he faced a possible death sentence in Virginia and exposure to the death row. Complaint: the applicant claimed that the extradition from the UK to the USA and the risk of serving on death row would constitute a violation of article 3 of the European Convention.

Decision of the ECtHR

The Court held that Article 3 could not be interpreted as prohibiting, in itself, capital punishment. However, the conditions of execution of the punishment (exposure to "death row" syndrome) would expose the applicant to a real risk of treatment going beyond the threshold set by Article 3.

Ireland v. the United Kingdom, Judgment of 18 January 1978

The case concerned the Irish Government’s complaint about the scope and implementation of anti-terrorism techniques and the practice of psychological interrogation techniques (wall standing, hooding, subjection to noise and deprivation of sleep, food and drink) during the preventive detention of those detained in connection with acts of terrorism. These methods, sometimes termed "disorientation" or "sensory deprivation" techniques, were not used in any cases other than the fourteen so indicated above. They so called five techniques consisted of:

(a) wall-standing: forcing the detainees to remain for periods of some hours in a "stress position", described by those who underwent it as being "spreadeagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers";

(b) hooding: putting a black or navy coloured bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation;

(c) subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;

(d) deprivation of sleep: pending their interrogations, depriving the detainees of sleep;

(e) deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the centre and pending interrogations.[16]

The Commission stated that it "considered the combined use of the five methods to amount to torture, on the grounds that (1) the intensity of the stress caused by techniques creating sensory deprivation "directly affects the personality physically and mentally"; and (2) "the systematic application of the techniques for the purpose of inducing a person to give information shows a clear resemblance to those methods of systematic torture which have been known over the ages... a modern system of torture falling into the same category as those systems... applied in previous times as a means of obtaining information and confessions". The Commission's findings were appealed. In 1978 the Court ruled that

"... Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood. ..." The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance." The Court concluded thus that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 ECHR.

 Depending on the time available (also in light of the discussions held), you can elaborate on the case-law cited or use it by way of storytelling, pinpointing the main principles.

Step 3 Definition of terms and interplay between articles 3 and 8 ECHR

 1 hour 15 minutes

Hat (or other container), situation cards, 4 flipchart papers, 4 tape rolls, scissors, ppt slides (from 7 to 12)

Cards and snowballing

In order to run this exercise you will have to prepare POSITION POSTERS and SITUATION CARDS. Situation cards are listed below. Print the pages and

cut the situation card, placing them in a hat or other container.

Mark 5 flipchart papers (position posters) with the word
TORTURE
INHUMAN TREATMENT/PUNISHMENT
DEGRADING TREATMENT/PUNISHMENT
PRIVATE LIFE
OTHER

and hang them on the walls, on 5 different locations

Ask participants to pick one situation card from the hat and place them on the poste they related to the situation disclosed by the card.

After all cards have been placed, divide participants in five groups. Task each group with the review of one of the flipchart, putting aside (still visible), the discarded cards, grouped as per the category the group believes they belong to (5 minutes maximum).

Ask groups to report in plenary about their decision (5 minutes per group).

 *Be sure to maintain a strict timing: this activity works best when participants are put under pressure/do not get bored.*

 *Use the debriefing session for each situation cards to illustrate the case-law of the ECtHR and to provide guidance on the definitions of terms. Discarded cards relevant for the purpose of article 3 discussion will be examined in the course of this session. The remainder ight be discussed in the course of the Unit VI* - Interplay between article 3 and other ECHR provisions.

Key points (ppt slides from 7 to 12)

ECHR does not contain clear definitions of what amounts to torture, inhuman or degrading treatment or punishment: these can be inferred from the case-law.

Physical and moral integrity of an individual are protected by both article 3 and 8 ECHR. The applicability of one or the other will depend on the fact that the interference reaches the minimum threshold set for article 3 to be engaged.

Interpretation and application of Article 3 do not take place in a vacuum: the

standards developed in the case law of the Court can change over time, in reaction to a changing society and changing opinions on relevant issues. Progressive/evolutive interpretation of the prohibition (see Bouyid v. Belgium).

In order for ill-treatment to fall within the scope of Article 3, it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case such as duration, physical and mental effects, the sex, age and state of health of the victim, the manner and method of its execution, purpose for which the treatment was inflicted together with the intention or motivation behind it.

Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.

Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

In order to determine whether any particular form of ill-treatment should be classified as torture, the Court must have regard to the distinction drawn in Article 3 between this notion and that of inhuman or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations Convention).

Elements of torture:

- *the infliction of severe mental or physical pain or suffering*
- *the intentional or deliberate infliction of the pain*
- *the pursuit of a specific purpose, such as gaining information, punishment or intimidation*

National context to be added

SITUATION CARDS

1. Use of pepper spray in dispersing demonstrators, with no significant physical consequences.	2. Seating of an accused in metal cage during trial.	3. Forcible surgery on drug-trafficker without his consent following his declaration to the custom authorities that he had swallowed a packet of cocaine.
4. Deprivation of a detainee's spectacles for 5 months following confiscation.	5. Forced gynaecological examination of a detainee, handcuffed with male prison officer in the room (behind a screen)	6. Detailed questions about sexual orientation, sex life, preferences and habits of servicemen followed by discharge.
7. Suspect detained overnight in police station (22 hours) without food and drink and access to toilet.	8. Detainee suffering chronic hepatitis and arterial hypertension subject to passive smoking over years.	9. Detainee on remand having not given food on the days he was transported from the prison to the regional court to attend his hearings.
10. Incarceration in a disciplinary cell with strong smell of smoke and burning due to recent fire	11. Palestinian hanging during interrogation, leaving person partially paralyzed	12. Electric shock to detainee during interrogation
13. Repeated caning of a boy by father for purpose of discipline. Caused significant bruising.	14. Three smacks from a shoe on the bottom of 15-year old boy through shorts not causing visible injury	15. Forced administration of a suppository, combined with stripping and manacling of the person
16. Small cut near a child's eye caused by a thrown tile	17. Forcible administration of life-saving drugs to child despite known and forceful objection by the mother.	18. Severe psychological trauma suffered by children neglected by parents. Authorities took them away from family only after 4 years since initial indications.
19. Punishing absconding conscript by forcing to strip down his briefs before fellow soldiers	20. Removal of organs without consent from a deceased body.	21. Force-feeding which is not medically necessary with recourse to handcuffs, mouth-widener, a special tube inserted into the food channel
22. Rape during custody by the police officers	23. Separation of 14-year old girl, pregnant due to rape, from her mother and	24. Female forcibly undressed by male personnel in sobering up

	placement in detention in order to prevent abortion	canter as she refused to wear a gown, then restrained on a bed with belts for about 10 hours
25. Early morning armed and masked police raid using force to enter MP's family home in search for evidence of fraud, causing psychologically damaging ordeal for wife and children.	26. Putting a hood over the head of a highly resourceful and dangerous escape prisoner for 2 hours while arresting and taking him before judge	27. Family members presented with mutilated corpse of relatives following arrest
28. Imposition of standard conscription to 71-year old man	29. Disability due to diving in the North Sea for oil companies during the pioneer period of oil exploration	30. Systematic strip searches of detainees
31. Handcuffing of a suspect during a search in his workplace (medical cabinet) where his staff could see him.	32. Wearing of closed overalls by prisoners in isolation	33. Punishment of a conscript with known knee and spine problems with 350 knee bends, resulting in permanent physical injury
34. Male prisoner stripped naked in the presence of female officer and touching of sexual organs and food with bare hands during strip search	35. Mentally ill patient kept for 7 years in institution lacking adequate food and heating due to financial constraints, toilets were in execrable state and laundry did not return clothes to same people	36. Obligation to prisoner to wear a cagoule at all times when leaving cell to protect him from violence and safeguard on-going investigations

Add situation cards relevant to national context.

Solution keys

1. Ciloglu v. Turkey, Judgment of 6.03.2007.

The applicant, president of the Istanbul Human Rights Association, organised a demonstration in Sultanahmet Square in Istanbul in the form of a march followed by a statement to the press. The police requested the group of 40-50 people, who were demonstrating by waving placards, to break up, telling them that the demonstration

was unlawful as no prior notification had been given, and that they would be disturbing public order at a busy time of day. The demonstrators refused to comply and attempted to force their way through. The police used a kind of tear gas known as "pepper spray" to disperse them.
Law: Article 3 – "Pepper spray" was not among the toxic gases listed in the applicable international legislation. While its use could cause physical discomfort, the applicant had not submitted any medical report demonstrating that she had suffered ill-effects after being exposed to the gas, nor had she asked for a medical examination.
Conclusion: **no violation of Article 3** (unanimously) also in relation to minor bruising resulting from tussles with the police during the demonstration.

2. Svinarenko and Slyadnev v. Russia, Judgment 17.7.2014 [GC]
Both applicants were charged with criminal offences including robbery. In a series of court appearances during the trial proceedings, they were confined in a caged enclosure measuring about 1.5 by 2.5 metres and formed by metal rods on four sides and a wire ceiling.
Law – Article 3: The Court observed that while order and security in the courtroom were indispensable for the proper administration of justice, the means used to achieve that end must not involve measures of restraint of such severity as to bring them within the scope of Article 3, which prohibited torture and inhuman or degrading treatment or punishment in absolute terms.The applicants had been tried in open court by a jury. The hearings had been attended by some 70 witnesses. In these circumstances, their exposure to the public eye in a cage must have undermined their image and aroused in them feelings of humiliation, helplessness, fear, anguish and inferiority. They had been subjected to this treatment throughout the trial, which had lasted for over a year, with several hearings almost every month. They must also have had objectively justified fears that their exposure in a cage would undermine the presumption of innocence by conveying to the judges the impression that they were dangerous. The Court found no convincing arguments to show that holding a defendant in a cage during a trial was a necessary means of physically restraining him, preventing his escape, dealing with disorderly or aggressive behaviour, or protecting him against aggression from the outside. Its continued practice could therefore only be understood as a means of degrading and humiliating the caged person. Accordingly, the applicants had been subjected to distress of an intensity exceeding the unavoidable level of suffering inherent in their detention during a court appearance, and their confinement in a cage had attained the "minimum level of severity" to bring it within the scope of Article 3. A series of Chamber judgments had in recent years found a violation of Article 3 in cases where the use of a cage was not justified by security considerations. However, the Grand Chamber did not consider that the use of cages in this context could ever be justified under Article 3. In any event, even assuming it could be, the Government's allegation that the applicants represented a threat to security had not been substantiated.The Court reiterated that the very essence of the Convention was respect for human dignity and that the object and purpose of the Convention as an instrument for the protection of individual human beings required that its provisions were interpreted and applied so as to make its safeguards practical and effective. In

view of its objectively degrading nature, holding a person in a metal cage during trial in itself constituted an affront to human dignity.
Conclusion: The applicants' confinement in a metal cage in the courtroom had thus amounted to **degrading treatment** in breach of Article 3 (unanimous).

3. Bogumil v. Portugal, judgment of 7.10.2008
In November 2002, on arriving at Lisbon Airport from Rio de Janeiro (Brazil), the applicant was searched by customs officers, who found several packets of cocaine hidden in his shoes. The applicant informed them that he had swallowed a further packet. He was taken to hospital and underwent surgery for its removal. Charges were brought against him for drug-trafficking, and he was placed in pre-trial detention. During the initial phase of the proceedings, he was assisted by a trainee lawyer. Since he faced a heavy sentence, however, a new, supposedly more experienced, lawyer was assigned to his case in January 2003 under the duty scheme. However, the new lawyer took no action in the proceedings other than to ask to be released from the case three days before the trial. A replacement lawyer was then assigned on the day the trial began and had only five hours in which to study the case file. In September 2003 the Lisbon Criminal Court convicted the applicant, sentenced him to four years and ten months' imprisonment and ordered his exclusion from Portugal.
Law - Article 3: As regards the alleged violation of the applicant's physical integrity on account of the surgery, there was insufficient evidence to establish that he had given his consent or that he had refused and had been forced to undergo the operation. The decision to perform the surgery had been taken by medical staff. The operation had been required by medical necessity as the applicant risked dying from intoxication and had not been carried out for the purpose of collecting evidence. Indeed, the applicant had been convicted on the basis of other pieces of evidence. It had been a straightforward operation and the applicant had received constant supervision and an adequate medical follow-up. As to the effects of the operation on his health, the evidence before the Court did not establish that the ailments from which he claimed to have been suffering since were related to the operation.
Conclusion: **no violation of article 3 ECHR** (unanimously).

4. Slyusarev v. Russia, Judgment of 20.04.2010
The applicant was arrested in July 1998 on suspicion of armed robbery. At some point during the arrest, his glasses were damaged. They were subsequently confiscated by the police. According to the applicant, although both he and his wife made several requests for their return, he did not recover his glasses until December 1998. In the interim, following an order by the competent prosecutor, he had been examined by an ophthalmologist in September 1998, who had concluded that his eyesight had deteriorated and prescribed new glasses, which the applicant received in January 1999.
Law – Article 3: The applicant suffered from medium-severity myopia. Accordingly, being without his glasses for several months must have caused him considerable distress in his everyday life and given rise to feelings of insecurity and helplessness. Although the Government had maintained that it had not been until early December 1998 that the applicant had requested the return of his glasses, the investigative

authorities seemed to have been aware of the applicant's eyesight problems well before then, since they had given instructions in September for him to be examined by an ophthalmologist. The applicant's wife had also requested the return of his old glasses. Notwithstanding their awareness of his problems with his eyesight, it had taken the authorities two and a half months to return the glasses. Nor had the Government explained why, after the ophthalmologist had prescribed new glasses, it had taken another two and a half months to provide him with a pair. In conclusion, the treatment complained of had to a large extent been attributable to the authorities and, given the degree of suffering it had caused and its duration, had been degrading.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

5. Filiz Uyan v. Turkey, Judgment of 8.01.2009
The applicant was convicted for being a member of a terrorist organisation and sentenced to twenty-two years imprisonment. In 2001, following a prison doctor's referral, she was handcuffed and taken to a public hospital by three male and one female security officers in order to undergo a gynaecological scan. The consultation room where the applicant was taken was situated on the ground floor of the hospital and had no bars on the windows. The applicant's handcuffs were not removed and the male security officers refused to leave the consultation room for security reasons although they did agree to stand behind a folding screen. The applicant refused to be examined in such circumstances. She subsequently instituted proceedings against the male security officers for misconduct, arbitrary treatment and insulting behaviour, but the competent authorities dismissed her complaints.
Law - article 3 ECHR: The security officers had acted in compliance with the domestic legislation, which provided that for security reasons all prisoners convicted for terrorist-related offences were not to be left alone in consultation rooms and were to remain handcuffed at all times. While recognising the security risk in the applicant's case, the Court considered that the insistence on the use of handcuffs during the examination as well as the presence of three male security officers in the consultation room had been disproportionate. It noted the existence of other practical alternatives, such as the female officer staying in the room with the applicant and one of the male officers being posted outside the unsecured window of the consultation room. The authorities had chosen to apply the strict measures prescribed under the domestic law rather than to allow a more flexible approach depending on the particular risk presented by the prisoner and the type of medical examination to be performed. The security measures used must have caused the applicant humiliation and distress beyond that inevitably associated with the treatment of a prisoner and were capable of undermining her personal dignity.
Conclusion: **violation of article 3 ECHR (Degrading treatment, inhuman treatment)** (four votes to three). In Juhnke v. Turke, judgment of 13.05.2008, the applicant had resisted the gynaecological examination until persuaded to agree to it. Given the vulnerability of a detainee at the hands of the authorities, she could not have been expected to have resisted the examination indefinitely. She had been detained incommunicado for at least nine days prior to the intervention. At the time of the examination, she had apparently been in a particularly vulnerable mental state. It was not suggested that there had been any medical reason for such an

examination or that it had been carried out in response to a complaint of sexual assault lodged by her. It remained, moreover, unclear whether she had been adequately informed of the nature of and the reasons for the measure. In the light of the doctor's statement, she might have been misled into believing that the examination had been compulsory. It could not be concluded with certainty that any consent given by the applicant had been free and informed. The imposition of a gynaecological examination on her, in such circumstances, had given rise to an interference with her right to respect for her private life, and in particular her right to physical integrity. Further, it had not been shown that that interference had been "in accordance with the law", as the Government had not presented any arguments to the effect that the interference was based on and was in compliance with any statutory or other legal rule. The impugned examination had not been part of the standard medical examination applied to persons arrested or detained. Rather it appeared to have been a discretionary decision – not subject to any procedural requirements – taken by the authorities in order to safeguard the members of the security forces, who had arrested and detained the applicant, against a potential false accusation by the applicant of sexual assault. Even if this could, in principle, have constituted a legitimate aim, the examination had not been proportionate to such an aim. The applicant had not complained of having been sexually assaulted and no reason had been advanced suggesting that she would be likely to do so. Therefore, that aim was not such as to justify overriding the refusal of a detainee to undergo such an intrusive and serious interference with her physical integrity or seeking to persuade her to give up her express objection. The gynaecological examination which had been imposed on the applicant without her free and informed consent had not been shown to have been "in accordance with the law" or "necessary in a democratic society".
Conclusion: **violation of article 8 ECHR** (five votes to two).

6. Smith and Grady v. the United Kingdom, judgment of 27.09.1999
The applicants were both exemplary members of the Royal Air Force and had been discharged solely due to being homosexual, circumstance they admitted in the course of unit investigations opened following a tip-off. The Court, while accepting that the policy, together with the investigation and discharge which ensued, were undoubtedly distressing and humiliating for each of the applicants, did not consider that the treatment reached the minimum level of severity which would bring it within the scope of Article 3 of the Convention. Conversely, it unanimously observed that that both the discharges and the investigations done after the admissions of homosexuality violated Article 8 § 2. The Court found both were in accordance with the law and had a legitimate aim but that neither were "necessary in a democratic society" as required by Article 8. As the intrusions concerned one of the most intimate parts of an individual's private life, the Court required "particularly serious reasons" to justify them. In terms of the armed forces, this meant that there must have been a "real threat" to their operational effectiveness. The Court found that the report, upon which the military supported its policy to exclude homosexuals, came to its conclusion that integration would harm morale based solely on negative attitudes towards homosexuals by current soldiers. The Court found that this, especially when considered against the backdrop of the successes of integrating women and racial

minorities, was not "convincing and weighty" evidence to support the exclusionary policy. Likewise, the continued investigations done into the applicants' private lives after finding that they were gay was a violation as the government's rationale of seeking to detect false claims of homosexuality was not sufficiently convincing and weighty.
Conclusion: **violation of Article 8 § 2 (unanimous)** with regard to investigation and discharge. No separate issue arising under article 14 in conjunction with article 8 ECHR. The Court did not consider that, in the circumstances of the case, the treatment reached the minimum level of severity which would bring it within the scope of Article 3 and concluded that there had been **no violation of Article 3** either alone or in conjunction with Article 14 (unanimous)

7. Fedotov v. Russia, Judgment of 25.10.2005
The applicant, who was the president of a non-governmental organisation, was suspected of using his position there for personal gain. In October 1999, the prosecutor charged the applicant and issued an arrest warrant against him. In February 2000, a supervising prosecutor quashed the decision to charge the applicant and cancelled the warrant. His name was nevertheless put on the federal list of wanted persons by the Criminal Police. The applicant was detained at police stations on 14-15 June 2000, and again on 6‑7 July, on the basis of the arrest warrant which had subsequently been cancelled. The applicant complained to the City Prosecutor that he had been unlawfully detained and ill-treated whilst in detention. As a result, disciplinary proceedings were brought against the investigator who had failed to notify the relevant Police Department that the arrest warrant had been cancelled. The applicant also sued the authorities and claimed damages for the unlawful criminal proceedings and arrest. In September 2001, the District Court delivered judgment, finding that the criminal proceedings against him had been unlawful because they had been ultimately discontinued for lack of evidence. Having regard to the fact that the applicant had given an undertaking not to leave the town and had not actually been taken into custody, the court awarded him an amount for damages and costs. The applicant appealed, complaining that the District Court had deliberately given an incomplete account of the circumstances of the case and that his claims for compensation for unlawful detention in June and July 2000 had not been considered in the judgment. The City Court upheld the judgment. In January 2002, the applicant initiated proceedings for the enforcement of the judgment of September 2001. After receiving the writ of execution, the applicant complained on several occasions that the amount in the writ was less than the award in the judgment. In 2004, the courts acknowledged that previously issued writs had not conformed to the law on enforcement proceedings. However, to date the judgment has not yet been enforced.
Law: Article 3 – The only account of the conditions of the applicant's detention at the police stations was those furnished by him. A failure on a Government's part to submit information on this without a satisfactory explanation could give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations. (i) The applicant's detention on 14-15 June 2000: the applicant had provided very few details about the material conditions of his detention at this police station, where he had remained in custody for twelve hours. He did not allege that his physical or

mental integrity was imperilled during that period. Accordingly, treatment to which the applicant was subjected to did not attain the minimum level of severity. (ii) The applicant's detention on 6-7 July 2000: the applicant had remained in this police station for a period of twenty-two hours. His description of this police station coincided with the findings of the CPT. The applicant was kept overnight in a cell unfit for an overnight stay, without food or drink or unrestricted access to a toilet. These unsatisfactory conditions exacerbated the mental anguish caused by the unlawful nature of his detention.
Conclusion: **violation of Article 3 (inhuman treatment) (unanimous).**

8. Florea v. Romania, Judgment of 14.09.2010
In 2002 the applicant, who suffered from chronic hepatitis and arterial hypertension, was imprisoned. For approximately nine months he shared a cell with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. In response to his complaints the Ministry of Justice acknowledged that due to overcrowding two prisoners sometimes had to share a bed and that it was not possible to separate smoking and non-smoking prisoners. Due to his worsening health, the applicant spent three periods in the prison hospital, where he was also in the company of smokers. A medical report dated January 2005 found that he was suffering from a number of disorders and should avoid tobacco smoke. He was granted conditional release in February 2005. In the meantime he had lodged a claim for compensation alleging that the deterioration in his health had been caused by passive smoking and his poor conditions of detention. The court rejected his claim in 2006, finding that no causal link had been established between his health problems and the conditions in which he had been detained.
Law – Article 3: (a) Overcrowding – The Court required as a general rule that prisoners should have at least 3 sq. m. of personal space. The applicant had been guaranteed an average of 2 sq. m. under the legislation prior to 2006. The Ministry of Justice and the domestic courts had acknowledged that overcrowding in prisons represented a systemic problem. Hence, for approximately three years the applicant had lived in extremely cramped conditions, with an area of personal space falling below the European standard. The Court noted that, in the meantime, the standard for personal space in communal cells in Romania had been increased to 4 sq. m. per prisoner. (b) Other factors – The lack of space of which the applicant complained appeared to have been aggravated by the fact that he had been confined for twenty-three hours a day to a cell which was used for both sleeping and eating, in deplorable conditions of hygiene. As to the fact that he had to share a cell and a hospital ward with prisoners who smoked, no consensus existed among the member States of the Council of Europe with regard to protection against passive smoking in prisons. The fact remained that the applicant, unlike the applicants in some other cases, had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice. However, a law in force since June 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non-smokers should be detained separately. It followed that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by Article 3 (**inhuman or degrading treatment**).

Conclusion: **violation** (unanimously).

9. Moisejevs v. Latvia, Judgment of 15.06.2006
On 4 September 1998 the applicant was committed to stand trial before the Regional Court, which considered the case until 16 August 2001, holding 72 hearings. Mr Moisejevs maintained that, on the days of the hearings, he was denied lunch or given a derisory amount of food.The Court considered that such a meal was clearly insufficient to meet the body's functional needs, especially in view of the fact that the applicant's participation in the hearings by definition caused him increased psychological tension. It noted in particular that, following a complaint by the applicant, he and the other defendants had started to receive more food when staying on the premises of the regional court in question; the authorities had thus realised that the meals being distributed were insufficient. The Court further noted that the Latvian Government had not rebutted the applicant's assertion that on a number of occasions when returning to the prison in the evening he had received only a bread roll instead of a full dinner. That being so, the Court concluded that the applicant had regularly suffered from hunger on the days of the hearings.
Conclusion: violation of article 3 (inhuman and degrading treatment), unanimous.

10. Plathey v. France, Judgment of 10.11.2011
The applicant, a prisoner, appeared before the disciplinary board following a search of his cell. He was ordered to spend forty-five days in a disciplinary cell, that is, until 22 February 2009, having regard to the four days he had spent in detention. The applicant was placed in a cell that had recently been set on fire and now had a nauseous smell. He unsuccessfully appealed against the disciplinary board's decision.
Law – Article 3: The applicant had been detained for twenty-eight days, twenty-three hours per day, in the disciplinary block in a cell which had been burnt out a week earlier. He had been detained there on account of an alleged lack of cell space despite the fact that a senator who had visited the cell on 26 January 2009, twenty-five days after the fire and seventeen days after the applicant had been put in it, had noted a "suffocatingly strong smell" and the prison governor had said in a letter of 17 February 2009 that no prisoners could be put in it. There had been eight doctor's visits during the period in which the applicant had been in the cell without any request being made for a change of cell. Although the applicant had not asked the prison authorities to put him in another cell on grounds of the poor quality of the air in the one he was in, he had referred to the problem in his appeals against his detention in a disciplinary cell. Moreover, the administrative authorities had been well aware of the situation. The applicant had undeniably been very badly affected by the fact that his cell had been burnt out shortly before he was put in it and a strong burning smell had lingered several weeks after the fire. Accordingly, the applicant's conditions of detention had diminished his human dignity and amounted to **degrading treatment**.
Conclusion: violation of article 3 ECHR (unanimous).

11. Aksoy v. Turkey, Judgment of 18.12.1996
The applicant was arrested and detained in the context of the State's fight against

the PKK in South-East Turkey. He was subjected to "Palestinian hanging:" he was stripped naked, his arms were tied together behind his back, and he was suspended by his arms. The Court noted that the treatment was deliberately inflicted and that a certain amount of preparation and exertion would have been required to carry it out. It was administered with the aim of obtaining admissions or information from the applicant. The Court noted that not only did the applicant suffer severe pain but the medical evidence showed that it led to a paralysis of both arms which lasted for some time. Conclusion: **violation of article 3 ECHR (torture)** (8 votes to 1).

12. Cakici v. Turkey, Judgment of 08.07.1999 [GC]
On 8 November 1993, an operation was carried out by gendarmes at the village where the applicant's brother lived. The gendarmes were looking for, among other things, evidence concerning the kidnapping and murder of teachers and an imam by the PKK and for anyone who might have been involved. In a co-ordinated operation, gendarmes apprehended three persons at the neighbouring village, who were transferred the next day to the provincial gendarme headquarters. It was established that during his detention the applicant's brotheı was beaten, one of his ribs broken, his head split open and that he had been given electric shock treatment twice.
Conclusion: **Violation of article 3 ECHR (torture)** in respect of the applicant's brother (unanimous), **no violation of article 3** in respect of the applicant (14 votes t o3), **violation of article 2 ECHR** (unanimous).

13. A. and others v. the United Kingdom, Judgment of 23.09.1998
Beating with garden cane applied with considerable force on more than one occasion reaches level of severity prohibited by Article 3 .State are required to take measures designed to ensure individuals not ill-treated in breach of Article 3 by other private individuals – children entitled to protection, through effective deterrence, against such treatment. Application of defence of "reasonable chastisement" did not provide adequate protection. The Court considered that children and other vulnerable individuals in particular were entitled to protection, in the form of effective deterrence, from such forms of ill- treatment.
Conclusion: **violation of article 3 ECHR (degrading punishment**) (unanimous).

14. Costello-Roberts v. the United Kingdom, Judgment of 25.03.1993.
The applicant was a seven year old boy who attended a private school which used corporal punishment on disobedient pupils. The Court noted with concern the fact that the applicant was only seven years old when he was "slippered" three times on his buttocks through his shorts with a rubber-soled gym shoe by the headmaster. The Court also noted with concern that the punishment was automatic in nature and that the applicant had to wait three days before its imposition. Due to the absence of any severe or long-lasting effects as a result of the treatment complained , the Court concluded that the facts of the case had not reached the minimum threshold of severity required for them to fall under the scope of application of article 3 ECHR.
Conclusion: **no violation of article 3 ECHR (degrading punishment)** (5 votes to 4).
Bearing in mind that the sending of a child to school necessarily involves some degree of interference with his or her private life, the Court considered that the

treatment complained of by the applicant did not entail adverse effects for his physical or moral integrity sufficient to bring it within the scope of the prohibition contained in Article 8. While not wishing to be taken to approve in any way the retention of corporal punishment as part of the disciplinary regime of a school, the Court therefore concluded that in the circumstances of this case there has also been **no violation of that Article 8 ECHR**.

15. El-Masri v. "The former Yugoslav Republic of Macedonia", Judgment of 13.12.2012 [GC]

The applicant, a German national, alleged that on 31 December 2003 he boarded a bus for Skopje. At the Macedonian border a suspicion arose as to the validity of his passport. He was questioned by the domestic authorities about possible ties with several Islamic organisations and groups. Later he was taken to a hotel room in Skopje where he was held for twenty-three days. During his detention, he was watched at all times and interrogated repeatedly. His requests to contact the German embassy were refused. On one occasion, when he stated that he intended to leave, a gun was pointed at his head and he was threatened. On the thirteenth day of his confinement, the applicant commenced a hunger strike to protest against his continued detention. On 23 January 2004, handcuffed and blindfolded, he was put in a car and taken to Skopje Airport. There he was placed in a room, beaten severely by several disguised men, stripped and sodomised with an object. After a suppository had been forcibly administered, he was placed in a nappy and dressed in a dark blue short-sleeved tracksuit. Then, shackled and hooded, and subjected to total sensory deprivation, he was forcibly marched to a CIA aircraft, which was surrounded by national security agents who formed a cordon around the plane. When on the plane, the applicant was thrown to the floor, chained down and forcibly tranquillised. While in that position, the applicant was flown to Kabul (Afghanistan) where he was held captive for five months. On 29 May 2004 the applicant was returned to Germany via Albania. In October 2008 the applicant lodged a criminal complaint with the Skopje public prosecutor's office, but this was rejected as being unsubstantiated.

The applicant had undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate during the interrogation sessions to which he had been subjected. Furthermore, such treatment had intentionally been meted out with the aim of extracting a confession or information about his alleged ties with terrorist organisations. The applicant's suffering had also been increased by the secret nature of the operation and the fact that he had been kept incommunicado for twenty-three days in a hotel, an extraordinary place of detention outside any judicial framework. Therefore, the treatment to which the applicant had been subjected while in the hotel had amounted on various counts to **inhuman and degrading treatment.** Conclusion: **violation of article 3 ECHR** (unanimous).

(ii) Treatment at the airport – The same pattern of conduct applied in similar circumstances had already been found to be in breach of Article 7 of the UN International Covenant on Civil and Political Rights. Although the applicant had been in the hands of the special CIA rendition team, the acts concerned had been carried out in the presence of officials of the respondent State and within its jurisdiction. Consequently, the respondent State had to be regarded as responsible under the

Convention for acts performed by foreign officials on its territory with the acquiescence or connivance of its authorities. The applicant had not posed any threat to his captors. Thus, the physical force used against him at the airport had been excessive and unjustified in the circumstances. The measures had been used in combination and with premeditation, with the aim of causing severe pain or suffering in order to obtain information, inflict punishment or intimidate the applicant. Such treatment amounted to **torture**. It followed that the respondent State must be considered directly responsible for the violation of the applicant's rights under this head since its agents had actively facilitated the treatment and failed to take any necessary steps to prevent it from occurring.
Conclusion: **violation of article 3 ECHR (torture)** (unanimous).
(iii) Removal of the applicant – There was no evidence that the applicant's transfer into the custody of CIA agents had been pursuant to a legitimate request for his extradition or any other legal procedure recognised in international law for the transfer of a prisoner to foreign authorities. Nor had any arrest warrant been shown to have existed at the time authorising the applicant's delivery into the hands of US agents. Further, the evidence suggested that the authorities had had knowledge of the destination to which the applicant would be flown from Skopje Airport. They were also aware or ought to have been aware that there was a real risk that the applicant would be subjected to treatment contrary to Article 3, as various reports had been published at the time concerning practices resorted to or tolerated by the US authorities that were manifestly contrary to the principles of the Convention. Lastly, the respondent State had not sought any assurances from the US authorities to avert the risk of the applicant being ill-treated. Accordingly, having regard to the manner in which the applicant had been transferred into the custody of the US authorities, the Court considered that he had been subjected to "extraordinary rendition", that is, an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or cruel, **inhuman or degrading treatment**.
Conclusion: **violation of article 3 ECHR (inhuman or degrading treatment)** (unanimous).

16. Tonchev v. Bulgaria, Judgment of 19.11.2009
The Court observes that the assault upon the applicant's son, while wilful, was not very violent: it consisted in the one‑off throwing of a small piece of tile. The resultant harm – a longitudinal wound on the left eyebrow measuring 11 to 3 millimetres and a bruise on the lower left eyelid measuring 5 to 3 millimetres (see paragraph 7 above) – was not very serious, even if account is taken of the fact that the boy was five years old. It is conceivable that as a result of the attack he might have suffered a certain psychological trauma but as no evidence of long-lasting. Similarly, the Court considers that the treatment complained of did not entail adverse effects for the physical or moral integrity of the applicant's son sufficient to bring it within the scope of the prohibition contained in Article 8. While not wishing to be taken to condone in any way the assault on him, the Court finds that in the circumstances there has also been no violation of that Article.
Conclusion: **no violation of article 8 ECHR.**

17. Glass v. the United Kingdom, Judgment of 9.03.2004
The first applicant is a severely handicapped child; the second applicant is his mother. In July 1998, the child was rushed to hospital and operated on for respiratory complications. The doctors thought he was dying and considered that further intensive care would be inappropriate. As the mother was not happy with this advice, the hospital offered to arrange for an outside opinion on the child's condition, which she refused. The child's condition improved and he was able to return home. He was subsequently re-admitted to the hospital on several occasions with respiratory infections. There were again strong disagreements between members of the hospital staff and the mother on how the child should be treated in the event of an emergency. On one occasion, a crisis situation arose: the doctors believed that the child had entered a terminal phase and, with a view to relieving his pain, administered diamorphine to him against the mother's wishes. Moreover, a "Do Not Resuscitate" notice was added to the child's file without consulting the mother. During this time, disputes broke out in the hospital involving family members and the doctors. The child survived the crisis and was able to be discharged home. The mother applied for judicial review of the decisions made by the hospital with regard to the treatment of her son, but the judge considered that such decisions were not susceptible to review because the situation had passed. Leave to appeal was refused. The mother subsequently complained to the General Medical Council and the police. Investigations into the doctor's actions were opened by both, but did not result in proceedings or the bringing of charges against the doctors involved.
Law: Article 8 – As the child's legal proxy, the mother had the authority to act on his behalf and defend his interests. Imposing a treatment on her son despite her continuing opposition represented an interference with the child's right to respect for his private life. The fact that the doctors were confronted with an emergency did not detract from the fact of interference. In examining whether the interference was "in accordance with the law", the Court did not consider it necessary to assess whether the domestic legal framework to resolve conflicts arising from parental objection to medical treatment of their children met the required qualitative criteria under the Convention. The Court nevertheless noted that the framework in place was consistent with the standards in the Council of Europe Bioethics and Human Rights Convention, and did not confer an excess of discretion to doctors nor did it contribute to unpredictability. The hospital staff had taken decisions in view of what they considered best to serve the interests of the child, so the aim pursued was also legitimate. As to the "necessity" of the interference at issue, it had not been explained to the Court's satisfaction why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to take such an initiative and defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother. In such circumstances, the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a breach of Article 8.
Conclusion: **violation of article 8 ECHR** (unanimous).

18. Z. and Others v. the United Kingdom, Judgment of 10.05.2001 [GC]

Four very young children/babies were only taken into care four-and-a-half years after concerns about their family were reported to social services. The children were subjected to appalling long-term neglect and emotional abuse by their parents during that time and suffered physical and psychological injury. There was no dispute that the neglect and abuse suffered by the four child applicants reached the threshold of inhuman and degrading treatment and that the State failed in its positive obligation under Article 3 of the Convention to provide the applicants with adequate protection against inhuman and degrading treatment. This treatment was brought to the attention of the local authority which was under a statutory duty to protect the children and had a range of powers available to it, including removing them from their home. The children were however only taken into emergency care, at the insistence of their mother only about 4 years later. In that period they had been subjected in their home to what the child consultant psychiatrist who examined them referred to as horrific experiences. The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence. The Court acknowledged the difficult and sensitive decisions facing social services and the important countervailing principle of respecting and preserving family life. The present case however left no doubt as to the failure of the system to protect the applicants from serious, long-term neglect and abuse.
Conclusion: **violation of Article 3 (inhuman or degrading treatment)** (unanimous)

19. Lyalyakin v. Russia, Judgment of 12.03.2015
The applicant, who at the material time was a nineteen-year conscript in the Russian Army, was twice caught trying to escape. Allegedly in order to prevent him making further attempts to escape on the journey back to base, he was forced to undress. After his return, he was brought before the battalion commander and made to stand in front of the battalion wearing only his military briefs.
Law – Article 3 (material aspect): The Court reiterated that States have a duty to ensure that a person performs military service in conditions which are compatible with respect for his human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are adequately secured. The applicant had remained in his military briefs on two occasions, the first after his unsuccessful attempt to escape and the second a day later, during the lining up of the battalion. The Court accepted that the level of distress suffered by the applicant was less than it would have been had he been stripped naked, that the episode had taken place in summer, was short and had ended with a reprimand. Nevertheless, the respondent Government had not explained why, in particular, the applicant had been required to stand in front of the battalion wearing only his military briefs after he had already been brought under control. While it did not overlook the specific military context of the case and the need to maintain military discipline, the fact remained that the need to use the impugned measure had not been convincingly demonstrated. In these circumstances, the undressing and exposure of the applicant during the lining up of the battalion had the effect of humiliating him. The fact that

he was aged nineteen at the time had aggravated the treatment, which constituted **degrading treatment** within the meaning of Article 3.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

20. Elberte v. Latvia, Judgment of 13.01.2015
Following the death of the applicant's husband in a car accident, tissue was removed from his body during an autopsy at a forensic centre and sent to a pharmaceutical company in Germany with a view to creating bio-implants, pursuant to a State-approved agreement. When the body was returned to the applicant after the completion of the autopsy its legs were tied together. The applicant only learned of the removal of the tissue two years later, in the course of a criminal investigation into allegations of the wide-scale illegal removal of organs and tissues from cadavers. However, no prosecutions were ever brought as the time-limit had expired.
Law – Article 8: The domestic authorities' failure to secure the legal and practical conditions to enable the applicant to express her wishes concerning the removal of her deceased husband's tissue constituted an interference with her right to respect for private life. As to the lawfulness of that interference, the question was whether the domestic legislation was formulated with sufficient precision and afforded adequate legal protection against arbitrariness in the absence of relevant administrative regulation. As to the first aspect, the domestic authorities had disagreed over the scope of the domestic legislation, with the forensic centre and security police considering there existed a system of "presumed consent" while the investigators thought that the Latvian legal system relied on the concept of "informed consent" with removal permissible only with the consent of the donor (during his or her lifetime) or of the relatives. By the time the security police accepted the prosecutors' interpretation and decided that the applicant's consent had been required, they were out of time to bring a criminal prosecution. This disagreement among the authorities inevitably indicated a lack of sufficient clarity. Indeed, although Latvian law set out the legal framework for consenting to or refusing tissue removal, it did not clearly define the scope of the corresponding obligation or the discretion left to experts or other authorities in this regard. The Court noted that the relevant European and international materials on this subject attached particular importance to establishing the relatives' views through reasonable enquiries. The principle of legality likewise required States to ensure the legal and practical conditions for implementation of their laws. However, the applicant had not been informed how and when her rights as closest relative could be exercised or provided with any explanation.
As to whether the domestic law afforded adequate legal protection against arbitrariness, it had been important, given the large number of people from whom tissue had been removed, for adequate mechanisms to be put in place to balance the relatives' right to express their wishes against the broad discretion conferred on the experts to carry out removals on their own initiative, but this was not done. In the absence of any administrative or legal regulation on the matter, the applicant had been unable to foresee how to exercise her right to express her wishes concerning the removal of her husband's tissue.
Consequently, the interference with her right to respect for her private life was not in

accordance with the law within the meaning of Article 8 § 2. Conclusion: violation (unanimously).
Article 3 (substantive aspect): The applicant's suffering had gone beyond that inflicted by grief following the death of a close family member. The applicant had had to face a long period of uncertainty, anguish and distress as to which organs or tissue had been removed, and the manner and purpose of their removal. Following the initiation of the general criminal investigation, the applicant had been left for a considerable period of time to anguish over the reasons why her husband's legs had been tied together when his body was returned to her for burial. Indeed, she had discovered the nature and amount of tissue that had been removed only during the proceedings before the European Court. The lack of clarity in the regulatory framework as regards the consent requirement could only have intensified her distress, regard being had to the intrusive nature of the acts carried out on her husband's body and the failure of the authorities themselves during the criminal investigation to agree on whether or not they had acted lawfully when removing tissue and organs from cadavers. Finally, no prosecution had ever been brought for reasons of prescription and uncertainty over whether the authorities' acts could be considered illegal. The applicant had thus been denied redress for a breach of her personal rights relating to a very sensitive aspect of her private life, namely the right to consent or object to the removal of tissue from her dead husband's body. In the specialised field of organ and tissue transplantation, it was common ground that the human body had to be treated with respect even after death. Indeed, international treaties including the Convention on Human Rights and Biomedicine and the Additional Protocol had been drafted to safeguard the rights of organ and tissue donors, living or deceased. Moreover, respect for human dignity formed part of the very essence of the European Convention. Consequently, the suffering caused to the applicant had undoubtedly amounted to **degrading treatment**.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

21. Nevmerzhitsky v. Ukraine, Judgment of 05.04.2005
The applicant, a former bank manager, was detained in April 1997 on suspicion of having committed unlawful currency transactions. He was subsequently charged on this ground, as well as of abuse of power, fraud and forgery. The applicant unsuccessfully complained to the District court against the investigator of the case, whom he claimed had acted unlawfully. The detention order was extended on five successive occasions to permit additional investigations by the prosecution, and the applicant's release on bail was refused. Several times during his detention, as a result of having gone on hunger-strike, the applicant was subjected to force-feeding, which he claims caused him substantial mental and physical suffering, in particular given the manner in which it was carried out: he had frequently been handcuffed to a chair or heating facility and forced to swallow a rubber tube connected to a bucket with a special nutritional mixture. He also maintains that whilst remanded in custody he was deprived of adequate medical treatment for the various diseases that he suffered from, and that the conditions of detention (overcrowding, lack of proper hygiene, infested bedding, placing in an isolation cell for 10 days while on hunger strike) were also in breach of Article 3 of the Convention. Although the maximum statutory period of detention in the applicant's case expired in September 1998, he

was only released in February 2000. In February 2001, the City court sentenced the applicant to five and a half years' imprisonment for repeated financial fraud, forgery and abuse of power. On the basis of the Amnesty Law, and since he had been detained for nearly three years, the court dispensed him from serving the sentence.
Article 3 – (i) Conditions of detention and the lack of medical treatment and assistance: Bearing in mind that the applicant's submissions were consistent and corresponded in general to the inspections conducted by the Committee for the Prevention of Torture and those of the Commissioner for Human Rights of the Ukrainian Parliament, the Court concluded that the applicant had been detained in unacceptable conditions which amounted to degrading treatment. The same conclusion was reached by the Court as regards the lack of adequate treatment administered to the applicant. Prior to his detention the applicant had not been suffering any skin disease and his state of health was normal. Moreover, despite the independent medical examination which had recommended that the applicant be given treatment in a specialised hospital, this had not been followed.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous)

(ii) Force-feeding: The Government had not demonstrated that there was a "medical necessity" to force-feed the applicant. It can only therefore be assumed that the force-feeding was arbitrary. Procedural safeguards were not respected in the face of the applicant's conscious refusal to take food. The authorities had not acted in the applicant's best interests in subjecting him to force-feeding. Whilst the authorities had complied with the manner of force-feeding prescribed by the relevant decree, the restraints applied – handcuffs, mouth-widener, a special tube inserted into the food channel – with the use of force, and despite the applicants resistance, had constituted treatment of such a severe character warranting the characterisation of **torture.**
Conclusion: **violation of article 3 ECHR (torture)** (unanimous).

22. Aydin v. Turkey, Judgment of 25.09.1997
A woman was arrested together with her father and her sister-in law. They were taken by village guards and gendarme officers to the gendarmerie headquarters. During her detention the applicant was blindfolded. She was beaten, stripped naked, placed in a tyre and hosed with pressurized water. She was then taken to another room where she was stripped and raped by a member of the security forces. She and the other members of her family were released after three days. According to the Government the applicant and the other members of her family were never held in custody. The applicant was 17 years old at the time and had also been subjected to other forms of physical and mental suffering. These terrifying and humiliating experiences and the accumulation of acts of violence, especially the act of rape, were held by the Court to amount to **torture**.
Conclusion: **violation of article 3 ECHR (torture)** (fourteen votes to seven)

23. P. and S. v. Poland, Judgment of 30.10.2012
The case concerned the harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape.
Article 3: It was of a cardinal importance that the applicant was at the material time

only fourteen years old. However, despite her great vulnerability, a prosecutor's certificate confirming that her pregnancy had resulted from unlawful intercourse and medical evidence that she had been subjected to physical force, both she and her mother had been put under considerable pressure on her admission to the Lublin hospital. One of the doctors had made the mother sign a declaration acknowledging that an abortion could lead to her daughter's death. No cogent medical reasons had been put forward to justify the strong terms of that declaration. P. had witnessed the argument between the doctor and the second applicant, whom the doctor had accused of being a bad mother. Information about the case had been relayed by the press, in part as a result of the press release issued by the hospital. P. had received numerous unwanted and intrusive text messages from people she did not know. In the hospital in Warsaw the authorities had failed to protect her from contact from people trying to exert pressure on her. Further, when she requested police protection after being accosted by anti-abortion activists, she was instead arrested and placed in a juvenile shelter. The Court was particularly struck by the fact that the authorities had decided to institute a criminal investigation on charges of unlawful intercourse against P., who should have been considered a victim of sexual abuse. That approach fell short of the requirements inherent in the States' positive obligations to establish and apply effectively a criminal‑law system punishing all forms of sexual abuse. Although the investigation against the applicant had ultimately been discontinued, the mere fact that it had been instituted showed a profound lack of understanding of her predicament. No proper regard had been given to her vulnerability and young age and to her views and feelings. The approach of the authorities had been marred by procrastination, confusion and a lack of proper and objective counselling and information. The applicant had been treated by the authorities in a deplorable manner and her suffering had reached the minimum threshold of severity under Article 3.
Conclusion: **violation of article 3 ECHR (inhuman and degrading treatment)** (unanimous).

24. Wiktorko v. Poland, Judgment of 31.03.2009
In 1999 the applicant, on her way home by taxi after having a drink with a friend, refused to pay the bill unless she was given a proper receipt as she considered the fare excessive; instead of taking her home, the taxi driver drove her to a sobering-up centre. She alleged that, on arrival at the centre, she was insulted, stripped naked by a woman and two men, beaten and put in restraining belts for the night. She was released the following morning. The next day she was examined by a doctor, who noted that she had a bruise on her hip, a scratched wrist, a painful shoulder and a swollen jaw. Shortly afterwards she filed a complaint against the staff of the centre. The ensuing investigation found that the staff had been obliged to use force against the applicant and to place her in restraining belts, given her aggressive behaviour and refusal to comply with the regulations in force by undressing and changing into a gown. The proceedings were discontinued on the ground that no criminal offence had been committed.
Law: (a) Substantive aspect: The essential aspect of the instant case was not the exact degree of physical coercion used against the applicant, but the fact that during her detention she had been forcibly undressed by a woman and two men and

subsequently placed in restraining belts. The Court took the view, as it had done in the cases concerning strip searches, that to be stripped naked in the presence of an officer of the opposite sex showed a lack of respect and diminished the human dignity of the person concerned. The applicant had therefore been left with feelings of anguish and inferiority capable of humiliating and debasing her. The Court could accept that the aggressive behaviour of an intoxicated individual might require recourse to the use of restraining belts, provided that checks were periodically carried out on the welfare of the individual so immobilised. However, no explanation had been given for putting the applicant in restraining belts for such an excessive period of time as ten hours. Such prolonged immobilisation must have caused her great distress and physical discomfort. The authorities' conduct had therefore amounted to **degrading treatment**.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

25. Gutsanovi v. Bulgaria, Judgment of 5.10.2013
The applicants are Mr Gutsanov, a well-known local politician, his wife and their two minor daughters. The authorities suspected Mr Gutsanov of involvement in corruption and ordered his arrest and a search of his home. On 31 March 2010 at 6.30 a.m. a special team made up of several armed and masked police officers went to the applicants' home. When Mr Gutsanov did not respond to the order to open the door, the police officers forced in the front door of the house and entered the premises. Mr Gutsanov's wife and their two young children were awoken by the arrival of the police. The first applicant was taken into a separate room. The house was searched and a number of items of evidence were taken away following the operation. When Mr Gutsanov left his home under police escort at around 1 p.m., journalists and television crews had already gathered outside. A press conference was held. The following day a regional daily newspaper published the comments made by the public prosecutor, together with extracts from an interview with the Interior Minister concerning the case. On the same day the prosecutor charged Mr Gutsanov with several criminal offences including involvement, in his capacity as a public servant, in a criminal group whose activities entailed the award of contracts potentially damaging to the municipality, and abuse of office by a public servant. The prosecutor ordered the first applicant's detention for seventy-two hours in order to ensure his attendance in court. On 3 April 2010 Mr Gutsanov appeared in court and was taken into pre-trial detention at the close of the hearing. On 25 May 2010 the court of appeal made him the subject of a compulsory residence order. On 26 July 2010 the first-instance court released him on bail. In April 2013 the criminal proceedings against him were still pending at the preliminary investigation stage.
Law – Article 3: The aims of the police operation had been an arrest, a search and a seizure of items, and had been apt to promote the public interest in the prosecution of criminal offences. Although the four members of the family had not suffered any physical injuries in the course of the police operation, the latter had nonetheless entailed a degree of physical force. The front door of the house had been forced open by a special intervention unit, and Mr Gutsanov had been immobilised by armed officers wearing masks, led downstairs by force and handcuffed. Mr Gutsanov was a well-known politician who had been chairman of Varna municipal council. There had been no evidence to suggest that he had a history of violence and that he

might have presented a danger to the police officers. The presence of a weapon in the applicants' home could not in itself justify the deployment of a special intervention unit or the type of force that had been used. The possible presence of family members at the scene of an arrest was a factor to be taken into consideration in planning and carrying out this kind of operation. The lack of prior judicial review of the necessity and lawfulness of the search had left the planning of the operation entirely at the discretion of the police and the criminal investigation bodies and had not enabled the rights and legitimate interests of Mrs Gutsanova and her two minor daughters to be taken into consideration. The law-enforcement agencies had not contemplated any alternative means of conducting the operation at the applicants' home, such as staging the operation at a later hour or even deploying a different type of officer in the operation. Consideration of the legitimate interests of Mrs Gutsanova and her daughters had been especially necessary since the former had not been under suspicion of involvement in the criminal offences of which her husband was suspected, and her two daughters had been psychologically vulnerable because they were so young (five and seven years of age). Mrs Gutsanova and her daughters had been very severely affected by the events.
The fact that the police operation took place in the early morning and involved special agents wearing masks had served to heighten the feelings of fear and anxiety experienced by these three applicants, to the extent that the treatment to which they had been subjected exceeded the threshold of severity required for Article 3 to apply. They had therefore been subjected to degrading treatment. The police operation had been planned and carried out without consideration for a number of factors such as the nature of the criminal offences of which Mr Gutsanov was suspected, the fact that he had no history of violence and the possible presence of his wife and daughters in the house. All these elements indicated clearly that the means used to arrest Mr Gutsanov at his home had been excessive. The manner in which his arrest had taken place had aroused strong feelings of fear, anxiety and powerlessness in Mr Gutsanov, liable to humiliate and debase him in his own eyes and in the eyes of his family. Accordingly, he too had been subjected to **degrading treatment**.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

26. Portmann v. Switzerland, Judgment of 11.10.2011
Following his escape from prison in February 1999 and after committing various subsequent offences, the applicant was arrested at around 7.45 p.m. on 10 March 1999 by police officers. In accordance with the customary procedure for the arrest of potentially dangerous individuals, he was immobilised on the ground using handcuffs and leg shackles. When back on his feet he became very aggressive. To protect themselves and to prevent the applicant harming himself the officers covered his head with a hood. They explained to him the purpose of the measure, which he did not challenge, and made sure he was breathing normally. When he arrived at the nearest police station he was presented to the investigating judge. The officers subsequently removed the hood so that he could read and sign his statement. They instructed him not to look around. The applicant refused to sign and the hood was placed over his head again. He was taken to a cell and at 9.50 p.m. transferred to another police station. It was at that point that the hood, handcuffs and shackles

were removed. In a judgment of March 2001 the court sentenced the applicant to ten years' imprisonment, reduced on appeal to nine years. In April 2006 the applicant filed a complaint with the investigating judge's office alleging that he had been subjected to inhuman or degrading treatment under Article 3 of the Convention at the time of his arrest, transfer and presentation before the investigating judge. The investigating judge's office ruled there was no case to answer. Subsequently, in 2006, the public prosecutor's office declared the applicant's complaint admissible, even though he had filed it more than seven years after the arrest in question, but considered it ill-founded. The applicant appealed against that decision but was unsuccessful.
Law – Article 3 (substantive aspect): The Court found it surprising that the applicant had filed his criminal complaint more than seven years after the events. Despite that delay, the domestic authorities had nevertheless examined it, but had dismissed it on the merits. That fact was not irrelevant when assessing the impact that the impugned treatment must have had on the applicant: if it had been significant, he would probably not have waited so long before complaining. Moreover, the applicant, who was forty at the material time, did not allege that he had had any particular health problems that would have made the measure harder to bear.
The treatment inflicted on the applicant during his arrest and transfer had been limited in time, lasting for about two hours. The applicant was a particularly dangerous individual against whom the police officers had to protect themselves adequately. They had thus considered it necessary to cover his head with a hood and to use handcuffs and shackles to stop him absconding or harming himself or others. The Court found the measures appropriate because they had been used both to reduce the applicant's freedom of action and to preserve the anonymity of the police officers involved, thus protecting them from possible reprisals. The hooding had been accompanied by the requisite safety measures. The applicant had not objected to wearing the hood and had confirmed, when asked by the officers, that he could breathe normally. Subsequently he had been watched almost continually by a police officer in accordance with the applicable rules. As regards his allegation that he had been subjected to a real interrogation by the investigating judge, for twenty or thirty minutes, after arriving at the police station and while still wearing the hood, the Court found that such conduct, if proven, could not be regarded as compatible with Article 3. The Court observed, however, that in the present case the length of the confrontation between the applicant and the investigating judge was a matter of dispute between the parties. The disagreement was partly due to the fact that the arrest dated back to 1999 and the applicant's delay in filing his criminal complaint had made it more difficult to reconstitute the relevant events in detail.Thus, the wearing of the hood, even combined with the handcuffs and shackles, had been limited to about two hours, had been accompanied by appropriate safety measures and had not sought to humiliate or debase the applicant. It had not therefore attained the level of seriousness required to engage Article 3.
Conclusion: **no violation of article 3 ECHR** (six votes to one).

27. Akpinar v. Turkey, Judgment of 27.02.2007
The applicants' brother and son were killed in the course of an armed clash between

members of an armed organisation and security forces. Post mortem examinations revealed that one or both of the deceased's ears had been cut off, in whole or in part. The authorities nevertheless took no investigative steps regarding the circumstances of the deaths. An investigation was opened into the applicants' allegations that their relatives had been tortured before death or that their corpses had been mutilated by the security forces. Four gendarmerie officers were charged with "insulting corpses". Less than two years after the events, the criminal proceedings were suspended, with the possibility that a final sentence be imposed should the accused be convicted of a further intentional offence within five years.
Article 3 – Act of mutilation itself: The ears had been cut off by the time the post mortem examination occurred. Prior to that examination, the corpses had been under the exclusive control of the security forces. Hence, the mutilation of the bodies occurred while in the hands of the State security forces. In the light of two cases in which members of the security forces deployed in the fight against terrorism in Turkey were accused of mutilating corpses after the death of the victims (Akkum and Others and Kanlıbaş, judgments 2005, Case-Law Report / Information Note No. 73), the Court concluded that the ears were cut off after death.Nevertheless, the human quality is extinguished on death and the prohibition on ill-treatment is no longer applicable to corpses, despite the cruelty of the acts concerned.
Conclusion: **no violation of article 3 ECHR** in relation to the deceased (six votes to one).

Applicants presented with the mutilated bodies of their relatives: As sister and father of the deceased, they could claim to be victims within the meaning of Article 34 and the suffering caused to them as a result of this mutilation amounted to degrading treatment.
Conclusion: v**iolation of article 3 ECHR (inhuman or degrading treatment)** in respect of the applicants themselves (unanimously).

28. Tastan v. Turkey, Judgment of 4.03.2008
The applicant was obliged to do his military service at the age of 71. He was called up for military service and taken by the gendarmes to the military recruitment office. A medical check-up found him fit for military service. The applicant underwent a month's training for new recruits. He was forced to take part in the same activities and physical exercises as 20-year-old recruits. The applicant alleged that he was subjected to degrading treatment during his training and was the target of various jokes. As he had no teeth, he had problems eating at army barracks. He also suffered from heart and lung problems on account of temperatures dropping to as low as minus 30°C. Lastly, he alleged that he had had no means of communicating with his son throughout the entire period of his military service. After his military training the applicant was transferred to an infantry brigade, where his state of health deteriorated. He was examined by a doctor on two occasions and then admitted to a military hospital, before being transferred to another hospital where, on 26 April 2000, he finally obtained a certificate exempting him from military service on grounds of heart failure and old age. The Turkish Government maintained that, in accordance with the practice followed in similar cases, the applicant's personal

records relating to his military service had been destroyed.
Law: Article 3– It was the responsibility of the State to provide a plausible explanation for the cause of any harm to the physical or mental integrity of persons placed under the control of the authorities. In this case that requirement had not been satisfied. Noting that the authorities had destroyed the records of the applicant's military service, the Court had little information in its possession, apart from the applicant's statements, regarding the circumstances of his military service or how the applicant, who spoke only Kurdish, had been able to communicate his complaints to the doctors and his hierarchical superiors. It was established and undisputed, however, that the applicant, who was 71 years old at the material time, had performed part of his military service between 15 March and 26 April 2000, including a month's training. While he had shown no signs of any particular illness when called up for military service, after a month's forced participation in military training intended for 20-year-old conscripts he had had to be admitted to hospital. Moreover, the Turkish Government had not referred to any particular measure taken with a view to alleviating, in the applicant's specific case, the difficulties inherent in military service, or adapting compulsory service to his case. Nor had they specified whether there had been any public interest in forcing him to perform his military service at such an advanced age. The Government had confined themselves to emphasising the applicant's share of responsibility in the matter, in so far as he had failed to register himself in the civil status register until 1986. Calling the applicant up to do military service and keeping him there and making him take part in training tailored for much younger recruits had been a particularly distressing experience and had affected his dignity. It had caused him suffering in excess of that which any man might experience when obliged to perform military service.
Conclusion: **violation of article 3 ECHR** (**degrading treatment)** (unanimous).

29. Vilnes and others v. Norway, Judgment of 5.12.2013
The applicants were former divers engaged in diving operations, including test dives, in the North Sea. They were recruited by diving companies used by oil companies drilling in the Norwegian Continental Shelf during the so-called "pioneer period" from 1965 to 1990. As a result of their professional activities they suffered damage to their health resulting in disabilities. They received a disability pension and ex gratia compensation from the State; some applicants received compensation from other sources, such as the oil company Statoil, which awarded compensation regardless of whether the divers had been employed by it. The applicants brought proceedings against the State for compensation on grounds of negligence, violations of Norway's obligations under international human rights instruments and strict liability. The Supreme Court found that the State could not be held strictly liable in the absence of a sufficiently close connection between the State and the alleged harmful activity. Nor was it liable under the law on employer's liability having regard to the measures taken by the authorities to ensure the adoption of relevant safety regulations backed up by effective implementation, inspection and supervisory mechanisms. The Supreme Court also found that the circumstances of the case did not amount, inter alia, to a breach of Articles 2, 3, 8 or 14 of the Convention.
Law – Article 8 (obligation to ensure that the applicants received essential information enabling them to assess the risks to their health and lives): There was a

strong likelihood that the applicants' health had significantly deteriorated as a result of decompression sickness, amongst other factors. That state of affairs had presumably been caused by the use of too-rapid decompression tables. Standardised tables had not been achieved until 1990. Decompression sickness had since then become an extremely rare occurrence. Thus, with hindsight at least, it seemed probable that had the authorities intervened to forestall the use of rapid decompression tables earlier, they could have removed what appeared to have been a major cause of excessive risk to the applicants' safety and health sooner.

Since the core problem related to the long-term effects on human health of the use of the tables, not to sudden changes in pressure with potentially lethal effects, it seemed more appropriate to deal with the matter from the angle of the State's positive obligations under Article 8. The "public's right to information" should not be confined to information concerning risks that had already materialised, but should count among the preventive measures to be taken, including in the sphere of occupational risks.

Decompression tables could suitably be viewed as essential information for divers to assess the health risks involved. The question therefore arose whether, in view of the practices related to the use of rapid decompression tables, the divers had received the essential information they needed to be able to assess the risk to their health and whether they had given informed consent to the taking of such risks.

Neither the Labour Inspection Authority nor the Petroleum Directorate had required the diving companies to produce the diving tables in order to assess their safety before granting them authorisation to carry out individual diving operations. The diving companies had apparently been left with little accountability vis-à-vis the authorities and for a considerable period had enjoyed a wide latitude to opt for decompression tables that offered competitive advantages serving their business interests.

The assessment of what could be regarded as a justifiable risk had to be based on the knowledge and perceptions at the time. It was known that sudden changes in pressure could have a great impact on the body but it was widely believed that diving did not have serious long-term effects in the absence of decompression sickness. Scientific research into the matter not only required considerable investment but was also very complex and time-consuming. At the same time, the prevailing view had been that decompression tables contained information that was essential for the assessment of risk to personal health involved in a given diving operation. The Petroleum Directorate had gone through most of the diving tables available and found the differences between the slowest and fastest tables disturbing. However, a considerable period had elapsed without the authorities requiring the companies to assume full openness about the tables and they did not appear to have informed divers of their concerns about the differences between the tables or the problems they posed to health and safety.

In the light of the authorities' role in authorising diving operations and protecting divers' safety, and of the uncertainty and lack of scientific consensus at the time regarding the long-term effects of decompression sickness, a very cautious approach had been called for. It would have been reasonable for the authorities to take the precaution of ensuring that companies observed full transparency about the diving tables and that divers received the information on the differences between the tables

and on the concerns for their safety and health they required to enable them to assess the risks and give informed consent. The fact that these steps were not taken meant that the respondent State had not fulfilled its obligation to secure the applicants' right to respect for their private life.
Conclusion: **violation of article 8 ECHR** (five votes to two) and **no violation of article 3 ECHR** (unanimous).

30. Iwanczuk v. Poland, Judgment of 15.11.2000
The applicant, a detainee, asked for permission to vote in parliamentary elections, as there were voting facilities for detainees in the prison where he was being held. He was taken to the guards' room, where he was told by a group of four guards that, to be allowed to vote, he would have to undress and undergo a body search. The applicant took off his clothes except his underwear, at which point the prison guards ridiculed him, exchanged humiliating remarks about his body and abused him verbally. He was ordered to strip naked, but refused to do so and was then taken back to his cell without being allowed to vote.

The Court found that it was doubtful whether the exercise of the right to vote in parliamentary elections by persons detained on remand should be subject to any special conditions other than those dictated by the normal requirements of prison security. In any event, the Court did not accept that it was justified that such conditions should include an order to strip naked in front of a group of prison guards. The Court further considered, given the applicant's personality, his peaceful behaviour during the entire period of his detention, the fact that he was not charged with a violent crime and that he had no previous criminal record, that it had not been shown that there were reasons to fear that he would behave violently. In the light of the applicant's personality and all the other circumstances of the case, no compelling reasons had been adduced to find that the order to strip naked before the prison guards was necessary and justified for security reasons. In addition, while strip searches might be necessary on occasions to ensure prison security or prevent disorder in prisons, they had to be conducted in an appropriate manner. The prison guards verbally abused and derided the applicant; behaviour intended to provoke feelings of humiliation and inferiority, which, in the Court's view, showed a lack of respect for his human dignity. Given the lack of persuasive justification for the treatment of the applicant and that he had wished to exercise his right to vote within the framework of arrangements specially provided for detainees, the Court found that the behaviour which humiliated and debased him amounted to **degrading treatment**.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (six votes to one).

31. Erdoğan Yağız v. Turkey, Judgment of 6.03.2007
The applicant, who had been employed as a doctor by the Istanbul security police for 15 years, was arrested by police officers in the car-park outside his workplace. He was handcuffed in public and subsequently exposed in handcuffs in front of his family and neighbours when searches were carried out at his home and place of work. He was then held in police custody at his workplace, where staff could see him

handcuffed, but was not informed of the charges against him. Two days after his release a psychiatrist diagnosed him as suffering from traumatic shock and certified him unfit for work for 20 days. His sick leave was extended several times on account of acute depression. The applicant filed a complaint and was informed that he had been interrogated in connection with a criminal investigation because of his relations with suspects. He was suspended from his duties until the close of the criminal investigation. The prosecuting authorities discontinued the case against the applicant. He was reinstated in his post but was unable to work on account of aggravated psychosomatic symptoms. He was retired early on health grounds and has been treated several times in a hospital neuropsychiatry department.
Law: Article 3 – The applicant had had no history of psychopathology before being taken into police custody and there was no material in the file to suggest the existence of psychosomatic instability. He had explained in detail the humiliation that he had felt on being exposed wearing handcuffs publicly, at work in front of staff who had been his patients and around his home. In his case it could be reasonably assumed that there was a causal link between the treatment in question and the beginning of his psychopathological problems, which had been diagnosed two days after his release (contrast Raninen v. Finland, 1997).
Successive medical reports had confirmed the fact that the applicant had sustained serious trauma following his period in police custody. He had particularly felt humiliated by his exposure to staff who had been his patients. His mental state had been irreversibly marked by the ordeal.
Moreover, on the date of his arrest, the applicant did not have a record that might have led to fears for security and there was no evidence that he represented a danger for himself or for others or that he had committed criminal acts or acts of self-destruction or violence against others. In particular the Government had given no explanation to justify the need for handcuffs in the present case.
In conclusion, the fact of exposing the applicant to public view wearing handcuffs at the time of his arrest and during the searches had been intended to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his moral resistance. In the particular circumstances of the case, the obligation to wear handcuffs had constituted degrading treatment.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (unanimous).

32. Lindstrom and Masseli v. Finland, Judgment of 14.01.2014
In 2004 the applicants, who were both serving prison sentences, were placed in isolation (the first applicant for three days, the second for seven) as they were suspected of attempting to smuggle drugs into the prison. While in isolation, they were forced to wear overalls covering them from neck to foot and "sealed" by prison staff with plastic strips. They could not remove the overalls by themselves or draw their hands inside the sleeves. The applicants alleged that there had been instances in which they had been forced to defecate in their overalls, as prison guards had not been able to escort them to a supervised toilet quickly enough, and that they had not been allowed to change afterwards or to wash throughout their period in isolation. They had suffered skin problems as a result. In 2005 the applicants reported the matter to the police and the authorities pressed charges against the prison director and two senior guards. However, in 2007 the district court dismissed

all the charges in a judgment that was upheld on appeal.
Law – Article 3: Maintaining order and security in prisons and guaranteeing prisoners' well-being could be proper grounds for introducing a system of closed overalls to be used while prisoners were held in isolation. Moreover, the measures were designed to protect prisoners' health and there was no intention to humiliate. Nevertheless, such a practice could be assessed differently if it led, in concrete circumstances, to situations which were contrary to Article 3. In the instant case, the domestic courts had found that it had not been intended that the prisoners should defecate in their overalls and that there was no evidence that the guards had delayed their response to the applicants' calls to use the toilet. Nor had it been shown that the applicants had not had an appropriate possibility to wash whenever necessary or had had to continue wearing dirty overalls. They had failed to submit any evidence to prove that the plastic strips had caused abrasions to their wrists or that the overalls had caused an allergic reaction. It was not for the Court to re-examine the validity of the domestic courts' assessment of the facts. Furthermore, where there were convincing security needs, the practice of using closed overalls during a relatively short period of isolation could not, in itself, reach the threshold of Article 3. This was especially so in the applicants' case, given that they were unable to produce any evidence to support their allegations concerning the possibly humiliating elements of their treatment.
Conclusion: **no violation of article 3 ECHR** (five votes to two).

33. Chember v. Russia, Judgment of 3.07.2008
While performing his national service, the applicant, who had been exempted from physical exercise and squad drill on account of a known knee condition for which he had been receiving treatment, was among a group of men who were ordered to do 350 knee bends as punishment for failing to clean the barracks properly. He collapsed during the exercise and was taken to hospital. He was later diagnosed with a closed injury of the spine, discharged from military service on medical grounds and classified as suffering from a second-degree disability. He can no longer walk properly. Following an inquiry, the prosecutor's office decided not to bring criminal proceedings against the officers in charge for want of evidence of an offence. A claim for damages by the applicant in the civil courts was dismissed because there had been no finding of guilt in the criminal proceedings. In the meantime, the applicant's mother had complained to a higher military prosecutor about the decision not to bring criminal proceedings , but he refused to examine her complaint until such time as the civil court had returned the documents and the applicant had received no further information since.
Law: Article 3 - Substantive limb: Even though challenging physical exercise might be part and parcel of military discipline, it should not endanger the health and well-being of conscripts or undermine their dignity. The applicant had been subjected to forced physical exercise to the point of collapse and the resulting injury had caused long-term damage to his health. Despite being fully aware of the applicant's specific health problems and having exempted him from physical exercise and squad drill, his commanders had forced him to do precisely the kind of exercise which would put great strain on his knees and spine. The severity of that punishment could not be accounted for by any disciplinary or military necessity. The punishment had thus

been deliberately calculated to cause the applicant intense physical suffering, which amounted to **inhuman punishment**.
Conclusion: **violation of article 3 ECHR (inhuman punishment)** (unanimous).

34. Valasinas v. Lithuania, Judgment 24.07.2001
The applicant complained about the general facilities in the prison, where he served 9 years. He also complained about a body search following a visit from a relative: the applicant alleged that he had been obliged to strip naked in the presence of a woman prison officer with the intention of humiliating him; he had been then ordered to squat, and his sexual organs and the food he had received from the visitor had been examined by guards who had worn no gloves. In addition, the applicant complained of victimisation by the prison administration by way of disciplinary penalties for his legitimate activities as a defender of prisoners' rights, for which there was no was no adequate review.
Conclusion: **no violation of article 3 ECHR** as regard to the general conditions of detention (unanimous).

As regards the body search of the applicant, the Court considered that, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. In the Court's opinion the way in which this particular search had been conducted showed a clear lack of respect for the applicant, and in effect diminished his human dignity.
Conclusion: **violation of article 3 ECHR (degrading treatment)** in relation to the body search (unanimous).

As regards the alleged victimisation of the applicant, the Court found that the applicant had not been victimised for the expression of his views or the exercise of his legitimate rights and freedoms. The Court considered that the disciplinary penalties imposed on the applicant had not been arbitrary, had been subjected to a proper review by the prison administration and the Ombudsman, and had not amounted to treatment contrary to Article 3 of the Convention.
Conclusion: **no violation of article 3 ECHR** in relation to the victimisation (unanimous).

35. Stanev v. Bulgaria, Judgment of 17.01.2012 [GC]
In 2000, at the request of two of the applicant's relatives, a court declared him to be partially lacking legal capacity on the ground that he was suffering from schizophrenia. In 2002 the applicant was placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, near a village in a remote mountain location. Following its official visits in 2003 and 2004, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concluded that the conditions at the home could be said to amount to inhuman and degrading treatment. In 2004 and 2005 the applicant, through his lawyer, asked the public prosecutor and the mayor to institute proceedings for his release from partial guardianship, but his requests were refused. His guardian likewise refused to take such action, finding that the social care home was the most suitable place for him to live since he did not have the means to lead

an independent life. In 2006, on his lawyer's initiative, the applicant was examined by an independent psychiatrist, who concluded that the diagnosis of schizophrenia was inaccurate but that the applicant had a tendency towards alcohol abuse and the symptoms of the two conditions could be confused, that he was capable of reintegrating into society, and that his stay in the social care home was very damaging to his health.
Article 3: Article 3 prohibited the inhuman and degrading treatment of anyone in the care of the authorities, whether this entailed detention in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned. The food in the social care home had been insufficient and of poor quality. The building had been inadequately heated and in winter the applicant had had to sleep in his coat. He had been able to have a shower once a week in an unhygienic and dilapidated bathroom. The toilets were in an execrable state and access to them was dangerous, according to the findings by the CPT. Lastly, the home did not return clothes to the same people after they were washed, which was likely to arouse a feeling of inferiority in the residents. The applicant had been exposed to all the above-mentioned conditions for a considerable period of approximately seven years (between 2002 and 2009, when the building where he lived had been renovated). The CPT had concluded, after visiting the home, that the living conditions there at the relevant time could be said to amount to **inhuman and degrading treatment**. Despite having been aware of those findings, during the period from 2002 to 2009 the Bulgarian Government had not acted on their undertaking to close down the institution. The lack of financial resources cited by the Government was not a relevant argument to justify keeping the applicant in the living conditions described.
Conclusion: **violation of article 3 ECHR (inhuman and degrading treatment)** (unanimous).

36. Petyo Petkov v. Bulgaria, Judgment of 7.01.2010

After being arrested by the police on suspicion of being the perpetrator of a sulphuric acid attack, the applicant was charged and detained pending trial. From May 2002, by order of the district prosecutor, he was required to wear a balaclava with eye-holes whenever he left his cell, for example when moving around or outside the prison premises, at hearings or when receiving visits. He complained but to no avail. In 2003 he applied to the district court for the measure to be discontinued. In view of the length of time the measure had been applied, the court ordered its discontinuation after the end of a hearing in May 2003. Nevertheless, the police officers continued to compel the applicant to wear the balaclava outside the courtroom. In June 2003 the applicant was acquitted.
Law – Article 3: Obligation to wear a balaclava – The applicant had been forced to conceal his face with a balaclava whenever he had left his cell over a period of one year and one month. That measure, which had impinged on the applicant's physical identity and had been applied for such a lengthy period, had inevitably had a profound psychological impact on him. No provision of domestic law expressly permitted the measure. The applicant had been aware of that fact, having raised it before the district court, and had thus felt that he was being treated arbitrarily by the authorities. As to whether the measure had been necessary, in the context of the

widespread media coverage of the applicant's trial and in view of the nature and seriousness of the offence with which he had been charged and the existence of a separate criminal investigation into a similar offence, the concern to ensure the applicant's own safety and to avoid jeopardising the two criminal investigations concerning him did not appear unfounded. In particular, the need to preserve the applicant's anonymity could have justified the use of a balaclava during his appearances in public while he was being escorted to the courtroom. However, the application of that measure had not been justified during his movements within the detention facility itself to the area where he had met his relatives and lawyers. Similarly, the applicant's anonymity during the consideration of his case by the courts could have been preserved by holding hearings in private or restricting the presence of television cameras or photographic equipment at hearings. However, despite the applicant's repeated complaints, the State authorities had apparently not considered whether it might be appropriate to make such arrangements to alleviate his situation, and this had surely aggravated his feelings of frustration and helplessness. Lastly, the police officers' arbitrary conduct in continuing to conceal the applicant's face outside the courtroom despite the district court's decision might have been perceived by him as a form of punishment. This punitive element had aroused in him feelings of anxiety, powerlessness and inferiority that were liable to debase him or lower his self-esteem. Accordingly, having regard to the duration and nature of its application, its lack of a legal basis, its arbitrariness and punitive character, the psychological effects of the measure in question had gone beyond the threshold of severity required for Article 3 to apply and the applicant had been subjected to **degrading treatment**.
Conclusion: **violation of article 3 ECHR (degrading treatment)** (six votes to one).

National context to be added

Unit III – Burden of proof

🕘 1 hour


State the standard of proof required to establish a violation of article 3 ECHR
Identify the situation of a prima facie allegation of torture
Learn weight of international reports in assessing allegation of torture
Apply the standards in real-life situations

Step 1 – The standard of proof

🕘 15 minutes

 Flipchart paper/board, markers

Brainstorming and lecture
Ask participants to brainstorm about the standard of proof applicable to prohibition of torture.

In order to stimulate ideas, ask them to think about the standard of proof applicable in their domestic legal system. Make sure you ask them to elaborate on the notions elicited, stimulating participants with questions (i.e. what does it mean beyond reasonable doubt? Can presumption of fact be used? To which extent? Can inferences be used? Under which conditions? Is the conduct of parties relevant when evidence is being obtained? For instance, what if one of the parties fails to provide material evidence they obviously possess? Which are the other possible sources of evidence that can be used?).

Note down keywords or summaries without commenting.

Keep the flipchart visible (stand-alone or wall) also in the course of the discussion of the scenarios that follow.

Step 2 – Injuries in custody

45 minutes

Hand-out, PPT (slides from 13 to 18)

Snowballing
Distribute hand-out. Ask participants to read the case individually focussing on the evidence provided and asking them if prima facie the facts of the case disclose a breach of article 3 ECHR. After 15 minutes, ask participants to share with the person next to them their thoughts. Conclude by discussion in plenary followed by solution of the case by the ECtHR.

Hand-out - National context to be added

Key points (ppt slides from 13 to 18)

Generally speaking, there is no formalized theory of burden and standards of proof.

Court takes the approach of a free assessment of the available evidence, including matters taken motu proprio.

In practice applicants must present prima facie substantiation of an interference with his right and arguable basis for violation.

Victims cannot be penalized when they do not have access to the relevant documents or information in the hands of the authorities.

The Court has shown itself very willing to draw inferences from the State's failure to provide evidence in cases where the applicant has been held in the custody of the authorities. It has made clear that where evidence is produced that suggests the victim suffered ill-treatment while in the custody of State authorities, the burden may shift to the State to produce evidence to show that the State was not responsible.

In custody situations it is incumbent on the State to provide a plausible explanation for injuries.

In relation to disputed factual situations, in cases of allegations of violation of article 3 ECHR, Court used standard of proof beyond reasonable doubt.

The reasonable doubt test, however, has a distinct (autonomous) meaning under the Convention and even when applied enjoys flexible application.

In relation to prison conditions, where the capacity for proving the reality of the situation lies in the hands of the authorities, the ECtHR said it will not make rigorous application of the principle affirmanti incumbit probatio giving a certain benefit of the doubt to prisoners and requiring the authorities to rebut arguable complaints.

The actions of the victim may also be taken into account in assessing the degree of burden on the State to prove that the use of force, possibly leading to a violation of article 3 ECHR, was not excessive (Rehbock v Slovenia, Berlinski v. Poland). CPT or other reports on conditions of detention are frequently used to support and substantiate prisoners' allegations (MSS v. Greece and Belgium).

National context to be added

Unit IV - Substantive limb of article 3 ECHR: positive and negative obligations

🕘 3 hours

List the types of obligations (positive and negative) stemming out from article 3 ECHR
Identify examples of such obligations
Learn about the Osman test to determine width of positive obligations
Apply the Osman test to real-life situations

Step 1 – Definitions and examples

Pen and papers, 2 flipcharts/boards and markers, ppt (slides 19 and 20)

30 minutes

Snowballing
Ask participants to divide a sheet of paper into two parts. One part is to be marked NEGATIVE OBLIGATIONS the other POSITIVE OBLIGATIONS.

Give participants 5 minute to fill out each part with specific examples of what these obligations are (in relation to any right or freedom). Ask participants to share with the person next to them their list and comment on the entries (3-5 minutes). After this, with 2 flipchart papers ready, invite 2 participant to assist you in writing on the flipcharts the examples provided by the audience.

Comment the entries clarifying what is meant with the expression negative and positive obligations and inform participants that procedural obligations (which are very likely to be amongst those listed) will be discussed in the course of the next session.

Key points (ppt slides 19 and 20)

Increasingly, rights are being interpreted in such a manner as to impose positive obligations on states to take steps to protect the enjoyment of rights from interferences from other sources.

Positive obligations were found first, and most commonly, under article 8. Then progressively under articles 2, 3, 10 and 11.

When assessing positive obligations the Court examines whether a fair balance has been struck between interest of individual and those of the community.

National context to be added.

Step 2 – The Osman test

30 minutes

Story telling
Use the case of Osman v. UK, judgment of 28.10.1998, to illustrate the test developed by the Court to determine the extent of positive obligations. In order to facilitate understanding of the test you can project it on a slide. Explain that the test was originally developed under article 2 ECHR but later its application was extended to other provisions. Place particular emphasis to the notion of "reasonableness".

Osman test

1. *Did the State know or ought to have known that there was a real and immediate risk to the life of the individual?*
2. *Did the State do all that could have been **reasonably** expected to prevent that risk from materializing?*

When telling the story, use your gesture, tone and pace of voice, pauses to create suspense and rivet the participants!
Before revealing the outcome of the case, ask participants whether they think that the State discharged its responsibilities under article 2 ECHR or not.

Key points

In 1986 the headmaster of Ahmet Osman (a young pupil) had noticed that one of his teachers, Mr Paget-Lewis, got very close to Ahmet. In January 1987, the mother of another child at the school complained to the school about Mr Paget-Lewis' attachment to her own son, Leslie Green. There followed a series of incidents throughout 1987 and 1988.

The head teacher interviewed Mr Paget-Lewis, who admitted spreading false rumours about Ahmet's relationship with Leslie Green. He had also made threats against Ahmet Osman. As a result the Osman family requested a move to another school. The matter was reported to the police but it was decided to deal with the matter internally at the school.
Eventually Ahmet Osman was transferred to another school, but owing to curriculum difficulties, he had to return 14 days later. Mr Paget-Lewis then

changed his name by deed poll to Paul Ahmet Yildirim Osman. The school wrote to the Inner London Education Authority (ILEA), saying that Paget-Lewis should have been removed from the school as soon as possible. The matter was again reported to the police. It also came out that Mr Paget-Lewis had changed his name before from that of Ronald Potter to the name of a pupil called Paget-Lewis, whom he had taught at another school. The head teacher again wrote to ILEA saying that Paget-Lewis needed medical help.

Paget-Lewis was seen by a psychiatrist, who said that he did indeed give cause for concern. A brick was thrown through the window of the Osman house, and one two occasions, the tyres of Ali Osman's car were burst. Mr Paget-Lewis was designated unfit for work, at which point he left the school and he was later suspended. The mother of the other child, who had been harassed by Mr Paget-Lewis made a further complaint. The suspension of Mr Paget-Lewis was later lifted and he began working as a supply teacher at another school.

There was more criminal damage to the Osman house, in a series of incidents all of which were reported to the police. The police spoke to Mr Paget-Lewis but there was a dispute as to precisely what he said. A car in which the other boy, Leslie Green was travelling was then rammed by Mr Paget-Lewis, who explained that it was an accident. The driver of the van told the police that Mr Paget-Lewis had told him that in a few months time, he would be serving a life sentence. The police took a detailed statement from Leslie Green and his family. Leslie Green said that he was frightened to go to school. The matter was further investigated by the police. ILEA interviewed Mr Paget- Smith who said that he was in a deeply self destructive mood. This was passed on to the police. In December 1987, the police then arrived at Mr Paget-Lewis' house with the intention of arresting him on suspicion of criminal damage. In January 1988, Mr Paget-Lewis' name was put on to the Police National Computer as being wanted in relation to the collision incident and on suspicion of having committed offences of criminal damage. In March 1988, Leslie Green saw Paget-Lewis wearing a black crash helmet near the Osman home. Finally on the 7th March 1988, Paget-Lewis shot and killed Ali Osman and seriously wounded Ahmet. He then drove to the home of Mr Perkins, the deputy head at Ahmet's school and seriously wounded Mr Perkins, as well as killing his son. Upon arrival of the police officer he looked at them in the eyes and asked them: "Why didn't you stop me before… You knew I would have committed something serious…". He was later convicted of manslaughter. The Osman family commenced proceedings against the Commissioner of Police for the Metropolis. They also commenced proceedings against the psychiatrist who examined Paget_Lewis but later abandoned that action. The case against the police was struck out by the Court of appeal on the grounds that no action could lie against the police in negligence in the investigation and suppression of crime on the grounds that public policy required an immunity from suit.

The applicants argued that, by failing to take appropriate steps to protect the lives

of Ali and Ahmet Osman from the known danger posed by Paget-Lewis, the authorities had failed to comply with one of their 'positive obligations' under Article 2. The Government, on the other hand, argued that in order to take the necessary steps to protect the Osmans it must have been clear that there was a risk of dying, which was not present in this case. The government therefore argued that the police responded reasonably in light of the knowledge they had at the time of the events.

Solution key: *the Court acknowledged the difficulties involved in policing modern societies noting that each potential threat must be assessed in light of police priorities and resources available at the time. The Court said the State's positive obligation to protect individuals from risk should not impose an impossible or unfair burden on the police.*
In order for there to be a violation of Article 2 in these circumstances, the Court said it must be shown that the police knew or should have known that there was a real and immediate risk to the life of the individual and that the authorities failed to take measures to avoid that risk. This question can only be answered in light of all the circumstances of each particular case. The Court decided that there was not a violation of Article 2 as it was not convinced that the police knew or ought to have known that the lives of the Osmans were at real and immediate risk from Paget-Lewis. The police felt that there was not enough evidence to charge Paget-Lewis for a crime or to have him committed to a psychiatric hospital. The Court accepted this and noted that the police could not be criticised for treating Mr Paget-Lewis as innocent until proven guilty.

There was not in these circumstances a violation of the positive obligation due by the State under Article 2 of the Convention. There was not enough evidence in the circumstances for the police to believe that the Osmans were at risk and therefore they were not obliged to take further steps to protect the Osmans.

Additional key points - ***National context to be added***

Step 3 – Substantive positive obligations: application of the Osman test

Hand-outs

2 hours

Case-studies
Split participants into groups. Distribute all cases to all groups but assign one

case only to each. In case of a large group, you can allocate the same case to more than one group.

Have a debriefing in plenary, inviting one group at a time. In case of two groups working on the same case, both should be invited to alternatively present the findings (one item by one group, then moving to the other group for one additional item until exhaustion of all points). Invite comments by audience then proceed with debriefing

 *Use the debriefing time to clarify any outstanding issues or address any misunderstanding.*

Hand-outs

Rape of M.C.

M.C., the applicant is a Bulgarian national born aged 14, She alleged that she was raped by two men, A. and P., aged 20 and 21. 14 is the age of consent for sexual intercourse in Bulgaria. M.C. claimed she went to a disco with the two men and a friend of hers. She then agreed to go on to another disco with the men. On the way back, A. suggested stopping at a reservoir for a swim. M.C. remained in the car. P. came back before the others, allegedly forcing M.C. to have sexual intercourse with him. M.C. maintained that she was left in a very disturbed state. In the early hours of the following morning, she was taken to a private home. She claimed that A. forced her to have sex with him at the house and that she cried continually both during and after the rape. She was later found by her mother and taken to hospital where a medical examination found that her hymen had been torn. A. and P. both denied raping M.C. The criminal investigations conducted found insufficient evidence that M.C. had been compelled to have sex with A. and P.. The proceedings were terminated on a few months later by the District Prosecutor, who found that the use of force or threats had not been established beyond reasonable doubt. In particular, no resistance on the applicant's part or attempts to seek help from others had been established. The applicant appealed unsuccessfully.

Solution key – M.C. v. Bulgaria, Judgment of 04.12.2003

The Court found a violation of Article 3 (prohibition of degrading treatment) and Article 8 (right to respect for private life) of the Convention, noting in particular the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that States had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the Court found the Bulgaria law to be defective.

Harassment of a disabled

Dalibor and Radmilla are son and mother, aged 45 and 60 respectively. Dalibor has no legal capacity because he is mentally and physically disabled, the result of an illness he suffered in his early childhood. His mother takes care of him, including feeding, dressing and washing him. She also helps him move about as his feet are severely deformed. Both Dalibor and his mother complained that they had been continuously harassed between July 2008 and February 2011 by pupils from the nearby primary school and that the authorities had not adequately protected them. A series of incidents were recorded throughout that period, with children ringing the family doorbell at odd times, spitting on Dalibor, hitting and pushing him around, burning his hands with cigarettes, vandalising their balcony and shouting obscenities at them. Those attacks had left Dalibor deeply disturbed, afraid and anxious. According to Dalibor and his mother, the harassment was triggered by Dalibor's disability and their ethnic origin. Dalibor and his mother complained on numerous occasions to various authorities, including the social services and the ombudsman. They also rang the police many times reporting the incidents and seeking help. Following each call, the police arrived at the scene, sometimes too late, and sometimes told the children to disperse or stop making a noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards Dalibor, they were too young to be held criminally responsible. In a number of medical reports on Dalibor's condition doctors recorded his deep distress as a result of the children's attacks on him, and recommended psychotherapy as well as a secure and calm environment. In one occasion the doctor also recorded a physical injury.

Solution key: Dordevic v. Croatia, Judgment of 24.07.2012

That ill-treatment had been sufficiently serious to attract the protection of Article 3 in his regard. The Croatian Government had not indicated which authority could have been held responsible for taking adequate measures to stop the harassment. They had also not shown that any remedy to which they referred could have provided immediate relief to Dalibor and prevented future abuse. Therefore, Dalibor and his mother were not required to exhaust all the remedies suggested by the Government and their complaints were declared admissible. In respect of Dalibor, the Court noted that violent acts which fell under Article 3 required, in principle, criminal-law measures against the perpetrators. However, given the young age of Dalibor's harassers, it had been impossible to criminally sanction them. Furthermore, while their acts, taken separately, might not have amounted to a criminal offence, if they were examined in their entirety, they might have proved incompatible with Article 3. As early as July 2008, Dalibor's mother had informed the police about the ongoing harassment of her son. Afterwards, she had repeatedly contacted them with additional complaints, which she had also brought to the attention of the ombudsman and the social services. Therefore, the authorities had been well aware of the situation.

Violation of article 3 in relation to Dalibor and 8 in relation to his mother.

Altercation with another individual

Alexandru Pantea is former public prosecutor, who now works as a lawyer. Mr Pantea was involved in an altercation with a person who sustained serious injuries. He was prosecuted and remanded in custody. He was placed in a cell known to be "for dangerous prisoners". The applicant asserted that at the instigation of the staff of Oradea Prison he had been savagely beaten by his fellow-prisoners and then made to lie underneath his bed, immobilised with handcuffs, for nearly 48 hours. He alleged that, suffering from multiple fractures, he had been transferred to Jilava Prison Hospital in a railway wagon, and that during the journey, which had lasted several days, he had not received any medical treatment, food or water, and had not been able to sit down because of the large number of prisoners being transported. He further alleged that while in Jilava Prison Hospital he had been obliged to share a bed with an Aids patient and had suffered psychological torture.

The applicant lodged a complaint, accusing the prison warders and his fellow prisoners of ill-treatment, but the complaint was dismissed by the Oradea military prosecution service, which ruled that the accusations against the prison warders were unsubstantiated and that the complaint against the applicant's fellow-prisoners was out of time. An action in which the applicant sought damages for his unlawful detention was also dismissed by the Timiş Court of First Instance on the ground that it was time-barred.

Solution key: Pantea v. Romania, Judgment of 03.06.2003
On the question whether the ill-treatment had taken place, and if so how serious it was, the Court noted that no one had denied that the applicant had been assaulted when in pre-trial detention, while he was in the charge of the prison warders and management (although his other allegations had not been substantiated, for lack of evidence). Medical reports attested to the number and severity of the blows the applicant had received. The Court held that these facts had been clearly established and were sufficiently serious to constitute inhuman and degrading treatment. In addition, the Court considered that the treatment in question had been aggravated by a number of circumstances. Firstly, it was not in dispute that the applicant had been handcuffed on the orders of the prison's deputy governor while he continued to share a cell with his assailants. Secondly, there was no evidence that the treatment prescribed for the applicant had ever actually been administered. Moreover, when the applicant was taken to another prison a few days after the above incident, in which he had suffered a number of fractures, he had had to travel for several days in a prison service railway wagon in conditions which the Government had not denied. Lastly, it appeared from the documents produced that when the applicant was taken into hospital he had not been seen and treated by the surgery department. In those circumstances, the Court considered that the treatment suffered by the applicant had been contrary to Article 3 of the Convention. As to whether this treatment was imputable to the Romanian authorities, the Court considered, in view of the circumstances of the case, that the authorities could reasonably have been expected to foresee that the applicant's psychological condition made him vulnerable and that his detention was capable of exacerbating his feelings of distress and his irascibility towards his fellow-prisoners, making it necessary to keep him under closer surveillance. The Court accepted the applicant's argument that it was illegal to place

a person detained pending trial in the same cell as repeat-offenders or persons convicted in a decision which had become final. In addition, the cell in question was generally known in the prison as "a cell for dangerous prisoners". Moreover, the Court noted that several witnesses had given evidence that the prison warder had not come promptly to the applicant's aid and furthermore that he had been required to continue to occupy the same cell. In those circumstances, the Court held that there had been a violation of Article 3, as the authorities had failed to discharge their positive obligation to protect the applicant's physical integrity.

Suicide in prison

Mark Keenan had been receiving intermittent anti-psychotic medication from the age of 21 and his medical history included symptoms of paranoia, aggression, violence and deliberate self-harm. On 1 April 1993, he was admitted to Exeter prison, initially to the prison health care centre, to serve a four-month prison sentence for assault on his girlfriend. The prison senior medical officer consulted Mark Keenan's doctor on admission and the visiting psychiatrist, who knew him, had been called to see him on 29 April 1993, the Court noted that there was no subsequent reference to a psychiatrist. Even though the doctor had warned that Mark Keenan should be kept from association until his paranoid feelings had died down, the question of returning to the main prison was raised with him the next day. When his condition proceeded to deteriorate, a prison doctor, unqualified in psychiatry, reverted to Mark Keenan's previous medication without reference to the psychiatrist who had originally recommended a change. From 5 May to 15 May 1993, there were no entries in his medical notes. Various attempts to move him to the ordinary prison were unsuccessful, as his condition deteriorated whenever he was transferred. On 1 May 1993, after the question of being transferred to the main prison was raised with him, Mr Keenan assaulted two hospital officers, one seriously. He was placed the same day in a segregation unit of the prison punishment block. On 14 May, he was found guilty of assault and his overall prison sentence increased by 28 days, including seven extra days in segregation in the punishment block, effectively delaying his release date from 23 May 1993 to 20 June. At 6.35 p.m. on 15 May 1993, he was discovered by the two prison officers hanging from the bars of his cell by a ligature made from a bed sheet. At 7.05 p.m. he was pronounced dead.

Solution key – Keenan v. the United Kingdom, Judgment of 3.04.2001

In deciding whether Mr Keenan had been subjected to inhuman or degrading treatment or punishment, within the meaning of Article 3, the Court was struck by the lack of medical notes concerning Mark Keenan, who was an identifiable suicide risk and undergoing the additional stresses that could be foreseen from segregation and, later, disciplinary punishment. Given that there were a number of prison doctors who were involved in caring for him, this showed an inadequate concern to maintain full and detailed records of his mental state and undermined the effectiveness of any monitoring or supervision process. Though Mark Keenan asked the prison doctor to point out to the governor at the adjudication that the assault occurred after a

change in medication, there was no reference to a psychiatrist for advice either as to his future treatment or his fitness for adjudication and punishment. The Court found the lack of effective monitoring of Mark Keenan's condition and the lack of informed psychiatric input into his assessment and treatment disclosed significant defects in the medical care provided to a mentally-ill person known to be a suicide risk. The belated imposition on him in those circumstances of a serious disciplinary punishment – seven days' segregation in the punishment block and an additional 28 days to his sentence imposed two weeks after the event and only nine days before his expected date of release – which may well have threatened his physical and moral resistance, was not compatible with the standard of treatment required in respect of a mentally-ill person.

Violence in schools

From 1968 onwards Nino went to a National School, as did the majority of Irish children. National schools are State-funded primary schools which are privately managed under religious (mainly Catholic) patronage. Nino 's school, was owned by the Catholic Diocese of Cora, its Patron was the Bishop of Cora and it was managed by Priest Vlad on behalf of an Archdeacon. In 1971 a parent of a child complained to Vlad that the school principal, Levan, a lay teacher, had sexually abused her daughter.. According to the procedure, the responsibility to monitor teacher's treatment of children lied on the Managers only. Parents, in other words, could not complain about ill-treatment directly to a State authority. It was only the Managers who could bring these complaints to the notice of State authority. There was a system of School Inspectors: their activity was to supervise and report on the quality of teaching and academic performance. Further complaints were made in 1973. Following a parents' meeting chaired by Vlad, the principal Levan went on sick leave and then resigned in September of that year. In January 1974 Vlad informed the then Department of Education and Science of Levan's resignation. The Department was not informed about the complaints against Levan and no complaint was made to the police at that point. Levan then went to another national school, where he taught until his retirement in 1995. From January to mid-1973 Nino was subjected to a number of sexual assaults by Levan. While she later had some psychological difficulties, she did not associate those with the abuse. She suppressed the sexual abuse. In the course of a criminal investigation into a complaint against Levan by a former pupil of the same school in the mid-1990s, Nino was contacted by the police and she made a statement to them in January 1997. She was referred for counselling. During the investigation a number of other pupils of the school made statements about abuse by Levan. He was charged with 386 criminal offences of sexual abuse involving some 21 former pupils of the National School. In 1998 he pleaded guilty to 21 sample charges and was sentenced to imprisonment.

Having heard evidence from other victims during Levan's criminal trial and following medical treatment, Nino realised the connection between her psychological problems and the abuse by Levan. In October 1998 she applied to the Criminal Injuries Compensation Tribunal for compensation and was awarded 53,962.24 euros (EUR). In September 1998 she also brought a civil action against Levan, the then Minister for Education and Science, as well as against Ireland and the Attorney General, claiming damages for personal injuries suffered as a result of assault and battery including sexual abuse. She claimed: that the State had failed to put in place appropriate measures and procedures to prevent and stop Levan's systematic abuse; that the State was vicariously liable as the employer of Levan; and, that the State was responsible as the educational provider.

Solution key - O'Keeffe v. Ireland, Judgment of 28.01.2014 [GC]

The crucial question in this case was not the responsibility of LH, of a clerical Manager or Patron, of a parent or of any other individual for the sexual abuse to which Ms O'Keeffe was subjected in 1973. Rather the case concerned the State's responsibility and whether it should have been aware of a risk of sexual abuse of minors such as the applicant in National Schools at the relevant time and whether it had adequately protected children, through its legal system, from such ill-treatment.

On the first point, the Court found that the State had to have been aware of the level of sexual crime against minors through its prosecution of such crimes at a significant rate prior to the 1970s. A Report 2009 also evidenced complaints made to the authorities prior to and during the 1970s about the sexual abuse of children by adults. Although that report focused on reformatory and industrial schools, complaints about abuse in National Schools were recorded. Despite this awareness, the Irish State continued to entrust the management of the primary education of the vast majority of young Irish children to privately managed National Schools, without putting in place any mechanism of effective State control. The Government maintained that certain mechanisms of detection and reporting had been in place. However, the Court did not consider these to be effective. In the first place, the Government pointed to the 1965 Rules for National Schools and the 1970 Guidance Note outlining the practice to be followed for complaints against teachers. However, neither referred to any obligation of the authorities to monitor a teacher's treatment of children nor provided a procedure for prompting a child or parent to complain about ill-treatment directly to a State authority. Indeed, the Guidance Note specifically channelled complaints directly to non-State Managers, generally the local priest as in Ms O'Keeffe's case. Complaints had in effect been made in 1971 and 1973 about LH to the Manager of Ms O'Keeffe's school but the Manager had not brought those complaints to the notice of any State authority. Secondly, the system of School Inspectors, also relied upon by the Government, did not refer to any obligation on Inspectors to inquire into or monitor a teacher's treatment of children,

their task principally being to supervise and report on the quality of teaching and academic performance. While the Inspector assigned to Ms O'Keeffe's school in Dunderrow had made six visits from 1969 to 1973, no complaint had ever been made to him about LH. Indeed, no complaint about LH's activities had been made to a State authority until 1995, after LH had retired. The Court considered that any system of detection and reporting which allowed over 400 incidents of abuse by LH to occur over such a long period had to be considered to be ineffective. Adequate action taken on the 1971 complaint could reasonably have been expected to avoid Ms O'Keeffe being abused two years later by the same teacher in the same school

Unit V – The procedural limb of article 3 ECHR

2 hours 15 minutes

List the features of procedural obligations stemming out from article 3 ECHR
Argue and sustain given positions
Identify internal and external obstacles to effective investigations
Demonstrate how to overcome such obstacles
Sensitize participants about their role in combating and preventing human rights violations

Step 1 – What are procedural obligations?

Hand-outs, 2 coloured voting cartons for each participant.

1 hours 15 minutes

Debate and voting
Distribute voting cards marked VICTIM and AUTHORITIES to participants.

Divide participants into several groups and assign to each of them an issue/situation. Further subdivide each group into two and assign to one group the point of view of victims of abuses and to the other the role of the authorities. Instruct them they have 15 minutes to prepare for a TV debate during which each sub-group has to sustain their position as to the compatibility of the statement with national and ECHR standards. Each group will have 5 minutes (to be timed strictly!) for presentation of arguments and 3 minutes for rebuttals.

After group preparation is over, act as if you were a real TV host: introduce the programme, greet audience and invite the two opposing subgroups.

Remind the audience of their role: they will have to listen to the debate and vote (by holding up the relevant carton) for the party who was able to sustain better their position In order to enable the audience to understand the debate, illustrate the scenarios before giving the floor to the debaters. At the end of the debate, just as in a real TV show, the trainer will act as host and invite randomly the public to express their opinion and then call for the vote.

A short summary of the key points of the ECtHR standards should be provided by the trainer orally in the debriefing following each vote.

Scenarios

1. A foreigner was approached by two gendarmes for an identity check. Although he had complied with the gendarmes' request by showing his papers, they subjected him to ill-treatment. Investigations took 5 and half years. It took almost two years from the date when the Principal Public Prosecutor had forwarded the file to the investigating judge until the decision to discontinue the proceedings.

2. In April 2008 the applicant was arrested in connection with an investigation into a series of thefts. He alleges that while in police custody he was gagged, tied up with a rope, punched, kicked and subjected to electric shocks for almost 12 hours. Although an investigative committee carried out a pre-investigation inquiry into his injuries it repeatedly refused to open a criminal case, which would have allowed the investigators to use the full range of investigative measures available. The applicant's appeal against the committee's tenth refusal in December 2009 was dismissed by the domestic courts, which considered that the pre-investigation inquiry had been thorough and the decision lawful and reasoned.

3. An Afghan national, was hospitalised in 2009 with injuries to the thorax after being attacked by a group of armed individuals in an area of central Athens known for repeated incidents of xenophobic violence. Having been discharged from hospital, and in the absence of a residence permit, he was held for about ten days in a police station pending his expulsion, before being released with an order to leave Greece.
A witness accused two individuals by name, before withdrawing his allegations. His statement was the only investigative activity conducted. The witness was then prosecuted for having made a false statement. He later he reaffirmed his statement and was ultimately acquitted of the charge against him. After the police had closed the preliminary investigation the file was sent to the prosecutor, who in 2012 sent it to the archives as an offence committed by unidentified persons.

4. In the course of the 2011 G8 summit NGOs organised an alternative anti-globalisation summit in the city at the same time. On the night of the last day of the summit the security forces decided to carry out a search in two schools used as night shelters for "authorised" demonstrators, to find evidence and possibly to arrest members of a group responsible for acts of violence. About 500 police officers took

part in the operation. After breaking down the doors of the school where the applicant was taking shelter, the security forces began to strike the occupants with their fists, feet, and truncheons, while shouting and threatening the victims, some of whom were lying or sitting on the ground. A number of occupants, awakened by the noise of the attack, were struck while they were still in their sleeping bags. Others had their hands up in surrender or were presenting their identity papers. Some were trying to escape, hiding in toilets or storerooms, but they were caught, beaten and sometimes pulled by their hair from their hiding places. Many victims sustained significant injuries, some of which permanent.
After an investigation opened by the public prosecutor's office, 30 members of the security forces were identified as having taken part in the raid and stood trial. Some charges were time-barred and, after sentence reductions, the prison sentences actually served were for terms of between three months and one year, and only for attempts to justify ill-treatment and unlawful arrest. No one was convicted for the ill-treatment itself.

Solutions keys

1. Dembele v. Switzerland, Judgment of 24.09.2013**:** In view of the seriousness of the accusations against the two gendarmes who had arrested the applicant, the relatively straight- forward nature of the case in terms of the number of persons and events concerned, and the fact that the investigation had simply amounted to hearing evidence from five witnesses and producing a limited number of readily accessible items of physical evidence, such delays were unjustified. As to the degree of care with which the domestic authorities had established the facts of the case, the reopening of the investigation ordered by the Federal Court had enabled some of the defects in the initial set of proceedings to be remedied, notably through the organisation of interviews with the key witnesses. Nevertheless, further investigative steps would have shed light on the precise circumstances in which the applicant had sustained the fracture to his collarbone. The investigation into the incident had therefore not been conducted with the requisite diligence.

2. Lyapin v. Russia, Judgment of 24.07.2014**:** The pre-investigation inquiry served as the initial stage in dealing with a criminal complaint under the Russian law of criminal procedure. The inquiry had to be carried out expediently and, if it disclosed elements of a criminal offence, was followed by the opening of a criminal case and a criminal investigation.
In the applicant's case, however, owing to its repeated refusal over a 20-month period to open a criminal case, despite credible medical evidence in support of the applicant's allegations of ill- treatment, the investigative committee had never conducted a "preliminary investigation" into the applicant's complaint, that is, a fully-fledged criminal investigation in which the whole range of investigative measures were carried out. As a result, police officers who could have shed light on the events had never been questioned as witnesses subject to criminal liability for perjury or for refusing to testify, and it had not been possible to hold a confrontation or an identity parade. The "pre-investigation inquiry" alone was not capable of establishing the facts and leading to the punishment of those responsible since the opening of a criminal case and a criminal investigation were prerequisites for bringing charges

which could then be examined by a court. Confronted with numerous cases of this kind against Russia, the Court was bound to draw stronger inferences from the mere fact of the investigative authority's refusal to open a criminal investigation into credible allegations of serious ill treatment in police custody. The investigative committee's failure to discharge its duty to carry out an effective investigation had not been remedied by the domestic courts which had reviewed its decisions. In the first set of proceedings they had declined to carry out a judicial review on the grounds that criminal proceedings were pending against the applicant. In another set of proceedings their decision had not been executed by the investigative committee, which had meant that the defect identified by the courts had continued to reappear in the committee's seven subsequent decisions throughout the fol- lowing year. Lastly, the domestic court had, without exercising any independent scrutiny, upheld the investigative committee's decision not to open a criminal case.
There had thus been a violation of Article 3 under its procedural aspect.

3. Sakir v. Greece, Judgment of 24.03.2016: Procedural failure of the authorities
(i) Obtaining evidence
– From the applicant – No statement had been taken from the applicant himself, although the authorities had had all the time necessary to question him, given that he was detained in the police station for almost ten days. The police authorities did not even invite him to identify the two individuals initially accused by the main witness of being part of the group of assailants. Nor had any steps been taken to identify other persons with links to extremist groups known to have committed racist attacks in the centre of Athens.
– From the doctors – Neither the police authorities nor the prosecutor had sought to establish in detail the nature and cause of the injuries inflicted on the applicant, by ordering, for example, a forensic medical report, whose conclusions could have helped identify the perpetrators.
– From the witnesses – The police had questioned only two witnesses: a police officer present during the incident, and a compatriot of the applicant who had alerted the police about the attack. Yet, according to the former's statement, there had been at least one other eye-witness, who was never summoned for questioning.
As to the second witness – a foreigner in police custody for not holding a residence permit when he gave his statement as an eyewitness – he was undoubtedly in a vulnerable situation. The police ought therefore to have questioned him in conditions which could guarantee the reliability and veracity of any information he was able to give about the assault on the applicant. Yet after he retracted his initial statement identifying two – known – individuals as the main perpetrators of the attack, he was not questioned at any point about the reasons for his change in testimony at a few hours' interval, but was instead prosecuted for making a false statement. Although the prosecution proved to be unfounded, the relevant judicial authorities took no steps – such as summoning the two individuals identified in order to re-examine their role in the impugned incident, perhaps by organising a confrontation with the witness – to establish the veracity of his initial statement.
(ii) Failure to take the general context of racist violence in Athens into account – Reports by several national bodies and international NGOs consistently highlighted the clear increase in violent racist incidents in the centre of Athens since 2009, when

the event in question occurred.
They referred to the existence of a recurrent pattern of assaults on foreigners, carried out by groups of extremists, the majority of the recorded incidents having taken place in two specific districts, including the district where the applicant was assaulted.
The reports also referred to serious failings on the part of the police with regard both to their intervention when such attacks took place in the centre of Athens and the effectiveness of the subsequent police investigations.
Although the incident in the present case had occurred in one of the two districts in question and the attack had certain features resembling those of a racist attack, the police had failed entirely to assess the case from the perspective described in the above-mentioned reports and had dealt with it as an isolated incident. Thus, neither the police nor the relevant judicial bodies had taken steps to identify possible links between the incidents described in the reports and the assault against the applicant. However, in investigating allegations of possibly racist ill-treatment, an adequate response was to be regarded as essential to prevent any appearance of collusion in or tolerance of unlawful acts and in maintaining public confidence in the principle of legality and their adherence to the rule of law.

4. Cestaro v. Italy, Judgment of 7.04.2015:
(i) Failure to identify the perpetrators of the ill- treatment at issue – The police officers who had attacked the applicant in the school and had physically subjected him to acts of torture had never been identified. They had not therefore been the subject of an investigation and had quite simply remained unpunished.
(ii) Time-barring of charges and partial reduction in sentences – As regards the storming of the school, the acts of violence committed there and the attempts to conceal or justify them, a number of officers of the security forces, of higher and lower ranks, had been prosecuted and had stood trial for various offences. However, after the criminal proceedings, nobody had been convicted for the ill-treatment perpetrated in the school against the applicant, among others, as the offences of wound- ing and grievous bodily harm had become time- barred. The convictions upheld by the Court of Cassation had concerned the attempts to justify the ill-treatment and the lack of any factual or legal basis for the arrest of the school's occupants. In addition, by the effect of the general reduction in sentence, the terms of imprisonment had been reduced by three years. The convicted persons had thus had to serve between three months and one year. Having regard to the foregoing, the authorities had not reacted sufficiently in response to such serious acts, and consequently that reaction had been incompatible with their procedural obligations under Article 3 of the Convention.
However, this result could not be imputed to the shortcomings or negligence of the public prosecutor's office or the domestic courts, which had been firm and had not been responsible for any delay in the proceedings. It was the Italian criminal legislation applied in the present case which had proved both inadequate as regards the need to punish acts of torture and devoid of the necessary deterrent effect to prevent other similar violations of Article 3 in the future.

Key points - *National context to be added*

Step 2 – Features of effective investigations

 Hat (or other container), statement cards, handout.

30 minutes

Puzzle
Ask participants to draw a card from the hat (make sure each participant has 3 cards). Explain that they will have to complete cards in order to identify the features of effective investigations. Solve in plenary. Distribute copy of the excerpt

This activity will help you cover issues related to procedural obligations that were not discussed with the "debate and voting" activity. It will also prompt a critical reflection on the national legal system and practise, highlighting situations when they depart from the ECHR standards.

Statement cards

Timely
Allowing for
Realistic identification of
Allowing for
Law enforcement officers involved
Interrogating
Gathering

Perform
Experiment
Record
Provide objective
To prevent
Provide access
Ensure
Objective
Subjective
Institutional
practical point of view
Hierarchical
Obligation of result
Obligation of means

Sample key solutions

Timely	investigations
Allowing for	discovery of evidence
Allowing for	realistic identification of perpetrators
Allowing for	Preservation of evidence
Interrogating	Law enforcement officers involved
Interrogating	Eye witnesses
Gathering	Forensic evidence
Executing	Autopsy

Conduct	Ballistic experiment
Record	Injuries
Provide objective	Analysis of clinical findings
Prompt trail	to prevent time-barring
Provide access	To next of kin
Open to	Public scrutiny
Objective and subjective independence	Of investigators
Independent from a	hierarchical, institutional, practical point of view
Investigations are an obligation of means	Not an obligation of result

Hand-out

Excerpt from the 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 on 30 March 2011)

VI. Criteria for an effective investigation

In order for an investigation to be effective, it should respect the following essential requirements:

Adequacy

The investigation must be capable of leading to the identification and punishment of those responsible. This does not create an obligation on states to ensure that the investigation leads to a particular result, but the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.

Thoroughness

The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

Impartiality and independence

Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. This requires that the authorities who are implicated in the events can neither lead the taking of evidence nor the preliminary investigation; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.

Promptness

The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities may generally be regarded as

essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.
Public scrutiny
There should be a sufficient element of public scrutiny of the investigation or its results to secure accountability, to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of the parties.
VII. Involvement of victims in the investigation
1. States should ensure that victims may participate in the investigation and the proceedings to the extent necessary to safeguard their legitimate interests through relevant procedures under national law.
2. States have to ensure that victims may, to the extent necessary to safeguard their legitimate interests, receive information regarding the progress, follow-up and outcome of their complaints, the progress of the investigation and the prosecution, the execution of judicial decisions and all measures taken concerning reparation for damage caused to the victims.
3. In cases of suspicious death or enforced disappearances, states must, to the extent possible, provide information regarding the fate of the person concerned to his or her family.
4. Victims may be given the opportunity to indicate that they do not wish to receive such information.
5. Where participation in proceedings as parties is provided for in domestic law, states should ensure that appropriate public legal assistance and advice be provided to victims, as far as necessary for their participation in the proceedings.
6. States should ensure that, at all stages of the proceedings when necessary, protection measures are put in place for the physical and psychological integrity of victims and witnesses. States should ensure that victims and witnesses are not intimidated, subject to reprisals or dissuaded by other means from complaining or pursuing their complaints or participating in the proceedings. These measures may include particular means of investigation, protection and assistance before, during or after the investigation process, in order to guarantee the security and dignity of the persons concerned.

Step 3 – What is your role in protecting human rights?

 Paper and pens, flipchart/board and markers or ppt.

 30 minutes

Sharing experiences
Everybody is asked to take some time (about 5 minutes) to think about a human rights violation they have encountered (or felt) in connection with

article 3 in the course their work: it can be something they saw themselves, something they heard about, or something they were involved in.
When everybody has written down a case, collect cards and divide the class into smaller groups. Cases are then distributed evenly amongst groups. Discussion could be stimulated by writing the following questions on the board/ppt for groups to refer to:
• What human rights were violated here?
• How did colleagues who were aware of it respond?
• What was the effect of police culture / group culture on the case?
• How common is this kind of case in your country / region / organisation?
• How could this case have been prevented?
• Change this case to make the behaviour acceptable. What has to be changed?
• How should one deal with this situation in accordance with national and international legal standards?

After all the cases have been discussed, each group can briefly report back their findings in open class. Select only the most controversial/difficult/common cases for discussion.

 *This tool can be confronting and can thus create a lot of resistance. It is advisable to use it at a later stage in training. The trainer must use his/her judgement. Sometimes potential resistance can be diminished by open discussion e.g., the trainer can ask participants how they feel about doing this exercise. Whatever the group's reaction, some time should be set aside for discussion about the exercise itself.*

Unit VI – Interplay between article 3 other ECHR provisions

2 hours 10 minutes

Learn about the possible (non) use of evidence obtained in breach of article 3 or 8 ECHR
Determine whether episodes of domestic violence reach the minimum threshold required by article 3 ECHR to be qualified as inhuman or degrading treatments
Learn about the interplay between Article 2 and 3 of the Convention in cases of use of non-lethal force
Raise awareness about the issue of domestic violence and its implications
Bring up the issue of access to justice for victims of domestic violence
Apply standards to real-life situations
Sensitize participants about their role in combating and preventing human rights violations

Training Manual on article 6 ECHR for Macedonian Judges and Prosecutors (parts related to use of evidence)

Additional suggested reading

Factsheets on violence against women, protection of minors and gender equality available at
http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets

Step 1 – Use of evidence in criminal proceedings - introduction

Hand-out or ppt (projecting the hypos on the screen)

15 minutes

Brainistorming

Show or distribute the hypos below and ask participants to brainstorm about the possible use of the mentioned evidence. Give the participants brief examples concerning the administration of evidence. Use the main principles to stimulate thinking

Hand-out/PPT

Hypo 1: A confession obtained under torture is used in a criminal trial together with other corroborating evidence.
Hypo 2: A witness statement obtained under torture is used in a criminal trial.
Hypo 3: Real evidence obtained under torture is used in trial together with corroborative evidence.
Hypo 4: Real evidence obtained under degrading treatment is used in trial as sole and conclusive piece of evidence.

Key points

Mention the vast number of situations the ECtHR had to deal with under this aspect (administration of evidence).

Clarify the approach of the ECtHR concerning the evidence obtained in breach of Convention articles:

- *statements obtained in breach of Article 3 (regardless of the degree of severity) if used in a trial, trigger a breach of Article 6;*
- *real evidence obtained by torture – if used in trial, trigger a violation of*

Article 6;

- *real evidence obtained by inhuman or degrading treatment – if used in trial and sole or conclusive for the finding of guilt – trigger a violation of Article 6*

- Evidence obtained in breach of Article 8 – do not necessarily trigger a violation of Article 6 if used in a trial

- In criminal trials, administration of evidence must be done in light of the presumption of innocence, with the burden of proof falling on the prosecution, which has to produce evidence sufficient to convict the defendant, any doubt benefitting the latter - Barberà, Messegué and Jabardo v. Spain, §§ 76, 77
- Right to remain silent and privilege against self incrimination - Saunders v. the United Kingdom, § 60
- Evidence obtained in breach of Convention rights - Jalloh v. Germany (GC)
- Entrapment - Teixeira de Castro v. Portugal
Role of national law and courts:
- admissibility of evidence and the way it should be assessed - Laska and Lika v. Albania, § 57
- the probative value of evidence and the burden of proof - Huseyn and Others v. Azerbaijan, § 212).
- the relevance of proposed evidence - Patsuria v. Georgia, § 86
Court's task under the Convention - to ascertain whether the proceedings as a whole were fair, including the way in which evidence was taken - Khan v. the United Kingdom, § 34.

National context to be added

Step 2 – Use of evidence in criminal proceedings - exercises

Hand-out

45 minutes

Small group work
Divide participants into small groups and distribute the handout with both cases. Ask half of the groups to work on case no. 1 and half on case no. 2. After 10 minutes brainstorm in plenary.

Hand-out

Case study no. 1

In 2002 the applicant suffocated an eleven-year-old boy to death and hid his corpse near a pond. Meanwhile, he sought a ransom from the boy's parents and was arrested shortly after having collected the money. He was taken to a police station where he was questioned about the victim's whereabouts. The next day the deputy chief police officer ordered one of his subordinate officers to threaten the applicant with physical pain and, if necessary, to subject him to such pain in order to make him reveal the boy's location. Following these orders, the police officer threatened the applicant that he would be subjected to considerable pain by a person specially trained for such purposes. Some ten minutes later, for fear of being exposed to such treatment, the applicant disclosed where he had hid the victim's body. He was then accompanied by the police to the location, where they found the corpse and further evidence against the applicant, such as the tyre tracks of his car. In the subsequent criminal proceedings, a regional court decided that none of his confessions made during the investigation could be used as evidence since they had been obtained under duress contrary to Article 3 of the European Convention. At the trial, the applicant again confessed to murder. The court's findings were based on that confession and on other evidence, including evidence secured as a result of the statements extracted from the applicant during the investigation. The applicant was ultimately convicted to life imprisonment and his subsequent appeals were dismissed, the Federal Constitutional Court having nonetheless acknowledged that extracting his confession during the investigation constituted a prohibited method of interrogation both under the domestic law and the Convention. In 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines of EUR 60 for 60 days and EUR 90 for 120 days, respectively. In 2005 the applicant applied for legal aid in order to bring proceedings against the authorities for compensation for the trauma the investigative methods of the police had caused him. The courts initially dismissed his application, but their decisions were quashed by the Federal Constitutional Court in 2008. At the time of the European Court's judgment, the remitted proceedings were still pending before the regional court.

Solution key - Gafgen v. Germany, Judgment of 1.06.2010 [GC]
Article 6: The use of evidence obtained by methods in breach of Article 3 raised serious issues regarding the fairness of criminal proceedings. The Court was therefore called upon to determine whether the proceedings against the applicant as a whole had been unfair because such evidence had been used. At the start of his trial, the applicant was informed that his earlier statements would not be used as evidence against him because it had been obtained by coercion. Nonetheless he confessed to the crime again during the trial, stressing that he was confessing freely out of remorse and in order to take responsibility for the crime he had committed. The Court had therefore no reason to assume that the applicant would not have confessed if the domestic courts had decided at the outset to exclude the disputed evidence. In the light of these considerations the Court concluded that, in the particular circumstances of the applicant's case, the failure of the domestic courts to exclude the evidence obtained following a confession extracted by means of

inhuman treatment had not had a bearing on the applicant's conviction and sentence or on the overall fairness of his trial.

Case study
In October 1993 plain-clothes police officers observed the applicant on several occasions taking tiny plastic bags out of his mouth and handing them over for money. Suspecting that the bags contained drugs, the police officers went over to arrest the applicant. While they were doing so he swallowed another tiny bag he still had in his mouth. As no drugs were found on him, the competent public prosecutor ordered that he be given an emetic to force him to regurgitate the bag. The applicant was taken to hospital, where he saw a doctor. As he refused to take medication to induce vomiting, four police officers held him down while the doctor inserted a tube through his nose and administered a salt solution and Ipecacuanha syrup by force. The doctor also injected him with apomorphine, a morphine derivative which acts as an emetic. As a result the applicant regurgitated a small bag of cocaine. A short while later he was examined by a doctor who declared him fit for detention. When police officers arrived to question the applicant about two hours after he had been given the emetics, he told them in broken English – it then becoming apparent that he could not speak German – that he was too tired to make a statement. The following day the applicant was charged with drug trafficking and placed in detention on remand. His lawyer alleged that the evidence against him had been obtained illegally and so could not be used in the criminal proceedings. He further contended that the police officers and the doctor who had participated in the operation were guilty of causing bodily harm in the exercise of official duties. Finally, he argued that the administration of toxic substances was prohibited by the Code of Criminal Procedure and that the measure was also disproportionate under the Code, as it would have been possible to obtain the same result by waiting until the bag had been excreted naturally. In March 1994 the District Court convicted the applicant of drug trafficking and gave him a one-year suspended prison sentence. His appeal against conviction was unsuccessful, although his prison sentence was reduced to six months, suspended. An appeal on points of law was also dismissed. The Federal Constitutional Court declared the applicant's constitutional complaint inadmissible, finding that he had not made use of all available remedies before the German criminal courts. It also found that the measure in question did not give rise to any constitutional objections concerning the protection of human dignity or prevention of self-incrimination, as guaranteed under the German Basic Law.

Solution key - Jalloh v. Germany, Judgment of 18.07.2006 [GC]
Law: Article 3 – The Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny. True, account needed to be taken of the problems confronting States in their efforts to combat the harm caused to their societies through the supply of drugs. However, in the instant case, it had been clear before the impugned measure was ordered and implemented that the street dealer on whom it was imposed had been storing the drugs in his mouth and could not, therefore, have been offering drugs for sale on a large scale. That had

also been reflected in the sentence. The Court was therefore not satisfied that the forcible administration of emetics had been indispensable to obtain the evidence. The prosecuting authorities could simply have waited for the drugs to pass out of the applicant's system naturally, that being the method used by many other member States of the Council of Europe to investigate drugs offences. Neither the parties nor the experts could agree on whether the administration of emetics was dangerous. It was impossible to assert that the method, which had already resulted in the deaths of two people in Germany, entailed merely negligible health risks. Moreover, in the majority of the German Länder and in at least a large majority of the other member States of the Council of Europe the authorities refrained from forcibly administering emetics, a fact that tended to suggest that the measure was considered to pose health risks. As to the manner in which the emetics had been administered, the applicant had been held down by four police officers, which suggested a use of force verging on brutality. A tube had been fed through the applicant's nose into his stomach to overcome his physical and mental resistance. This must have caused him pain and anxiety. He had then been subjected to a further bodily intrusion against his will through the injection of another emetic. Account also had to be taken of the applicant's mental suffering while he waited for the emetic substance to take effect and of the fact that during that period he was restrained and kept under observation. Being forced to regurgitate under such conditions must have been humiliating for him, certainly far more so than waiting for the drugs to pass out of the body naturally. As regards the medical supervision, the impugned measure had been carried out by a doctor in a hospital. However, since the applicant had violently resisted the administration of the emetics and spoke no German and only broken English, the assumption had to be that he was either unable or unwilling to answer any questions that were put by the doctor or to submit to a medical examination. As to the effects of the impugned measure on the applicant's health, it had not been established that either his treatment for stomach troubles in the prison hospital two and a half months after his arrest or any subsequent medical treatment he received had been necessitated by the forcible administration of the emetics. In conclusion, the German authorities had subjected the applicant to a grave interference with his physical and mental integrity against his will. They had forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out had been liable to arouse in the applicant feelings of fear, anxiety and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure had entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this had not been the intention, the measure was implemented in a way which had caused the applicant both physical pain and mental suffering. He had therefore been subjected to inhuman and degrading treatment contrary to Article 3. Conclusion: violation (ten votes to seven).
Article 8 – In view of the finding that there had been a violation of Article 3 of the Convention in respect of the applicant's complaint concerning the forcible administration of emetics to him, no separate issue arose under Article 8 of the Convention.

Step 3 - Interplay between Article 3 and Article 2 ECHR

30 minutes

 Hand-out or ppt (projecting the scenario on the screen)

Dilemmas

Project on the screen or distribute the following scenario:

The applicant was driving a vehicle when he found himself in a traffic patrol. Instead of stopping, he accelerated and continued driving. Several police vehicles and at least fifteen police officers started chasing him. The applicant did not stop the vehicle and continued driving at an excessive speed. Under such circumstances, the police used alternative measures to force him to stop the vehicle. The applicant managed to avoid two police blockages which were set up by police vechicles and passed by police officers standing aside their vechicles. The police then fired four bullets, two of which ended in the vehicle driven by the applicant. The applicant was not hit by bullets, nor did he suffer any injuries as a consequence.

Questions

First ask the following question and collect answers in plenary:
Do you think this police officer(s) should be prosecuted/punished?

Then proceed with the following additional questions:

Do you find anything in this situation to be a violation of the Convention?
Do you find anything in this situation to be a violation of Article 3?
Weather the minimum threshold for applicability of Article 3 was reached?
Is there any other Article of the Convention which is more applicable in this situation? Which? Why?

Invite the participants to explain their reasons. In light of the discussions held elaborate on the case-law, pinpointing the main principles (see Kitanovski, judgment, 22 January 2015, §50-57).

Key points

It is only in exceptional circumstances that actions by State agents which do not result in death may disclose a violation of Article 2 of the Convention.

The degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case State agents' actions in inflicting injury but not death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose of that Article.

In almost all cases where a person is allegedly assaulted or ill-treated by the police or soldiers their complaints will rather fall to be examined under Article 3 of the Convention

Article 2, read as a whole, demonstrates that it covers not only intentional killing, but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. The Court has already examined complaints under this provision where the alleged victim did not die as a result of the impugned conduct (see for example Sašo Gorgiev, judgement, 19 April 2012).

Step 4 – Violence against women and domestic violence

 Hand-out

 40 minutes

ABC group work

Divide participants into 3 groups. Distribute handouts. Name groups A, B, and C. Inform group A that they will look at the case only in relation to the victim(s), group B will focus on actions of the state authorities, whilst group C will concentrate on the alleged perpetrator. Clarify that perspective can be that of person/authority itself or more connected with the circumstances related to it.

Give each group 10 minutes to work through their assignment. Then re-group participants so that each of the new groups contains one member from each of the original groups; in other words the new groups are constituted as ABC, ABC and ABC. Give the ABC groups the task of identifying whether the facts

of the case disclose a violation of the ECHR (spelling out the provisions) or not and why.
Debrief in plenary ensuring that all groups have the possibility to say something and comment in the light of the ECtHR judgment.

Hand-out

Ana, Maja and Branka, a mother and her two daughters, are Venusian nationals who were born in 1973, 2000 and 2002 respectively. Ana, a cleaning lady by profession, with little education, was married to Ion, born in 1972. Ion is a police officer. After the birth of their second girl, Ion started to come home drunk and beat Ana in the presence of their two daughters. The situation went on for a couple of years until the mother realized that, as a result of the situation, the two girls' psychological well-being was adversely affected. She then decided to report the case to the authorities. After having been fined and given a formal warning by the Venusian authorities, Ion became even more violent and almost suffocated his wife in November 2013. Ana asked for her request for a divorce to be examined urgently, to no avail. At the same time, she applied to the national courts for a protection order, which was issued on 9 December 2013 on the basis that the husband represented a significant risk to his wife and daughters. It was served to the husband only on 15 March 2014, due to a clerical error. According to this order, Ion was due to stay 500 metres away from the family home for 90 days without contacting the applicants or committing any acts of violence against them. Although the police had opened a case to oversee enforcement of the protection order, Ion assaulted his wife again and entered the family home on several occasions. However, in March 2014, the Venusian courts upheld Ion's appeal and partly revoked the protection order. During the whole duration of the proceedings Ion continued to work as police officer. In the meantime, in December 2013, Ana had complained about Ion's violence to police officers who pressured her into withdrawing her criminal complaint, arguing that if had a criminal record and lost his job it would affect their daughters' educational and professional prospects. A criminal investigation was nevertheless launched in January 2014. On 3 February 2014 the Court extended the protection order in favour of Ana and her daughters, considering that Ion represented a significant risk to tem. On 7 February the Prosecutor, despite finding substantive evidence of Ion's guilt, notably in the form of medical reports (also proving that the fear of further assaults had to have been severe enough to cause her to experience heavy suffering and anxiety) and witness statements, and notwithstanding him confessing his violent acts, considered that Ion could not be regarded as a threat to society and decided to suspend the investigation for one year on the condition that it would be reopened if Ion reiterated his violent conduct during that time. During this period the social services in charge of the case also suggested reconciliation, telling Ana that she was nor the first nor the last woman to be beaten up by her husband who, though violent, loved her. And she must have loved him too, if she decided to marry him and have two children together. Plus, she had to take care of the girls, for whom a family was important.

Solution key: Eremia v. Moldova, Judgment of 28.05.2013

Wife: The Court noted that, in December the Moldovan courts had decided that the situation was sufficiently serious to warrant a protection order being made in respect of Lilia Eremia. She had also subsequently obtained medical evidence of ill-treatment. It also found that the fear of further assaults had to have been severe enough to cause her to experience suffering and anxiety amounting to inhuman treatment within the meaning of Article 3. The Court further considered that the authorities had put in place a legislative framework allowing measures to be taken against people accused of domestic violence. Indeed, Moldovan law provided for criminal sanctions against the aggressors as well as for protective measures for their victims. Moreover, the authorities had been well aware of A.'s violent behaviour, which had become even more evident following the protection order of December. Ms Eremia had also promptly complained about A.'s breach of the protection order. Therefore, the authorities should have realised that she had been exposed to an increased risk of further violence, which had been corroborated by sufficient evidence. Although the authorities had not acted swiftly enough, the Court noted that they had not remained totally passive since A. had been fined and given a formal warning. However, none of those measures had been effective and, despite A.'s repeated breaches of the order, he had continued to carry out his duties as a police officer without any measure being taken to ensure the applicants' safety. The lack of decisive action by the authorities had been even more disturbing considering that A. was a police officer whose professional requirements included the protection of the rights of others, the prevention of crime and the protection of public order.

Daughters: Although Ms Eremia's daughters had complained of a violation of their rights under Article 3, the Court decided to examine the complaint under Article 8.First, as had been recognised by the Moldovan courts, the two daughters' psychological well-being had been adversely affected by repeatedly witnessing their father's violence against their mother in the family home. Therefore, there had been an interference with their rights under Article 8. Second, the authorities had been aware of that interference but had not taken all reasonable measures in order to prevent it. The Court noted that the protection order of 9 December 2010 had prevented A. from contacting, insulting or ill-treating not only Ms Eremia but also her children. Ms Eremia had also asked that her daughters be officially recognised as victims of domestic violence for the purposes of the criminal investigation against their father. Finally, the applicants had complained that, during one of his visits to the family house, A. had not only assaulted his wife but also verbally abused one of his daughters. Therefore, the authorities had clearly been aware of A.'s breaches of the protection order as well as of his threatening and insulting behaviour towards the applicants and its effect on his daughters. However, little or no action had been taken to prevent the recurrence of such behaviour. On the contrary, despite a further serious assault in 2011, A. had been eventually released from all criminal liability. The Court therefore concluded that the Moldovan authorities had not properly complied with their obligations under Article 8 in respect of Ms Eremia's daughters.

Unit VII – Closing of the training

30 minutes

Compare knowledge on the subject matter
Identify key learning points
Develop positive feelings about the training
Evaluate the training

Step 1 - Post-course knowledge assessment

10 minutes

 Multiple choice test annexed

Distribute test.
Ask participants to write their name on it.
Explain to participants that this is a self-assessment tool aimed at helping identify what they know and what knowledge or understanding they need to deepen.
Inform participants that results of the test will be used as baseline and that same test will be administered again at the end so as to measure progress.
Correct tests in plenary (each participant corrects own test).
Distribute pre-course tests as to enable understanding of progress made.

Step 2 – What did I learn? How did I learn?

20 minutes

 Papers and pens.

Snowstorm
Invite trainees write down one thing they learned/liked during the training on a piece of scratch paper and wad it up. Invite participants to gather all together in the middle of the room. Ask them to throw paper snowballs and then invite them to collect one. In turn each participant reads out the feedback.

At the end, certificates (if applicable) and evaluation forms are handed out.

Specific module

Unit I - Introduction and opening of the course

20 minutes

Learn about other participants
State expectations
Illustrate purpose, format and methodology of training
Identify knowledge and expertise present in the group
Establish an environment that is conducive to training
Set baseline of individual knowledge

Manual on training methodology

Step 1 - Introduction of participants and expectations

5 minutes/15 minutes

Remember: the tone of the training is set from the very first moment the participants arrive at the venue. There are a number of ways to ensure that participants are introduced to one another. Even when participants already know each other it is important that they have time to 'form' as a group at the beginning of a session. This helps create an environment which is cooperative and conducive to participatory training.

Invite participants to introduce themselves and state any expectation they have. Alternatively, if you have an additional 10 minutes available, you can go for one of the exercises listed below.

The Little Known Fact: *ask participants to share their name, department or role in the organisation, length of service, and one little known fact about themselves. This "little known fact" becomes a humanising element that can help break down differences such as grade/status in future interaction.*

True or False: *ask your participants to introduce themselves and make three or four statements about themselves, one of which is false. Now get the rest of the group to vote on which fact is false. As well as getting to know each other as individuals, this exercise helps to start interaction within the group.*

Step 2 – Presentation of the agenda

5 minutes

Navigate participants through the agenda and introduce the format of the training. Comment the agenda making reference to the expectations and fears (i.e. in relation to the self-assessment test).

Step 3 - Pre-course knowledge assessment

10 minutes

Multiple choice test annexed

Test

Distribute test. Ask participants to write their name on it. Explain to participants that this is a self-assessment tool aimed at helping identify what they know and what knowledge or understanding they need to deepen. Inform participants that results of the test will be used as baseline and that same test will be administered again at the end so as to measure progress.

Correct tests in plenary (each participant corrects own test).

Collect tests – they will be again distributed at the end of the post-training test for comparison.

Unit II – Burden of proof

1 hour

State the standard of proof required to establish a violation of article 3 ECHR
Identify the situation of a prima facie allegation of torture
Learn weight of international reports in assessing allegation of torture
Apply the standards in real-life situations

Step 1 – The standard of proof

15 minutes

Flipchart paper/board, markers

Brainstorming and lecture

Ask participants to brainstorm about the standard of proof applicable to prohibition of torture.

In order to stimulate ideas, ask them to think about the standard of proof applicable in their domestic legal system. Make sure you ask them to elaborate on the notions elicited, stimulating participants with questions (i.e. what does it mean beyond reasonable doubt? Can presumption of fact be used? To which extent? Can inferences be used? Under which conditions? Is the conduct of parties relevant when evidence is being obtained? For instance, what if one of the parties fails to provide material evidence they obviously possess? Which are the other possible sources of evidence that can be used?).

Note down keywords or summaries without commenting.

Keep the flipchart visible (stand-alone or wall) also in the course of the discussion of the scenarios that follow.

Step 2 – Injuries in custody

45 minutes


Hand-outs, ppt (slides from 13 to 18)


Snowballing
Distribute hand-out. Ask participants to read the case individually focussing on the evidence provided and asking them if prima facie the facts of the case disclose a breach of article 3 ECHR. After 15 minutes, ask participants to share with the person next to them their thoughts. Conclude by discussion in plenary followed by solution of the case by the ECtHR.

Hand-out - National context to be added (as in the general module)

Key points

Generally speaking, there is no formalized theory of burden and standards of proof.

Court takes the approach of a free assessment of the available evidence, including matters taken motu proprio.

In practice applicants must present prima facie substantiation of an interference with his right and arguable basis for violation.

Victims cannot be penalized when they do not have access to the relevant documents or information in the hands of the authorities.

The Court has shown itself very willing to draw inferences from the State's failure to provide evidence in cases where the applicant has been held in the custody of the authorities. It has made clear that where evidence is produced that suggests the victim suffered ill-treatment while in the custody of State authorities, the burden may shift to the State to produce evidence to show that the State was not responsible.

In custody situations it is incumbent on the State to provide a plausible explanation for injuries.

In relation to disputed factual situations, in cases of allegations of violation of article 3 ECHR, Court used standard of proof beyond reasonable doubt.

The reasonable doubt test, however, has a distinct (autonomous) meaning under the Convention and even when applied enjoys flexible application.

In relation to prison conditions, where the capacity for proving the reality of the situation lies in the hands of the authorities, the ECtHR said it will not make rigorous application of the principle affirmanti incumbit probatio giving a certain benefit of the doubt to prisoners and requiring the authorities to rebut arguable complaints.

The actions of the victim may also be taken into account in assessing the degree of burden on the State to prove that the use of force, possibly leading to a violation of article 3 ECHR, was not excessive (Rehbock v Slovenia, Berlinski v. Poland). CPT or other reports on conditions of detention are frequently used to support and substantiate prisoners' allegations (MSS v. Greece and Belgium).

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National context to be added

Unit III - Substantive limb of article 3 ECHR: positive and negative obligations

🕘 2 hours

List the types of obligations (positive and negative) stemming out from article 3

ECHR

Identify examples of such obligations
Learn about the Osman test to determine width of positive obligations
Apply the Osman test to real-life situations

Step 1 – Definitions and examples

Pen and papers, 2 flipcharts/boards and markers, ppt (slides 19 and 20)

10 minutes

Brainstorming

Prepare 2 flipcharts, one marked NEGATIVE OBLIGATIONS, the other POSITIVE OBLIGATIONS. Ask participants to indicate specific examples of what these obligations are (in relation to any right or freedom).

Briefly comment the entries clarifying what is meant with the expression negative and positive obligations and inform participants that procedural obligations (which are very likely to be amongst those listed) will be discussed in the course of the next session.

Key points

Increasingly, rights are being interpreted in such a manner as to impose positive obligations on states to take steps to protect the enjoyment of rights from interferences from other sources.

Positive obligations were found first, and most commonly, under article 8. Then progressively under articles 2, 3, 10 and 11.

When assessing positive obligations the Court examines whether a fair balance has been struck between interest of individual and those of the community.

National context to be added

Step 2 – The Osman test

30 minutes

Story telling

Use the case of Osman v. UK, judgment of 28.10.1998, to illustrate the test developed by the Court to determine the extent of positive obligations. In order to facilitate understanding of the test you can project it on a slide. Explain that the test was originally developed under article 2 ECHR but later its application was extended to other provisions. Place particular emphasis to the notion of "reasonableness".

Osman test

3. *Did the State know or ought to have known that there was a real and immediate risk to the life of the individual?*
4. *Did the State do all that could have been* ***reasonably*** *expected to prevent that risk from materializing?*

When telling the story, use your gesture, tone and pace of voice, pauses to create suspense and rivet the participants!

Before revealing the outcome of the case, ask participants whether they think that the State discharged its responsibilities under article 2 ECHR or not.

Key points

In 1986 the headmaster of Ahmet Osman (a young pupil) had noticed that one of his teachers, Mr Paget-Lewis, got very close to Ahmet. In January 1987, the mother of another child at the school complained to the school about Mr Paget-Lewis' attachment to her own son, Leslie Green. There followed a series of incidents throughout 1987 and 1988.

The head teacher interviewed Mr Paget-Lewis, who admitted spreading false rumours about Ahmet's relationship with Leslie Green. He had also made threats against Ahmet Osman. As a result the Osman family requested a move to another school. The matter was reported to the police but it was decided to deal with the matter internally at the school.

Eventually Ahmet Osman was transferred to another school, but owing to curriculum difficulties, he had to return 14 days later. Mr Paget-Lewis then changed his name by deed poll to Paul Ahmet Yildirim Osman. The school wrote to the Inner London Education Authority (ILEA), saying that Paget-Lewis should have been removed from the school as soon as possible. The matter was again reported to the police. It also came out that Mr Paget-Lewis had changed his name before from that of Ronald Potter to the name of a pupil called Paget-Lewis, whom he had taught at another school. The head teacher again wrote to ILEA saying that Paget-Lewis needed medical help.

Paget-Lewis was seen by a psychiatrist, who said that he did indeed give cause for concern. A brick was thrown through the window of the Osman house, and one

two occasions, the tyres of Ali Osman's car were burst. Mr Paget-Lewis was designated unfit for work, at which point he left the school and he was later suspended. The mother of the other child, who had been harassed by Mr Paget-Lewis made a further complaint. The suspension of Mr Paget-Lewis was later lifted and he began working as a supply teacher at another school.
There was more criminal damage to the Osman house, in a series of incidents all of which were reported to the police. The police spoke to Mr Paget-Lewis but there was a dispute as to precisely what he said. A car in which the other boy, Leslie Green was travelling was then rammed by Mr Paget-Lewis, who explained that it was an accident. The driver of the van told the police that Mr Paget-Lewis had told him that in a few months time, he would be serving a life sentence. The police took a detailed statement from Leslie Green and his family. Leslie Green said that he was frightened to go to school. The matter was further investigated by the police. ILEA interviewed Mr Paget- Smith who said that he was in a deeply self destructive mood. This was passed on to the police. In December 1987, the police then arrived at Mr Paget-Lewis' house with the intention of arresting him on suspicion of criminal damage. In January 1988, Mr Paget-Lewis' name was put on to the Police National Computer as being wanted in relation to the collision incident and on suspicion of having committed offences of criminal damage. In March 1988, Leslie Green saw Paget-Lewis wearing a black crash helmet near the Osman home. Finally on the 7th March 1988, Paget-Lewis shot and killed Ali Osman and seriously wounded Ahmet. He then drove to the home of Mr Perkins, the deputy head at Ahmet's school and seriously wounded Mr Perkins, as well as killing his son. Upon arrival of the police officer he looked at them in the eyes and asked them: "Why didn't you stop me before… You knew I would have committed something serious…". He was later convicted of manslaughter. The Osman family commenced proceedings against the Commissioner of Police for the Metropolis. They also commenced proceedings against the psychiatrist who examined Paget_Lewis but later abandoned that action. The case against the police was struck out by the Court of appeal on the grounds that no action could lie against the police in negligence in the investigation and suppression of crime on the grounds that public policy required an immunity from suit.

The applicants argued that, by failing to take appropriate steps to protect the lives of Ali and Ahmet Osman from the known danger posed by Paget-Lewis, the authorities had failed to comply with one of their 'positive obligations' under Article 2. The Government, on the other hand, argued that in order to take the necessary steps to protect the Osmans it must have been clear that there was a risk of dying, which was not present in this case. The government therefore argued that the police responded reasonably in light of the knowledge they had at the time of the events.

***Solution key:** the Court acknowledged the difficulties involved in policing modern societies noting that each potential threat must be assessed in light of police priorities and resources available at the time. The Court said the State's positive obligation to protect individuals from risk should not impose an impossible or*

unfair burden on the police.
In order for there to be a violation of Article 2 in these circumstances, the Court said it must be shown that the police knew or should have known that there was a real and immediate risk to the life of the individual and that the authorities failed to take measures to avoid that risk. This question can only be answered in light of all the circumstances of each particular case. The Court decided that there was not a violation of Article 2 as it was not convinced that the police knew or ought to have known that the lives of the Osmans were at real and immediate risk from Paget-Lewis. The police felt that there was not enough evidence to charge Paget-Lewis for a crime or to have him committed to a psychiatric hospital. The Court accepted this and noted that the police could not be criticised for treating Mr Paget-Lewis as innocent until proven guilty.

There was not in these circumstances a violation of the positive obligation due by the State under Article 2 of the Convention. There was not enough evidence in the circumstances for the police to believe that the Osmans were at risk and therefore they were not obliged to take further steps to protect the Osmans.

Additional key points - *National context to be added*

Step 3 – Substantive positive obligations: application of the Osman test

Hand-outs

1 hour 20 minutes

Case-studies
Split participants into groups. Select amongst the one proposed the cases that you consider most relevant. Allocate the same case to 2 groups, so as to facilitate discussion.

Have a debriefing in plenary, inviting both groups working on the same case to alternatively present the findings (one item by one group, then moving to the other group for one additional item until exhaustion of all points). Invite comments by audience then proceed with debriefing.

Use the debriefing time to clarify any outstanding issues or address any misunderstanding.

Hand-outs

Rape of M.C.

M.C., the applicant is a Bulgarian national born aged 14, She alleged that she was raped by two men, A. and P., aged 20 and 21. 14 is the age of consent for sexual intercourse in Bulgaria. M.C. claimed she went to a disco with the two men and a friend of hers. She then agreed to go on to another disco with the men. On the way back, A. suggested stopping at a reservoir for a swim. M.C. remained in the car. P. came back before the others, allegedly forcing M.C. to have sexual intercourse with him. M.C. maintained that she was left in a very disturbed state. In the early hours of the following morning, she was taken to a private home. She claimed that A. forced her to have sex with him at the house and that she cried continually both during and after the rape. She was later found by her mother and taken to hospital where a medical examination found that her hymen had been torn. A. and P. both denied raping M.C. The criminal investigations conducted found insufficient evidence that M.C. had been compelled to have sex with A. and P.. The proceedings were terminated on a few months later by the District Prosecutor, who found that the use of force or threats had not been established beyond reasonable doubt. In particular, no resistance on the applicant's part or attempts to seek help from others had been established. The applicant appealed unsuccessfully.

Solution key – M.C. v. Bulgaria, Judgment of 04.12.2003

The Court found a violation of Article 3 (prohibition of degrading treatment) and Article 8 (right to respect for private life) of the Convention, noting in particular the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that States had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the Court found the Bulgaria law to be defective.

Harassment of a disabled

Dalibor and Radmilla are son and mother, aged 45 and 60 respectively. Dalibor has no legal capacity because he is mentally and physically disabled, the result of an illness he suffered in his early childhood. His mother takes care of him, including feeding, dressing and washing him. She also helps him move about as his feet are severely deformed. Both Dalibor and his mother complained that they had been continuously harassed between July 2008 and February 2011 by pupils from the nearby primary school and that the authorities had not adequately protected them. A series of incidents were recorded throughout that period, with children ringing the family doorbell at odd times, spitting on Dalibor, hitting and pushing him around, burning his hands with cigarettes, vandalising their balcony and shouting obscenities at them. Those attacks had left Dalibor deeply disturbed, afraid and anxious. According to Dalibor and his mother, the harassment was triggered by Dalibor's

disability and their ethnic origin. Dalibor and his mother complained on numerous occasions to various authorities, including the social services and the ombudsman. They also rang the police many times reporting the incidents and seeking help. Following each call, the police arrived at the scene, sometimes too late, and sometimes told the children to disperse or stop making a noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards Dalibor, they were too young to be held criminally responsible. In a number of medical reports on Dalibor's condition doctors recorded his deep distress as a result of the children's attacks on him, and recommended psychotherapy as well as a secure and calm environment. In one occasion the doctor also recorded a physical injury.

Solution key: Dordevic v. Croatia, Judgment of 24.07.2012
That ill-treatment had been sufficiently serious to attract the protection of Article 3 in his regard. The Croatian Government had not indicated which authority could have been held responsible for taking adequate measures to stop the harassment. They had also not shown that any remedy to which they referred could have provided immediate relief to Dalibor and prevented future abuse. Therefore, Dalibor and his mother were not required to exhaust all the remedies suggested by the Government and their complaints were declared admissible. In respect of Dalibor, the Court noted that violent acts which fell under Article 3 required, in principle, criminal-law measures against the perpetrators. However, given the young age of Dalibor's harassers, it had been impossible to criminally sanction them. Furthermore, while their acts, taken separately, might not have amounted to a criminal offence, if they were examined in their entirety, they might have proved incompatible with Article 3. As early as July 2008, Dalibor's mother had informed the police about the ongoing harassment of her son. Afterwards, she had repeatedly contacted them with additional complaints, which she had also brought to the attention of the ombudsman and the social services. Therefore, the authorities had been well aware of the situation.
Violation of article 3 in relation to Dalibor and 8 in relation to his mother.

Altercation with another individual
Alexandru Pantea is former public prosecutor, who now works as a lawyer. Mr Pantea was involved in an altercation with a person who sustained serious injuries. He was prosecuted and remanded in custody. He was placed in a cell known to be "for dangerous prisoners". The applicant asserted that at the instigation of the staff of Oradea Prison he had been savagely beaten by his fellow-prisoners and then made to lie underneath his bed, immobilised with handcuffs, for nearly 48 hours. He alleged that, suffering from multiple fractures, he had been transferred to Jilava Prison Hospital in a railway wagon, and that during the journey, which had lasted several days, he had not received any medical treatment, food or water, and had not been able to sit down because of the large number of prisoners being transported. He further alleged that while in Jilava Prison Hospital he had been obliged to share a bed with an Aids patient and had suffered psychological torture.

The applicant lodged a complaint, accusing the prison warders and his fellow prisoners of ill-treatment, but the complaint was dismissed by the Oradea military prosecution service, which ruled that the accusations against the prison warders were unsubstantiated and that the complaint against the applicant's fellow-prisoners was out of time. An action in which the applicant sought damages for his unlawful detention was also dismissed by the Timiş Court of First Instance on the ground that it was time-barred.

Solution key: Pantea v. Romania, Judgment of 03.06.2003
On the question whether the ill-treatment had taken place, and if so how serious it was, the Court noted that no one had denied that the applicant had been assaulted when in pre-trial detention, while he was in the charge of the prison warders and management (although his other allegations had not been substantiated, for lack of evidence). Medical reports attested to the number and severity of the blows the applicant had received. The Court held that these facts had been clearly established and were sufficiently serious to constitute inhuman and degrading treatment. In addition, the Court considered that the treatment in question had been aggravated by a number of circumstances. Firstly, it was not in dispute that the applicant had been handcuffed on the orders of the prison's deputy governor while he continued to share a cell with his assailants. Secondly, there was no evidence that the treatment prescribed for the applicant had ever actually been administered. Moreover, when the applicant was taken to another prison a few days after the above incident, in which he had suffered a number of fractures, he had had to travel for several days in a prison service railway wagon in conditions which the Government had not denied. Lastly, it appeared from the documents produced that when the applicant was taken into hospital he had not been seen and treated by the surgery department. In those circumstances, the Court considered that the treatment suffered by the applicant had been contrary to Article 3 of the Convention. As to whether this treatment was imputable to the Romanian authorities, the Court considered, in view of the circumstances of the case, that the authorities could reasonably have been expected to foresee that the applicant's psychological condition made him vulnerable and that his detention was capable of exacerbating his feelings of distress and his irascibility towards his fellow-prisoners, making it necessary to keep him under closer surveillance. The Court accepted the applicant's argument that it was illegal to place a person detained pending trial in the same cell as repeat-offenders or persons convicted in a decision which had become final. In addition, the cell in question was generally known in the prison as "a cell for dangerous prisoners". Moreover, the Court noted that several witnesses had given evidence that the prison warder had not come promptly to the applicant's aid and furthermore that he had been required to continue to occupy the same cell. In those circumstances, the Court held that there had been a violation of Article 3, as the authorities had failed to discharge their positive obligation to protect the applicant's physical integrity.

Suicide in prison
Mark Keenan had been receiving intermittent anti-psychotic medication from the age of 21 and his medical history included symptoms of paranoia, aggression, violence

and deliberate self-harm. On 1 April 1993, he was admitted to Exeter prison, initially to the prison health care centre, to serve a four-month prison sentence for assault on his girlfriend. The prison senior medical officer consulted Mark Keenan's doctor on admission and the visiting psychiatrist, who knew him, had been called to see him on 29 April 1993, the Court noted that there was no subsequent reference to a psychiatrist. Even though the doctor had warned that Mark Keenan should be kept from association until his paranoid feelings had died down, the question of returning to the main prison was raised with him the next day. When his condition proceeded to deteriorate, a prison doctor, unqualified in psychiatry, reverted to Mark Keenan's previous medication without reference to the psychiatrist who had originally recommended a change. From 5 May to 15 May 1993, there were no entries in his medical notes. Various attempts to move him to the ordinary prison were unsuccessful, as his condition deteriorated whenever he was transferred. On 1 May 1993, after the question of being transferred to the main prison was raised with him, Mr Keenan assaulted two hospital officers, one seriously. He was placed the same day in a segregation unit of the prison punishment block. On 14 May, he was found guilty of assault and his overall prison sentence increased by 28 days, including seven extra days in segregation in the punishment block, effectively delaying his release date from 23 May 1993 to 20 June. At 6.35 p.m. on 15 May 1993, he was discovered by the two prison officers hanging from the bars of his cell by a ligature made from a bed sheet. At 7.05 p.m. he was pronounced dead.

Solution key – Keenan v. UK, Judgment of 3.04.2001

In deciding whether Mr Keenan had been subjected to inhuman or degrading treatment or punishment, within the meaning of Article 3, the Court was struck by the lack of medical notes concerning Mark Keenan, who was an identifiable suicide risk and undergoing the additional stresses that could be foreseen from segregation and, later, disciplinary punishment. Given that there were a number of prison doctors who were involved in caring for him, this showed an inadequate concern to maintain full and detailed records of his mental state and undermined the effectiveness of any monitoring or supervision process. Though Mark Keenan asked the prison doctor to point out to the governor at the adjudication that the assault occurred after a change in medication, there was no reference to a psychiatrist for advice either as to his future treatment or his fitness for adjudication and punishment. The Court found the lack of effective monitoring of Mark Keenan's condition and the lack of informed psychiatric input into his assessment and treatment disclosed significant defects in the medical care provided to a mentally-ill person known to be a suicide risk. The belated imposition on him in those circumstances of a serious disciplinary punishment – seven days' segregation in the punishment block and an additional 28 days to his sentence imposed two weeks after the event and only nine days before his expected date of release – which may well have threatened his physical and moral resistance, was not compatible with the standard of treatment required in respect of a mentally-ill person.

Violence in schools

From 1968 onwards Nino went to a National School, as did the majority of Irish children. National schools are State-funded primary schools which are privately managed under religious (mainly Catholic) patronage. Nino 's school, was owned by the Catholic Diocese of Cora, its Patron was the Bishop of Cora and it was managed by Priest Vlad on behalf of an Archdeacon. In 1971 a parent of a child complained to Vlad that the school principal, Levan, a lay teacher, had sexually abused her daughter.. According to the procedure, the responsibility to monitor teacher's treatment of children lied on the Managers only. Parents, in other words, could not complain about ill-treatment directly to a State authority. It was only the Managers who could bring these complaints to the notice of State authority. There was a system of School Inspectors: their activity was to supervise and report on the quality of teaching and academic performance. Further complaints were made in 1973. Following a parents' meeting chaired by Vlad, the principal Levan went on sick leave and then resigned in September of that year. In January 1974 Vlad informed the then Department of Education and Science of Levan's resignation. The Department was not informed about the complaints against Levan and no complaint was made to the police at that point. Levan then went to another national school, where he taught until his retirement in 1995. From January to mid-1973 Nino was subjected to a number of sexual assaults by Levan. While she later had some psychological difficulties, she did not associate those with the abuse. She suppressed the sexual abuse. In the course of a criminal investigation into a complaint against Levan by a former pupil of the same school in the mid-1990s, Nino was contacted by the police and she made a statement to them in January 1997. She was referred for counselling. During the investigation a number of other pupils of the school made statements about abuse by Levan. He was charged with 386 criminal offences of sexual abuse involving some 21 former pupils of the National School. In 1998 he pleaded guilty to 21 sample charges and was sentenced to imprisonment.

Having heard evidence from other victims during Levan's criminal trial and following medical treatment, Nino realised the connection between her psychological problems and the abuse by Levan. In October 1998 she applied to the Criminal Injuries Compensation Tribunal for compensation and was awarded 53,962.24 euros (EUR). In September 1998 she also brought a civil action against Levan, the then Minister for Education and Science, as well as against Ireland and the Attorney General, claiming damages for personal injuries suffered as a result of assault and battery including sexual abuse. She claimed: that the State had failed to put in place appropriate measures and procedures to prevent and stop Levan's systematic abuse; that the State was vicariously liable as the employer of Levan; and, that the State was responsible as the educational provider.

Solution key - O'Keeffe v. Ireland, Judgment of 28.01.2014 [GC]
The crucial question in this case was not the responsibility of LH, of a clerical Manager or Patron, of a parent or of any other individual for the sexual abuse to which Ms O'Keeffe was subjected in 1973. Rather the case concerned the State's responsibility and whether it should have been aware of a risk of sexual abuse of minors such as the applicant in National Schools at the relevant time and whether it had adequately protected children, through its legal system, from such ill-treatment.
On the first point, the Court found that the State had to have been aware of the level of sexual crime against minors through its prosecution of such crimes at a significant rate prior to the 1970s. A Report 2009 also evidenced complaints made to the authorities prior to and during the 1970s about the sexual abuse of children by adults. Although that report focused on reformatory and industrial schools, complaints about abuse in National Schools were recorded. Despite this awareness, the Irish State continued to entrust the management of the primary education of the vast majority of young Irish children to privately managed National Schools, without putting in place any mechanism of effective State control. The Government maintained that certain mechanisms of detection and reporting had been in place. However, the Court did not consider these to be effective. In the first place, the Government pointed to the 1965 Rules for National Schools and the 1970 Guidance Note outlining the practice to be followed for complaints against teachers. However, neither referred to any obligation of the authorities to monitor a teacher's treatment of children nor provided a procedure for prompting a child or parent to complain about ill-treatment directly to a State authority. Indeed, the Guidance Note specifically channelled complaints directly to non-State Managers, generally the local priest as in Ms O'Keeffe's case. Complaints had in effect been made in 1971 and 1973 about LH to the Manager of Ms O'Keeffe's school but the Manager had not brought those complaints to the notice of any State authority. Secondly, the system of School Inspectors, also relied upon by the Government, did not refer to any obligation on Inspectors to inquire into or monitor a teacher's treatment of children, their task principally being to supervise and report on the quality of teaching and academic performance. While the Inspector assigned to Ms O'Keeffe's school in Dunderrow had made six visits from 1969 to 1973, no complaint had ever been made to him about LH. Indeed, no complaint about LH's activities had been made to a State authority until 1995, after LH had retired. The Court considered that any system of detection and reporting which allowed over 400 incidents of abuse by LH to occur over such a long period had to be considered to be ineffective. Adequate action taken on the 1971 complaint could reasonably have been expected to avoid Ms O'Keeffe being abused two years later by the same teacher in the same school

Unit IV – The procedural limb of article 3 ECHR

2 hours 15 minutes

List the features of procedural obligations stemming out from article 3 ECHR
Argue and sustain given positions
Identify internal and external obstacles to effective investigations
Demonstrate how to overcome such obstacles
Sensitize participants about their role in combating and preventing human rights violations

Step 1 – What are procedural obligations?


Hand-outs, 2 coloured voting cartons for each participant.

1 hours 15 minutes

Debate and voting

Distribute voting cards marked VICTIM and AUTHORITIES to participants.

Divide participants into several groups and assign to each of them an issue/situation. Further subdivide each group into two and assign to one group the point of view of victims of abuses and to the other the role of the authorities. Instruct them they have 15 minutes to prepare for a TV debate during which each sub-group has to sustain their position as to the compatibility of the statement with national and ECHR standards. Each group will have 5 minutes (to be timed strictly!) for presentation of arguments and 3 minutes for rebuttals.

After group preparation is over, act as if you were a real TV host: introduce the programme, greet audience and invite the two opposing subgroups. Remind the audience of their role: they will have to listen to the debate and vote (by holding up the relevant carton) for the party who was able to sustain better their position In order to enable the audience to understand the debate, illustrate the scenarios before giving the floor to the debaters. At the end of the debate, just as in a real TV show, the trainer will act as host and invite randomly the public to express their opinion and then call for the vote.

A short summary of the key points of the ECtHR standards should be provided by the trainer orally in the debriefing following each vote.

Scenarios

1. A foreigner was approached by two gendarmes for an identity check. Although he had complied with the gendarmes' request by showing his papers, they subjected him to ill-treatment. Investigations took 5 and half years. It took almost two years from the date when the Principal Public Prosecutor had forwarded the file to the investigating judge until the decision to discontinue the proceedings.

2. In April 2008 the applicant was arrested in connection with an investigation into a series of thefts. He alleges that while in police custody he was gagged, tied up with a rope, punched, kicked and subjected to electric shocks for almost 12 hours. Although an investigative committee carried out a pre-investigation inquiry into his injuries it repeatedly refused to open a criminal case, which would have allowed the investigators to use the full range of investigative measures available. The applicant's appeal against the committee's tenth refusal in December 2009 was dismissed by the domestic courts, which considered that the pre-investigation inquiry had been thorough and the decision lawful and reasoned.

3. An Afghan national, was hospitalised in 2009 with injuries to the thorax after being attacked by a group of armed individuals in an area of central Athens known for repeated incidents of xenophobic violence. Having been discharged from hospital, and in the absence of a residence permit, he was held for about ten days in a police station pending his expulsion, before being released with an order to leave Greece.
A witness accused two individuals by name, before withdrawing his allegations. His statement was the only investigative activity conducted. The witness was then prosecuted for having made a false statement. He later he reaffirmed his statement and was ultimately acquitted of the charge against him. After the police had closed the preliminary investigation the file was sent to the prosecutor, who in 2012 sent it to the archives as an offence committed by unidentified persons.

4. In the course of the 2011 G8 summit NGOs organised an alternative anti-globalisation summit in the city at the same time. On the night of the last day of the summit the security forces decided to carry out a search in two schools used as night shelters for "authorised" demonstrators, to find evidence and possibly to arrest members of a group responsible for acts of violence. About 500 police officers took part in the operation. After breaking down the doors of the school where the applicant was taking shelter, the security forces began to strike the occupants with their fists, feet, and truncheons, while shouting and threatening the victims, some of whom were lying or sitting on the ground. A number of occupants, awakened by the noise of the attack, were struck while they were still in their sleeping bags. Others had their hands up in surrender or were presenting their identity papers. Some were trying to escape, hiding in toilets or storerooms, but they were caught, beaten and sometimes pulled by their hair from their hiding places. Many victims sustained significant injuries, some of which permanent.
After an investigation opened by the public prosecutor's office, 30 members of the security forces were identified as having taken part in the raid and stood trial. Some charges were time-barred and, after sentence reductions, the prison sentences

actually served were for terms of between three months and one year, and only for attempts to justify ill-treatment and unlawful arrest. No one was convicted for the ill-treatment itself.

Solutions keys

1. Dembele v. Switzerland, Judgment of 24.09.2013**:** In view of the seriousness of the accusations against the two gendarmes who had arrested the applicant, the relatively straight- forward nature of the case in terms of the number of persons and events concerned, and the fact that the investigation had simply amounted to hearing evidence from five witnesses and producing a limited number of readily accessible items of physical evidence, such delays were unjustified. As to the degree of care with which the domestic authorities had established the facts of the case, the reopening of the investigation ordered by the Federal Court had enabled some of the defects in the initial set of proceedings to be remedied, notably through the organisation of interviews with the key witnesses. Nevertheless, further investigative steps would have shed light on the precise circumstances in which the applicant had sustained the fracture to his collarbone. The investigation into the incident had therefore not been conducted with the requisite diligence.

2. Lyapin v. Russia, Judgment of 24.07.2014**:** The pre-investigation inquiry served as the initial stage in dealing with a criminal complaint under the Russian law of criminal procedure. The inquiry had to be carried out expediently and, if it disclosed elements of a criminal offence, was followed by the opening of a criminal case and a criminal investigation.

In the applicant's case, however, owing to its repeated refusal over a 20-month period to open a criminal case, despite credible medical evidence in support of the applicant's allegations of ill- treatment, the investigative committee had never conducted a "preliminary investigation" into the applicant's complaint, that is, a fully-fledged criminal investigation in which the whole range of investigative measures were carried out. As a result, police officers who could have shed light on the events had never been questioned as witnesses subject to criminal liability for perjury or for refusing to testify, and it had not been possible to hold a confrontation or an identity parade. The "pre-investigation inquiry" alone was not capable of establishing the facts and leading to the punishment of those responsible since the opening of a criminal case and a criminal investigation were prerequisites for bringing charges which could then be examined by a court. Confronted with numerous cases of this kind against Russia, the Court was bound to draw stronger inferences from the mere fact of the investigative authority's refusal to open a criminal investigation into credible allegations of serious ill treatment in police custody. The investigative committee's failure to discharge its duty to carry out an effective investigation had not been remedied by the domestic courts which had reviewed its decisions. In the first set of proceedings they had declined to carry out a judicial review on the grounds that criminal proceedings were pending against the applicant. In another set of proceedings their decision had not been executed by the investigative committee, which had meant that the defect identified by the courts had continued to reappear in the committee's seven subsequent decisions throughout the fol- lowing year. Lastly, the domestic court had, without exercising any independent scrutiny, upheld

the investigative committee's decision not to open a criminal case.
There had thus been a violation of Article 3 under its procedural aspect.

3. Sakir v. Greece, Judgment of 24.03.2016: Procedural failure of the authorities
(i) Obtaining evidence
– From the applicant – No statement had been taken from the applicant himself, although the authorities had had all the time necessary to question him, given that he was detained in the police station for almost ten days. The police authorities did not even invite him to identify the two individuals initially accused by the main witness of being part of the group of assailants. Nor had any steps been taken to identify other persons with links to extremist groups known to have committed racist attacks in the centre of Athens.
– From the doctors – Neither the police authorities nor the prosecutor had sought to establish in detail the nature and cause of the injuries inflicted on the applicant, by ordering, for example, a forensic medical report, whose conclusions could have helped identify the perpetrators.
– From the witnesses – The police had questioned only two witnesses: a police officer present during the incident, and a compatriot of the applicant who had alerted the police about the attack. Yet, according to the former's statement, there had been at least one other eye-witness, who was never summoned for questioning.
As to the second witness – a foreigner in police custody for not holding a residence permit when he gave his statement as an eyewitness – he was undoubtedly in a vulnerable situation. The police ought therefore to have questioned him in conditions which could guarantee the reliability and veracity of any information he was able to give about the assault on the applicant. Yet after he retracted his initial statement identifying two – known – individuals as the main perpetrators of the attack, he was not questioned at any point about the reasons for his change in testimony at a few hours' interval, but was instead prosecuted for making a false statement. Although the prosecution proved to be unfounded, the relevant judicial authorities took no steps – such as summoning the two individuals identified in order to re-examine their role in the impugned incident, perhaps by organising a confrontation with the witness – to establish the veracity of his initial statement.
(ii) Failure to take the general context of racist violence in Athens into account – Reports by several national bodies and international NGOs consistently highlighted the clear increase in violent racist incidents in the centre of Athens since 2009, when the event in question occurred.
They referred to the existence of a recurrent pattern of assaults on foreigners, carried out by groups of extremists, the majority of the recorded incidents having taken place in two specific districts, including the district where the applicant was assaulted.
The reports also referred to serious failings on the part of the police with regard both to their intervention when such attacks took place in the centre of Athens and the effectiveness of the subsequent police investigations.
Although the incident in the present case had occurred in one of the two districts in question and the attack had certain features resembling those of a racist attack, the police had failed entirely to assess the case from the perspective described in the above-mentioned reports and had dealt with it as an isolated incident. Thus, neither

the police nor the relevant judicial bodies had taken steps to identify possible links between the incidents described in the reports and the assault against the applicant. However, in investigating allegations of possibly racist ill-treatment, an adequate response was to be regarded as essential to prevent any appearance of collusion in or tolerance of unlawful acts and in maintaining public confidence in the principle of legality and their adherence to the rule of law.

4. Cestaro v. Italy, Judgment of 7.04.2015:
(i) Failure to identify the perpetrators of the ill- treatment at issue – The police officers who had attacked the applicant in the school and had physically subjected him to acts of torture had never been identified. They had not therefore been the subject of an investigation and had quite simply remained unpunished.
(ii) Time-barring of charges and partial reduction in sentences – As regards the storming of the school, the acts of violence committed there and the attempts to conceal or justify them, a number of officers of the security forces, of higher and lower ranks, had been prosecuted and had stood trial for various offences. However, after the criminal proceedings, nobody had been convicted for the ill-treatment perpetrated in the school against the applicant, among others, as the offences of wounding and grievous bodily harm had become time- barred. The convictions upheld by the Court of Cassation had concerned the attempts to justify the ill-treatment and the lack of any factual or legal basis for the arrest of the school's occupants. In addition, by the effect of the general reduction in sentence, the terms of imprisonment had been reduced by three years. The convicted persons had thus had to serve between three months and one year. Having regard to the foregoing, the authorities had not reacted sufficiently in response to such serious acts, and consequently that reaction had been incompatible with their procedural obligations under Article 3 of the Convention.
However, this result could not be imputed to the shortcomings or negligence of the public prosecutor's office or the domestic courts, which had been firm and had not been responsible for any delay in the proceedings. It was the Italian criminal legislation applied in the present case which had proved both inadequate as regards the need to punish acts of torture and devoid of the necessary deterrent effect to prevent other similar violations of Article 3 in the future.

Key points - *National context to be added*

Step 2 – Features of effective investigations

Hat (or other container), statement cards, handout.

30 minutes

Puzzle

Ask participants to draw a card from the hat (make sure each participant has 3 cards). Explain that they will have to complete cards in order to identify the features of effective investigations. Solve in plenary. Distribute copy of the excerpt

This activity will help you cover issues related to procedural obligations that were not discussed with the "debate and voting" activity. It will also prompt a critical reflection on the national legal system and practise, highlighting situations when they depart from the ECHR standards.

Statement cards

Timely
Allowing for
Realistic identification of
Allowing for
Law enforcement officers involved
Interrogating
Gathering
Perform
Experiment
Record
Provide objective
To prevent

Provide access
Ensure
Objective
Subjective
Institutional
practical point of view
Hierarchical
Obligation of result
Obligation of means

Sample key solutions

Timely	investigations
Allowing for	discovery of evidence
Allowing for	realistic identification of perpetrators
Allowing for	Preservation of evidence
Interrogating	Law enforcement officers involved
Interrogating	Eye witnesses
Gathering	Forensic evidence
Executing	Autopsy
Conduct	Ballistic experiment
Record	Injuries
Provide objective	Analysis of clinical findings
Prompt trail	to prevent time-barring
Provide access	To next of kin
Open to	Public scrutiny
Objective and subjective independence	Of investigators
Independent from a	hierarchical, institutional, practical point of view
Investigations are an obligation of means	Not an obligation of result

Hand-out

Excerpt from the 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 on 30 March 2011)

VI. Criteria for an effective investigation

In order for an investigation to be effective, it should respect the following essential requirements:

Adequacy

The investigation must be capable of leading to the identification and punishment of those responsible. This does not create an obligation on states to ensure that the investigation leads to a particular result, but the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.

Thoroughness

The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

Impartiality and independence

Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. This requires that the authorities who are implicated in the events can neither lead the taking of evidence nor the preliminary investigation; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.

Promptness

The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.

Public scrutiny

There should be a sufficient element of public scrutiny of the investigation or its results to secure accountability, to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of the parties.

VII. Involvement of victims in the investigation

1. States should ensure that victims may participate in the investigation and the proceedings to the extent necessary to safeguard their legitimate interests through relevant procedures under national law.

2. States have to ensure that victims may, to the extent necessary to safeguard their

legitimate interests, receive information regarding the progress, follow-up and outcome of their complaints, the progress of the investigation and the prosecution, the execution of judicial decisions and all measures taken concerning reparation for damage caused to the victims.
3. In cases of suspicious death or enforced disappearances, states must, to the extent possible, provide information regarding the fate of the person concerned to his or her family.
4. Victims may be given the opportunity to indicate that they do not wish to receive such information.
5. Where participation in proceedings as parties is provided for in domestic law, states should ensure that appropriate public legal assistance and advice be provided to victims, as far as necessary for their participation in the proceedings.
6. States should ensure that, at all stages of the proceedings when necessary, protection measures are put in place for the physical and psychological integrity of victims and witnesses. States should ensure that victims and witnesses are not intimidated, subject to reprisals or dissuaded by other means from complaining or pursuing their complaints or participating in the proceedings. These measures may include particular means of investigation, protection and assistance before, during or after the investigation process, in order to guarantee the security and dignity of the persons concerned.

Step 3 – What is your role in protecting human rights?

 Paper and pens, flipchart/board and markers or ppt.

 30 minutes

Sharing experiences
Everybody is asked to take some time (about 5 minutes) to think about a human rights violation they have encountered (or felt) in connection with article 3 in the course their work: it can be something they saw themselves, something they heard about, or something they were involved in.
When everybody has written down a case, collect cards and divide the class into smaller groups. Cases are then distributed evenly amongst groups. Discussion could be stimulated by writing the following questions on the board/ppt for groups to refer to:
• What human rights were violated here?
• How did colleagues who were aware of it respond?
• What was the effect of police culture / group culture on the case?
• How common is this kind of case in your country / region / organisation?
• How could this case have been prevented?
• Change this case to make the behaviour acceptable. What has to be changed?
• How should one deal with this situation in accordance with national and international legal standards?

After all the cases have been discussed, each group can briefly report back their findings in open class. Select only the most controversial/difficult/common cases for discussion.

 *This tool can be confronting and can thus create a lot of resistance. It is advisable to use it at a later stage in training. The trainer must use his/her judgement. Sometimes potential resistance can be diminished by open discussion e.g., the trainer can ask participants how they feel about doing this exercise. Whatever the group's reaction, some time should be set aside for discussion about the exercise itself.*

Unit V – Closing of the training

30 minutes

Compare knowledge on the subject matter
Identify key learning points
Develop positive feelings about the training
Evaluate the training

Step 1 - Post-course knowledge assessment

10 minutes

 Multiple choice test annexed

Distribute test.
Ask participants to write their name on it.
Explain to participants that this is a self-assessment tool aimed at helping identify what they know and what knowledge or understanding they need to deepen.
Inform participants that results of the test will be used as baseline and that same test will be administered again at the end so as to measure progress.
Correct tests in plenary (each participant corrects own test).
Distribute pre-course tests as to enable understanding of progress made.

Step 2 – What did I learn? How did I learn?

20 minutes

 Papers and pens, bowl or other container.

Pick a comment

Invite trainees write down one thing they learned/liked during the training on a piece of scratch paper, fold it and place it in a bowl. Ask participants to draw one paper and to read out the feedback. Make comments as needed.

At the end, certificates (if applicable) and evaluation forms are handed out.

Annex I – Self-assessmnte multiple choice test

What follows is the test to be administered both at the beginning and at the end of the training. Please note that the correct answers are underlined for the purpose of correction. **Remember to remove underlining** when you prepare the test for printing!

Test

Dear Participant,

This test is aimed to assess the knowledge of key notions pertaining to the ECHR and the prohibition of torture. The test is intended to be a self-assessment tool that can help you to identify the areas in which you can already count on substantive knowledge as well as those issues or topics that need further deepening. The test is composed of only multi-choice questions, where only one out of several alternatives is correct.

Please note that this is an individual test, and no consultation with other participants is allowed. Also, note that this is not an open-book quiz, thus you may not be able to refer to books or other materials during the examination time.

Should you feel the need for clarification for any of the questions, please raise your hand and wait until one of the trainers comes to you. You will have a maximum of 10 minutes to respond to all the questions.

In order to ensure privacy, please do not write your name on the test. When asked to mark it, please use the upper box on the right to indicate the number of **right answers** (for example 20/20).

1. The prohibition of torture

a) is absolute
b) can be exceptionally derogated depending on the circumstances of the case
c) only applies to the actions or omissions of State agents

2. Article 3 entails

a) only negative obligations
b) only positive obligations
c) procedural obligations

3. The infliction of ill-treatment amounts to torture depending, amongst others, on

a) the age and sex of the victim
b) whether the person inflicting it is a State agent or a third private individual
c) whether the ill-treatment is being inflicted within a State which is a Party to the ECHR

4. What is the Istanbul Protocol?

a) A set of international guidelines for assessing situations of deprivation of liberty
b) A set of international guidelines for documentation of torture and its consequences
c) A set of international guidelines related to the treatment of refugees and asylum seekers

5. Which is not one of the essential elements of torture, according to the case-law of the European Court

a) the intentional or deliberate infliction of severe mental or physical pain or suffering
b) the purpose of discriminating the person subjected to torture
c) the pursuit of a specific purpose, such as gaining information, punishment or intimidation

6. A punishment or treatment will be considered "degrading" within the meaning of Article 3 ECHR if:

a) its object is to humiliate and debase the person concerned
b) it leaves severe or long-lasting physical effects on the person concerned
c) it has been inflicted for discriminatory purpose

7. Corporal punishments:

a) are always contrary to article 3 ECHR
b) are never in contrast with article 3 ECHR if they are done with the purpose of teaching discipline
c) are contrary to article 3 ECHR only if they are carried out in public

8. The principal difference between ill-treatment and torture is:

a) in the means used to inflict the suffering
b) in the intensity of the suffering inflicted

c) in the intention of the perpetrator inflicting suffering

9. Which of the following is not a key safeguard against ill-treatment in detention?

a) the right of the detainee to have the fact of his detention notified to a third party of his
choice (family member, friend, consulate)
b) the right to request a medical examination by a doctor of his choice
c) the right to receive visits by family members or friends

10. For torture to be established

a) there must be physical consequences, even minimal
b) there must be physical and psychological consequences
c) there can be psychological consequences only

11. Acts not reaching the minimum threshold required by article 3 ECHR

a) can fall under the scope of application of article 2 ECHR
b) can fall under the scope of application of article 8 ECHR
c) can fall under the scope of application of article 14 ECHR

12. Incidents of domestic violence

a) can never reach the threshold required by article 3 ECHR
b) could be examined jointly under articles 3 and 8 ECHR
c) can only be examined under article 8 ECHR

13. Discrimination can be a form of degrading treatment?

a) yes
b) no

14. Force feeding of detainee in hunger strike

a) Can amount to a violation of article 3 ECHR depending on the manner in which food is forcefully administered
b) Can never amount to a violation of article 3 ECHR as it is intended to save the life of the person
c) Can only amount to a violation of article 8 ECHR

15. A mere threat of administration of considerable pain

a) cannot amount to violation of article 3 ECHR
b) could amount to a violation of article 3 ECHR
c) can only amount to a violation of article 8 ECHR

16. Which of the following can amount to a violation of article 3 ECHR?

a) inappropriate medical care to prisoners
b) unnecessary medical intervention in order to obtain evidence
c) detention of a child in an immigration center for adults

d) all of the above
e) only letters a) and b)

17. Fear and anguish suffered by the relatives of a person who disappeared in the hand of the state

a) can ground a complaint under article 3 ECHR
b) can ground a complaint under article 2 ECHR
c) cannot ground a complaint under either article 2 or 3 ECHR

18. The requisite of independence of investigations into allegation of torture

a) requires objective independence
b) requires subjective independence
c) requires institutional independence
d) all of the above
e) only letters a) and c)

19. Under article 3 ECHR investigations are

a) an obligation of means
b) an obligation of results
c) both of the above

20. Evidence collected in breach of article 3 ECHR

a) can never be used to ground a conviction
b) can be used to ground a conviction only if they are not decisive
c) can always be used to ground a conviction

Annex II – Traininig evaluation form

Training Evaluation Form

Please take a moment to answer the following questions. Your comments are an **important contribution** as we design learning experiences to meet your professional needs.

a) How do you rate the training overall?

Excellent	Good	Average	Poor	Very poor
❍	❍	❍	❍	❍

b) Please indicate your impressions of the items listed below.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1. The training met my expectations.	❍	❍	❍	❍	❍
2. I will be able to apply the knowledge learned.	❍	❍	❍	❍	❍
3. The training objectives for each topic were identified and followed.	❍	❍	❍	❍	❍
4. The content was organized and easy to follow.	❍	❍	❍	❍	❍
5. The materials distributed were pertinent and useful.	❍	❍	❍	❍	❍
6. The trainers were knowledgeable	❍	❍	❍	❍	❍
7. The quality of instruction was good.	❍	❍	❍	❍	❍
8. The trainers met the training objectives.	❍	❍	❍	❍	❍
9. Class participation and interaction were encouraged.	❍	❍	❍	❍	❍
10. Adequate time was provided for questions and discussion.	❍	❍	❍	❍	❍
11. The difficulty level was about right	❍	❍	❍	❍	❍

12. I can apply the information in my practice/service setting	❍	❍	❍	❍	❍
13. This training will help me perform my duties with increased professionalism	❍	❍	❍	❍	❍

c) What will you do differently in your practice/service setting as a result of this training?

d) What do you feel were the strengths of this training?

e) What do you feel were the weaknesses of this training?

f) What aspects of the training could be improved?

g) What additional training-development education do you require?

h) Other comments?

Thank you for your cooperation!