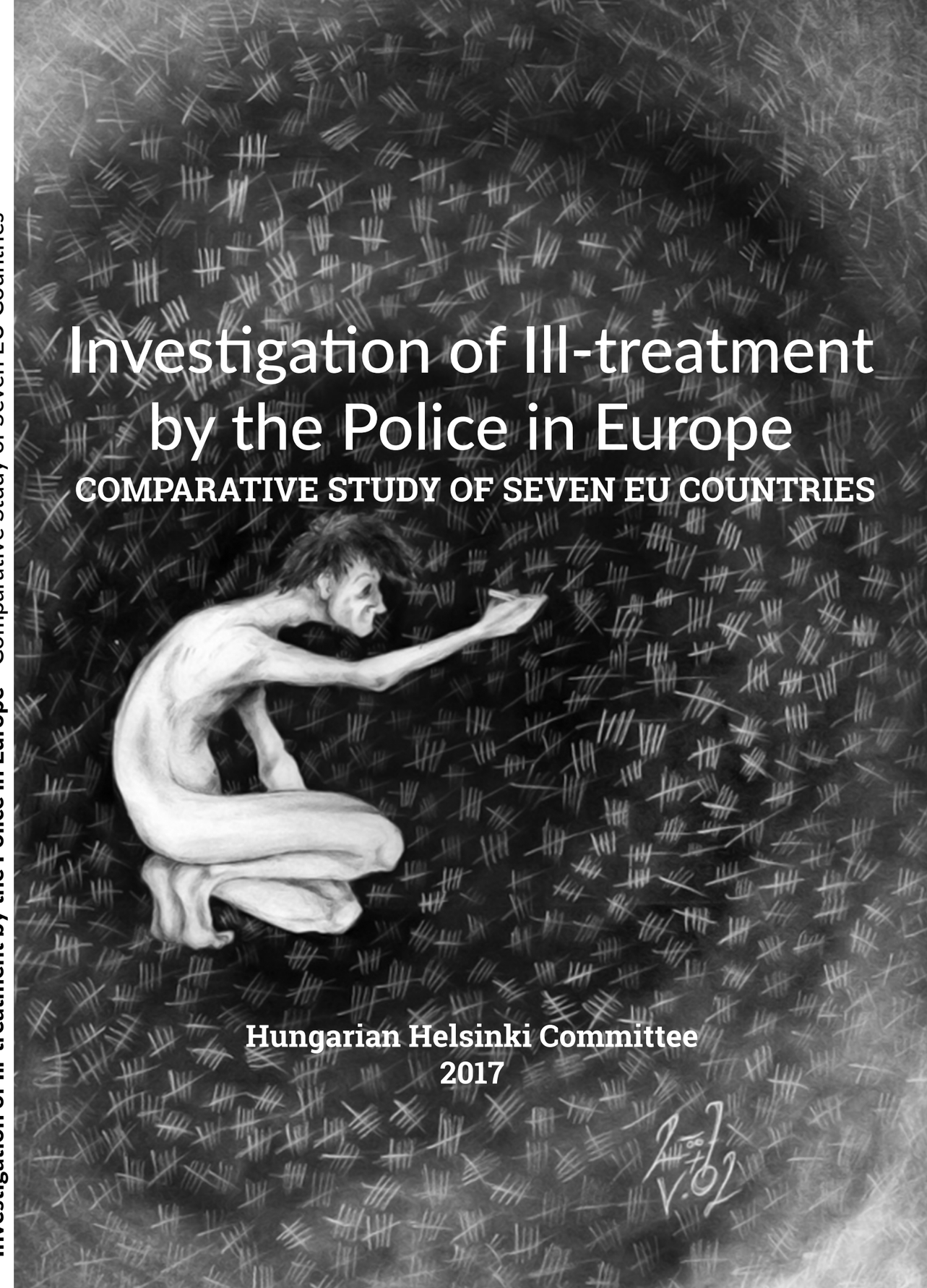
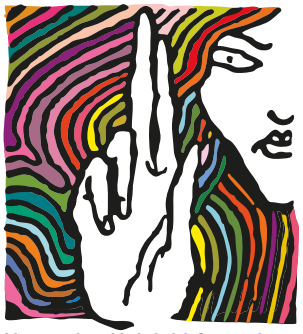
# Investigation of Ill-treatment by the Police in Europe

## COMPARATIVE STUDY OF SEVEN EU COUNTRIES



Hungarian Helsinki Committee
2017

Investigation of Ill-treatment by the Police in Europe - Comparative Study of Seven EU Countries



Hungarian Helsinki Committee

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# Preface

Torture, and inhuman or degrading treatment or punishment, has been prohibited by international and regional instruments and conventions for many decades. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in December 1984 and came into force in June 1987, although it was prefigured by the Universal Declaration of Human Rights almost four decades earlier. In Europe, the European Convention on Human Rights (ECHR) has, since the Convention was ratified and entered into force in 1953, provided in Article 3 that no-one shall be subjected to torture or to inhuman or degrading treatment or punishment. Forty-eight states have ratified the Convention and most, if not all, of them have incorporated the prohibition on torture into their domestic law. The prohibition on torture is absolute and cannot be derogated from under any circumstances, and is enforceable through both the European Court of Human Rights (ECtHR) and, in principle at least, through domestic courts.

Yet torture and other forms of inhuman or degrading treatment at the hands of state officials, and particularly those engaged in the criminal justice systems of member states, continue to featurein many European countries.Whilst measuring the incidence of torture is fraught with difficulty, one approach is to look at the number of cases dealt with by the ECtHR. Since 1957, more than one in ten violations of the ECHR, as found by the ECtHR, has concerned Article 3, and more than a quarter of those cases involved lack of effective investigation. The phenomenon is not confined to a small number of recalcitrant states. More than ten countries have been found by the ECtHR to have breached the prohibition on torture several times. It also appears that the incidence of torture and inhuman or degrading treatment is not declining. In 2013, more than a quarter of violations found by the ECtHR concerned Article 3, and in more than a quarter of those cases, the court found there to have been a lack of effective investigation.The continuing use of torture and the incidence of inhuman and degrading treatment, and the failure of some states to effectively prevent and investigate it, is a feature of many of the country reports produced by the European Committee for the Prevention of Torture. Thus, although many states do not have adequate systems for identifying, collecting and publishing statistical data on torture and inhuman or degrading treatment, quite a lot is known about it.

The same cannot be said of lesser forms of ill-treatment by state officials in criminal justice systems. The threshold for conduct amounting to torture for the purposes of Article 3 of the ECHR is high. Whilst the ECHR does not define torture, the case-law of the ECtHR makes it sufficiently clear that conduct that falls within Article 3 has three essential elements: the infliction of severe physical or mental pain or suffering; the intentional or deliberate infliction of such pain or suffering; and the pursuit of a specific purpose such as securing information, punishment or intimidation. However, the evidence, such as it is, suggests that law enforcement officials in many countries frequently, if not routinely, use excessive force when carrying out their law enforcement or public order functions, and when arresting and detaining suspects, and engage in various forms of unlawful conduct when investigating crime and interrogating suspects. Here, the problem of definition is more difficult. Such conduct can be serious, or have

significant consequences, both for those who are the victims of it and for the integrity of the criminal justice process, without amounting to torture. It may amount to inhuman or degrading treatment, but the parameters are less clear and even if it does, this may not be adequately recognised.One result is that data on conduct which, whilst serious, falls short of torture, is difficult to collect in a consistent and comparable way and,in many states, is non-existent. However, the lack of data does not equate to the lack of a problem.

Official reports and research shows that the causes of both torture and ill-treatment are varied and inter-connected, and include institutional and systemic factors, the culture of law enforcement bodies, and the psychological profile of some who work in them. Police officers, and others working in the criminal justice system, are often poorly paid and lack adequate training, and the organisations that they work for may be under-resourced. Yet they are expected to prevent and investigate crime, uphold public order and, often, to deal with individuals and communities that are themselves under stress. Such expectations often translate into institutional imperatives and targets, placing pressure on police and other investigative officials to produce 'results'. Lacking investigative skills and resources, the temptation to use violence or the threat of it to produce results may be irresistible. Whilst egregious forms of conduct may not be sanctioned by the judiciary, and may result in evidence so obtained being excluded, less serious forms of conduct are unlikely to result in 'loss' of evidence, and may even be permitted or viewed favourably. And in any event, many police encounters with suspects and accused are 'low visibility' or below the radar and, crucially, those who are suspected or accused of crime normally have no 'voice' – that is, they have little public standing and are often not regarded as credible.

However, whilst the picture regarding ill-treatment by criminal justice officials is not so clear, it is evident that torture is not encountered across all European states, and in some appears to be all but non-existent. So, the critical questionsare why does torture and serious ill-treatment occur in some jurisdictions and not others, what are the relevant variables, and can lessons be learned from states that have a low incidence of torture and ill-treatment that can be used to improve the position in those countries that have a poor record in this respect?Surprisingly, until now there has been very little comparative research and analysis of these questions across the jurisdictions of Europe.

This research project set out to remedy that deficiency, and that is why it is so important. Critical to the project was an understanding that whilst the normative legal structure, and the institutions established to monitor and enforce legal prohibitions on torture and ill-treatment are important, non-legal factors are also likely to play a crucial role. In other words, whilst adequate regulation and effective institutions are necessary pre-conditions, they are not sufficient for the successful eradication of torture and ill-treatment. Non-legal factors, such as the level of financial resources, and traditional cultural attitudes and practices – amongst prosecutors and the judiciary as well as law enforcement officers –vary significantly across different jurisdictions, and it is important to understand how these have an impact on both the incidence, and the effective regulation, of torture and ill-treatment. Armed with this information, it is possible not only to assess the effectiveness of legal and institutional regulation, but

also to examine ways in which non-legal factors may be modified so as to improve the position in particular countries.

The findings and recommendations of the project deserve to be read, disseminated and acted upon. An innovative approach to measuring and comparing relevant factors was devised in order to analyse the data, and this produced powerful results. The importance of adequate regulation provides a good example. All states in the study have, in effect, adopted the international normative standards regarding the prohibition on torture, yet the incidence of torture and ill-treatment differs widely.Animportant variable is the extent to which high level prohibitions on torture are interpreted by way of detailed rules, and guidance for law enforcement officers, that isexpressed in practical language that can be understood and applied on a day-to-day basis. Thus, the emphasis should be on preventing torture and ill-treatment,and on incentivising good practice, rather than identifying and punishing those who are guilty of it. That is not to say that institutions and mechanisms for holding perpetrators to accountare not necessary. It is imperative that they exist. But it is important to remember that, for a range of reasons, only a small minority of cases will ever be resolved by sanctions applied to those who torture or ill-treat citizens.

Torture and ill-treatment by public officials is unacceptable. Not only is it contrary to international normative standards, but it undermines the rule of law, and is inimical to democracy itself. Moreover, it is counter-productive. Public order and effective crime investigation relies on public confidence in criminal justice officials and the criminal justice process. If faith in the criminal justice system is compromised, people will be less disposed to comply with the law, and less willing to support law enforcement by reporting crime and acting as witnesses. Whenever a person is mistreated by law enforcement officials, their experiences are shared amongst friends, relatives and their community. Preventing torture and ill-treatment, guaranteeing that allegations are promptly and effectively investigated, and ensuring that perpetrators are appropriately dealt with, should be a political priority of the highest order. The research reported here provides the basis for ensuring that these objectives are realised.

**Prof. Ed Cape**

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# 1. Introduction

## 1. 1. What was the whole research about and why?

**Ill-treatment by officials– typically police officers and penitentiary staff – is present all over the world**, but response to that crime is different from state to state. This research project, commenced in 2015, focuses on **prosecution in cases of ill-treatment, which imply criminal accountability of public officials** intentionally inflicting severe pain or suffering (whether physical or mental) on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, when such pain or suffering is inflicted by a public official or other person acting in an official capacity. It must be emphasized that we extended the focus of the researched issue in two respects: firstly, we included the prosecution of behaviours that do not reach the level of severity that would qualify them as torture (e.g. ill-treatment amounting to inhuman or degrading treatment), and we also looked into incidents where the element of intention is not clear-cut (e.g. ill-treatment of a person resisting a police measure, which may be seen as "punishment" for non-compliance, but also may lack any conscious consideration and stem fully from the uncontrolled anger of the acting officers). Perhaps the best way to formulate the concept of ill-treatment is given by the European Court of Human Rights in its Grand Chamber judgement delivered inthe case of Bouyid v Belgium (23380/09, para 88.), which reads as follows: "in respect of a person who is [...] confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3". This means that our project covered any allegation of excessive use of force even when the kind of force used is formally authorized by the law.

Throughout the operation of the European Court of Human Rights (ECtHR or Court) **from 1959 to 2013**, more than 11 per cent of the violations found by the Court[1] concerned the prohibition of torture and inhuman or degrading treatment (Article 3 of the European Convention on Human Rights, ECHR). In many national jurisdictions, it is a persistent problem that only few criminal proceedings are initiated into ill-treatmentcharges, and the success rates in these procedures are low. Out of the 1977 violations found by the Court concerning Article 3 of the ECHR,in 519 cases the basis for finding a violation was the lack of effective investigation. This means that in more than 26 per cent of Article 3 related violations, the Court found that the domestic authorities had failed to effectivelyprosecute cases of ill-treatment. **This widespread and continuing problem ensures – as the ECtHR regularly puts it – "virtual impunity" to the perpetrators of such crimes.** And it is not only the "notorious" countries' citizens (like Russian Federation, Turkey or Ukraine) that suffer from torture, inhuman or degrading treatment: Bulgaria, France, Greece, Hungary, Italy, Poland, Romania and other states have also been found several times to have violated Article 3 of the Convention. Current statistics indicate that judgments of the ECtHR have not resulted in systematic changes, ill-treatment has remained a significant problem throughout Europe. **In 2013**, more than 26 per cent of violations found by the Court[2] concerned the prohibition of torture and inhuman or

1 http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf

2 http://www.echr.coe.int/Documents/Stats_violation_2013_ENG.pdf

degrading treatment, and **in more than 27 per cent of these cases effective investigation was lacking**.

As regards the domestic level,it can be concluded **that in many countries very few reports of ill-treatmentresult in the pressing of charges**. For example, in Hungary, according to statistics received from the Office of Chief Public Prosecutor, in 2010, 1086 incidents of ill-treatment committed by public officials were reported, but chargeswere brought only in 44 cases. And even when an indictment takes place the official success rate of prosecution – which on average exceeds 95% – is around 65% in ill-treatmentcases. Taking into account the presumably high degree of latency of such offenses, we can conclude that the prosecution of ill-treatmentis very ineffective in Hungary. All this can be experienced after two decades of constant development of the legal framework and the establishment of independent oversight mechanisms over the police and the penitentiary system.[3]In other countries, even if there are no reliable statistics regarding the number of complaints and/or the number of investigations that effectively have been initiated upon the complaints, there are hints suggesting that this rate might not be considerably higher. For example, the UN Committee against Torture expressed concern about the discrepancy between the number of complaints of torture and ill-treatment and the absence of prosecution in this connection in the Czech Republic. In this context, the fact that the Czech authorities prosecuted only 13 ill-treatment related cases in 2014 cannot be assessed as a fully satisfactory achievement. As we shall see, similar experiences were reported from other Eastern European countries, which suggests that there is something beyond legal regulation and institutional design that helps toeffectively prosecute ill-treatment.At the same time, there are certain countries where such phenomena are only faded memory. Perhaps the best example of this is Northern Ireland that had perhaps the worst human rights situation in this respect among the Western European countries during the 1970's and early 80's (because of the fight against terrorism), but Northern Ireland today can be mentioned as a best practice country.

Where an individual makes a credible assertion that he/she has suffered ill-treatment by an official and turns to the ECtHR, the Court will assess whether the domestic authorities conducted an effective investigation into the case. **Failure of the authorities to conduct a thorough investigation is qualified by the Court as a violation of Article 3** (prohibition of torture, inhuman or degrading treatment) of the ECHR. The rich case-law of the ECtHR provides clear **standards about the notion of effective investigation.**[4]

- For an investigation to be effective, it must be carried out by authoritiesthat areindependent from those implicated in the incident. This means not only a lack of hierarchical or institutional connection but also **practical independence**.
- The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions. They must take all reasonable measures available

3 See: Borbála Iványi – András Kádár – András Nemes: Hungary. In: Richard Carver – Lisa Handley: DoesTorturePreventionWork? Liverpool University Press, Liverpool, 2016, pp. 183-230

4 Eric Svanidze: Effective investigation of ill-treatment. Guidelines on European standards, Council of Europe 2009., available at: http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1121.pdf (accessed on 1 November 2016)

to them **to secure the evidence** concerning the incident, including,eyewitness testimony and forensic evidence.

- Medical certificates and reports must be drawn up by an **independent medical practitioner**.
- The investigations must be carried out in due course. The **length of investigation** must correspond to the complexity of the case, and undue delay of the proceedings indicates the lack of genuine intent to effective prosecution.

Different countries have different normative frameworks and apply different specific measures and practical solutions (e.g. the use/lack of video cameras in detention facilities or police stations, financial resources dedicated to the aim of effective prosecution of torture cases, the application/lack of protocols for medical practitioners conducting examination of injuries) serving (or in some cases undermining) compliance with the standards set by the ECtHR. Even with regard to the basic normative framework (e.g. on the elements of the definition of torture or ill-treatment, modes of liability, penalties, aggravating/mitigating circumstances, defences and immunities)a number of differing solutions exist.[5] There are no up-to-date comparative analyses however as to the issue of what solutions exist for the investigation and prosecution of ill-treatmentcases and whether they can be qualified as **good or bad practices according to the Strasbourg requirements and other international standards**.

There are also no comparative analyses into the non-legal factors that influence the efficiency of the prosecution of ill-treatment(such as the institutional culture and connections of the different entities that have a role in the procedure: e.g. the attitudes of the prosecution and judiciary towards the police and towards those who are likely to fall victim to ill-treatment, including defendants in on-going criminal cases).

The overall goal of the project was to fight ill-treatmentthrough research-based advocacy providing decision makers with information on the changes in the legal framework and – possibly – institutional culture that can contribute to making the prosecution of torture more efficient.

This is why, on the basis of the seven country reports prepared within the framework of this international research project, we have compiled **a list of indicators**as regards the effective prosecution of ill-treatment cases with a special view to the ECtHR requirements and other international standards.

Our primary aim was to look into the issue whether there are any specific legal provisions or institutions that prove to be **significant factors in the success of investigations** (e.g. rules related to medical examination upon admission to a holding facility and the recording thereof, video recording of interrogations and within penitentiaries, or the structural independence of prosecutors investigating ill-treatment cases etc.). Furthermore, as a secondary aim, we attempted to find out whether any non-legal factors play an important role in this respect (heritage of socialist era, ethos within police forces, the prosecution and the judiciary, financial opportunities of the different states etc.), and if they do, what can be done to change those non-legal factors that hinder the effective prosecution of ill-treatment. We certainly could not find theanswer

5 http://www.apt.ch/content/files_res/report-expert-meeting-on-anti-torture-legislation-en.pdf

to all our initial questions. But we hope that the lessons learned from this comparative analysis have added value to both researchers of the area and policy makers who wish to improve the situation in their respective countries.

## 1. 2. Methodology

### 1.2.1. The problem

As mentioned above, torture, inhuman and degrading punishment by police is prevalent in many European countries, while the success rate of the investigation of these cases is low. This widespread and continuing problem guarantees – as the ECtHR regularly puts it – virtual impunity to the perpetrators of these crimes.

At the same time

1. similarly low success rates of these criminal procedures are experienced in states with slightly or significantly different substantive and procedural legal rules pertaining to ill-treatment, which indicates that non-legal factors (financial capability of investigative authorities, security solutions in prisons, different ethos within police forces etc.) may account for the similar performance of prosecution in ill-treatment cases in spite of differences between legal systems;
2. different legal regulations can result in differing performances by various criminal justice systems, in which case certain formal-legal aspects of the system shall be identified that make better performance more likely;
3. it is also imaginable that the performance of two criminal justice systems is significantly different in spite of having similar legal rules, which again might be accounted for by non-legal factors.

Although the problem examined by the research project has been identified in many places, in the planning phase of the research we were not aware of up-to-date comparative analyses as to the reasons why countries with different rules experience the same problem, neither did we have possible explanations for these differences. We could surely start from the notion that basic guarantees do not directly entail a well-working system. Access to legal counsel, to a third party and to a medical doctor is ensured almost everywhere, at least on paper, and the independence of the bodies investigating ill-treatment cases is formally provided for, still, there are huge differences in the human rights performance of seemingly similar systems.

### 1.2.2. The goal of the project

The goal of the project was to offer possible explanations as to why similarities and differences exist as regards the success rate of prosecution in cases of ill-treatment committed by official persons under comparable and different legal regulations. First of all, we wanted to find out whether there are any specific legal rules or institutions that prove to be significant factors in the success of investigations (i.e. rules related to medical examination and the recording thereof, video recording of interrogations within penitentiaries, or the structural independence of prosecutors investigating ill-treatment cases etc.), and also to find out whether any, primarily non-legal factors play

an important role in this respect (heritage of socialist era, ethos within police forces, financial conditions of states etc.).

To achieve this aim, we have developed a project plan consisting of research and advocacy elements. The research is primarily not a scholarly or academic work, and has not been intended as such. It has been designed and mainly carried out by practicing attorneys and NGOs with a view to identifying good practices and problem areas that can serve as a basis for advocacy and – sometimes rather technical – improvements of prosecution systems, but involvement of academic expertise was also ensured to provide methodological consistency.

#### 1.2.2.1. Pilot phase (months 1-6)

In the pilot phase of the project, Hungary and the UK were **selected as pilot countries**. One expert from the UK, Professor Ed-Lloyd Cape in addition to two experts from Hungary, András Kristóf Kádár and István Szikinger formed a board (hereinafter: **Board**) that was responsible for the overall professional supervision of the project work carried out by HHC's project coordinator, Balázs Tóth. The HHC legal team elaborated a questionnaire (see under Annex I) which served as a basis for the analyses of the different legal systems, this was meant to ensure a degree of consistency between the varying countries researched in the project.

Following the selection of the pilot countries, local experts – the HHC in Hungary and JUSTICE in the UK –**provided an analysis of how their respective legal systems** address the issue of ill-treatment through giving a thorough description of their own countries' legal system in general, and more specifically on how a hypothetical ill-treatment case (developed by the project team based on cases selected from the jurisdiction of the ECtHR) would be handled by the respective authorities.[6] On the basis of a **standardized questionnaire** taking them through the criminal procedure (from reporting through the collection of evidence to the indictment and verdict), the **local experts were required to write a detailed description of how the legal norms of their jurisdictions would "work" in practice**, and elaborate on **which are the possible obstacles and/or potential good solutions/practices** that have a significant impact on the outcome of the criminal proceedings. While preparing the hypothetical case study, local experts had to pay special attention to **whether their own justice system complies with the standards set by the CPT and the ECHR**, and if not, they would be asked to provide an explanation for the shortcomings. In order to facilitate their work, the HHC **prepared a short list of international standards related to the prevention and prosecution of ill-treatment** based on – among other sources – CPT standards and the practice of the ECtHR.

Besides preparing the hypothetical case study, the experts were asked to conduct, if necessary, altogether **7-15interviews with practitioners** (e.g. prosecutors, counsels and judges) to explore the non-legal factors that may play a role in the (negative or positive) outcome of ill-treatment investigations and to learn about all those determining factors which cannot be detected based on the examination of the normative framework, and either include the results of the interviews into the case study or provide a summary

6 The method has been inspired by the concept of the book: Ed Cape – Jacqueline Hodgson – Ties Prakken – Taru Spronken: Suspects in Europe: Procedural Rights at the Investigative Stage of the Criminal Process in the European Union. Intersentia, 2007.

at the end of the study. The experts were provided with sample questions used in the Hungarian research (see Annex II).

#### 1.2.2.2. Actual research phase (months 7-18)

After the first two draft country reports were submitted to the Board, **the questionnaire and the hypothetical case were slightly amended** in light of the discrepancies and problems that arouse while preparing the reports. There was one important amendment, namely, we have decided to take out ill-treatment in prisons from the scope of the research and focus on police: going through the UK paper has made it clear that in some jurisdictions, where completely different bodies investigate the abuses by different law enforcement bodies, covering both police and prisons would require double work which was not possible to cover within the framework of the project.

Following the amendment of the questionnaire and the hypothetical case and the preparation of the instructions, **six other countries were chosen to be involved in the research**. The countries were selected in line with the following considerations:

1. the two major Western European legal traditions (common law and continental) should be represented,
2. countries with a state-socialist past should also participate,
3. countries with different models in the prosecution of ill-treatment (e.g. Irish Ombudsman, British ICCP, states where the prosecution office has exclusive competence, etc.)
4. countries which use and those which do not use video cameras at interrogations shall be included.

Based on these considerations and upon a preliminary research into this field (analysing CPT reports and ECtHR statistics), the following countries were selected:

1. **Northern Ireland**, which has a special ombudsman for investigating complaints of ill-treatment, which is unique;
2. **The Czech Republic**, where in January 2012 there was a significant institutional reform, a new independent body was established for the inspection of police ill-treatment. This makes it possible to evaluate the effect of the changes;
3. **Bulgaria**, one of the countries with severe criticism from CPT and many cases ending up in Strasbourg;
4. **Belgium**, a Western-European country whose external police service control committee (Comité P) has also been criticized by the CPT;
5. **France**: the legal system with the most inquisitorial elements (judges investigating);
6. **Germany**: a legal system which influenced many others including Hungary – and the different solutions of the Länder and the federal state structure provided an extra reason for including Germany.

Experts were required to point out any possible legal norms or structural/institutional shortcomings that are in contradiction with the international standards or which fail to increase the efficiency of prosecution. The length of the final outputs varies between

40-120 pages. Unfortunately, due to severe health problems, the German expert could not accomplish his report, therefore the research eventually covered seven countries altogether.

#### 1.2.2.3. The comparative analysis

It is never easy to come up with a tenable methodology, which makes it possible to compare fundamentally different and at the same time complex systems, such as ill-treatment prevention and investigation systems. The questionnaire, the hypothetical case, the international standards, the two pilot reports and the oversight of the work by a professional Board all served the same purpose: to have reports on the basis of which the different systems can be compared at least to some extent and conclusions can be drawn which are relevant for the initial research objective, namely to answer which legal and non-legal factors seem to be important in ill-treatment prevention and the effective investigation thereof. However, the final individual country reports were not susceptible to comparison in their original form and their length varied in a wide spectrum, between 40 and 120 pages. Therefore we decided to produce short (7-12 pages long) summaries of these reports in a more unified structure on the basis of which we could analyse these reports by using an "Index" that we have developed for the purposes of this analysis.

The main categories of the Index are:

1. **Prohibition of torture – regulation and practice:** evaluation of the legal system and its implementation;
2. **Documentation of facts, potential evidence:** the subcategories in this section provide an overview of the most useful pieces of evidence in the cases of ill-treatment investigation (camera recordings and medical evidence);
3. **Right to inform a third person and access to lawyers:** assessment of the classic safeguards;
4. **Investigation, prosecution:** a complex assessment of the body responsible for investigating allegations of ill-treatment (independence, perception, possibility of acting if the body drops a case);
5. **Disciplinary proceedings:** this part assesses the consequences of an established ill-treatment
6. **Monitoring**: this part provides an insight into whether it is possible to carry out a reliable evaluation of the system on the basis of official statistics.

We have prepared a separate analysis for each country[7] covered by the project and produced a comparison between them on the basis of our own evaluation with a view to the reports submitted by the experts. It goes without saying that both the categories used and the evaluative results are open to debate. But we firmly believe that this is a methodology which points to some of the crucial aspects of an effective ill-treatment investigation system and also one which makes the comparison of these different complex systems a rational effort.

7 In these summaries we do not use footnotes, they can be checked in the original reports which are available at the torturefiles.org.

### 1.2.3. Advocacy activities

In addition to preparing the comparative research study in English, **country-specific studies or their summaries** (plus the comparative study) were **translated into the native language** of the respective countries. Where the local experts found it appropriate and feasible, a short video was also produced about the local problems or experiences related to ill-treatment which – with their more easily digestible approach and message – can be used for advocacy purposes.

In addition to the dissemination of the country-specific studies to the domestic stakeholders, there was a possibility for experts from **a maximum of three countries to carry out more extensive "campaigns"** calling the attention of not only the stakeholders but also the wider public to the problems and the potential solutions identified locally. Experts willing to carry out such campaigns submitted a description of the problems (the subject of the campaign) and innovative campaign ideas (use of story telling, infographics, short films was envisaged). The three countries selected for funding by the Board supplemented by two persons delegated by the donor were Belgium, Bulgaria and The Czech Republic.

All the materials produced within the framework of this project can accessed and downloaded at thetoruturefiles.org.

## 1. 3. International standards related to investigation of torture and ill-treatment

### 1.3.1. Definition

Article 3 of the European Convention on Human Rights states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

The definition of torture as provided for in Article 1 of the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment ('CAT') is the following:

'For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

As already mentioned above, a proper definition of the concept of ill-treatment can be found in the Grand Chamber judgement of the ECtHR delivered in the case of Bouyid v Belgium (23380/09, para 88.), which reads as follows: "in respect of a person who is [...] confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3".

Cases of torture are the most grave and acute forms of the violation of Article 3 of ECHR, but the protection of Article 3 applies to many different types of assault on human dignity and physical integrity. Ill-treatment must always attain a minimum level of severity and it depends on all the circumstances of the case (such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.)

**Torture** constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. Three essential elements of torture are: the infliction of severe mental or physical pain or suffering; the intentional or deliberate infliction of the pain; and the pursuit of a specific purpose, such as gaining information, punishment or intimidation.

The severity, or intensity of the suffering inflicted can be gauged by reference to factors such as: duration, physical and mental effects, the sex, age and state of health of the victim, the manner and method of its execution. These acts are not only violent, but they would be heinous and humiliating for anyone, irrespective of their condition.

The notion of **inhuman treatment** covers at least such treatment that deliberately causes severe suffering, mental or physical, which in the particular situation is unjustifiable.[8]**Degrading treatment** is that which is said to arouse in its victims feelings

8 "The Greek Case", 1969, Yearbook: European Convention on Human rights No12., p. 186.

of fear, anguish and inferiority, capable of humiliating and debasing them. Inhuman or degrading treatment does not have sufficient intensity or purpose to qualify as torture.[9]

There can never, under the Convention or under international law, be a justification for these.

## 1.3.2. GENERAL STANDARDS[10]

### 1.3.2.1. Investigation

The obligation to initiate an investigation arises when the competent authorities receive a plausible allegation or other sufficiently clear indications that serious ill-treatment might have occurred. An investigation should be undertaken in these circumstances even in the absence of an express complaint. Public officials (including police officers and prison staff) should be formally required to notify the competent authorities immediately upon becoming aware of allegations or other indications of ill-treatment.

- For an investigation into possible ill-treatment to be effective, it is essential that the persons responsible for carrying it out are **independent** from those implicated in the events. Independence is to be interpreted in practical terms, not only the absence of hierarchical or institutional connections.
- An investigation into possible ill-treatment by public officials must comply with the criterion of **thoroughness**. It must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification and, if appropriate, the punishment of those concerned.
- The persons conducting the investigation must have at their disposal all the necessary budgetary and technical resources for effective investigation.
- The investigation must also be conducted in a **prompt** and reasonably **expeditious** manner.
- Investigative bodies must have **full competence** to establish the facts of the case and to identify and punish those responsible where necessary. Investigative bodies should have the power to suspend from service or from particular duties persons under investigation.
- When ill-treatment has been proven, the imposition of **a suitable penalty** should follow.
- The investigator should **tape-record** a detailed statement from the person and have it transcribed.

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9 http://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or-punishment/what-is-torture-and-ill-treatment

10 For a complete overview of the standards, see: Eric Svanidze: Effective investigation of ill-treatment. Guidelines on European standards , Council of Europe 2009., available at: http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1121.pdf (accessed on 1 November 2016). The following are summaries and verbatim quotes from this material which were distributed among the project partners.

- **Victims** of ill-treatment should be entitled to request specific steps to be taken and to participate in specific investigative actions. They should be regularly informed as to the progress of investigations and all relevant decisions made, and must be provided with prompt redress, including rehabilitation.

**(Istanbul Protocol**: The investigation must also determine any pattern or practice that may have brought about the torture plus medical care and rehabilitation of the victim).

Failure to adequately respond to allegations of violations may in and of itself give rise to a separate and discrete violation of Article 3 on the part of the judicial authorities.

#### 1.3.2.2. The fundamental safeguards against torture and ill-treatment for people in detention

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)attaches particular importance to three rights for persons detained by the police:

- The right of the person concerned to have the fact of his detention **notified to a third party of his choice** (family member, friend, consulate).
- The right **of access to a lawyer** which incorporates the corollary rights to a private consultation and to have the lawyer present at interrogations, with legal aid for persons unable to pay for legal representation.
- The right **to request a medical examination by a doctor**, and the corollary right to have medical examinations conducted out of earshot and (unless the doctor expressly requests otherwise) out of sight of police and other non-medical staff. The results of medical examinations should be properly recorded and made available to the detainee and his or her lawyer. The medical opinion must provide an interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment even in the absence of specific allegations by individuals, law enforcement or judicial officials. The report should be confidential and communicated to the subject or his or her nominated representative.

Persons taken into police custody should be expressly informed without delay of all their rights. A form setting out their rights should be given to persons detained by the police at the very outset of their custody and they should be asked to sign a statement attesting that they have been informed of their rights.

A single and comprehensive custody record should exist for each person detained, on which all aspects of their custody and action taken regarding them should be recorded. The detainee's lawyer should have access to such a custody record.

#### 1.3.2.3. Injuries in detention

Where a detainee shows signs of injuries, or ill-health, either upon release or at any stage during their detention, the burden will be on the detaining authorities to establish that the signs or symptoms are unrelated to the period or fact of detention. **The burden of proof** is firmly on the detaining authorities to provide a plausible account of how the injuries occurred.

It would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

#### 1.3.2.4. Access to doctor and medical examination

- All examinations should be conducted out of the hearing, and preferably out of the sight, of police officers.
- Colour photographs should be taken of the injuries of persons alleging that they have been tortured.
- The results of every examination as well as relevant statements by the detainee and the doctor's conclusions should be formally recorded by the doctor and made available to the detainee and his lawyer.
- Persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.
- If a detained person is found to have injuries which are clearly indicative of ill-treatment (e.g. extensive bruising of the soles of the feet) but refuses to reveal their cause or gives a reason unrelated to ill-treatment, his/her statement should be accurately documented and reported to the authority concerned together with a full account of the objective medical findings. If the possible ill-treatment relates to the acts of fellow inmates, alternative accommodation should be found for the detained person concerned.
- If the report concerns possible ill-treatment by law enforcement officials, the detained person should under no circumstances be returned to their custody.

## 1. 4. Useful sources and links

1. Effective investigation of ill-treatment

   http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1121.pdf

2. The prohibition of torture

   http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-06%282003%29.pdf

3. CPT Standards: http://www.cpt.coe.int/en/docsstandards.htm

4. Safeguards against torture

   https://www.essex.ac.uk/combatingtorturehandbook/manual/2_content.htm

5. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12 (1991)

   http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html

6. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

   http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx

7. Istanbul Protocol

   http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

# 2. Belgium

## 2. 1. Summary of the Belgium report

One would expect that prevention and investigation of ill-treatment by police are well-developed in a country at in the heart of Europe. The reality is more shady: criticized independence of the special investigative body and the extremely lenient sanctioning practice by the courts, plus some stunning deficiencies are characteristics of the system.

### 2.1.1. Legal framework

#### 2.1.1.1. Duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

Belgian police is an integrated police force structured on two levels: the Federal Police and the Local Police. Although both levels are autonomous, they cooperate to perform an integrated police function.

Police forces must ensure the respect of human rights and fundamental liberties and contribute to the development of a democratic society. Police forces accomplish their missions under the authority of superior bodies, either administrative, political or judiciary authority.

Belgian law defines torture as any deliberate inhuman treatment provoking acute pain or very serious and cruel physical or mental suffering. The prohibition in the Penal Code covers all acts of torture, inhuman and/or degrading treatment, whatever the perpetrator's status is and qualifies the perpetrator being "a public officer, an agent or officer of the police acting in the line of duty" as an aggravating circumstance for offences of torture and inhuman treatment. According to the Penal Code, the fact that the act was committed upon order from a superior officer or a public authority may not be invoked as a justification of crimes of torture or inhuman treatment.

#### 2.1.1.2. Disciplinary and ethics codes, other provisions

The Belgian police are subject to a Code of Ethics. It provides that officers in charge of an operation must make sure that the orders which they give and the action which they propose have legal ground and the intervention is proportional to the aim pursued. They may not order or commit arbitrary acts which may violate rights and freedoms. The subordinate must refuse illegal or unlawful orders, especially those to perpetrate crimes of torture and/or inhuman treatment on the grounds of his status, the Code of Ethics and the domestic and international legal framework applicable to police services and must inform his superiors of that refusal. During their training, police officers are informed of their obligation to act in accordance with the law, including criminal and humanitarian law and the Code of Ethics. The standards of behaviour prescribed in this Code is criticized for being too vague to comply with and to be sanctioned.

The Code of Ethics details the rights of persons deprived of their liberty. It establishes rights to medical assistance, access to sanitary facilities and the supply of food and drink. Staff members are responsible for every person under their surveillance. They must take necessary steps to prevent accidents, absconding and must ensure effective surveillance to that end. They must give assistance to people under their supervision

who clearly need medical care. They are to give or arrange for first aid while waiting for approved medical care services. Investigators must ensure the quality and reliability of the recording and the transcription of the hearings, interviews and confrontations that they carry out. They are to inform people of their rights, respect their right to silence, not to force them to incriminate themselves and to refrain from resorting to violence, abuse or other illicit means.

The Code of Ethics does not explicitly ban torture but reminds police officers of their obligation to respect and protect human rights and lays down strict conditions for the use of coercion and force. Furthermore, several provisions of the Code explicitly prohibit inhuman and degrading treatment.

However, there is a lack of precise instructions for police officers detailing ethical rules concerning arrest and detention. Some individual corps have developed guidelines on the subject, but there is no general framework.

#### 2.1.1.3. The power to detain, duration of detention

In the Belgian law, two types of deprivation of liberty may be applied by law enforcement authorities: the administrative arrest and the judicial arrest. The police can order the judicial arrest if a person is suspected of having committed an offence. This arrest cannot exceed 24 hours (except for some justified exceptions in which the investigating judge intervenes). The administrative arrest is a measure of restraint taken by a police officer that leads to a temporary deprivation of liberty. It can be applied to maintain or restore public order or maintain public security. This arrest cannot exceed 12 hours. The person in administrative arrest has the following rights: to be informed of his/her rights and obligations, notification of a third party, medical assistance, written and oral information of his/her rights in a language s/he understands, the right to eat and drink during her/his detention. In this type of arrest, the detainee has no right to a lawyer.

### 2.1.2. Institutional solutions

#### 2.1.2.1. Police body and detention monitoring

Standing Police Monitoring Committee (Committee P) is an external body to the police forces, responsible to the Federal Parliament which was established to monitor the police, in particular its performance on protecting the rights of the citizens, its coordination with other public monitoring and inspection services and its effectiveness. Committee P makes annual reports on its activity and individual reports upon each examination that it carries out. These reports are sent to the Parliament. The Committee P has five members, appointed by the Parliament, and has its own Investigation Service whose members have a status of judiciary police officers. The fact that this department is composed of police officers coming from different services, who are in charge of monitoring the work of active police officers is subject to criticism from international organizations for its lack of independence, objectivity and transparency. However, Committee P considers the employment of police officers an asset and argues that having three permanent civilian members monitoring over its investigative service effectively guarantees its neutrality.

The General Inspectorate of the Federal Police and the Local Police (AIG) is a governmental department which is under the authority of Ministers of Home Affairs and Justice. It is independent of the police services. The primary mission of the AIG is to inspect operations of the Federal Police and of local police forces and to examine its effectiveness, in particular the application of laws. The Integrated Police Act gives AIG members a general and permanent right of inspection. AIG either acts on its own initiative or by order of Ministers of Justice or Home Affairs or at the request of the judicial and administrative authorities, especially mayors, governors, the Attorney General, the Federal Prosecutor, prosecutors and the Federal Police Council.

The AIG submits the results of its inspections together with its recommendations to Ministers of Home Affairs and Justice, to the authority that initiated its action and if the inspection concerns a local police force, it also submits it to the mayors of the municipality in question. These authorities can then take corrective measures as necessary. The AIG also publishes an annual report and specific reports based on their inspections. AIG investigators are actually officers seconded from their regular police services, where they subsequently may return to. Also, AIG's policy is decided by the Ministers of Home Affairs and Justice, therefore this body is not seen wholly independent either.

#### 2.1.2.2. Investigative body, its independence

The investigation of police ill-treatment is mainly ensured by the Committee P. This Committee has been criticized for its lack of independence and transparency. In fact, the Investigation Service of the Committee P includes mainly police officers who are appointed for a renewable five-year term and seconded from a police department to which they will return after their time spent at the Committee P. This results in a lack of effectiveness of legal sanctions taken against police officers.

### 2.1.3. Specific safeguards

#### 2.1.3.1. Audio and video recording

Belgian law does not provide any specific legal basis on police car dash board cameras or body cameras. The use of such devices is not legally determined,consequentlyit is not forbidden either. Pilot experiments using such technological tools are being led in some areas in Flanders and Brussels. In general, police cars are not equipped with video recording devices. This is also true concerning most of the older police station buildings, but all the new buildings are equipped with CCTV and the equipment is gradually improving but this depends on the commanding officer and the available financial means. A 2007 Royal Decree allows for cameras to be put in cells but doesn't make it compulsory.

It is possible to make a recording of the interrogation, but it is not compulsory or generally done. Practice varies in the police stations. It is however compulsory for minor victims, but not for suspects. Interviews are in a large majority of cases recorded in writing. Cameras are rarely used, due to the lack of means. Usually, if an interview room is equipped with CCTV, it is for surveillance purposes, not to record the content of the interview. The minutes of the interrogation is usually made by the police officer who conducts the interview by simultaneously typing the questions and answers,

which may lead to a summarized written record. Problems may also occur concerning the translation of which the reliability cannot be supervised without video or audio recording.

Although in principle it is not prohibited for outsiders to record police action, however, most of the time police officers react negatively in such cases, which can lead to intimidation, illegal seizing of material or in some cases, police violence. Journalists and citizens are sometimes arrested for rightfully recording police action, even with seizing of their equipment and erasing of their recordings.

It seems that it is very difficult to access recordings when an illegal treatment is suspected or alleged. Sometimes because the police allege that cameras were not operating at the time events took place. In a lot of cases, police officers do not send recordings to lawyers or judges who ask for them, instead, they send a statement of what images show.

As to the storage time, CCTV recordings must be deleted after one month. Some cameras film without recording, others keep a recording for 30 days maximum, which is shorter than the time limit set out for replying to a request for evidence (which is 45 days).

#### 2.1.3.2. Medical examination

Belgian law provides the right to medical assistance without any condition for every person deprived of liberty, but there is no unconditional obligation of medical examination upon admission. It is only compulsory if the detainee is injured or if he/she requests it. The detainee has the right to request an examination by a doctor of his choice at his/her expense. The detainee must obtain information of his/her rights, including the right to request for medical examination. There are considerable differences in the practice of ensuring this right according to the place of custody. Complete refusal of medical assistance is not unheard of, some police officers tend to decide on the necessity and thus the permission of a medical examination depends on their own discretion. Victims are often not provided with the medical report of their examination.

There are no police doctors or medical staff attached to a police station, examinations of the detainees are performed by independent doctors, paid by the police. In general, the victims are taken to the nearest hospital for a consultation. It is assumed that some kind of connivance develops between police officers and doctors from emergency services.

According to the law, police officers should not be present at the examination, except if the doctor expressly asks for it.Infact, they often stay, invoking security reasons. The doctor and the arrested person can ask them to leave the room and they can ask them to stay if they do not feel safe. Doctors do not always ask officers to leave but when they do police officers become obliged to leave.

The doctor shall not seek probable causes of injuries or take photographs of them. The general practitioner who performs the examination shall not forward the medical documentation in any case to anyone else but to the victim on the grounds of the principle of medical secrecy. Victims can receive a copy of their medical files later during the proceeding upon request.

#### 2.1.3.3. Right to a lawyer

The arrested person has a right to a lawyer in the case of a judicial arrest, but not in the case of administrative arrest. If the lawyer cannot be present at the interrogation, the complainant must have a phone conversation prior to this interrogation. In fact, state-appointed lawyers do not always come to interviews, especially in the Brussels-capital Region, they prefer phone conversations instead. The police have to inform the lawyer as soon as they are ready to start the interrogation and the lawyer has two hours to get to the police station. When that time limit has expired, they have no obligation to wait. As soon as the lawyer is present, they have 30 minutes to discuss the case in private and the lawyer has the right to get information about general circumstances and existing charges. This information has to be provided by the police. During the interrogation, the lawyer has to stay quiet and cannot intervene. He can lodge a complaint for illtreatment after the interrogation and intervene before the investigating judge. The police officer has complete authority over the contents of the official report. The lawyer can ask for some elements to be written down but the police officer is not compelled to respond favourably.

#### 2.1.3.4. Right to inform a third person

The police are obliged to inform a third party as soon as possible if the arrested person requests it. The arrested person can ask to make the call by her/himself but the police can decide to call by themselves (and usually do so). In case of administrative arrest, the police can refuse if they think the person represents a danger to public order. In case of a judicial arrest, only the royal prosecutor or the investigating judge can refuse a call on the grounds of a risk of collusion or destroying of evidence.

#### 2.1.3.5. Risk of being pursued for false accusation

It is reported that some police officers make backdated reports of rebellion when they know the person is lodging a complaint against them. This practice (that some deem almost systematic) dissuades victims from filing complaints.

### 2.1.4. Mechanisms for dealing with torture and ill-treatment

#### 2.1.4.1. Complaints system

A complaint against illtreatment can be made to the Prosecutor's Office, to a police station or through the Centre for Equal Opportunities. The complaint may lead to legal proceedings or only result in administrative proceedings. The first instance to which a victim can turn to is the police. Police cannot refuse to register a complaint.

#### 2.1.4.2. Administrative proceedings

Complaints about illtreatment can also be handled in an administrative procedure which does not necessarily results in a criminal sanction for the aggressor. These complaints should be made to the Committee P via its online platform or to the AIG.

Committee P regularly publishes the number of complaints it receives. The number of complaints keeps increasing year after year. In its 2012 annual report the Committee noted an increase in the number of complaints of police violence, from 468 in 2010 to

576 in 2012. However, these figures are distorted, because Committee P only takes into account complaints that it directly receives from citizens (and does not mention the number of complaints from other monitoring bodies such as the AIG and/or mechanisms of internal control of the police) and because it only counts one file per event, even if a large number of citizens are concerned. It is estimated that Committee P declares 80% of the complaints to be abusive (i. e. complaints with no real ground, false accusations). Victims also alleged that they had been subject to pressure by police officers to sign incorrect reports, which makes it difficult for the victims to lodge complaints afterwards.

#### 2.1.4.3. Criminal proceedings

A victim cannot, by its own, exercise public action. But in case the public prosecutor fails to act, the victim can enforce public action by a direct summon to appear before a trial court. It is also possible to file a complaint directly before an investigative judge. It is the best guarantee to have an independent and fair judge who will then conduct an investigation. By contrast, complaints made to police forces and the public prosecutor can be closed on discretionary grounds with no further action taken.

When filing a complaint, one should also file a declaration of injured party at the Prosecutor's secretariat or directly at the police station. Then the prosecution will have to notify about either the closing of the file and its reasons, the beginning of the judicial investigation and the date of hearing.

Criminal proceedings in Belgium are divided into investigation and trial stages. In most cases the investigation is directed by the public prosecutor or – in certain cases that are more complex or serious – by an investigating judge. During the investigation, evidence is gathered to establish whether an offence has been committed and by whom. Once the investigation is over, the case is either closed or referred to a court for trial.

#### 2.1.4.4. Disciplinary action

A police officer risks a disciplinary sanction for any act or behaviour - even outside the exercise of duties - that can lead to a professional misconduct or can jeopardize the dignity of the police. A police officer can be punished for misconduct/failure even if they have not done anything illegal. The sanction can range from a simple warning to a revocation and notably includes salary reduction.

The Committee P has repeatedly noted that disciplinary authorities punish more heavily and almost solely facts which are done outside the operation of the service or infringements to professional obligations while abuses of authority or power that occurs mostly during the operation of the service is not sufficiently sanctioned. It is demonstrated by the 2013 Committee P report which shows that disciplinary sanction was applied in 6 out of the 39 court cases where the police officers have ultimately been convicted for assault (i. e. in 15% of the cases), compared to an almost 60% in cases that involved forgery conviction.

#### 2.1.4.5. Victim's rights

Any person who has suffered damage as a result of an incident that constitutes an offence under domestic law is considered to be victim and has certain individual legal rights before, during and after criminal proceedings. As a victim, to take a more active

part in proceedings, it is possible to be registered as an injured party or to bring a claim as a civil party to criminal proceedings.

#### 2.1.4.6. Private prosecution

The legal institution of private prosecution does not exist in Belgian jurisdiction. Under certain circumstances it is possible to initiate criminal proceedings by directly summoning the perpetrator or by lodging a complaint with the investigating judge and at the same time applying to be treated as a civil party. The most effective way in case of ill-treatment is to bring a claim as a civil party to criminal proceedings, which necessarily ends up with an appearing before a judge. Application to join proceedings as a civil party can be made during the pre-trial phase and during tribunal hearings. As a civil party one can not only request damages for the harm suffered but can also profit from certain rights all along the criminal procedure. During the pre-trial phase, one can ask to inspect the criminal file and ask that additional investigative measures be taken.

#### 2.1.4.7. Civil action, tort

A liability suit can be connected to a criminal procedure but can also be led independently.

#### 2.1.4.8. Exclusion of evidence

The suspect of a criminal offence is free to answer or not the questions that are asked, depending on whether she/he finds them to be in accordance with her/his own interests. The accused person cannot be made to testify against him/herself or be forced to plead guilty. This implies the accused person's right to avoid self-incrimination. Elements of proof gathered in violation of this right have to be excluded.

The accused person's silence cannot be sanctioned. It is also prohibited to interrogate an accused person under oath. However, the witness is required to tell the truth according to the oath to be taken but still has the right not to answer questions that may lead to blame him/herself.

In principle, a confession shall not be admitted as evidence if it is given under duress or ill-treatment, in the breach of the relevant Act, including in particular if the lawyer was not present. The victim can report these circumstances to the magistrate of the prosecution interrogating him for an alleged wrongdoing in order to have it recorded. But in practice the confession will be discarded only if the ill-treatment is proved. In principle also, an investigative judge is to be designated to investigate such allegations. It is an obligation for the Belgian State, which doesn't always comply.

### 2.1.5. Experience in practice

#### 2.1.5.1. Sentencing practice and sanctions applied

Impunity of police offenders is widespread. The Committee P highlighted that between 2009 and 2012 only 39 cases established that police violence was illegitimate, despite the numerous allegations of police violence by NGOs. Among this 39 court cases 31 resulted in the mildest of sanctions possible, either a simple conviction (3) or a suspension of sentencing (28), which is a favourable treatment equal to the absence of punishment with a clean criminal record. Two cases ended up with a service sentence (without an

inscription to the criminal record), 12 with fully or partly suspended sentences. Only one case ended with the perpetrator receiving effective jail sentence. Among those 39 records, Committee P was informed of only 6 disciplinary sanctions: 1 reprimand, 2 deductions from wages, 1 disciplinary suspension from duty, 1 downgrading at a lower maximum rate of pay and only one compulsory retirement which was later cancelled by the Council of State. Therefore it can be said that de facto there is an almost total impunity for police officers who commit unlawful violence.

#### 2.1.5.2. Data available

There is no centrally gathered data on the number of torture and illtreatment cases, nor on the unlawful use of force by police officers. Consequently, neither there is statistical information about the outcome nor the success rate of the relevant investigations. International human rights organizations expressed their concerns related to this lack of data, but the recommendations on the need to establish statistics has not been implemented so far.

There is no gathered and systematic structured information on the sanctions applied for illtreatment. Committee P admitted in its 2006 annual report that there was a policy of tolerance at a criminal level with regard to the members of the police and almost one in three officers got a suspension and kept a clean criminal record.

As to the number of perpetrators, the law requires that courts transfer to the Committee P a copy of decisions involving police officers but in practice, this obligation is not sufficiently respected. Therefore, the Committee P receives partial information or even sometimes no decision at all from certain judicial districts, consequently there is no reliable data on this subject.

#### 2.1.5.3. Concerns, criticism

There is a recommendation that is constantly and regularly reiterated by human rights institutions: Belgium must, first, ratify the Optional Protocol to the Convention against Torture (OPCAT) and second, establish a National Human Rights Institution (NHRI) consistent with the "Paris Principles".

There is also an urgent need to reform the Penal Code and the Code of Criminal Instruction as they respectively date from 1878 and 1867 and, despite various reforms, they have not been totally redrafted which makes them not easily readable. Furthermore, the unsuitability of the Penal Code also results in prison overcrowding. Belgium needs to set up a reflection on incriminations and sanctions as many of them are not adapted to today's society.

Restrictions to the right to a lawyer, the right to be examined by an independent physician and the right to contact family members or other persons of the detainee's choice also give rise to concerns by various international organizations.

Another subject is the possibility to identify police officers while performing their duties. Currently, police officers involved in the maintenance of law and order, specifically during protests, do not wear any distinctive signs enabling their identification in case of incidents. Although a legislative reform came into force to enable citizens to identify members of the police in every circumstance, either by a nameplate or by an intervention

number, this Act cannot enter into force unless a Royal Decree is adopted to fix practical details. The concrete implementation of this obligation has been pushed back several times and it is feared that such an act will never be adopted, thus making this law not applicable.

ECHR decisions underline an unusual length of the investigation and Belgium was severely criticized for inaction. Sometimes delays are so long that courts end up just pronouncing a simple conviction as time has elapsed or facts are time-barred and cannot be prosecuted.

| 2. 2. Assesment of Belgium | | | 1 | 2 | 3 | no data/not relevant |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | | | X | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | X | | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | X | | | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | X | | | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | X | | |
| | | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | | X | |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | | X | |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | X | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | | X | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | | X | |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | X | | |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | X | | |
| | | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | X | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | | prohibited/never appears | might appear | should be included |
| | | | | X | | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission |
| | | | | X | | |
| | | Privacy | | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise |
| | | | | | X | |
| | | Attending police officer is present if privacy is not granted | | always the arresting police officer | the arresting officer might be present | never the arresting officer |
| | | | | | | X |
| | Right to inform a third person | | | obstructed | limited | effective |
| | | | | | X | |
| | Right to a lawyer | | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected |
| | | | | | X | |
| | | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation |
| | | | | | X | |
| | | | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided |
| | | | | | X | |

| | | | | |
|---|---|---|---|---|
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ |
| | | | | X |
| | Personal independence of the investigative body | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence |
| | | X | | |
| | Public perception of the investigation | not independent | number of concerns/not fully trusted | independent |
| | | X | | |
| | Evidentiary value of police officers' testimony | decisive | stronger than other testimonies | same as other testimonies |
| | | | X | |
| | Private prosecution | not possible | possible on paper but not in practice | available in practice |
| | | | | X |
| *Disciplinary proceedings* | Probability | not usual | | regular |
| | | X | | |
| | Relation to a criminal procedure | closely linked/subsidiary | parallel | independent procedures |
| | | | | X |
| | Possible dismissal of a police officer | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction |
| | | X | | |
| | Claim for damages | separate civil action based on a final and binding conviction | within the criminal procedure | separate and independent civil action |
| | | | X | X |

| | | | | | |
|---|---|---|---|---|---|
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| *Total* | **58** | | | | |

# 3. Bulgaria

## 3. 1. Summary of the Bulgaria Report

Bulgaria is one of the countries with the highest proportion of Article 3 violations established by the European Court of Human Rights: almost every fifths ECtHR decision which held Bulgaria responsible for a human right violation since 1992 was about torture, inhuman or degrading punishment or lack of investigation in the cases of such allegations. This report explains at least some of the structural, systemic causes for this disappointing situation.

### 3.1.1. Legal framework

#### 3.1.1.1. Duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

There is no provision in Bulgarian legislation adopted expressly for the purpose of prohibiting torture and ill-treatment.

According to the Criminal Act, anyone who unlawfully deprives another person of his personal freedom is to be punished with imprisonment of up to 6 years. If the deprivation of liberty was perpetrated by a public official in violation of his/her duties the punishment is imprisonment of 2 to 8 years. The qualified version of this crime is committed if the deprivation of liberty caused pain, if it was dangerous for the health of the victim or if it has lasted more than 48 hours.

Article 131 of the Criminal Act provides that any police officer who causes corporal injuryis guilty of a crime and is punishable with imprisonment of 3 to 15 years if the injury is severe, 2 to 10 years if the injury is moderate and up to 3 years if the injury is light. The excessive use of force by the police would fall under this article. It is the only one that mentions specifically police officers as perpetrators of violence. Cases where the harm caused pain and suffering but no injury occurred, the harm is considered as causing light corporal injury and the punishment is up to 1 year imprisonment or probation. When the perpetrator of the light corporal injury is a civilian he/she is punishable with up to 2 years imprisonment or probation. In case no injury was caused by a civilian apart from pain and suffering, the punishment is imprisonment of up to 6 months or probation, or a fine of 50 to 150 euros.

Besides these provisions, anyone forcing another person to do or not do something or to suffer something against his/her will by using violence, threatening or by abuse of his/her power is to be punished with imprisonment of up to 6 years.

Concerning the punishments, the Criminal Code provides that a person who perpetrated a crime might be released from criminal prosecution and sanctioned with administrative sanction (a fine of BGN 1 000 to 5 000, that is EUR 500 to 2 500) when all of the following conditions are met: (a) the punishment for the crime is deprivation of liberty of up to 3 years or other lighter punishment, when the crime is perpetrated with malice and up to 5 years imprisonment or lighter punishment when it is perpetrated because of negligence; (b) the perpetrator is not sentenced for a crime prosecuted under the general rules and was not released from criminal responsibility before; (c) the pecuniary damages of the

crime had been restored. This provision cannot be applied in cases when the harm caused severe corporal injury or death, when the perpetrator was drunk and when the crime was perpetrated against a public officer during their official proceedings.

#### 3.1.1.2. Disciplinary and ethics codes, other provisions

Police activities are governed by the Ministry of Interior Act which sets the main responsibilities and rights of police officers, the structure of police departments and the disciplinary proceedings rules against police officers. The basic principles of police conduct are the respect of the Constitution, the laws and the international treaties; respect of the rights and freedoms of the citizens and their dignity; operation in public; accountability; political neutrality; objectivity; protection of information and sources of information; protection of the officers whilst performing their duties and cooperation with other state and municipal bodies, citizens and legal entities.

#### 3.1.1.3. The power to detain, duration of detention

According to the Ministry of Interior Act a person may be detained by police officers if he/she is suspected having committed a crime, if he/she hinders the police officers to fulfil their duties after being warned and if he/she cannot be identified.

### 3.1.2. Institutional solutions

#### 3.1.2.1. Police body and detention monitoring

Bulgaria ratified the Facultative protocol of the UN Convention against torture and other forms of cruel, inhuman and degrading treatment or punishment in 2011. The role of the National Preventive Mechanism is vested with the Ombudsman who continues to perform its other duties. The Ombudsman is entitled to report any suspected crime to the prosecutor. The Ombudsman can act on own initiative when he/she estimates that necessary conditions for protection of the rights and freedom of the citizens are not met. The Ombudsman receives and replies complaints, conducts checks, issues recommendations for restoration of rights, mediates between authorities and victims, issues recommendations and suggestions for removal of obstacles of protection of human rights. Concerns were raised by the CPT after its visit in 2015 that the Ombudsman's Office was facing a reduced budget in comparison with the previous year which might impact the performance of its duties.

#### 3.1.2.2. Investigative body, its independence

There is no special body established to deal with cases where the perpetrator is a police officer. These cases were investigated by the military prosecutor until 2008, and the district prosecutor since then.

### 3.1.3. Specific safeguards

#### 3.1.3.1. Audio and video recording

Bodyworn cameras and dash board cameras are used in Bulgaria, but there is no publicly available information about their number or the places where they are used. According to the law the recording should be kept for 30 days and the investigating authority and

the victim should have unhindered access to it. There is an opinion that it is likely that police officers turn on and off the cameras when they think it necessary.

According to the law the persons placed in custody should be monitored constantly – directly or via a system of video-monitoring and they should be informed about this in advance. Cameras should be installed in the cells and all over in custody suites where detainees may be present in order to record and ensure security. Under an instruction of the Ministry of Interior the rooms for interrogation should be equipped with audio and video recording devices. Recording is obligatory in order to supervise the detainees' behaviour, the implementation of the internal rules and the respect of their rights. The recordings are to be kept in the department for 30 days.

The interrogation may be audio recorded upon the request of the detained person or on the initiative of the investigating authority. The detainee must be informed that the interrogation is being audio recorded. It is not allowed to make such recording on only a part of the interrogation or to have a part of the interview repeated for the purposes of the recording. After the interrogation the audio recording should be heard by the detained person. Additional explanations and testimonies should also be recorded and the interrogated person should confirm at the end that it reflects accurately his testimonies. The recording is attached to the minutes of the questioning with a memorandum indicating the number of the case, the names of the investigator and the detained person, the date of the interrogation and this memorandum is signed by both persons. The audio-recording might be heard only for the purpose of the investigation with permission of the prosecutor and in the presence of the detained person and after each hearing it has to be sealed again. The same procedure is followed mutatis mutandis for video recordings.

Despite these provisions, video and audio recordings of the interrogations seem to be rather an exception than the common practice. This perception is confirmed by an Ombudsman report in 2014. The Ombudsman carried out a monitoring project covering 21 police stations as part of his National Preventative Mechanism duties. In his report he emphasised the need of installing signal systems in custody suites to ensure the safety of the detainees. The report states that there are still places of detention where no video monitoring system is installed.

With regard to the recording of the action of a police officer by an outsider, the Constitution of the Republic of Bulgaria sets out a prohibition of filming, making pictures and recordings of the actions of a citizen without his/her notification and consent. However, as police officers are public figures, their right to privacy can be restricted in this aspect and they might be recorded. Nevertheless it is likely in practice that the phone of the victim would be taken and the pictures would be deleted.

#### 3.1.3.2. Medical examination

There is no unconditional obligation of medical examination upon admission into custody. Medical examination may be carried out upon request or when it seems necessary due to the detainee's health condition. The police officers should inform the detained person about their right to medical care. The detained person has to sign a declaration that he/she has been informed of this right and whether he/she would like to be examined by a doctor. Should the detainee refuse the examination, he/she should

also do it by a written and signed declaration. The parent, the guardian, the lawyer and a diplomat (in case the detained person is a foreigner) may also submit a request for medical examination. According to the doctors interviewed for the purposes of the report, the detainee should insist strongly to be examined objectively in practice. An exception from this rule is when there is a possible "institutional conflict" – when the detainee would be transferred or was transferred from another police department, prison or pre-trial detention facility. Then the examination is done almost in all cases. This alone is enough to assume that members of the system know that there is a significant possibility of people in detention to be ill-treated.

For each medical examination documentation is drawn up by the doctor. A copy of that should be given to the detained person or to his lawyer. However, except for the cases when the examination is carried out by an independent doctor, the detainee will not receive a copy of the medical files unless he/she especially requests for it. The police must keep a record of medical examinations and prescription in the custody suite and all entries must be signed by the doctor. It must be noted that according to the interviewed doctors either the examination or the record would be formal.

Different police departments have different practice, but usually the examination is provided by emergency medical centres or by the emergency units at the local hospitals. The detainee has the option of being examined by a medical practitioner of their choice at their expense. It is very rare that the practitioner is the personal doctor of the detainee. There is not any public information on the proportion of these examinations, but it is presumed to be very low due to the expenses and the time needed for the doctors to get to the place of detention. There are also police doctors but no reliable information about their number or activities is available. Special forensic medicine knowledge is not required.

A police officer of the same gender as the detained person may be present at the examination upon the doctor's request and this circumstance must be noted in the medical documentation and in the police record. However, the 2015 CPT states that "the delegation received a number of allegationsthat [...] the examination itself was often performed in the presence of police officers, with detainees usually being handcuffed".

If the examination raises reasonable suspicion of ill-treatment, physical abuse, illegal use of weapons or coercive measures, the police officer who was present at the examination should report in writing to the chief of the police department.

It is believed that the accuracy and the reliability of the documentation of the examination are questionable because the documents tend to reflect the explanations of the police officers concerning the possible reasons of the recorded injuries. Doctors do not take photos of the injuries and they do not give their opinions on the plausible origin of injuries. Although doctors are legally obliged to report any suspect of possible illtreatment, this requirement is not respected in practice.

#### 3.1.3.3. Right to a lawyer

The right to access to a lawyer is stipulated in the Constitution, in the Ministry of Interior Act, the MIR Instruction in case of detention and also in the Criminal Procedure Code.

The Constitution provides that everyone has the right to a lawyer from the moment of his/her detention or the moment when he/she is accused. It provides also that both the meetings of the detained/accused with their lawyer and their communication should be private.

If the detained person would like to receive legal aid under the Legal Aid Act the police officer on duty should inform immediately on the phone the lawyer chosen be the detainee and report the details about the detention of the person. The exact time when the lawyer is informed should be written in the declaration that the detained person fills in. The exact time when the lawyer came in the police department is to be entered in the book for visits. According to an Instruction by the Prosecutor General, the consultation with the lawyer should be carried out in a separate room immediately after the detention which means no later than 2 hours after the beginning of the detention and before the first interrogation. The lawyer should be ensured with immediate access to the detainee within 30 minutes after he/she appeared in the place of detention. However it is telling that none of the lawyers interviewed for the purposes of the research heard about this Instruction as it is not publicized on the website of the Prosecutor General.

The problem in practice is that the detainees are not always informed about the right to a lawyer and their request is not documented. The other problem is that a person could be detained for several hours without any accusation on account that there is "data that he had committed a crime" that is not presented to him/her. This may not be documented at all by the police officers and the detained person would be released without having the opportunity to prove that he/she has been detained. If the detention takes place during night time it is likely that even when the detainee asked for a lawyer and efforts were made a lawyer to be ensured this would not happen especially in small towns. In addition, it is a common perception that detainees have access to a lawyer often only if and when they are accused. In the meantime they might be interrogated as witness in which case right to a lawyer does not apply.

It must be also emphasized that an NGO 2004 study for the quality of legal aid established that the quality of the ex officio legal aid is consistently and significantly lower than the paid legal aid. In 2011 the average remuneration of an ex officio lawyer per case was BGN 183 (EUR 91). Standards for quality, assessment and control over the ex officio legal aid were adopted only in 2014. The assessment of their work by the National Bureau for Legal Aid should be made but the Bureau has not published any report about the quality of the legal aid so far.

#### 3.1.3.4. Right to inform a third person

Under the Ministry of Interior Act, the detained person has the right to inform a third person and they have to claim in a written declaration if they intend to exercise this right. The Instruction of the Minister of Interior obliges the police officer on duty to inform this person immediately. The law is silent on what happens if this person to be informed is not available. It is believed that the third person would not be informed in the majority of the cases and the 2015 CPT report states that "The vast majority of persons interviewed by the delegation stated that they had not received information about their rights after being detained by the police, had not been able to notify a third party of their custody"

#### 3.1.3.5. Risk of being pursued for false accusation

The complainant is running a very likely risk of being pursued for false accusation. This criminal offence is regulated under Art. 286 of the Criminal Code.

### 3.1.4. Mechanisms for dealing with torture and ill-treatment

#### 3.1.4.1. Complaints system

##### *3.1.4.1.1. Procedures upon complaint*

A detainee may file a complaint against alleged unlawful detention with the court and the court should issue a decision immediately.

Complaints of alleged ill-treatment may be filed at the local district court (initiating a criminal procedure) and also at the chief of the Police Department.

#### 3.1.4.2. Criminal proceedings

Until 2008, criminal charges against police officers were prosecuted by the military prosecutor and tried before the military court. However, in 2008 cases against police officers were transferred to civilian criminal courts as it was estimated that some military courts had very low workload and should be abolished. Arguments about better access to justice for the victims in the civilian courts were also raised.

The Ministry of Interior declared upon special request that during the period of 2000-2015 there were 1099 disciplinary proceedings and 138 criminal proceedings against police officers for ill-treatment. As a result of these procedures, only 11 officers were sentenced to deprivation of liberty and only 18 were dismissed. On the other hand, the courts that replied to the requests submitted in the framework of this project provided information about 101 police officers sentenced with fines and 28 with deprivation of liberty, altogether 129 sentenced police officers in criminal proceedings during the period between 2000 and 2015. According to the courts (that replied) out of 212 cases at least 172 were for "light corporal injury" and the outcome is that 101 fines were imposed and 28 police officers were sentenced to conditional imprisonment probably for moderate or severe corporal injury and unlawful detention.

Although the information received from the courts differs a lot from the data provided by the Ministry of Interior, it can be concluded from the available data that the majority of the officers found guilty continue to serve as police officers.

There is also a study carried out in 2011 by a human rights lawyer working at the Bulgarian Helsinki Committee which contains a detailed overview of the ECtHR cases between 1998 and 2010 concerning police brutality in Bulgaria. The study states that in each and every case of the 27 decisions Bulgaria was convicted for inadequate investigation. In these cases none of the police officer perpetrators were sentenced effectively or were subject to disciplinary sanction either. Some of the officers were even raised in their position.

### 3.1.4.3. Disciplinary action

Apart from criminal proceedings, police ill-treatment may imply a disciplinary proceeding in case of breach of the Ministry of Interior Act or when police officers violate their duties, powers and ethical code rules. Disciplinary proceedings are governed by the Ministry of Interior Act, and the sanctions are reprimand, written warning, prohibition of the person to be raised in position for a period of 1 up to 3 years, warning for dismissal and dismissal. The superior who pursues the disciplinary procedure is not obliged to report the disciplinary offence to the prosecutor if it is suspected to constitute a criminal offence.

Criminal and disciplinary proceedings may be pursued at the same time. Disciplinary proceedings are opened even in cases when criminal proceedings are being conducted, in such cases disciplinary sanctions should be imposed after the final and binding judgment of the criminal court becomes definitive.

According to the data provided by the Ministry of Interior on special request, 1099 disciplinary proceedings were initiated upon complaints of detainees. Out of all 1146 complaints, 97 complaints against unlawful detention were found unreasoned, 158 complaints against corporal injury were found unreasoned and 45 complaints against forced interrogation were found unreasoned (altogether 300). Out of the remaining 846 internal investigations carried out by the chief of the police departments the sanctions imposed to police officers were as follows: 3 officers were reprimanded, 18 received written warning, 75 were sanctioned with written warning for dismissal, 7 were sanctioned with prohibition to participate in the contest for raising in their position and 18 were dismissed (altogether 121).

### 3.1.4.4. Victim's rights

Under the Criminal Procedure Code the victim is a person who suffered pecuniary and non-pecuniary damages. During the pre-trial proceedings the victim has the right to be informed about all the rights he or she is entitled to during the criminal proceedings; to be protected and his/her relatives to be protected; to be informed about the progress of the criminal proceeding; to participate in the proceedings; to pose questions and objections; to complain against all acts that lead to discontinuation of the proceeding; to have a lawyer. The investigating body that initiates the proceeding informs immediately the victim about the proceeding. The victim's rights can be exercised from the moment he/she asks to participate in the pre-trial proceeding and declares his/her address for notification. The victim has the right to ask for cooperation of the Ministry of Interior for gathering evidence and data, which he/she cannot do by him/herself.

Unlike in the criminal procedure, the victim has no procedural rights during disciplinary proceedings.

### 3.1.4.5. Private prosecution

The victim who has suffered damages of a crime has the right to participate in the court proceeding as a private prosecutor. If criminal proceedings are not initiated by the public prosecutor or the latter refuses to press charges, the private prosecutor cannot initiate them. The application for participation in the proceedings as a private prosecutor may be written or oral. It should contain information about the victim and the circumstances

on which it is based and should be submitted before the first instance court opens the court investigation phase. The private prosecutor carries out the prosecution together with the prosecutor and may continue it even after the public prosecutor decides to stop it. The private prosecutor has the right to be informed about the proceeding and to have copies of the documents; to present evidence; to participate in the court proceeding; to pose questions and objections; to complain against acts of the court when they violate his/he rights and interests (including first instance court sentence).

The victim who has suffered damages of a crime which is investigated only when he/she applies for it is a private complainant. He/she may initiate proceeding and carry out prosecution before the court. The private complaint should be written and should contain information about the private complainant, the person against whom it is submitted and about the circumstances of the crime. A state fee is paid for the submission of the complaint and it could be submitted only within a 6-month period after the victim learned that the crime has been committed or after the victim was notified that the pre-trial proceeding was ceased because the crime is to be investigated only after submission of the private complaint of the victim.

The rights of the private complainant are: to read all documents of the proceedings and to make copies of them; to present evidence; to participate in the court proceeding; to pose questions and objections; to complain against all acts of the court that violate his/her rights and interests. He/she might also be indicter during the court proceeding.

There is an opinion that the avenues for private prosecution could be improved if victims were given the right to prosecute any crime (not only the light corporal injury) perpetrated by police officers instead of the prosecutor and were entitled to gather evidence effectively and to participate in all proceedings.

#### 3.1.4.6. Civil action, tort

There is no possibility to launch civil procedure independently of a criminal court proceeding. The victims may claim compensation in a criminal proceeding. This should be done until or during the first court hearing of the criminal proceeding takes place.

### 3.1.5. Experience in practice

#### 3.1.5.1. Data available

Statistical data about the number of perpetrated crimes and proceedings about them is gathered by the National Statistical Institute (NSI). However, the NSI does not gather detailed data about each paragraph of the Criminal Code. Crimes perpetrated by police officers are provided for in certain paragraphs of certain articles. In this way there is no unified statistical data at national level about the crimes perpetrated by police officers. Special requests were sent for the purposes of this report to military courts, regional courts and the Ministry of Interior asking about the number of complaints, the number of indictment acts and the number and type of sentences issued. However, this data is not representative, and it also must be noted that data coming from the courts differ significantly of that coming from the Ministry of Interior. There is no reliable information thus on the success rate of prosecution, nor on the number of perpetrators, the severity of sanctions and the duration of procedures.

However, NGO–led monitoring projects show an increased number of ill-treatment, given that it finds that above over 1/3 of detainees who were subsequently sentenced to effective imprisonment were ill-treated either at the time of detention or afterwards, or in both cases. Some cases involve inflicting severe pain with the purpose of coercing information or for punishment, i.e. torture.

#### 3.1.5.2. Concerns, criticism

The last report of the Committee of the Prevention of Torture (CPT) on Bulgaria (2015) states that "the rising number of allegations of deliberate physical ill-treatment of persons detained by the police leads the CPT to conclude that men and women (including juveniles) in the custody of the police continue to run a significant risk of being ill-treated, both at the time of apprehension and during subsequent questioning. Very little progress, if any, has been made as regards guaranteeing the practical implementation of the legal safeguards against police ill-treatment".

The report shows that a number of issues are criticized. Firstly, there is no special oversight institution apart from the Ombudsman, who has limited – and even declining – resources, thus his ability to perform as National Preventive Mechanism is of serious concern. The independence and effectiveness of investigation of police ill-treatment and torture cases is subject to criticism too. It is presumed that allegations of police illtreatment would not be investigated properly and impartially.

Secondly, the practical implementation of the legal safeguards against police ill-treatment is also largely criticised. Detainees have no access to information about their rights, and the vast majority of them is not able to notify a third party of their custody and does not benefit from the presence and the services of a lawyer from the very outset of their deprivation of liberty. Medical examination is also a specific issue as it is often limited to a few general questions without any physical inspection taking place or the injuries being recorded. The provision of legal aid is problematic as it is either not ensured from the moment of the detention or the ex officio lawyers on duty refuse to ensure it when called.

The lack of centrally gathered, structured and reliable data hinders both the State and the public to have a comprehensive view of the situation. Moreover, concerning the limited information available, there is a considerable discrepancy between officially provided data and the numbers that turn up in independent studies.

Inefficiency of the investigation and sentencing practice of police ill-treatment is also widely criticised at both domestic and international level.

| 3. 2. Assesment of Bulgaria | | | 1 | 2 | 3 | no data/not relevant |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | X | | | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | X | | | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | X | | | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | | | | X |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | | | X |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | | | X |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | X | | |
| | | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory | |
| | | | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | X | | |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | X | | |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | X | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | X | X | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | | X | |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | X | | |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | X | | |
| | | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | X | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | prohibited/never appears | might appear | should be included | |
| | | | X | | | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission | |
| | | | | X | | |
| | | Privacy | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise | |
| | | | | | X | |
| | | Attending police officer is present if privacy is not granted | always the arresting police officer | the arresting officer might be present | never the arresting officer | |
| | | | | | | X |
| | Right to inform a third person | | obstructed | limited | effective | |
| | | | X | | | |
| | Right to a lawyer | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected | |
| | | | X | | | |
| | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation | |
| | | | | X | | |
| | | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided | |
| | | | | X | | |

| | | | | |
|---|---|---|---|---|
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ |
| | | | X | |
| | Personal independence of the investigative body | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence |
| | | | X | |
| | Public perception of the investigation | not independent | number of concerns/not fully trusted | independent |
| | | X | | |
| | Evidentiary value of police officers' testimony | decisive | stronger than other testimonies | same as other testimonies |
| | | | X | |
| | Private prosecution | not possible | possible on paper but not in practice | available in practice |
| | | | | X |
| *Disciplinary proceedings* | Probability | not usual | | regular |
| | | X | | |
| | Relation to a criminal procedure | closely linked/subsidiary | parallel | independent procedures |
| | | X | | |
| | Possible dismissal of a police officer | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction |
| | | X | | |
| | Claim for damages | separate civil action based on a final and binding conviction | within the criminal procedure | separate and independent civil action |
| | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| *Total* | **41** | | | | |

# 4. Czech Republic

## 4. 1. Summary of the Czech Republic Report

The Czech Republic introduced major institutional changes in 2012 to meet the obligations arising from the international framework against torture and illtreatment. Experience shows though, that a formally independent institution that maintains the same persons in charge and continues to operate among the long-established personal links has little value without further guarantees. The report suggests that the Czech Republic took the path of Northern Ireland, but the road is proving more difficult.

### 4.1.1. Legal framework

#### 4.1.1.1. Duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

Criminal Code contains a specific provision prohibiting torture and other inhuman or cruel treatment, but does not cover degrading treatment. Section 149(1) provides that any person who causes physical or mental suffering to another person through torture or other inhuman and cruel treatment in connection with the exercise of his powers of a State authority, local government body, a court or other public authority, shall be punished by imprisonment between six months to five years. However, the Criminal Code does not contain a definition of torture which led to criticism by the Committee against Torture. In practice, this provision is not in use, there has been no conviction for the crime of torture since the entering into force of the Criminal Code in 2010.

In case of alleged ill-treatment, police officers are investigated for the criminal offence of abuse of power by public official. In accordance with this provision, "[a] public official who, with an intent to cause damage or serious harm to someone else or to acquire an unjust benefit for himself or for someone else (a) exercise his powers in a manner contrary to the law; (b) exceeds his authority; or (c) fails to fulfil a duty pursuant to his competency, shall be punished by imprisonment between one to five years or by a prohibition to hold a public office." Further paragraphs of said section contain qualified versions of the offence. Aggravating circumstances justifying stricter punishment mostly concern the extent of damage or harm caused by the perpetrator. The notion of "damage" covers material damage, i.e. damage quantifiable in money, whereas the notion of "harm" covers immaterial harm, i.e. harm to the rights, health, moral damage etc.

In case when a bodily or mental harm is caused to the victim, it is possible to prosecute the police officer at the same time for committing the crime of abuse of power by a public official and the crime of bodily harm, which can be committed by anyone, not only by the public official.

Police Act details the duties and powers of the Police, including an exhaustive list of coercive measures that can be used. Officers must respect the principle of proportionality and comply with the detailed provisions concerning the lawful use of the coercive measures listed in that act. Head of the police department has an obligation to inform a competent public prosecutor about injury or death caused by the use of such a coercive measure. It specifies the grounds for lawful detention and contains provisions

on the circumstances of the detention, such as on the use of handcuffs and medical examination. Police Act expressly obliges police officers who witness such treatment to take measure for preventing it and to report it immediately to their superior.

Service Act rules the disciplinary liability and disciplinary proceedings of the serving police officers. Generally, the conviction of a police officer for deliberate crime implies a release from service.

#### 4.1.1.2. The power to detain, duration of detention

Generally, the detention can last no longer than 24 hours.

### 4.1.2. Institutional solutions

#### 4.1.2.1. Police body and detention monitoring

The role of the National Preventive Mechanism is carried out by the Ombudsman (Public Defender of Rights), elected by the Chamber of Deputies for six years. The Ombudsman is entitled to visit all places where persons are or might be restricted in their freedom by public authorities. The visits are usually conducted on the own initiative of the Ombudsman, but the person restricted on freedom is also entitled to lodge a complaint to the Ombudsman. The Ombudsman establishes a report on each visit, containing its findings and recommendations.

Public prosecutors also exercise supervision over detention facilities. Unlike the Ombudsman, the prosecutor has the power to issue orders requiring compliance with regulations concerning pre-trial detention or imprisonment and to order release of the person from the facility if the restriction of the personal freedom is unlawful.

#### 4.1.2.2. Investigative body, its independence

General Inspection was established in 2012 in order to safeguard the independence of investigation of police ill-treatment cases, given that the former Police Inspectorate (InspekcePolicie) which together with the Police of the Czech Republic fell under the authority of the Ministry of Interior and was criticized (also by the European Court of Human Rights) for the lack of independence. Newly established General Inspection now has a formal status of independent organizational unit of the State as armed security corps, and not being a department of the Ministry of Interior any longer, it is independent of the Ministry of Interior. The director of the Inspection is appointed by and responsible to the Prime minister. Tasks of the Inspection are executed by members of the Inspection who are performing service duty in the Inspection (unlike before, the Inspectors are not members of the Police). However, serious deficiencies with regard to the independency of investigation carried out by General Inspection still persist. The main concern is that after the demise of the Police Inspectorate, vast majority of its workers (if not all of them) became members of the General Inspection. So the new "independent" General Inspection de facto was composed of the same people who served at the former Police Inspectorate, therefore the independence and the ability to conduct effective investigations remained disputable.

### 4.1.3. Specific safeguards

#### 4.1.3.1. Audio and video recording

Police officers have the possibility to use body cameras if they find it necessary, and they can decide when to turn it on and off. Since the Czech Supreme Administrative Court (relying on the case law of European Court of Human Rights) concluded that it is a responsibility of the State to prove that the injuries were not caused by ill-treatment, if a police video-recording is incomplete and misses key moments of the action, it is a failure of the State to bear the burden of proof.

Dash board cameras can be found in the vast majority of the police vehicles. If a vehicle is equipped with a camera, recording starts at the moment of departure of the vehicle from the police station and ends after the vehicle returns to the station, with no possibility for the police officer to intervene in the recording. Dash board cameras are placed behind the front and rear window of the car, but they do not record the inside of the vehicle.

Not all of the police stations are equipped with video recording devices. Criminal Procedure Code does not require audio or video recording of the interrogation, such recording remains thus optional.

At the same time, anyone from the public can make a camera recording of the police action. When performing police action, police officers do not act as private individuals, which means that making video or audio recording of their actions cannot be regarded as interference with their personal rights.

#### 4.1.3.2. Medical examination

There is no requirement for routine medical examination of a detainee upon admission. A detainee should be medically examined if he or she is under the influence of drug or alcohol or there is some indication of injury or serious illness. Medical examination is also necessary when a detainee falls ill, suffers injuries or attempts suicide in custody. According to the Act on Public Health Insurance, the right to have the doctor of one's own choice does not apply to the medical examination upon admission into custody. In other cases, the police are obliged to respect the choice of the doctor of the detained person and enable the doctor to examine the detained patient. Ombudsman reports state however that in practice, although medical examinations are mostly ensured upon request, the detainees' right to the doctor of their own choice is not respected, neither is ensured the privacy during the medical examination. It is also assumed that detainees are not informed of these rights. Medical examinations are provided by contracted medical facilities or, in emergency cases, by health emergency service. Examinations are carried out by civilian medical practitioners without the requirement to have special forensic medicine knowledge. In case of injury, doctors are not entitled to provide their assessment on the possible reasons of it. This question is to be dealt with in the expert opinion, if requested in the criminal proceedings by any of the parties. Doctors normally do not take photos of the injury, police officers are more likely to do it.

During the medical examination at least one police officer of the same sex as the detained person shall keep visual contact with this person. There is no such requirement that it shall be different police officer than that who was involved in apprehension of the

complainant. In practice, it is likely that the officer who performs the apprehension will be in charge the whole time.

There is a general notification obligation as regards the crime of torture and other cruel or inhuman treatment and if the doctor suspects that such crime was committed, he or she must inform the police. In practice, however, this does not happen (with the exception of serious cases) and it is up to the victim to take further steps, such as filing a criminal complaint. In any case, the doctor is not entitled to send the medical documentation to the prosecutor or any other investigative authority for this purpose, although it is indicated that an amendment to the current legislation is being prepared to oblige doctors to report possible ill-treatment cases.

#### 4.1.3.3. Right to a lawyer

Criminal Procedure Code provides that everyone is entitled to legal aid when interrogated, and the Police must enable the detainee to exercise this right and to have a lawyer present at the interrogation. However, this rule only applies for the interrogations carried out under the Criminal Procedure Act within a criminal procedure. Police Act does not contain such guarantees, so the same obligations do not bind the Police when performing interrogations under the Police Act. This discrepancy seems to give ground for a restricting practice concerning the exercise of the right to a lawyer. This practice was rejected by the Constitutional Court which came to a conclusion that anybody is entitled to the presence of lawyer, regardless of whether the interrogation is carried out under the Criminal Procedure Code or the Police Act.

If the lawyer is unavailable within the 48 hours which is the maximum period of detention, the right to a lawyer can be restricted. The law does not set out a minimum period for notice to the lawyer about the start of the interrogation, so it depends on the police officer in charge whether they wait for the arrival of the lawyer or not. Given that the detainee may refuse to testify without the presence of their solicitor, officers usually try to agree with the lawyer on a suitable time.

#### 4.1.3.4. Right to inform a third person

The detained person has a right to request that the Police inform a third person about the detention, provided that this would not jeopardise another police action. There is no specified period in which the third person shall be informed about the detention. Also, it is not obligatory to inform a third person if unreasonable difficulties occur in contacting him/her, however, as soon as these obstacles cease to exist, the police shall give the notification. Although the law does not guarantee a right of the detainee to speak with third persons, in practice the police might allow the detainees to make a phone call themselves.

### 4.1.4. Mechanisms for dealing with torture and ill-treatment

#### 4.1.4.1. Administrative procedures upon complaint

In case of misconduct of a police officer, an administrative procedure can be initiated by filing a complaint with the authority where the alleged misconduct occurred. General provisions of the administrative procedure Act apply. The authority is obliged

to investigate the complaint, and it may interrogate the persons involved if it seems appropriate. The complaint procedure must be closed within 60 days. If the complaint was found to be justified or at least partly justified, the administrative authority shall immediately take necessary remedy measures. The specific form of these remedy measures is not specified by the law. The procedure is subject to the review of the superior authority.

Any individual who claims that an administrative authority interfered unlawfully in his/her rights may bring an action before the administrative court within two months from the day when the plaintiff became aware of the interference, and no later than within two years of the moments when the interference have occurred. This action aims a declaration of the unlawfulness of the interference in order to provide sufficient ground for compensation under the State Liability Act.

#### 4.1.4.2. Criminal proceedings

Anybody who in a credible manner learns that the crime of torture and other ill-treatment has been committed is obliged to report it to the Police or to the public prosecutor. Failure to report it constitutes a criminal offence. This applies to the doctor who performs the medical examination of a detainee claiming police ill-treatment and also to a police officer, should he/she be witness to such ill-treatment. In practice, police ill-treatment related procedures are initiated upon the complaint of the victim though.

If a complaint addressed to the Police suggests that a crime has been committed, the police are obliged to refer the case to the General inspection of the Security Forces. General Inspection then carries out an investigation and after it is established that a crime was committed and it was sufficiently justified that it was committed by a particular person, a criminal prosecution shall be initiated. If on the other hand it turns out that the act committed does not qualify as a crime, the case can still be referred to the competent authority for disciplinary or misdemeanour proceedings. The prosecutor supervises the legality of the preliminary proceeding. There is a concern with regards to the registration of the complaints on ill-treatment, as pointed out by the Committee against Torture. The main concern is that after a victim of ill-treatment files a criminal complaint, General Inspection tends not to initiate the investigation considering that there is no indication of crime. Accordingly, the "criminal complaint" (governed by the Criminal Procedure Code) is qualified as a mere "complaint against the inappropriate conduct of the official or maladministration" (governed by the Administrative Procedure Act) and is referred to the Police, which further deals with the complaint. In such cases, it is the same organ to establish the facts of the alleged misconduct in which the perpetrator serves. This procedure then cannot lead to criminal conviction of the officer concerned.

Regarding the number of criminal prosecutions related to police ill-treatment, the General Inspection provided data for 2014 in its annual report. It shows that 10 cases out of the 13 relevant procedures throughout the year were prosecuted as abuse of power by a public official and the remaining 3 was prosecuted as torture and other inhuman or cruel treatment. No judgement has been passed in these procedures yet.

If a complaint suggests that a crime was committed by a member of the Police, the preliminary proceedings must be carried out by General inspection of the Security Forces under the supervision of the prosecutor. In the context of this supervision,

the prosecutor is authorised to give binding instruction for the investigation, require police files and other documents and materials, participate in the investigation, annul unlawful or unjustified decisions and measures and replace them by his own or require that investigation is carried out by another officer.

The law provides persons allegedly subjected to ill-treatment with remedies against failure of the investigating authority to carry out effective investigation. If the victim of the ill-treatment believes that their case was not investigated properly, they may file a request for a review of the procedure of the police authority to the competent prosecutor. If the victim is not satisfied with the outcome of the prosecutor, he or she may further turn to the prosecutor of higher level with a request for execution of supervision (review of the procedure of the police authority to the competent prosecutor and subsequent constitutional complaint).

The preliminary proceedings are supervised by the public prosecutor who is entitled, for example, to transfer the case, discontinue or stop prosecution, or approve settlement. If the results of the police investigation are sufficient enough to bring the case before the court, the public prosecutor submits an indictment. There is no possibility of private indictment according to the Czech criminal law.

In Czech criminal procedure, standard of proof beyond reasonable doubt applies. Moreover, the courts have to follow the principle of discretionary assessment of evidence which means that it depends on the judge which of the evidence proposed will be evaluated as conclusive for proving the guilt of the accused. All of the available evidence shall be taken into consideration and if some of are not, the court have to provide justification. Therefore, even if according to the forensic opinion it is "only" possible that story of the complainant is true, together with other available evidence; the judge may come to guilty verdict.

#### 4.1.4.3. Disciplinary action

Violations of the obligations arising from the police service that does not constitute a crime or misdemeanour may be handled in disciplinary proceedings. This procedure is initiated ex officio and carried out by the chief officer. Disciplinary sanctions are written reprimand, reduction of their tariff (tariff is an essential component of the income of the officer) by up to 25% for a maximum period of three months, withdrawal of the Service Medal or withdrawal of the service rank, which constitutes an obligatory ground for dismissal from service. Disciplinary sanction can be only imposed within two months after the chief officer became aware of the disciplinary offence of the officer and no later than one year after the offence was committed.

#### 4.1.4.4. Victim's rights

The victim of a crime has legal standing as a party to the criminal proceedings if he or she had suffered bodily harm, property damage or non-material damage as a result of a criminal offense, and thus has the right to make proposals for additional evidence, access to the file, right to participate in the plea bargain negotiations, right to participate in the trial and public hearing held on the appeal or plea approval and right to provide closing speech before the end of the proceedings. The injured party has also right to claim damages from the accused in respect of damage caused by a criminal offense. The

Crime Victims Act provides additional rights to the victim, such as right for professional assistance (psychological, social and legal counselling or restorative programs) before during and after the criminal proceedings, right to information relating to the case in which a person became a victim of crime, right to protection from imminent danger, right to protection of privacy, right to protection from secondary victimisation and right to financial assistance.

Nevertheless, the condition for the efficient use of the above mentioned rights is that a criminal prosecution should be initiated, which in fact is often denied as part of a rather questionable practice.

#### 4.1.4.5. Civil action, tort

Although the administrative action is not a prerequisite for a subsequent claim for damages, the position of the claimant is much more advantageous once the administrative judge ruled on the unlawfulness of the interference. The claim for damages must be brought to the competent Ministry – in case of the Police it is the Ministry of Interior. Limitation period for bringing the claim is three years in case of material damage and six months in case of immaterial damage. In case of refusal, the claimant may launch a civil action for damages at the civil court.

#### 4.1.4.6. Constitutional complaint

After having exhausted all available remedies, a person might launch a constitutional complaint before the Constitutional Court, claiming that his/her fundamental rights guaranteed by the Czech Charter of Fundamental Rights and Freedoms were violated. Recently, some of the judges of the Constitutional Court have begun to apply the case law of European Court of Human Rights regarding state's obligation to carry out effective investigation. There are thus some recent decisions declaring lack of the effective investigation into potential cases of ill-treatment or right to life infringement.

#### 4.1.4.7. Exclusion of evidence

### 4.1.5. Experience in practice

#### 4.1.5.1. Data available

There is no reliable data on the number of the registered police ill-treatment related cases. A number of these cases are investigated as abuse of power by a public official, which covers a variety of other misconducts, while in others only disciplinary proceedings are initiated.

In 2012, the UN Committee against Torture expressed concern about the problematic registration of complaints and the independence of the system to assess them. In particular, the Committee was concerned about the discrepancy between the number of complaints of torture and ill-treatment in places of deprivation of liberty, especially those described as justified and partially justified, and the absence of prosecution in this connection for torture or ill-treatment committed by police officers and prison staff.

As to the length of an average criminal procedure concerning police ill-treatment, it is impossible to reliably establish it due to the lack of data.

#### 4.1.5.2. Concerns, criticism

Despite the steps towards a more effective prosecuting of police ill-treatment cases, marked mainly by a formal institutional reform, the lack of further guarantees in the legal framework plus the serious deficiencies in the actual implementation give rise to a number of concerns.

Firstly, on the legislative level, not only the lack of the definition of the concept of torture causes problems, but also unwillingness to properly investigate the allegations of ill-treatment by public officials, which is demonstrated by the fact that so far no one has been convicted for committing the crime of torture and other cruel or inhuman treatment in the Czech Republic. In this regard, another problem arises. Crime of torture and other ill-treatment, as governed by the Criminal Code, does not cover degrading treatment. This may then easily lead to situations that some cases of ill-treatment of lower severity will not be prosecuted even though they would fall under the scope of article 3 of the European Convention of Human Rights.

The Czech Constitutional Court has raised criticism concerning the abusive use of coercive measures which goes beyond that is proportionate and necessary to achieve the objective pursued. One of the reasons might be the lack of specific rules on the use of these coercive measures, given that the general principles of necessity and proportionality set out in the Police Act seem to be eventually inefficient in the prevention of abuses in practice.

Secondly, the implementation of the declared rights is not evident in practice. Right to request medical examination by the doctor of one's own choice seems to be the most problematic. Detained persons are not informed about this right and thus it is being exercised only in minimum cases.

Lack of camera recording of a police action is also a problem in general. The action itself is either not recorded at all, or the recording does not include the important part when there is a conflict between a police and other persons. This problem has been also addressed by the Constitutional Court, which recommended the Police to take recording of situations of conflict.

Another subject is that victims are often being denied their procedural status of injured party and related rights, especially the right to access the file. This is because investigating authorities (the police or General Inspection) argue that the case was terminated within the phase of initial investigation and no criminal prosecution was initiated. Without ensuring these rights, and the access to the file in particular, a victim cannot adequately assess how their criminal complaint has been dealt with and whether the investigation was effective enough. Consequently, using of available remedies is limited. The Constitutional Court raised concerns about this practice.

As far as the status of the investigative body is concerned, the Constitutional Court expressed a concern whether General Inspection can be considered an independent authority in this case, if the investigation is carried out by the same persons as was in the Police Inspectorate, which lacked the independence. The Court particularly pointed out the fact that almost all of the member of the previous Inspectorate have now been taken over to General Inspection. Formal independence of the General Inspection (which is no longer subordinated to the Ministry of Interior) according to the Court is

not sufficient to guarantee also independence in practice, especially providing that the General Inspection is predominantly occupied by former members of the bodies, whom it should investigate.

Work of General Inspection also lacks the transparency. For example the Inspection refuses to disclose information on whether persons who had committed serious misconduct in the past still work in the Inspection.

Finally, an insufficient control of the General Inspection is also an issue. Control of the Inspection in criminal proceedings shall be provided by prosecutors. In practice, however, in many cases prosecutors fail to thoroughly address the complaints of the victims of ill-treatment on the lack of effective investigation.

| 4. 2. Assesment of the Czech Republic | | | 1 | 2 | 3 | no data/not relevant |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | | X | | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | X | | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | X | | | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | | | X | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | | X | |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | By third person | prohibited | possible but obstructed | possible and accepted |
| | | | | | X |
| | | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory |
| | | | | X | |
| | | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | | X | |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | | X | |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | X | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | X | | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | X | | |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | | | X |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | | X | |
| | | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | prohibited/never appears | might appear | should be included |
| | | | X | | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission |
| | | | | X | |
| | | Privacy | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise |
| | | | X | | |
| | | Attending police officer is present if privacy is not granted | always the arresting police officer | the arresting officer might be present | never the arresting officer |
| | | | X | | |
| | Right to inform a third person | | obstructed | limited | effective |
| | | | | | X |
| | Right to a lawyer | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected |
| | | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Right to a lawyer | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation |
| | | | | | X |
| | | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided |
| | | | | | X |
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ |
| | | | | | X |
| | Personal independence of the investigative body | | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence |
| | | | X | | |
| | Public perception of the investigation | | not independent | number of concerns/not fully trusted | independent |
| | | | X | | |
| | Evidentiary value of police officers' testimony | | decisive | stronger than other testimonies | same as other testimonies |
| | | | | | X |
| | Private prosecution | | not possible | possible on paper but not in practice | available in practice |
| | | | X | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Disciplinary proceedings* | Probability | | not usual | | regular | |
| | | | | | | X |
| | Relation to a criminal procedure | | closely linked/subsidiary | parallel | independent procedures | |
| | | | | | X | |
| | Possible dismissal of a police officer | | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction | |
| | | | | | | X |
| | Claim for damages | | separate civil action based on a final and binding conviction | within the criminal procedure | separate and independent civil action | |
| | | | | | X | |
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public | |
| | | | | X | | |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public | |
| | | | | X | | |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public | |
| | | | | | | X |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public | |
| | | | | | | X |
| *Total* | **64** | | | | | |

# 5. England and Wales

## 5. 1. Summary of the England and Wales Report

The system of investigation into police misconduct in England and Wales has developed over the past few decades into one that aims to ensure no incident is left unchallenged, through an ever more independent investigation process. This evolution of the process has not yet been completed, with current reform proposals. Despite these efforts, the current system remains a complicated and multi-layered process, which is criticised for being bureaucratic, slow, and focused on whether something is, or is not, misconduct and how a case should be labelled, investigated, recorded and appealed rather than on addressing grievances. In this fragmented system with much room for discretion, and 43 force areas across England and Wales, forces take differing approaches to incidents and it is only the most serious cases that are dealt with entirely independently.

### 5.1.1. Legal framework

#### 5.1.1.1. Duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

The main statute governing the powers and duties of the police is the Police and Criminal Evidence Act 1984 (PACE). It is accompanied by the PACE Codes of Practice, which prescribe practice in the following areas: stop and search; arrest; detention; investigation; identification; and interview. The PACE Codes are not law, and breach of them does not therefore constitute a criminal act or give rise to a specific legal remedy. Also, a breach of the Codes would not render an officer liable to disciplinary proceedings, nevertheless, the Codes are admissible as evidence in all criminal and civil proceedings. Evidence can be excluded from criminal proceedings where it is shown to have been obtained in breach of a Code. These codes are kept under review by committees, who may seek to amend them from time to time, by statutory instrument requiring the approval of Parliament. Because these are public bodies, any proposed changes are usually put out for public consultation prior to adoption.

Torture is prohibited by common law and by several Acts of Parliament (including the Human Rights Act 1998, which brings the ECHR into domestic law), as well as the various international conventions prohibiting torture and ill-treatment that the UK has ratified. The Criminal Justice Act 1988 creates an offence of torture where a public official or a person acting in an official capacity, whether or not the victim is a British citizen, and whether or not it took place in the UK, "intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties."

Police officers may use force in carrying out their duties as long as it is necessary, proportionate and reasonable in all of the circumstances. Actions which go beyond "reasonable force" are subject to disciplinary action, and, if they constitute a criminal offence, prosecution. At that stage, a police officer is treated as any other private citizen and charged with the relevant criminal offence.

There is a separate, common law offence of misconduct in public office, which applies only to public office holders (including police officers) and is committed when the office holder acts/fails to act in a manner which amounts to a breach of the duties of that

office. Where there is clear evidence of other statutory offences (e.g. bodily harm), those offences should form the basis of the case against the police officer, and the 'public office' element should be put forward as an aggravating factor at the point of sentencing. This offence is therefore reserved for situations where there is no statutory offence, but the behaviour of the police officer should nevertheless be treated as criminal, or where it would be inappropriate to use the statutory offence (e.g. because of evidential difficulties), or where the maximum sentence for the statutory offence is entirely insufficient to reflect the seriousness of the misconduct. The maximum sentence for misconduct in public office is life imprisonment.

#### 5.1.1.2. Disciplinary and ethics codes, other provisions

In England and Wales, a police officer's role is conceived of in terms of responsibilities and positive duties. The Code of Conduct for Police Officers and subsequent Standards of Professional Behaviour set out primary duties which include that force may only be used when it is "necessary, proportionate and reasonable in all the circumstances" and impose a duty to challenge and report improper conduct. Failure to comply with the Code of Conduct or the Standards may result in disciplinary action. Prescribed standards of behaviour provide a measure against which to identify ill-treatment by the police.

A Code of Ethics was created by the College of Policing in 2014 and elaborates on these principles and the Standards of Professional Behaviour. The College of Policing is responsible for developing authorised professional practice in relation to all aspects of policing, including the use of force, control, restraint, search, detention and deaths in custody. This Code of Ethics is a detailed set of standards of behaviour for everyone who works in policing with the aim of embedding the standards into everyday policing and creating a transparent mechanism for which the public can hold the police to account. Individual forces also have their own Codes of Professional Standards.

Various bodies, including the College of Policing and the National Police Chief's Council publish guidance which brings relevant law and procedure together in relation to various policing responsibilities, such as the handling of persons in custody.

Together with the meticulously detailed PACE Codes, these prescribed standards of behaviour provide a measure against which to identify ill-treatment by the police.

#### 5.1.1.3. The power to detain under ordinary law and under anti-terrorist laws, duration of detention

PACE empowers police officers to arrest without a warrant, provided the officer has reasonable grounds for suspecting that an offence is being, has been, or is about to be, committed, and that arrest is necessary for the various reasons set out in PACE. Once a person is arrested, they must normally be taken to a police station as soon as is practicable, where a custody officer may authorise their detention for the purpose of investigation and/or questioning.

The need to keep a person in detention is subject to periodical review: at 6 hours after the detention is first authorised; and after that, every 9 hours. Under normal circumstances, a person cannot be kept in police detention for more than 24 hours without being charged. A senior police officer may authorise detention for a maximum of a further 12 hours, if it is deemed necessary (a) to secure or preserve evidence relating to the arrested offence(s)

or to obtain such evidence by questioning him; (b) the offence is an indictable offence (i.e. triable in the Crown Court and carries a possible sentence in excess of six months), and (c) the investigation is being conducted diligently and expeditiously. If more time is then considered necessary, police officers must apply to a magistrates' court for a warrant of further detention, which must apply the same test as above, and can sanction a period of further detention up to 36 hours, with the possibility of authorisation for a further 36 hours, making 96 hours in total. Once that period expires, the detainee must be either charged or released.

### 5.1.2. Institutional solutions

#### 5.1.2.1. Police body and detention monitoring

The jurisdiction of England and Wales does not have one national police force. Instead, there are 43 operationally independent forces across the jurisdiction with locally accountable chief constables and Policing and Crime Commissioners. The National Police Chiefs' Council (NPCC) was formed on 1st April 2015 (replacing the Association of Chief Police Officers). It brings together the 43 operationally independent and locally accountable chief constables and their chief officer teams to coordinate national operational policing.

The Independent Police Complaints Commission (IPCC) oversees the police complaints system in England and Wales, and sets the standards by which the police should handle complaints made against it. It makes its decisions independently of the police and the government. Most complaints against police officers and staff are dealt with by the relevant police force, though serious cases must be referred by police forces directly to the IPCC. The IPCC also handles appeals from individuals who are dissatisfied with the way their local police force has dealt with their complaint. Part of the IPCC's role is to secure and maintain public confidence in the police complaints system. The system is currently being reformed through new guidance and legislation brought forward by the Policing and Crime Bill 2016, which also proposes significant restructuring to the IPCC.

HM Inspector of Constabulary has a statutory duty to inspect and report on the efficiency and effectiveness of police forces in England and Wales.

The Crown Prosecution Service (CPS) has no formal supervisory powers over the police.

#### 5.1.2.2. Investigative body, its independence

Once a matter is referred to it, the IPCC must determine whether it should be investigated, and if so, the mode of investigation, having regard to the seriousness of the case and the public interest. The mode of investigation may be: local; supervised; managed; or independent investigation.

Less serious matters are dealt with locally (i.e. by the relevant force itself), with appeals being dealt with by the IPCC or the relevant chief officer.

Supervised investigations are where the IPCC supervises an investigation by the appropriate authority of any complaint, recordable conduct matter or Death or Serious Injury ("DSI") matter. The IPCC monitors the progress of the investigation and, at the end, receives the investigation report and certifies that the terms of reference that were set

out at the beginning of the investigation have been met. The complainant has a right of appeal to an IPCC Commissioner.

In case of managed investigation the person appointed to investigate the complaint is under the control of IPCC.

Independent investigation is reserved for the most serious complaints and incidents involving the police which raise issues of accountability and transparency, in particular. The IPCC's own investigators carry out independent investigations, and all are overseen by IPCC commissioners. For particularly serious cases, the commissioner is directly responsible.

The IPCC Guidance in relation to local, supervised or managed investigations requires that the investigator make a written note in the investigation decision log to declare whether or not he or she or any member of the investigation team could act impartially. The appropriate authority or IPCC will then decide whether or not to replace the investigator.

Former police officers are employed as IPCC investigators, which does indicate that they would hold the relevant knowledge of the area they are to investigate, and have demonstrable expertise at investigation. This may raise concerns about independence, however. The IPCC takes measures to minimise the potential effects of bias by, for instance, ensuring that ex-police officer staff are not on investigations concerning their own former force. However, IPCC commissioners cannot have been former police officers.

### 5.1.3. Specific safeguards

#### 5.1.3.1. Audio and video recording

There is no national policing requirement to use body or dash board cameras. Use of body worn video is increasing as technology improves and many forces of the 43 police forces are expanding their use in certain or all circumstances. There are also no requirements to have a dash board camera. National standards that would be applied to vehicle telematics do not require the installation of cameras; they only suggest that where these are used, certain specifications apply. Cameras are most likely to be installed on pursuit and speed vehicles rather than general patrol vehicles.

CCTV is used in custody suites both for monitoring the welfare of detainees and for preventing and detecting crime. The College of Policing has set out comprehensive Guidance on the use of CCTV in detention and custody. The IPCC recommends that police forces should make CCTV available in at least one cell in the custody suite, for use when a detainee is identified as being at risk.

There is a general obligation that all interviews with suspects should be audio recorded. However, there are some exceptions. The offences of assaulting and/or resisting a police officer in the execution of his/her duty are offences that can only be tried summarily (less serious offences where the defendant is not usually entitled to trial by jury and the case is to be dealt with in the magistrates' court). There is therefore no requirement that the interview be audio or visually recorded.

There is no power to stop a member of the public filming police action, or to seize or delete recordings.

#### 5.1.3.2. Medical examination

The detained person can request a medical examination upon detention at custody and must be given a notice of this right in writing. The custody officer also has a duty to make sure that a detainee receives appropriate medical attention if they have signs of illness, injury, mental disorder or otherwise need clinical attention. If the need for attention appears urgent, the nearest available healthcare professional or an ambulance must be called immediately. If a detainee requests a clinical examination, an appropriate healthcare professional must be called as soon as practicable to assess the detainee's needs. The detainee also has the option of being examined by a medical practitioner of their choice at their expense.

Where a complaint is made about treatment by police since arrest or it appears that the detainee has been ill-treated, a report must be made as soon as possible to an officer of inspector rank or above not connected with the investigation. An appropriate healthcare professional must also be called as soon as possible. The custody officer must record in the custody log the arrangements made for such an examination, the complaint made and any relevant remarks of the custody officer. All medical assessments follow a standard structure which consists of taking a full history, conducting a full examination and identification of all injuries and appropriate reporting and management.

Healthcare for detainees is currently commissioned by police authorities. This means that there is no oversight body currently responsible for commissioning of services and ensuring quality standards. Because they are commissioned by individual forces, the models of services differ widely. Examinations taking place at the police station are likely to be carried out by the force medical examiner who is contracted to police authorities. However, in some police stations the health care professional has to be called in, and this person will be from the civilian National Health Service. The current situation is that nurses are most likely to examine suspects. If a detainee requires hospital treatment they will be taken to the closest hospital, either by ambulance or police vehicle.

Concerns were raised about the lack of consistency in the quality of healthcare and the delay of assessment and treatment. The use of nurses over doctors is also subject to criticism.

Special training in forensic medicine is not required. There are a number of proforma available, but there is no national document for the documentation of alleged police ill-treatment. Concern has been expressed that healthcare professionals contracted to police authorities may not always possess the required levels of skill and experience in custody healthcare.

Privacy concerns of the detained person have to be weighed against the safety of the forensic physician. In practice, a police officer, will be present in the room, so there is no confidentiality through which to give an account of what happened. In practice, this should not mean that the apprehending officers will be present, but rather one of the custody staff. Where an officer is present, the detainee could ask for the officer to leave,

but the decision would be made by the healthcare professional, with advice from the officer as to safety precautions.

Although a conclusion would be required to be given on the plausible origin of the injuries, it is not the role of the practitioner to offer an opinion on causation, nor are they likely to be suitably trained to do so. This is the type of evidence an expert would be expected to give in the course of any legal proceedings, which would be based on the original documentation of injury.

Examiners rarely take images of injury. The practitioner may recommend that a police photographer takes images formally. Often, however, marks or injuries may be recorded on police officers' mobile phones. The quality of police imaging is therefore often evidentially valueless.

#### 5.1.3.3. Right to a lawyer

PACE Code C states that all detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available. A detainee must not be interviewed, or continue to be interviewed once they have requested legal advice. This requires the interviewing officer to allow time for the lawyer to arrive, receive any pre-interview briefing from the officer and take instructions in a consultation with the detainee. The Code even requires a poster advertising the right to be prominently displayed in the charging area of each police station.

Almost all legal representation is provided at the police station through public funding. It is a free service irrespective of financial circumstances at that stage of the criminal process. This means that any lawyers attending, whether retained or on the duty list, will be receiving public funding for their service which makes it highly unlikely that a different approach or professional diligence would be followed depending on whether the lawyer is a retained or a legal aid lawyer.

#### 5.1.3.4. Right to inform a third person

The detainee has the right to have someone informed if they are in police custody and of their whereabouts. This is a right, at public expense and upon request of the detainee to have one person known to them or likely to take an interest in their welfare. The custody officer would make the call as soon as practicable. Any delay or denial of the right to have someone informed must be proportionate and should last no longer than necessary. If the nominated person cannot be contacted, the detainee may choose up to two alternatives. Further attempts may be allowed after this at the discretion of the investigating officer. A record must be kept of any request and call made. In addition, if a friend, relative or person with interest in their welfare makes enquires about the detainee, information about their whereabouts must be given. The detainee must also be allowed to telephone one person for a reasonable time.

#### 5.1.3.5. Risk of being pursued for false accusation

The complainant could be charged with perverting the course of justice or wasting police time. The first is a serious, common law offence triable on indictment. The second is a summary offence. However, such a charge would not occur where the CPS

has prosecuted the case through the courts and the officers have been acquitted. A charge would only be considered if the investigation were not pursued. But even then it appears highly unlikely as allegations against the police are not contained in any of the guidance as an example circumstance where a charge should be laid.

### 5.1.4. Mechanisms for dealing with torture and ill-treatment

#### 5.1.4.1. Complaints system

If a member of the public makes an allegation about someone serving with the police (the allegation may be raised with the force, the PCC or the IPCC), the force must take a decision about whether the allegation should be recorded as a complaint. Once a complaint is recorded by the police force, efforts are made to resolve the allegation raised by the member of the public, either by local resolution, a local investigation or by referring to the IPCC for an investigation. If a member of the public is unhappy with the way their complaint has been handled, the system has a series of appeal points which allows them to challenge a decision. The appeal is usually dealt with by the chief constable or the IPCC depending on the circumstances.

The IPCC reports that of the 4108 appeals completed by the IPCC in 2014/15, it upheld 39% compared to 46% in 2013/14. The proportion of investigation and local resolution appeals that were upheld decreased, to 39% and 53% respectively. The number of non-recording appeals it upheld also reduced to 42%. Despite the reduction, these are significant figures, demonstrating that local police investigations may not be carried out appropriately in almost half of the decisions appealed.

#### 5.1.4.2. Conduct matters

A conduct matter is a matter which has not been the subject of a complaint but where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings. Conduct matters which relate to any incident or circumstances in or in consequence of which a person has died or suffered serious injury, and conduct matters which fall within the mandatory referral criteria, must be referred to the IPCC.

#### 5.1.4.3. Death or serious injury (DSI) matters

A DSI matter refers to any circumstances (unless they are or have already been the subject of a complaint or amount to a conduct matter) in, or as a result of which, a person has died or sustained serious injury and: (i) at the time of death/serious injury the person had been arrested by a person serving with the police; or (ii) at or before the time of death or serious injury the person had contact of any kind (direct or indirect) with a person serving with the police who was acting in the execution of his/her duties and there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury. 'Serious injury' is defined as "a fracture, a deep cut, a deep laceration or an injury causing damages to an internal organ or the impairment of any bodily function." All DSI matters must be referred to the IPCC. Police forces have a duty to record, review, refer and cooperate with any investigation into conduct. Where a referral to the IPCC does not take place, the IPCC can direct the appropriate authority to act, if the matter comes to its attention.

#### 5.1.4.4. Criminal proceedings

On referral, the CPS will decide whether or not a criminal prosecution should be brought, applying the same Full Code Test as is used in relation to private citizens. This consists of a two-stage test, the first stage of which is the 'evidential stage' which asks whether there is sufficient evidence to provide a realistic prospect of conviction. If this stage is satisfied, the second stage – the 'public interest stage' – asks whether it is in the public interest to proceed with the prosecution. Decisions on charging should be made on the merits of the case and should not be influenced by the fact that a complaint against the police has been made.

#### 5.1.4.5. Disciplinary procedures

Police officers are obliged to report any action taken against them for a criminal offence, conditions imposed by a court or the receipt of any penalty notice. The bare fact of a criminal conviction, irrespective of the nature of the conduct itself, may lead to misconduct action. The decision as to whether or not the police officer concerned will be dismissed then rests with the police force department for professional standards. It appears that a conviction for an offence involving ill-treatment or torture would be judged in terms of whether or not it discredited the police force, rather than on the basis of ill-treatment, per se. If such a conviction were made out, however, it would seem hard to imagine a scenario where this would not discredit the force (unless the assault was very minor perhaps).

Of the 191 IPCC investigations analysed, 62 of the officers involved were found to have breached the standards of professional behaviour. Gross misconduct was found for 22 officers, and misconduct for 39. One officer was found to have unsatisfactory performance. The disciplinary outcome for these officers was as follows (four officers retired or resigned prior to the conduct proceedings taking place): dismissed: 9, final written warning: 12, written warning: 6, management advice: 12, management action: 7, performance improvement plan: 1, no further action: 6, unknown/awaited: 9. Files in relation to 24 officers were sent to the CPS with criminal proceedings subsequently brought against 18.

#### 5.1.4.6. Victim's rights

Code of Practice for Victims, which also applies to IPCC investigations, sets out the services which must be provided to victims of crime. The complainant should be kept informed throughout the investigation, make a victim personal statement to explain how they were affected by the crime, and apply for compensation under the Criminal Injuries Compensation Scheme. None of the rights conferred provide victims with an opportunity to participate in investigative actions (beyond being interviewed). Nor is there any right to request specific steps to be taken, beyond the right to appeal a decision. Victims cannot be represented separately by a lawyer during the proceedings.

#### 5.1.4.7. Private prosecution

Every citizen has the right to bring a prosecution, known as a private prosecution. The Director of Public Prosecutions may take over a private prosecution at any stage, either to continue or stop it. A private prosecution is likely to have been commenced by the

victim of a crime if not by the CPS. If the CPS decides to drop a case during the court phase, the victim could effectively appeal that decision. They could in principle mount a private prosecution, but without fresh evidence it would likely be considered an abuse of process by the court. The defendants could also invite the CPS to take over the case, through which the case could be stopped again.

An individual private prosecutor is likely to lack investigative resources in the context of ill treatment cases. Also, s/he does not have a legal right to compel the production of material from the police or the CPS. Legal aid is not available to mount a case, so there is a financial burden on an individual who wishes to prosecute.

#### 5.1.4.8. Civil action, tort

Where the CPS decides not to prosecute, or in any case, families of those killed following police contact might wish to pursue a remedy in the civil courts. There are time limits on the different relevant actions and lengthy IPCC investigations and/or CPS investigations may result in running out of time to make a civil claim. Also, this is an expensive process which may cause difficulties to fund the action. Civil actions against the police include actions at common law for the tort of negligence, misfeasance in public office, assault and false imprisonment. Choosing to pursue a civil remedy rather than criminal conviction may enable the victim to recover greater compensation for the injury and consequent losses suffered since compensation awarded in the criminal courts will be substantially lower. In civil claims, the standard of proof is lower than the criminal standard of proof ('beyond reasonable doubt'): the claimant must prove the claim 'on the balance of probabilities.' Case law has established a number of control mechanisms to limit the classes of victims of psychiatric injury which may claim in tort, though it is unlikely that a victim of ill-treatment or torture would be excluded. A 'primary victim' must prove either that s/he also suffered physical injury, or that the defendant should have foreseen that s/he would suffer any personal injury. A 'secondary victim' will only have a claim if three conditions are satisfied: (1) there is proof of a close tie of love and affection with the person involved in the incident; (2) the claimant was present at the incident or its immediate aftermath; and (3) the claimant had a direct perception of the incident or its aftermath (as opposed to learning about it from someone else, or watching it on the television). Obtaining evidence in civil cases may also prove to be problematic.

#### 5.1.4.9. Exclusion of evidence

Evidence can be excluded from criminal proceedings where it is shown to have been obtained in breach of a PACE Code of Practice. Furthermore, the court shall not allow a confession to be given in evidence against a defendant if it is represented to have been obtained "(a) by oppression of the person who made it; or (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof", unless the Prosecution can prove beyond reasonable doubt that the confession was not obtained in that way. There is also a general exclusionary power where the court considers that, having regard to all the circumstances, the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it

### 5.1.5. Experience in practice

In the absence of any complete picture of the "use of force" by police in England and Wales, the IPCC has recently produced a report that brings together analysis of complaints recorded by the police; cases that the IPCC has been involved with; and research into members of the public, police personnel and other stakeholders' perceptions and experiences. It then makes a number of recommendations designed to improve how force is used, recorded and evaluated.

#### 5.1.5.1. Data available

Since 2004/5, the IPCC has published statistics on complaints recorded by police forces, including information about the number and type of complaints and how the complaints were dealt with. The statistics are presented annually, quarterly, and by each police force area. Each police complaint contains one or more allegation. There are 27 allegation categories, that are rather broad, and of which serious non-sexual assault, and other assault are the most closely related to ill-treatment and torture offences in respect of physical offences. Data on oppressive questioning, where the manner in which the questions are asked is inappropriate or amounts to ill-treatment, is collected by the IPCC in the category of complaints made about, "Breach of Code C PACE on detention, treatment and questioning." With regard to unlawful detention, the IPCC captures these complaints in the category "unlawful/ unnecessary arrest or detention". It is possible to refine a search in the list of published investigations held on the IPCC website by 'type', to include 'use of force'.

As to the outcome and success rate of the investigations, in 2014/15, 56 % of serious non-sexual assaults were dealt with by way of investigation, and 11 % were dealt with by way of local resolution. 16 % of other assaults were withdrawn and 25 % were dealt with by way of dispensation. 1603 (52%) PACE Code C cases were investigated and 223 (14%) were upheld. 1765 (57%) of arrest/ detention cases were investigated and 160 (9%) of these were upheld. In 2015, a total of 142 allegations of serious non-sexual assault were the subject of completed investigations. Of those investigations, 5 were substantiated, and 137 were unsubstantiated. 2022 allegations of other assault were the subject of completed investigations, 105 of which were substantiated and 1917 were unsubstantiated.

#### 5.1.5.2. Concerns, criticism

The way the IPCC identifies and investigates potential criminal acts by police officers has been particularly criticised. Even where criminal acts have been identified by the IPCC, only a remarkably limited number of police killings since 1990 have led to a prosecution for a serious offence (e.g. murder or manslaughter) and/or an inquiry which has found that the killing was unlawful.

A recent HM Inspectorate of Constabulary report noted that there have been failures in recording the use of force by police forces. The rate of use of force may be higher than that recorded by police forces. Furthermore, across the forces reviewed, there was little evidence of management review or analysis of the use of force in custody. There is currently no standardised national practice for police forces to record all types of force used.

The IPCC felt that the statistics compiled regarding investigations raise some concerns about the robustness of police investigations into complaints from people who have experienced use of force. When the police investigate them, these kinds of complaint are much less likely to be upheld than others. Yet, when a subsequent appeal comes to the IPCC, this body is more likely to uphold it than appeals that do not relate to use of force. This is particularly true in cases brought by black and minority ethnic (BME) complainants.

One of the ways in which police misconduct, malpractice and corruption is brought to light is when police officers or staff report it themselves. However these reports are not always made. Anecdotal evidence suggests that some of the reasons for this may be because it is not believed that anything will be done, the reporting routes available are not trusted, or they fear an adverse reaction from the police force. Changes to the Police (Conduct) Regulations 2012 aim to make it clear that police whistle-blowers are protected from unfair disciplinary action and reprisals against them will not be tolerated. The College of Policing published national whistle-blowing guidance recently entitled Reporting Concerns. The guidance sets out that should any officer or police staff have concerns about wrongdoing or poor practice, this should be reported, usually internally. It also records that forces should develop an open reporting culture through provision of support and safeguards, including providing feedback and updates to police whistle-blowers, giving them the right to be consulted by the force (or IPCC) and outlining the reporting routes available.

The IPCC recently reviewed police referral processes to the IPCC across six police standards departments. Of the 419 cases sampled that had not been referred, it found that 22% (93) should have been referred either on a mandatory (76) or voluntary (17) basis. The types of cases that were not being referred primarily involved deaths and serious injuries, serious corruption and serious assault. All forces sampled lacked a formal process for assessing whether cases needed to be reported to their Police Standards Department, and there had been little training on the referral criteria. Most did not consider article 3 ECHR when assessing whether to refer. Some key recommendations have been made: that forces have appropriate processes in place to ensure professional standards departments are notified of relevant cases and referral assessments take place in every case. A substantive rationale for not referring should be recorded and systems are in place to monitor patterns in officer's behaviour.

With regard to the sentencing practice, there seem to be a perception that the system is skewed in favour of the police. One of the reasons might be that cautious investigators tend to opt for gross misconduct at the outset of a case, which can result in a mismatch between the assessment and the outcome. As such categorising something as an investigation into gross misconduct 'sets the bar high' and if the ensuing investigation reveals a much lower level of misconduct, much less onerous outcomes than would be expected (in response to gross misconduct) are consequently meted out. This is a problem because it frustrates public expectations, created by the original categorisation of 'gross misconduct'.

Another issue is that bringing the misconduct proceedings takes so long that the officers retire, or are allowed to resign – which may not satisfy victims or the public in general that they have been appropriately punished.

| 5. 2. Assesment of England and Wales | | | 1 | 2 | 3 | no data/not relevant |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | | X | | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | | X | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | | | X | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | | | X | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory |
| | | | | | X |
| | | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | | | X |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | | | X |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | X | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | X | | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | | | X |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | | X | |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | | X | |
| | | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | prohibited/never appears | might appear | should be included |
| | | | X | | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission |
| | | | | | X |
| | | Privacy | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise |
| | | | | X | |
| | | Attending police officer is present if privacy is not granted | always the arresting police officer | the arresting officer might be present | never the arresting officer |
| | | | | X | |
| | Right to inform a third person | | obstructed | limited | effective |
| | | | | | X |
| | Right to a lawyer | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected |
| | | | | | X |
| | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation |
| | | | | | X |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Right to a lawyer | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided | |
| | | | | | X | |
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ | |
| | | | | | X | |
| | Personal independence of the investigative body | | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence | |
| | | | | X | | |
| | Public perception of the investigation | | not independent | number of concerns/not fully trusted | independent | |
| | | | | X | | |
| | Evidentiary value of police officers' testimony | | decisive | stronger than other testimonies | same as other testimonies | |
| | | | | | | X |
| | Private prosecution | | not possible | possible on paper but not in practice | available in practice | |
| | | | | | X | |

| | | | | | |
|---|---|---|---|---|---|
| *Disciplinary proceedings* | Probability | | not usual | | regular |
| | | | | | X |
| | Relation to a criminal procedure | | closely linked/subsidiary | parallel | independent procedures |
| | | | | | X |
| | Possible dismissal of a police officer | | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction |
| | | | | X | |
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| *Total* | **88** | | | | |

# 6. France

## 6. 1. Summary of the France Report

### 6.1.1. Legal framework – duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

#### 6.1.1.1. Relevant provisions of the Criminal Code

Criminal Code sanctions torture and acts of barbarism. The crime is of greater severity if it is committed by a person in charge of public authority in the frame of his/her duty.

Normally, official misconduct is prosecuted as the criminal offence of violence. There are four different levels of violence according to their outcome (death, permanent mutilation or injury, incapacity to work for more than eight days, incapacity to work for eight days or less). These offences all qualify more severe if committed by a person in charge of public authority in the frame of his/her duty.

Criminal Code also contains provisions prohibiting unlawful detention.

#### 6.1.1.2. Disciplinary and ethics codes, other provisions

Both the French National Police and the Gendarmerie are subject to a new Code of Ethics. since 1st January 2014.

#### 6.1.1.3. The power to detain under ordinary law and under anti-terrorist laws, duration of detention

The police officer who places a person into custody must inform the prosecutor of the detention within 20 hours after its beginning. The police can hold someone in custody for 24 hours. Detention for more than 24 hours requires an explicit consent of the prosecutor. Maximum period of detention is 96 hours. If the offence under investigation involves state security (e.g. terrorism), two further 48-hour extensions can be granted, making a total of five days.

### 6.1.2. Institutional solutions

#### 6.1.2.1. Police body and detention monitoring

Ombudsman or Défenseur des droits (Défenseur) is a new external and independent institution established in 2011 to ensure the respect of professional conduct rules in law enforcement and security. The Défenseur can be contacted by any victim of ill-treatment, the victim's relatives, a witness, a member of the French parliament or a similar foreign institution. The Défenseur can also initiate an investigation ex officio. The Défenseur has access to information and documents related to the case and he or she can hear the victim, the witnesses and the officers concerned. The Défendeur's examination results in a report that may contain recommendations which are not legally binding, but publicly available on the internet. The Défenseur cannot initiate criminal procedures or apply sanctions. Experience shows certain difficulties in the co-operation and communication with judicial and police authorities and concerning

access to information and documents. It is also assumed that recommendations of the Défenseur on disciplinary measures are rarely implemented.

The prosecutor supervises the investigation and has an obligation to ensure that the detention in custody is lawful, but this obligation does not involve a personal attendance which leads to concerns about the tightness of the supervision.

#### 6.1.2.2. Investigative body, its independence

There are two organisations set up to investigate police criminality, both the National Police and the Gendarmerie having its own investigative body. Investigations of the cases related to the National Police are carried out by the Inspection of the National Police (IGPN) with 8 regional directorates in France and around 100 inspectors, while the Inspection of the National Gendarmerie (IGGN) and its 80 inspectors deal with investigations concerning the Gendarmerie. IGPN is incorporated in the organisation of the National Police as a directorate, inspectors are former police officers and they maintain this status and continue to be employed by the Police in their new duty. These apply mutatis mutandis for IGGN. These bodies are not independent neither on an organisational nor on a personal level, hence a certain lack of public confidence in the ability to act impartially when investigating their colleagues.

### 6.1.3. Specific safeguards

#### 6.1.3.1. Audio and video recording

After a pilot project in 2013, there should be around 2000 body cameras carried by police officers by 2016, without any legal basis though. Consequently, police officers turn them off and on as they wish and citizens do not have legal grounds to access to the recordings. There is no general (available) assessment of the use of cameras. The first experiment concerning body cameras (since 2013) hasn't provided consistent feedback.

There is no public available text, ruling or information concerning neither the use of dash board cameras nor CCTVs in custody suites.

Although in principle any type of evidence can be accepted by the court, including recordings of the police action made by outsiders, however, there are public videos showing that police officers sometimes destroy or confiscate such pieces of evidence, or they falsely claim that filming the police intervention is prhibited.

Interviews of the persons accused of crime are to be video recorded. If for technical reasons or because of the number of interviews recording is not possible, the prosecutor must be informed in writing and the reason of the lack of video recording must be indicated in the report.

#### 6.1.3.2. Medical examination

The Criminal Procedure Act provides that any person placed under police custody can, when she/he requests so, be examined by a doctor designated by the prosecutor or the officer of judicial police, this Act, however, does not confer the right for the detainee to choose his/her doctor. In case of prolongation of the custody, the person can request to be examined a second time. The prosecutor and the police officer can also order a medical

examination, and it must be carried out upon the request of the detainee's relative too. The examination shall not be conducted within sight or earshot of third parties.

There is no doctor with a status of "police employee" or "contractor". Depending on staff availability and habits of police stations, it is generally a doctor (sometime forensic) from the French National Healthcare System. The issue of independence of the doctors raises some concerns since prosecutors and police officers usually designate and work with the same doctors over years, which create a proximity that might influence the objectivity of the doctor´s examinations. The thoroughness or the quality of the examination is not subject to criticism. The French Health Authority provides a detailed guidance on how to conduct an examination. This guidance is available on-line and it sets out the good practices concerning the documentation of the injuries, such as the possibility of taking photos. It also states that "when the compatibility between the injuries and the pretended facts can be easily established, the doctor can mention it [...] but it's not compulsory". Doctors are not obliged to refer the medical file to the investigative authority in case of suspected ill-treatment, however, there is no prohibition to do so if the victim gives his/her consent to it.

#### 6.1.3.3. Right to a lawyer

Right to a lawyer in custody is very limited in France. It implies a 30 minute private consultation prior to the first suspect's interrogation by police at the expiry of first 24 hours of the custody, and after 12 hours if the custody is prolonged. In special circumstances, such as in case of investigation into organized crime, the lawyer can intervene only 48 hours after the beginning of police custody, and only after 72 hours for drug and terrorist cases. Interrogation can be started without any consultation with a lawyer. Lawyers are excluded from the interrogation of suspects. They are also not given access to the case file.

#### 6.1.3.4. Right to inform a third person

The detainee has the right to inform the person with whom he/she lives, a parent, a brother or sister or the legal representative and his or her employer of the custody measures. Foreign nationals can inform their embassy. The police officer can refuse the request to inform a third person if he/she estimates that this is necessary for the purpose of the investigation. The prosecutor should be immediately informed about this decision. Unless there are insurmountable obstacles, which should be indicated in the written report, the third person must be informed within 3 hours after the request was made.

### 6.1.4. Mechanisms for dealing with torture and ill-treatment

#### 6.1.4.1. Complaints system

#### 6.1.4.2. Procedures upon complaint

A complaint against police or prison officers can be filed within the three years following the alleged violation of the complainant's rights (e. g. physical or verbal violence, unlawful detention in custody, application of coercion or pressure).

Complaints can be filed at the police. Police or gendarmerie officers have a legal obligation to register any complaint concerning an offence. Nevertheless, it is believed that in practice police officers tend not to register the complaint against their colleagues, and even if they do, they fail to report the alleged offence to their hierarchy or to the prosecutor, so that the complaint will remain in a complaint registration book without any follow-up. While this abusive practice clearly constitutes a misconduct, there is no data available on the number of disciplinary procedures carried out for such act.

Victims can also file a complaint at the prosecutor in which case the prosecutor will decide on the necessity of opening an investigation. Prosecutors are free to decide to investigate, to reprimand the accused person or to close the case, and many cases are closed by prosecutors without prior investigation based on the principle of opportunity to investigate or not a case.

Victims of crimes (serious criminal offences) also have the possibility to take action as a civil party, and initiating an investigation directly at the investigating judge. In the latter case, a deposit of around 1000 euros is to be paid. Acting as a civil party is also possible either if the prosecutor closes the complaint or upon the expiration of 3 months without any steps taken by the prosecution.

Members of the public can file a complaint at the IGPN personally, via mail, e-mail and through a dedicated website. After a preliminary examination of the complaint, IGPN and IGGN decides whether an investigation should be initiated. It is worth to be noted that in 2014, only 32 out of the 5178 complaints, that is 0.6 % led to an investigation at IGPN, and IGGN also claims that complaints coming from the public rarely result in an investigation. IGPN and IGGN explain this by the fact that the alleged misconducts that the complaints are about do not fall within their competency. However, there is no information on the nature of the rejected complaints. The public image of the inspection authorities is characterized by a presumption of partiality towards the police and gendarmerie colleagues. According to the researcher Cedric Moreau de Bellaing, “without absolutely unquestionable elements, an inspector will give more credibility to the testimony of a colleague than to the testimony of an applicant”.

#### 6.1.4.3. Procedures upon referral

Apart from complaints coming from the members of the public, IGPN and IGGN can be contacted by police or gendarmerie authorities and by judicial authority. Even if the deontology code of the national police and the gendarmerie imposes all officers to report any ill-treatment they witness, it is assumed that a strong corporatism might act against this obligation.

#### 6.1.4.4. Criminal proceedings

When someone files a criminal complaint, the prosecutor decides how to qualify the alleged offence. Depending on the evaluation by the prosecutor, it might be investigated as a “crime” (serious offence, punishable with up to life sentence) or as a “délit” (less serious offence punishable with a maximum of 10 years imprisonment). Judicial inquiries are initiated by a prosecutor. In case the violation by an officer amounts to a criminal offence, the investigation of that offence is done by the IGPN/IGGN under the

supervision of the prosecutor. And if the offence is a severe criminal one, an investigating judge will be in charge with possibly the IGPN/IGGN under his/her lead.

The preliminary investigative procedure is called an instruction procedure when it is conducted by an investigating judge, who is an independent magistrate. Investigating judges cannot take up cases on their own initiative. Cases must be referred to them for investigation by the prosecutor, or by an injured party who lodges a complaint alleging a criminal offence and asks to be treated as a civil party to the criminal proceedings. In conducting the investigative hearing, the investigating judge has a wide range of powers available. He may issue warrants allowing the authorities to search the accused's residence and seize necessary evidence. He also may issue warrants requiring other people to appear as witnesses, or he may request experts to testify. If there is conflicting testimony, witnesses are confronted with each other and often with the accused. At the end of the hearing, the prosecutor may, if he chooses, present his opinion, in the form of a plea. When the judge is of the opinion that the investigation is complete, he or she can make an order discharging the suspect (ordonnance de non-lieu), or commit the person under investigation for trial by the criminal court or the assize court (courd'assises).

The investigating judge has an ambiguous role that requires him/her both to investigate and take judicial decisions that may raise questions about his/her ability to act with complete neutrality. In addition, there is no clear definition of tasks as between the investigating judge, the prosecutor and the judiciary police, which is the reason why the French President announced in January 2009 his intention to abolish the institution of the investigating judge, leading to almost immediate opposition from all justice professionals.

Judicial police investigates police violations as it does for other criminal offence, with no interference with the investigations of the IGPN and the IGGN since criminal investigations are conducted under the authority of the prosecutor or the investigating judge, whereas disciplinary investigations are under the authority of administrative authorities. IGPN and IGGN come into play before and/or after a decision of the disciplinary council, according on the complexity of the case. Judicial police officers work with the prosecution services and the investigating judge.

A case involving a serious misdemeanour or a lesser felony is tried before the criminal court (composed of three professional judges), whereas a major felony must first go to the chamber of accusation of the Court of Appeal (Courd'Appel) for the pretrial hearing. If the Court of Appeal supports the investigating judge's recommendation, it will turn the case over to the Assize Court (Courd'Assise), the only court in France with a jury.

Regarding the sentencing practice in court judgements, ECHR found repeatedly that they are rarely proportionate to the seriousness of the offence. The sanctions applied to convicted police officers often do not exceed suspended prison sentences, are not registered in criminal records and are not combined with an interdiction of work as a police or prison officer.

Many cases are closed by prosecutors without prior investigation based on the principle of opportunity to investigate or not a case. Prosecutors are free to decide to investigate, to reprimand the accused person or to close the case. The United Nations Committee against Torture has criticised several times this "principle of opportunity" held by

prosecutors since they are not even obliged to investigate the case. French authorities consider though that victims still have the possibility to complaint against the decision to close the case or to become civil party, and that the statutes of French prosecutors guarantee their objectivity.Some magistrates consider that complaints based on ill-treatment by police officers are more often closed than other types of offences.

#### 6.1.4.5. Disciplinary action

Disciplinary procedures come under the heading of administrative accountability. Besides criminal enquiries, both IGPN and IGGN can conduct administrative enquiries. If based on its investigations the IGPN and the IGGN come to the conclusion that a disciplinary procedure must be initiated, they contact the relevant police/Gendarmerie units. Disciplinary procedures are conducted in front of a disciplinary board. This board is involved upon the referral of the Ministry of Interior and it is a joint committee composed of designees representing both the administration and the police personnel. The disciplinary board is contacted through a report drafted by the disciplinary authority. In the case of police or gendarmerie officers, it shall be the Ministry of Interior acting as disciplinary authority. The pursued officer can provide written or oral observations before the disciplinary board, with the help of witnesses and his/her legal defence. Witnesses can also be presented by the administrative authority. The disciplinary board can also order an investigation. Investigation is carried out by the administrative authority.

The disciplinary board holds a hearing and adopts its decision by voting on the disciplinary sanction (which is an administrative sanction) that it should propose to the disciplinary authority to apply. The disciplinary sanctions range from reprimand to dismissal from the service, with loss of pension rights. If the disciplinary authority then decides to depart from the proposition of the disciplinary board, it has to inform the board of its reasoned decision. There is the possibility to challenge the sanction before the appeal commission of the Supreme council of the State public service. Administrative authorities can impose disciplinary sanctions without waiting for the outcome of a judiciary procedure or any court judgment. However, the disciplinary board can propose to suspend the disciplinary procedure until the court takes a decision. The Défenseur has repeatedly criticised the fact that administrative authorities often decide to wait, in order to take disciplinary measures, until a judicial authority has adopted a decision regarding the accused officer, even if disciplinary and judicial procedures are independent from each other.

Convicted police officers may be exonerated from the detrimental consequences of their conviction and also be allowed to keep serving in the Police by the Minister of Interior.

As to sanctioning practice, one piece of documentation is the research conducted by the sociologist Cédric Moreau de Bellaing on the 1996-2001 reports of the General Inspection of Services (IGS). One of his results showed that administrative authorities are not severe regarding ill-treatment.

It´s a paradox but ill-treatment are less often sanctioned and are less severe sanctioned than other types of breaches of professional duties. According to M. Moreau de Bellaing, “the Ministry of Interior is much more severe on breaches of internal rules than on police violence. Police violence as an investigated fact represents less than 5% of all disciplinary

sanctions imposed in the police territory of Paris". Another specialist of police forces draws the same picture: "studies show that sanctions taken against police officers are inversed proportional to the seriousness of the investigated fact. Thus, police officers have a higher risk to be sanctioned for, for instance, losing their professional card than for illegitimate violence". A third observer of police practices wrote that "like all other administrations, police seems to pay more attention to the respect of its internal rule of functioning rather than to the treatment of its clients". An investigative daily newspaper wrote that "the scale of sanctions is sometimes surprising. A wrongful use of the petrol card for the tanks of duty cars and the theft of a mobile phone are sanctioned with a two-year-exclusion of the service, whereas two cases of ill-treatment are sanctioned with a one-year-exclusion (plus one year suspended). And as to dismissals and compulsory retirements that have be decided (N = 10), none seems to be resulting from ill-treatment". The few cases analysed by ACAT show that sanctions are rarely proportionate to the seriousness of the offence, and don´t go beyond suspended prison sentences, are not registered in criminal records and are not combined with an interdiction of work as a police or prison officer.

#### 6.1.4.6. Victim's rights

During the judicial investigation, the investigating judge informs the victim every six months about the development of the investigation. Police, gendarmerie and judicial authorities must inform victims that they can take action as constituted civil party.

#### 6.1.4.7. Private prosecution

Victims can take action as civil party and thus get an investigating judge to investigate. The civil party can move to have a witness heard or a house searched but cannot file a motion for pre-trial detention. Action as a civil party is also possible either if the prosecutor closes the complaint or upon the expiration of 3 months without any steps taken by the prosecution. In this case, the civil party gets full access to the investigation files and can request prosecution services to conduct certain investigations. Civil parties have the same procedural rights as the defence and the prosecutor.

#### 6.1.4.8. Civil action, tort

Civil action can be pursued according to the liability rules of the Civil Code.

### 6.1.5. Experience in practice

#### 6.1.5.1. Data available

Concerning the number of criminal procedures, there is no data available enabling any comparison between the rates of closed cases in cases of violence where police officers are accused and where there is no police officer involved. The Défenseur communicated in 2015 that he lacked data on imposed sanctions and on the nature of sanctioned facts following his recommendations: authorities answered him that there was no central collection of those data, neither by inspection services nor by the Ministry of Interior. He also pointed out that for the sake of transparency, it should be compulsory to know which sanctions were imposed on police, military of gendarmerie forces and for which facts".

As to the disciplinary procedures, there is no central collection of data on the sanctions or the facts that the sanctions are related to. IGPN provides data in its 2014 annual report on the number of judicial and administrative investigations and the number of sanctions proposed regarding all the administrative investigations without any further specifications. Neither the number of perpetrators nor the success rate or the nature of the applied sanctions cannot be evaluated based on the data available. IGGN does not provide any useful data on any of these subjects.

Media news were published about the intent of the IGPN to gather information and to draw up statistics on ill-treatment resulting in incapacity to work for at least 20 days, its context and the use of force.

An important data source comes from the medical-judicial unit of one important hospital in Paris (Hôtel-Dieu), that also provides information to victims on how to complaint, explained that in 2006, among the 50 000 medical examinations done, half of them concerned persons placed in police custody. Among these ones, 2 500 explained that they were victims of ill-treatment (e.g. handcuffs are too tight).

#### 6.1.5.2. Concerns, criticism

There is a view that police officers benefit from a presumption of credibility among magistrates, inspectors or even the public opinion. As already shown by NGOs and researchers, judges tend to believe and base their decisions on police officers´ testimony, and, even more so, if the applicant has already a police (or criminal) record. This plays a major role in cases where there is no other witness than the accused police officer and the applicant.

The Défenseur expressed its concerns repeatedly about the strictness and the reliability of procedural reports that may raise serious doubts as to the impartiality and effectiveness of the procedures aimed to provide legal remedy to the victims of police illtreatment, given the evidentiary value of the police officers' allegations and police reports.

The law obliges any police or gendarmerie officer to register any complaint concerning an offence.Nevertheless, it is quite pointless to lodge a complaint at the police or gendarmerie station. Usually, police officers won´t even register the complaint against theirs colleagues, and even if they do so, they won´t communicate it to their hierarchy or to the prosecutor, so that the complaint will remain in a complaint registration book without any follow-up.

An unpublished 2010 report of the Finance Higher Court, released by a weekly magazine, mentioned strong dysfunction inside the IGPN and the IGS. The report tackled the impartiality of these two institutions: "contrary to some other European inspection institutions, they are both under the direct authority of the head of all police forces that are in their investigation scope". One issue is that inspectors of the IGPN and IGGN are employed by the police, even if they are attached to the Ministry of Justice. They have a police officer status. Chief inspectors are former commissars and other inspectors are former police officers. The European Court of Human Rights criticised the absence of external intervention in the process of control and concluded that "without any reform

conducting to more transparency, the relevance of such an internal control is uncertain, especially in the light of European independent institutions".

| **6. 2. Assesment of France** | | | *1* | *2* | *3* | *no data/not relevant* |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | | **X** | | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | **X** | | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | **X** | | | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | **X** | | | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | **X** | | |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | **X** | | |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | **X** | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | | X | |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules | |
| | | | | X | | |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory | |
| | | | X | | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor | |
| | | | | X | | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice | |
| | | | X | | | |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination | |
| | | | | | X | |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically | |
| | | | | | | X |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | | X | |
| | | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | prohibited/never appears | might appear | should be included |
| | | | | X | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission |
| | | | | X | |
| | | Privacy | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise |
| | | | | | X |
| | | Attending police officer is present if privacy is not granted | always the arresting police officer | the arresting officer might be present | never the arresting officer |
| | | | | | X |
| | Right to inform a third person | | obstructed | limited | effective |
| | | | | | X |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Right to a lawyer | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected |
| | | | X | | |
| | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation |
| | | | X | | |
| | | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided |
| | | | X | | |
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ |
| | | | X | | |
| | Personal independence of the investigative body | | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence |
| | | | X | | |
| | Public perception of the investigation | | not independent | number of concerns/not fully trusted | independent |
| | | | X | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Investigation, prosecution, evidence* | Evidentiary value of police officers' testimony | | decisive | stronger than other testimonies | same as other testimonies | |
| | | | | X | | |
| | Private prosecution | | not possible | possible on paper but not in practice | available in practice | |
| | | | | | X | |
| *Disciplinary proceedings* | Probability | | not usual | | regular | |
| | | | | | | X |
| | Relation to a criminal procedure | | closely linked/subsidiary | parallel | independent procedures | |
| | | | | | X | |
| | Possible dismissal of a police officer | | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction | |
| | | | X | | | |
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public | |
| | | | | X | | |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public | |
| | | | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| *Monitoring* | Data | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | **X** | | |
| *Total* | **58** | | | | |

# 7. Hungary

## 7. 1. Summary of the Hungary Report

### 7.1.1. Legal framework

Hungary is an Eastern European country where there have been many legal and institutional changes with regard to policing and investigation of ill-treatment since the fall of communism in 1989. However, as this report shows, these formal changes do not seem to have significant impact on the number of complaints about ill-treatment or the success rate of investigations in these cases. The report offers some explanation as to the possible causes of this strange discrepancy between the legal and factual reality.

#### 7.1.1.1. Duties of police officers, rules of conduct, codes, Acts, orders criminalizing torture and ill-treatment

Police officers have to discharge their tasks in accordance with the laws and regulations, obey the orders of their superiors subject to the provisions of the Police Act and to protect public security and internal order even risking their life if necessary. The order must be refused if its execution would be a criminal offense. Police Act specifies the general requirement of proportionality by stipulating that the use coercive means shall not cause any disproportionate detriment to the person subjected to the police measure. The use of force has to be terminated if the person does not resist any more and the effectiveness of the police measure can be ensured without the use of force. According to the express prohibition of the Police Act, police officers shall not torture, interrogate by force or treat persons in a cruel, inhuman or humiliating manner and shall refuse any order to use these means. The police officer shall take action against any person - irrespective of his/her position, rank - to stop such behaviour.

Efforts shall be made to prevent injuries or death when coercive means is used. The person injured during the police measure shall be given aid as soon as possible and, if necessary, the police officer shall ensure that the injured be attended by a doctor and if he/she is taken to a hospital, the relatives or other persons related to the injured person shall be informed.

Torture, inhuman or degrading treatment is not, and has never been a separate crime in the Criminal Code.

Criminal Code prohibits ill-treatment in official proceedings which is committed by any public official who physically abuses another person during official proceedings. If the public official has legal authorization to use coercive means, this crime is not committed, unless the perpetrator exceeds the limits of the authorization. This felony may only be committed in course of an official proceeding having a proper legal basis, ill-treatment outside of a legal official proceeding may be sanctioned according to one of the several other articles of the Criminal Code (e.g. bodily harm). Ill-treatment in official proceedings is punishable with imprisonment of one to five years.

Any public official who attempts by force or threat of force, or by other similar means, to coerce another person into giving information, making a testimony or making a statement, or to withhold information, is guilty of forced interrogation. The perpetrator

may be any public official having the right to take a testimony or to call somebody to make a statement. The use of force means an actual physical impact on the victim suitable to influence his/her will. Threat of force in defined by the Criminal Code as follows: "a declaration of intention to cause considerable harm so as to make the person who is the target of the threat fearful." Other similar means cover all those illegal acts suitable for influencing the victim's will (without an actual physical impact), e.g. offering advantages, hurting the human dignity, etc. The perpetrator commits the crime even if the victim does not make a testimony or a statement, or does not withhold the information. Forced interrogation is punishable with imprisonment of one to five years.

The Criminal Code provides that any public official who unlawfully deprives another person of his personal freedom is guilty of unlawful detention. It is committed in every case when the deprivation of one's liberty is ordered or executed without a proper legal basis, i.e. either the criteria of the ordering of deprivation or the applicable procedural requirements are not met. The public official commits the qualified version of this crime if the unlawful detention is committed with malice aforethought or with malicious motive, by tormenting the aggrieved party, or having caused a particularly serious result. Unlawful detention is punishable with imprisonment of one to five years; the sanction for the qualified version of this felony is imprisonment of two to eight years.

#### 7.1.1.2. The power to detain, duration of detention

During the investigative phase of the criminal proceeding, three forms of deprivation of liberty may be applied.

Under the Police Act, a person may be brought before the competent authority (usually the closest police station) and taken into short-term arrest, if, amongst others, caught in the act of committing a crime, under an arrest warrant, suspected of having committed a crime. This form of detention may last for eight hours, and may be prolonged for an additional four hours in justified cases.

Criminal custody may be ordered upon reasonable suspicion that the defendant has committed a criminal offence punishable with imprisonment provided that the pre-trial detention will probably be ordered against the defendant. It can be ordered by the prosecutor or the police. This form of detention may last for a maximum of 72 hours.

Pre-trial detention is the judicial deprivation of the defendant of his personal freedom prior to the delivery of a final and binding judicial decision. During the investigation, pre-trial detention may only be ordered and prolonged by the investigation judge upon the motion of the prosecutor for a certain period of time.

### 7.1.2. Institutional solutions

#### 7.1.2.1. Police body and detention monitoring

There are two state institutions in Hungary specifically charged with the monitoring of detention and the examination of detainees' complaints. Firstly, the Department for the Supervision of Lawfulness of the Execution of Punishment and Legal Protection operating within the Chief Public Prosecutor's Office, employing prosecutors specialized in the carrying out of inspections. In addition, at each regional chief prosecutor's office, there are prosecutors designated for the task of supervising the lawfulness of detention.

Supervising prosecutors may take obligatory measures and can issue instructions to the detaining authority. The monitoring power of the prosecutor does not cover the phase of the interrogations. If a person is not held in arrest but only interrogated by the police officer and released after the interrogation, the eventual rights' violations may only be revealed if the concerned person reports them, but there is no regular monitoring supervising the treatment of interrogated persons. If prosecutors monitoring the lawfulness of detention detect any incidence of torture, they are under the obligation to file a criminal report.

Secondly, the Ombudsman monitors the performance of both the police and the penitentiary system and has wide ranging investigatory rights. The Ombudsman generally acts upon individual complaints but ex officio systematic monitoring is also possible. The Ombudsman is obliged to refer a case to the prosecutorial authority if he/she considers that a criminal offense was committed. However, in practice, if a complainant claims that a criminal offense has been committed against him/her, the Ombudsman usually informs the alleged victim of the possibility of reporting the case to the investigating authority but do not make a report directly to the prosecutor's office. According to the official statistics published by the Ministry of Interior, the Ombudsman has never reported the commission of ill-treatment, forced interrogation or unlawful detention.

The Ombudsman may initiate the remedy of the violation with the head of the concerned authority or propose a resolution to the supervisory body of the concerned authority. The Ombudsman's main publicity tool is the annual report submitted to Parliament, and also made available to the public. Besides the annual report, all reports on the outcomes of individual complaints shall be accessible to the public in an anonymised form.

The Ombudsman was designated to carry out the tasks of the National Preventive Mechanism, the tasks of which are performed by a separate department established within the Office of the Ombudsman composed of lawyers, psychologists and physicians. A civil consultation board composed of the representatives of organizations having significant expertise and experience in the field of treatment with detainees has been set up to provide support to the Ombudsman.

There are two additional special oversight institutions within the Police as well: the Supervisory Service of the National Police Headquarters and the National Protective Service. The former service gathers information and issues (not public) annual reports on the fulfilment of the CPT's recommendations.

#### 7.1.2.2. Investigative body, its independence

In case of criminal offences committed by police officers, the prosecutor has exclusive competence to investigate. Prosecutors are functionally independent of the police and prison staff. It should be added though that at their establishment in 1990, prosecutorial investigation offices employed former police officers, who then investigated their former colleagues. It is also believed "that prosecutors have a conflict of interest because they depend heavily on the police to investigate effectively and prepare well-founded cases for court. Also, the complementary but separate roles of the police and prosecutors (to identify perpetrators and to secure justice) creates a degree of collegiality between members of the two organisations. Finally, many victims of torture or other ill-treatment

are also defendants, and consider prosecutors a threat. All these factors can lower torture victims' trust in prosecutors and cause them to withhold complaints [...]."1

On the 1st of January 2014 the military prosecution got exclusive competence to investigate the offences committed by police officers, thus every criminal offence committed by police officers is subject to military criminal procedure.

### 7.1.3. Specific safeguards

#### 7.1.3.1. Audio and video recording

Police Act says that in connection with the police measure, the police may make image and sound recordings of the person concerned, the environment and any other circumstance or object relevant to the police measure.

Based on a National Police Headquarters Instruction, image and voice recording devices can be installed in police cars (these are fixed cameras). According to relatively recent data, 1410 out of 6221 police cars are equipped with cameras. The permanent operation of these devices is only mandatory if the police officer in charge of operating the device notices a "violation of the law" or if the light bar and light trumpet of the police car are switched on. In other cases there is a rather wide margin of appreciation to the police officer to decide whether to turn on the cameras.

Police officers are not equipped with body worn cameras, these devices are currently being tested by the Police.

Police Act provides that the Police may install image, voice and image and voice recording devices in the premises where short-term arrest is executed and in police jails – except in the restroom and the cell – and may make recordings for the purpose of – inter alia – crime prevention and the protection of the health and bodily integrity of the detainee. Devices can be installed in cells only if the defendant committed suicide or caused harm to him/herself previously or it could reasonably be presumed that he/she may commit such acts. These devices installed in the cells may only be used for the observation of the detainee, but the recordings shall not be stored. These devices are, however, not in general use in practice. According to 2016 data, in total 22 police jails operate in Hungary which are all equipped with closed circuit camera system. Based on the provided data the Police has 212 premises where short-term arrest can be executed. Cameras are installed only in 153 such premises, and 130 premises (out of the 153) are equipped only with a camera which does not store image. Cells are rarely monitored by cameras.

As to the recording of interrogations, the prosecutor and the investigative authority may order it by a video or audio recorder. This is mandatory for the prosecutor or the investigative authority upon the motion of the suspect, the defense counsel or the victim, provided that they pay for the costs in advance. The interrogation has to be recorded from the beginning. If there is any technical difficulty necessitating the interruption of the recoding, this fact and the exact time of the interruption has to be documented in the minutes and indicated in the recording as well. At the end, the declaration of all the

1 Borbála Iványi – András Kádár – András Nemes: Hungary. In: Richard Carver – Lisa Handley: Does Torture Prevention Work? Liverpool University Press, Liverpool, 2016, p. 209.

persons present at the interrogation – stating that everything they said was recorded correctly – has to be recorded as well. The recording is attached to the documents of the investigation, but shall not substitute the minutes. The number of interrogations of defendants recorded with audio and video recording devices is extremely low: for the period of 2012–2014 it varied from 0,013% to 0,023% and 0,026% respectively.

The recordings of the interrogations shall be stored as long as the case file is stored. The other records mentioned shall be stored for 30 days which may be prolonged by 30 days if necessary as specified by the relevant law. The stored recordings may only be used for the purpose of assessing the lawfulness of police actions.

As to the recording of a police action by an outsider, the civil code expressly provides that in case of action in a capacity of a public figure, the consent of the person concerned is not required. The Supreme Court nonetheless has repeatedly confirmed the existing jurisprudence that a police officer cannot be considered as a public figure, therefore the recording of his/her action requires his/her consent. The Constitutional Court has rejected this interpretation and insisted on changing that approach by emphasising the role of the freedom of the press in the right to be informed. This decision did not deal with individuals wishing to record police officers when performing a measure though. Despite this, according to the consistent jurisprudence of the courts, the recoding is not unlawful if it was made with the purpose of proving an imminently threatening or already committed unlawful action, provided that the recoding was justified by public interest or lawful self-interest. Furthermore, it is also well established practice of the courts that videos made with hidden cameras can be used in the criminal proceedings as evidences.

#### 7.1.3.2. Medical examination

Every person placed into police custody has to be examined by a doctor as part of the admission procedure to the jail. This doctor is usually, but not necessarily the police jail doctor. Police jail doctors may be employees of the police service, but they may also perform their service on a contractual basis. Their dependence on the police is often subject to criticism. In case of injury, the medical attendance of the arrested person has to be ensured. If a person presented injuries upon admission to custody, and/or made allegations of ill-treatment, he or she would be sent to civil hospital or to a civil primary care physician for an independent medical examination. The right to access to an external doctor of one's own choice during the detention is not formally guaranteed. There is no requirement of special forensic medicine knowledge.

The detainee has a right to medical examination after his/her admission to the police jail as well. Similarly to the examination carried out upon placement in jail, the physician has to make a medical report in case of visible injuries or if the detainee complains about having been abused. The physician has to record every visible injury together with the assessment of the possible circumstances under which the injuries may have occurred or the lack of any visible injuries. If the detainee alleges that he/she was abused by the police officers the medical report has to contain the physician's statement on the plausible origin of the injury as well as the detainee's statement. However, in practice, doctors do not give any statement as to the plausible origin of the injury, arguingthat the drawing of conclusions is the task of an outside forensic medical expert and, to preclude

any bias, the police doctor may not make a statement in this connection.However, a forensic medical expert is appointed usually months after the initiation of a criminal proceeding against the police officer, thus the expert has no chance to examine the injuries right after the alleged ill-treatment.

The possibility of carrying out the medical examination without the presence of the police officers has to be ensured upon the request of the physician or the detainee, if it is possible. In fact, a police officer who is likely to be the same police officer who allegedly committed ill-treatment is almost always present during the medical examination if the injured person is escorted to a civil hospital or a civil primary care physician right after the impugned police measure.

Doctors hardly ever take photos of the injury, given that there is no legal obligation to do so. Doctors do not refer the complaint of ill-treatment and the related medical report directly to the prosecutor, instead, it is transmitted through the police officers, thus confidentiality of medical documentation is not ensured.

It is further specified that both the detainee and his/her defense counsel – with the written permission of the detainee – have access to the medical documentation and may ask for a copy (however it is not free of charge).

#### 7.1.3.3. Right to a lawyer

If the defendant is detained, the participation of a defense counsel is mandatory from the very first moment of the short-term arrest if the person was apprehended because he/she was caught in the act of committing a deliberate criminal offense. The Code of Criminal Procedure (CCP) provides that the defendant's interrogation shall be scheduled in a way that the defendant shall have adequate time and means to prepare his/her defence. The law also prescribes that the defense counsel shall be notified in due time, at least 24 hours in advance about those procedural actions at which his/her presence is allowed, unless the procedural action has to take place immediately. However, guaranteeing the right to have adequate time and means to prepare the defence shall not cause disproportionate difficulties in the progress of the criminal proceeding. As to the practice, the right to have adequate time and means to prepare one's defence is not guaranteed effectively. Notifications about initial interrogations are in fact sent out very shortly, that is 30 minutes or an hour on average before the interrogation actually commence.

The Constitutional Court recently concluded that it violates the right to defence if the defense lawyer is informed about the place and time of the interrogation at a time which makes it impossible for him/her to participate or to perform the duties defined by procedural. This means that evidence gathered through such interrogation must be excluded.

Experience shows that defence counsels are not particularly active in taking action in relation to the complainant's claim of ill-treatment. It is unlikely that defence counsels would report the ill-treatment or forced interrogation with the purpose of initiating a criminal proceeding against the police officer(s). However, defence counsels do sometimes insist on recording the injury and the complaint or bringing the complainant to a medical examination. They also refer to ill-treatment or forced interrogation before

the court with the purpose of convincing the judge to exclude the testimony of the complainant from among the evidences.

A sharp distinction must be made between retained lawyers and lawyers appointed by the. It is a common view that retained lawyers perform their service much more effectively than appointed counsels, partly due to the late notifications and their low remuneration, but it has also a very important structural reason: in the investigation phase it is the police officer conducting the investigation who chooses the defence counsel for the indigent defendants. Some attorneys base their law practice principally on ex officio appointments, so they may become financially dependent on the police officer deciding on appointments, while the police – due to its procedural role – is obviously not interested in efficient defence work. This results in the widespread practice of having "in-house" ex officio defence counsels at police headquarters. CPT also pointed out in its 2013 report that it was not unheard that ex officio lawyers were acting in the interests of police officers rather than in the interests of the persons to whom they had been assigned.

#### 7.1.3.4. Right to inform a third person

The Police Act stipulates that the detainee has the right to notify a relative or any other person from the very outset of the short-term arrest unless this would jeopardize the aim of the given police measure. The law does not specify the time when the notification shall take place, with the exception of the detention of juveniles and people under guardianship, whose parents or guardian must be notified immediately. For other categories of detainees, the notification shall take place before the end of the deprivation of liberty. While the detainee is granted the right to choose the person to be informed, it is the police officer to decide whether the notification of a certain person would jeopardize the aim of the police measure. If the detainee is not in a position to exercise his/her right, the notification has to be performed by the police officers.

In case of the criminal custody, when communicating the order of the detention to the suspect, the authority has to ask the suspect to name a person to be notified. The CCP prescribes that the relative designated by the defendant shall be notified within 24 hours of the defendant's criminal custody. If the detainee has no relative who could be informed, the detainee has the right to designate another third person to be notified. The notification of the detainee's relative is formulated as an obligation, while the notification of another third person is only a possibility which the police officers can consider. With regard to the person who shall perform the notification, in practice it is almost always a police officer who makes the phone call.

The time and the chosen way of the notification have to be documented. It is also mandatory to give reasons if the police have failed to perform the notification. According to empirical research, it is not unusual that there is only one attempt by the police to notify the relative designated by the detainee and if that is not successful, no further efforts are made.

#### 7.1.3.5. Risk of being pursued for false accusation

The Criminal Code prohibits two acts as false accusation: "[a]ny person who a) falsely accuses another person before an authority of the perpetration of a crime, b) conveys to

the authority any forged evidence against another person relating to a crime is guilty of a felony". The false accusation is a statement of fact falsely alleging that a concretely identifiable person committed an act punishable by the Criminal Code and is suitable for triggering a criminal procedure. The forged evidence must be suitable for creating the pretence that another person committed a crime.

Initiating a criminal proceeding for false accusation when the defendant claims that he/she was ill-treated is not typical. Most of the criminal proceedings opened against police officers are terminated for want of evidence, and the person who reported ill-treatment cannot be prosecuted for false accusation if the criminal proceeding conducted against the police officers is terminated for this reason.

## 7.1.4. Mechanisms for dealing with torture and ill-treatment

### 7.1.4.1. Complaints system

#### *7.1.4.1.1. Procedures upon complaint under the Police Act*

According to the Police Act the person whose right has been violated by the police officers during police actions or the use of coercive means may lodge a complaint within 30 days with the police organ at which the police officer serves. The complaint is investigated and decided by the chief police officer of the concerned police organ within 30 days. The decision of the chief police officer can be appealed, and the second instant police decision may be challenged before and reviewed by the court.

Alternatively, if the person alleges that his/her human right was violated, he/she may lodge a complaint with the Independent Police Complaints Board. The Board was set up in January 2008. This body is composed of members elected by the Parliament and is entitled to carry out inquiries into complaints of police misconduct violating the human rights of citizens. The Board is entitled to require information from the Police, to study documents concerning the complained police actions and to enter the police buildings. The Board gives its opinion on the complaint and sends it to the National Chief of Police. The complaint is decided by the National Chief of Police who has to take the opinion of the Board into account, but is not bound by it – however any deviation from the Board's opinion has to be reasoned. The decision of the National Chief of Police can be challenged directly before the court.

The court (administrative court) may exercise review over the police decisions concerning the complaints. The court examines the lawfulness of the decisions; the judge may only quash the decision and order the police to reexamine the complaint, but may not change the decision of the police.

#### *7.1.4.1.2. Complaint procedures regulated in the Code of Criminal Proceedings*

Anyone whose right or legal interest was directly violated in the criminal proceeding by the measures carried out by the investigative authority (the Police) may lodge a complaint with the investigative authority within 8 days. The prosecutor entitled to review the decision of the Police on the complaint and to modify or quash it. If the complaint is deemed founded, every step shall be taken to remedy the complained injurious situation.

#### 7.1.4.2. Procedures upon referral

The police officer is obliged to report the use of coercive means to his/her superior (commander) both orally and in a written report. The commander has the obligation to examine immediately whether the requirements of the use of coercive means were respected. The commander has to hear the person who suffered injuries due to the use of coercive means and all those persons who were present at the police action. In addition to these explicit requirements the commander should also hear the doctor who attended the injured person, obtain the medical documentation and the opinion of the doctor on the possible causes of the injury; the commander may also have recourse to an expert in order to clarify the necessity of the use of coercive means.

The commander shall make a written report containing his/her observations including his/her opinion on the lawfulness, professionality, necessity and proportionality of the use of coercive means. If the commander concludes that the use of coercive means was not lawful, the commander shall initiate a disciplinary or a criminal proceeding against the police officer.

#### 7.1.4.3. Criminal proceedings

The commission of a criminal offence may be reported by the victim, his/her family members or any other third person. Members of an authority and official persons (officials) are legally obliged to report to the investigative authorities if the suspicion of a criminal offence comes to their notice while performing their official duties. The investigation of the criminal offences committed by police officers belongs to the exclusive competence of the military prosecution. In a military criminal proceeding the duties of the prosecutor are performed by the military prosecutor and the case is tried by the military panel of the general court. The court may impose military sanctions on the officer affecting his/her position in the service hierarchy or may discharge the officer besides the sanctions otherwise envisaged by the Criminal Code.

The prosecutor has the right to reject the report of the criminal offense. The person who reported the criminal offense has to be informed about the rejection. If it was the victim who reported the criminal offense, he/she can challenge the decision, but if the person who reported the criminal offense is not the victim, he/she is explicitly excluded from this right. If the victim challenged the decisions of the prosecutor, but the complaint was rejected, he/she can file a motion for prosecution and act as a supplementary prosecutor.

In case of termination of the investigation, both the person who reported the criminal offense and the victim (provided that these are different persons) has to be notified and they both can challenge the termination of investigation.

A complaint against the decisions delivered in course of the investigative phase of the criminal proceeding can be submitted within 8 days after the notification. The prosecutor has three days to consider the complaint and modify his/her decision. If the prosecutor does not agree with the complaint, it is forwarded to a senior prosecutor. There is no remedy against the decision of the senior prosecutor.

#### 7.1.4.4. Disciplinary action

Any kind of misconduct violating the rules on the duties of the officers concerning their service constitutes a disciplinary offense and the officer shall be called to account in an internal disciplinary procedure. As a general rule, it is the chief officer of the given organ in which the officer performs his/her service responsible for the disciplinary procedure. If it turns out that the disciplinary offence constitutes a criminal offence it has to be reported to the competent investigative authorities. Until the final and binding judgment of the criminal court, the disciplinary procedure may be suspended.

The victim may be heard as a witness in the disciplinary procedure, but he/she does not have any other rights. However if it is requested by the witness, his/her personal data must be treated confidentially.

Among the disciplinary sanctions there are reprimand, pecuniary sanctions, sanctions concerning the position of the officer within the service hierarchy, and the officer may also be discharged from his/her duties. If the misconduct is deemed insignificant the initiation of a disciplinary procedure may be omitted and the officer may only be given a warning. Furthermore, the officer shall not be sanctioned if he/she was commanded to commit the offence, unless the officer knew that the commanded action constituted a disciplinary offence.

#### 7.1.4.5. Victim's rights

Any person whose right or legal interest has been violated or threatened by the crime has legal standing in the criminal proceedings as a victim of a crime. The victim shall be entitled to be present at the procedural actions unless exception is made in the CCP and to inspect the documents affecting him or her in the course of the procedure, make motions and observations at any stage of the procedure, receive information from the prosecutor and the investigating authority concerning his or her rights and obligations in course of the criminal proceeding and file for legal remedy in certain cases. At the end of the trial, the victim may address the court and may also declare whether he/she requests the establishment of the guilt and the punishment of the accused.

The victim is entitled to challenge the decision of the authorities terminating the investigation and to attack the decision of the public prosecutor partially omitting the indictment. During the preparation of the trial, the court may decide to terminate the criminal proceeding which may be challenged by the victim. In course of the trial, the victim may exercise his/her right to legal remedy in a limited area, however this right is wider if the victim acts in his/her capacity as private accuser, supplementary prosecutor or private party. The victim cannot challenge the legal qualification of the crime or the imposition of the penalty.

The victim can also enforce a civil claim for pecuniary compensation in the criminal proceeding by acting as private party.

#### 7.1.4.6. The protection of the victim as a witness

The victim is entitled to the different forms of protection measures in his/her capacity as witness.

The court, the prosecutor or the investigating authority may order ex officio the confidential treatment of the witness' personal data. Upon the request of the witness or his/her attorney, the confidential treatment of personal data has to be ordered. In this case the personal data of the witness may only be known to the court, the prosecutor and the investigating authority who are obliged to guarantee the confidentiality of these personal data throughout the criminal proceedings. The scope of this confidential treatment may cover also the name of the witness. CCP contains the detailed rules for specially protected witnesses, personal protection and witness protection program too.

Upon the request of the witness and the attorney of the witness, or ex officio, the court may order the hearing of the witness by way of a closed-circuit communication system, provided that a violent criminal offence was committed against the witness, or the protection of the witness otherwise justifies it.

In addition to the above mentioned measures, if it is necessary for the protection of the witness, the presentation for identification has to take place under conditions preventing the person presented from identifying or noticing the witness. Furthermore, as a general rule, the contradiction between the testimonies of the defendant and the witness may be reconciled by way of confrontation, however if it is required for the protection of the witness, the confrontation shall not be ordered. Moreover, for the duration of questioning, the judge may order the accused whose presence may disturb the witness in the course of the questioning to leave the court room upon the motion of the prosecutor, the accused, the defense counsel or ex-officio.

#### 7.1.4.7. Private prosecution

The victim has the right to act as a supplementary prosecutor if the prosecutor is not willing to enforce its criminal claim against the defendant. The victim may act as a supplementary prosecutor – inter alia - in the following events: a) the prosecutor rejects the report of the criminal offense or terminates the investigation, b) the prosecutor partly omits to file formal charges, c) the prosecutor drops the charge. The motion has to be submitted via an attorney and within a 60 days deadline. Legal representation is mandatory throughout the proceedings unless the victim has passed the bar exam.

According to a research of the Criminal Chamber of the Supreme Court in 2009, only 1/3 of all the motions for prosecution was accepted by the court, i.e. 2/3 of the motions was rejected by the courts without further examination.

The qualification of the crime by the prosecutor has a significant impact. Ill-treatment in official proceedings and forced interrogation – which have a victim – may easily be qualified as an abuse of authority which does not have a victim according to the practice of the courts, consequently there is no possibility of joining the proceeding as a supplementary prosecutor.

In course of the proceeding, the supplementary prosecutor exercises the rights of the prosecutor (including the general right to motion and the right to legal remedy). The supplementary prosecutor is entitled to motion the order of coercive measures as well. One major difference between the position of the prosecutor and that of the supplementary prosecutor is that the supplementary prosecutor does not have the

possibility to conduct an investigation, but only to submit motions for evidence before the court.

The supplementary prosecutor can be heard at the trial as a witness in which case he/she is questioned by the legal representative. If the accused police officer has been acquitted or the proceeding has been terminated by the court, the expenses of the criminal proceeding are borne – at least partially – by the supplementary prosecutor.

#### 7.1.4.8. Civil action, tort

The Civil Code provides that every person whose inherent personal rights (including right to dignity and to physical integrity) have been violated and suffered damage may claim restitution or compensation. Consequently victims of torture are entitled to bring civil actions against the organs of the state, i.e. in ill-treatment/torture cases against police departments where the police officer who has committed the offence serves.

The victim also has the right to enforce a civil claim in the criminal proceedings initiated against the officers. However, in case of criminal offences committed by police officers, the applicability of this rule is uncertain. The reason is that in a criminal proceeding the civil claim may only be enforced against the accused (i.e. the police officer), but it is the police department which is responsible for the damages caused by the police officer. It may well happen that in a criminal proceeding the court will decide not to deal with the civil claim and refer the enforcement of the civil claim to other legal means. It means that in such cases the victim has to bring a separate civil claim before the civil court against the police department. If the accused person is found guilty by the criminal court, the civil court cannot conclude that the criminal offense was not committed by the police officer.

#### 7.1.4.9. Exclusion of evidence

Facts derived from means of evidence obtained by the court, the prosecutor or the investigating authority by way of committing a criminal offense, by other illicit methods or by the substantial restriction of the procedural rights of the participants of the criminal proceeding shall not be admitted as evidence in a criminal proceeding.

Whether the evidence was obtained by other illicit methods or by the substantial restriction of the procedural rights of the participants of the criminal proceeding has to be determined by the judge of the original criminal proceeding (i.e. there is no need of initiating a separate procedure). The authorities are obliged to examine ox officio the lawfulness of their procedure and all the prior phases of the criminal proceeding.

### 7.1.5. Experience in practice

#### 7.1.5.1. Sentencing practice in torture cases and amnesty

Conviction rates of the relevant offenses (ill-treatment in official proceedings, forced interrogation, unlawful detention) are significantly lower than that of other crimes, for example assault against public officials. Furthermore, even when the perpetrators are convicted, the sanctions tend to be rather lenient. The Old Penal Code provided that in the case of suspended imprisonment, the court could exonerate the convicted perpetrator from the detrimental consequences of an unclear criminal record, which meant that

a convicted police officer was able to remain in the police force. If the court granted exoneration parallel to imposing a suspended imprisonment sentence, the convicted police officer did not have to be dismissed. If no such exoneration was given, even a suspended imprisonment prevented the perpetrators from keeping their jobs with the police (unless the Minister of Justice and Law Enforcement gave an exemption). Courts did exercise the possibility of exoneration and the police did not dismiss officers convicted of criminal offenses in some very serious cases.

After amendments, the law now excludes the possibility of keeping in the force officers convicted of ill-treatment and other similar offences, even if they were exonerated by the criminal court. However, the Minister of Interior can allow officers that have been sentenced to suspended imprisonment and exonerated to continue to work as members of armed organisations. The number of exemptions is considerable: while in 2012 3 exemptions were granted out of 10 requests, this rate mounted to 2 out of 4, 2 out of 3 and 9 out of 12 in the respective following years.

#### 7.1.5.2. Data available

Supervisory Service of the National Police Headquarters has a duty to publish annual reports (which are not available to the public) on the fulfilment of the CPT's recommendations. These reports are rather general and based on data provided by the metropolitan and regional police departments. According to this data, the number of complaints submitted against police officers having performed the police measure and guards is steadily increasing. The 2015 report admits that most of the complainants alleged ill-treatment, but concludes shortly and simply that – based on the results of the internal review procedures and criminal proceedings – the complained police measures were lawful, professional and justified. It is further added that the conclusion can be drawn from the examined cases that the persons subjected to police measure often try to avoid criminal consequences by accusing the police officers of having committed a criminal offense.

Other statistical sources show that only a very small – and in fact decreasing – percentage of torture-related complaints end in indictments. The vast majority of the cases discontinues due to the rejection of the report or the termination of investigation. Data show that as a general pattern more than 90% of the ill-treatment, forced interrogation and unlawful detention cases were terminated either because the report of the criminal offense was rejected or the investigation was terminated. In ill-treatment and forced interrogation cases the number of terminations are somewhat higher than the number of rejections, while in unlawful detention cases the gap between these numbers is narrower. The proportion of cases in which charges were pressed against the perpetrators remained under 10%. Moreover, since 2010 the number of indictments did not exceed the 5% of the cases. In sheer numbers it means that in the period of 2010-2015 indictment was filed only 20-40 times in ill-treatment cases, 1-8 times in forced interrogation cases and 2-4 times in unlawful detention cases.

As to the success rate of prosecution, while this low percentage of indictment could indicate that prosecutors press the charges only if sufficiently convincing evidences have been obtained to convict the accused officers, it seems that even in those cases brought before the court the conviction of the accused officers does not necessarily

follow the filing of indictment (in 2013 67%, 50% and 75% for ill-treatment proceedings, forced interrogation and unlawful detention respectively).

Even if the perpetrator is finally convicted the sanctions tend to be rather lenient. In most cases the court imposes a suspended imprisonment or a fine. No effective imprisonment was imposed in unlawful detention cases between 2003 and 2013, and in forced interrogation cases between 2006 and 2013.

Concerning the length of criminal procedures, data provided by the Chef Prosecutor's Office upon special request show that the average length of criminal proceedings initiated against police officers varies significantly. An ill-treatment case lasted for 561 days in average in 2008, but in 2014 the procedure took 1105 days. We can observe similar gaps when it comes to forced interrogation (only 425 days in 2011, but more than 2385 days in 2014) and unlawful detention (the minimum was 525 days in 2009, the maximum was 2348,5 in 2014) cases. The average lengths of the criminal proceedings vary from one year to the other without showing any general pattern. However, it is common in ill-treatment, forced interrogation and unlawful detention cases that the criminal procedures terminated by a final and binding judgment in 2014 were extremely lengthy compared to data from previous years. Ill-treatment criminal cases usually last for less than 2,5 years, but definitely more than 1,5 year. The average length of unlawful detention cases moves between 1,5 and 3 years. The dispersion is particularly significant when it comes to forced interrogation cases; most cases terminate within 3,5 years but the average length went under 1,5 year in 2010 and 2011. In unlawful detention cases it happens more often compared to ill-treatment cases that the average length of the process exceeds 2,5 years. The average length of forced interrogation cases fell between 3 – 3,5 years in four years, while in ill-treatment and unlawful detention cases it happened only once. What is particularly concerning is that forced interrogation and unlawful detention procedures terminated by a final a binding judgment in 2014 lasted for more than 4 years; to be exact the average length of forced interrogation cases was 2 385,6 days (c. 6, 5 years) and it was 2 348,5 days (c. 6, 5 years) in unlawful detention cases.

#### 7.1.5.3. Concerns, criticism

Although the immediate ex officio inquiry seems to be perfectly suitable to constantly examine the lawfulness of police actions and to function as an alarm bell when ill-treatment occurs, serious shortcomings of both the legal background and the practice of this ex officio inquiry can be highlighted. In fact, the success of any further liability mechanism (such as the criminal proceeding) heavily relies on the facts found and evidences obtained in the course of this inquiry, given the fact that police ill-treatment is a criminal offense particularly difficult to be proven due to the lack of evidences or their quick loss with the lapse of time. Despite its importance, this area is considerably under regulated, within the frame of the very general legal provisions there are no detailed rules on the inquiry to be followed by the commander. The lack of a detailed regulation and clear professional criteria can easily result in negligent examinations, the loss of very important evidences and the omission of the necessary legal consequences.

Another criticism present in the literature is that the commander is very often not able to carry out an unbiased and objective examination of the police actions given the strong hierarchy in the organization. As a result – it is argued – police actions are found

unlawful in general only in those cases where the unlawfulness of the use of coercive means cannot be concealed (e.g. several unbiased witnesses were present at the police action).

| 7. 2. Assesment of Hungary | | | 1 | 2 | 3 | no data/not relevant |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | X | | | |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | X | | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | X | | | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | X | | | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | X | | | |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | X | | |
| | | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory | |
| | | | | X | | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | X | | |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | X | | |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | | | X |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | X | | |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | X | | |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | | X | |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | | X | |
| | | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos |
| | | | X | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | | prohibited/never appears | might appear | should be included |
| | | | | | X | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission |
| | | | | X | | |
| | | Privacy | | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise |
| | | | | | X | |
| | | Attending police officer is present if privacy is not granted | | always the arresting police officer | the arresting officer might be present | never the arresting officer |
| | | | | X | | |
| | Right to inform a third person | | | obstructed | limited | effective |
| | | | | | X | |
| | Right to a lawyer | | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected |
| | | | | X | | |
| | | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation |
| | | | | | X | |
| | | | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided |
| | | | | | X | |

| | | | | |
|---|---|---|---|---|
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ |
| | | | X | |
| | Personal independence of the investigative body | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence |
| | | | X | |
| | Public perception of the investigation | not independent | number of concerns/not fully trusted | independent |
| | | X | | |
| | Evidentiary value of police officers' testimony | decisive | stronger than other testimonies | same as other testimonies |
| | | | X | |
| | Private prosecution | not possible | possible on paper but not in practice | available in practice |
| | | | X | |
| *Disciplinary proceedings* | Probability | not usual | | regular |
| | | | | X |
| | Relation to a criminal procedure | closely linked/subsidiary | parallel | independent procedures |
| | | X | | |
| | Possible dismissal of a police officer | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction |
| | | X | | |
| | Claim for damages | separate civil action based on a final and binding conviction | within the criminal procedure | separate and independent civil action |
| | | | | X |

| | | | | | |
|---|---|---|---|---|---|
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | **X** | |
| *Total* | **59** | | | | |

# 8. Northern Ireland

## 8. 1. Summary of the Northern Ireland Report

Due to Northern Ireland's historical legacy, a thorough reform of policing took place, including a strong emphasis on human rights and a tight supervision over the treatment of detainees. From the mid-sixties to the end of the millennium, Northern Ireland was gripped by a violent political conflict whose direct impact was felt in Britain and the Republic of Ireland and which cost over three and a half thousand deaths, scores of thousands of injuries and up to forty thousand people imprisoned. However, as a result of serious efforts, legal and institutional reforms, there were no allegations of ill-treatment of persons detained by the Police Service for Northern Ireland in 2008, as established by the CPT. On the contrary, most persons interviewed stated that they had been well treated at the time of their apprehension and during custody. The report on Northern Ireland provides an in-depth insight into the route from the crisis to the current days when Northern Ireland policing is a best practice in Europe.

### 8.1.1. Legal framework – duties of police officers, rules of conduct, codes, acts, orders criminalizing torture and ill-treatment

#### 8.1.1.1. Disciplinary and ethics codes, other provisions

Duties of police officers are detailed in the Police (Northern Ireland) Act 2000. All serving police officers within the Police Service of Northern Ireland (PSNI) are required to comply with the Code of Ethics, which sets out the standards against which the officer will be measured. Torture and ill treatment by official persons is covered under the Code of Ethics.

According to these provisions, police officers shall not subject any person to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatsoever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. Police officers shall ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner. Arrest and detention shall only be carried out in accordance with the provisions of the European Convention on Human Rights, relevant legislation and associated codes of practice. In their dealings with detained persons, police officers shall, as far as possible, apply non-violent methods before resorting to any use of force. Where force is required, such use of force shall be the minimum required in the circumstances and shall be lawful, proportionate and necessary for the maintenance of security and order; to prevent escape, injury, damage to property or the destruction of evidence; or where the detained person resists the taking of items or samples for criminal justice purposes as authorised by law. Police officers shall take every reasonable step to protect the health and safety of detained persons and shall take immediate action to secure medical assistance for such persons where required.

The Code of Ethics defines the parameters of conduct within which the discretion of officers should be exercised. Any breach of the Code of Ethics may therefore result in disciplinary action being taken, which in serious cases could result in dismissal. As to the further employment of an officer concerned, serving police officers found guilty

of serious criminal offences will generally be dismissed or required to resign. There have not been any convictions of police officers for ill-treatment of detainees in the last decade but it is inconceivable that any officer so convicted would be permitted to continue serving.

There are different Codes of Practices, issued under the Police and Criminal Evidence (NI) Order 1989 (the PACE Order), detailing the provisions of that Order and providing guidance on its implementation. These Codes of Practice issued under the PACE Order and the Terrorism Act lack the full force of law, but failure by police officers to comply with them may make them liable to disciplinary proceedings (unless criminal proceedings are pending against them) and the provisions of the Codes may be taken into account by the courts when deciding whether to admit confessions. Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers applies to all suspects, except those arrested and detained under the Terrorism Act 2000, for which a revised Code of Practice H has applied since 2008 (there are differences in the degree of protection offered to suspects under each of these Codes). Code C contains detailed rules on how interviews are to be conducted. It requires that an accurate record be made of each interview with a person suspected of an offence and that the record be signed by the suspect as correct.

#### 8.1.1.2. The power to detain under ordinary law and under anti-terrorist laws, duration of detention

The PACE Order specifies the conditions and circumstances under which a person can be kept in detention. It also gives mandatory and detailed explanations of how custody records should be kept.

Until his or her release the arrested person is the responsibility of the station's 'custody officer', who authorises the initial detention and any release. PACE Order sets out detailed rules on the detention, such as how to carry out searches (including intimate search), what are the permitted periods of detention, how it must be reviewed and what are the detainee's rights concerning information, legal advice, visits and medical examination.

The maximum permitted period of detention without charge is normally 24 hours that can be continued by up to 12 hours for indictable offences. Under the PACE Order however, further detention beyond 36 hours is allowed only if authorised by a magistrates' court. The court can initially require allow it for up to 36 hours, but a second court order can then be applied for, bringing the total permitted period of detention since the time of the arrest to 96 hours. Throughout the period of detention the position of the arrested person must be reviewed. The first review must be carried out 6 hours after the detention begins and later reviews must be conducted at least once every 9 hours by an officer who has not been directly involved in the investigation. Once charged, he or she must be released on police bail or brought before a magistrates' court on that day or on the following day.

Persons arrested under the Terrorism Act 2000 can be detained for up to 48 hours that can be extended by a county court judge or a designated district judge. The initial extension can be for any period, provided that it does not end more than seven days after the date of the detainee's initial arrest. Further applications for extended detention can then be made provided that the total detention does not end more than 14 days after

the detainee's initial arrest. The first review must be carried out as soon as is reasonably practicable after the person's arrest and thereafter at intervals of not more than 12 hours. The review officer must make a written record of the review in the presence of the detainee and inform him or her at that time whether and, if so, why detention is being continued.

In 2014/15, 24 377 people were arrested and detained by the PSNI under the PACE Order. Of these 62 were held for longer than 24 hours of whom 17 were subsequently charged and 45 released without charge. 227 people were arrested under Section 41 of the Terrorism Act (TACT) of whom 35 were charged; no information is available on the length of detention.

### 8.1.2. Institutional solutions

#### 8.1.2.1. Police body and detention monitoring

All complaints about the police are investigated by the independent Office of the Police Ombudsman. for Northern Ireland (OPONI or Police Ombudsman). It has its own independent corps of investigators and receives all complaints about police misconduct or criminality. The Police Ombudsman also has powers with regards to disciplinary matters as well as investigation of complaints. The Ombudsman can direct that charges be brought and invoke a special procedure known as a directed tribunal. The Police Ombudsman has a primary statutory duty to secure an efficient, effective and independent complaints system and in doing so to secure the confidence of the public and the police in that system. Complaints are dealt with in a manner which is free from any police, governmental or sectional community interest and which is of the highest standard. There is 24 hour availability and call-out of Ombudsman investigators.

In addition to that, the Northern Ireland Policing Board is established to hold the Chief Constable and the police service publicly to account and charged with supervising the activities of the Police Service of Northern Ireland (PSNI). It is a non-departmental public body composed of members of the Northern Ireland Assembly and independent citizens. As part of its human rights monitoring work, the Performance Committee of the Policing Board also monitors internal disciplinary proceedings and breaches of the Code of Ethics in order to assess the extent to which individual officers are paying due regard to human rights principles and the action that PSNI as an organisation takes in response to those breaches, thus the effectiveness of the Code of Ethics should the Board consider revising the Code.

While a person is in custody he or she may be visited by custody visitors, that is, people who are appointed by the Northern Ireland Policing Board under section 73 of the Police (NI) Act 2000. Custody visitors can speak to detainees in private and can report to the Board on the conditions they find in the police stations' custody suites, but they cannot themselves investigate any complaints raised by detainees.

Also, in accordance with section 41 of the Police (Northern Ireland) Act 1998, the Department of Justice may commission Her Majesty's Inspectorate of Constabulary to inspect and report on the efficiency and effectiveness of the PSNI.

#### 8.1.2.2. Investigative body, its independence

The organisation set up to deal with complaints against the police by members of the public is the aforementioned OPONI. All investigations into allegations of ill-treatment by the police are carried out by the Office of the Police Ombudsman.

The Police Ombudsman has two investigations directorates - the Current and Historical Investigations directorates. The Current Directorate deals primarily with complaints made to the Office about incidents which have occurred in the previous year (members of the public have one year from an incident in which to make a complaint about it, unless the complaint is about a matter deemed by the Police Ombudsman to be grave or exceptional). The Current Directorate consists of four teams, of around 80 staff in total. The teams include two Current Investigations Teams, a Significant Investigation Team and the Initial Complaints Office. The Initial Complaints Office receives complaints over the phone, by email, via a website, and from members of the public who call to make a complaint in person at OPONI offices in Belfast City Centre. Most of OPONI's investigating officers are employees of the Office (many are ex-police officers but usually from outside Northern Ireland) but some are seconded police officers from services other than the PSNI. Investigators have full police powers when investigating possible criminal offences and hence can arrest serving officers and search premises as necessary.

OPONI deals with complaints coming from the members of the public, but deals also with matters referred by the PSNI Chief Constable, the Northern Ireland Policing Board, the Department of Justice and the Public Prosecution Service. The Police Ombudsman also has the power to initiate an investigation without a complaint having been made if it appears to him to be desirable and in the public interest.

### 8.1.3. Specific safeguards

#### 8.1.3.1. Audio and video recording

In 2014, the PSNI piloted a scheme for the deployment of body-worn cameras for police officers on operational duty. At the end of February 2016, it was announced that this would be rolled out across the service over a period of months. In the future, then, incidents would be recorded by cameras worn by the officers concerned. Police officers can turn off the cameras at any point. In fact, guidance dictates that the cameras are not switched on all the time to avoid collateral infringement of e.g. privacy rights. If switched off the camera records the date and time at which it is switched off and back on again. Each camera records the details of the officer to whom it was issued.

There is no routine recording of what happens in a police car.

All custody suites are fitted with sound and vision equipment – everywhere but in the toilets and medical room. There are also alarm buzzers in cells. CCTV records are kept for 90 days in general but if required for evidence are kept indefinitely. Custody suites don't have a facility for officers to turn off cameras.

During the interrogation, a sound recording is made of all interviews with detainees. Code E and Code F of Practice concern the issues of audio-taping and video-recording of interviews at police stations. According to these Codes, interviews should be audio-recorded where a person has been cautioned in respect of any indictable offence, save

for the offence of driving whilst uninsured. Interviews with persons cautioned for other offences may be recorded at the police's discretion. A uniformed officer not below the rank of inspector may authorise an interview not to be recorded if the equipment is faulty and the interview should not be delayed, or where it is clear that there will not be a prosecution. The audio recording may also be switched off at the request of the interviewee without any obligation on officers to ascertain the reason for the request. Rules for visual recording apply to interviews regarding indictable offences (or offences which can be tried either on indictment or summarily) which take place when the interviewee has already been charged or informed that he or she may be prosecuted; is deaf, blind or speech-impaired, and uses sign language to communicate; requires the help of an 'appropriate adult' or has requested (perhaps through his or her legal representative) that the interview be visually recorded. All interviews by police officers of persons detained under the Terrorism Act 2000 must now be audio and video-recorded.

Outsiders are allowed to record the action of a police officer. The recording device can be seized under certain circumstances and the seizure must be justified by reference to the particular circumstance. Deleting any material from the seizure equipment constitutes a serious misconduct.

#### 8.1.3.2. Medical examination

There is no requirement for routine medical examination of a detainee, who will not therefore always be medically examined. Medical examination shall take place if there is some indication of injury, vulnerability or if a request is made. If a claim is made of illtreatment during an interrogation that will be recorded and medical examination will be directed by the custody sergeant. If such a claim is made the matter will be immediately referred to the Police Ombudsman who will attend and investigate the claim. The medical examination is provided by an appropriate healthcare professional, who will normally be a Forensic Medical Officer. These are independent doctors, usually General Practitioners, who are contracted by the PSNI to provide a service to detainees. They are all members of the Faculty of Forensic and Legal Medicine (FFLP) of the Royal College of Physicians which is a professional body with relevant codes of conduct. Forensic Medical Officers would normally be regarded as independent of the police.

The detainee may also be examined by a medical practitioner of their choice at their expense. The proportion of such examinations is unknown, but they are likely to be very rare. Police officers would not normally be in the room for a medical examination. Only if the detainee were violent would the custody sergeant take appropriate measures.

Injuries are observed, photographed and drawn by the Forensic Medical Officer where appropriate. The doctor would automatically (i. e. without request) mention the possible cause of the injury in the medical report. Ombudsman investigators may also photograph injuries. Doctor's reports are automatically passed on to the Ombudsman. Forensic Medical Officers can complain to the custody sergeant or directly to the Ombudsman's office. If the doctor had concerns and raised them with the custody sergeant, this conversation would be recorded unless it took place in the medical room. Doctors could also contact the civilian manager who is Head of Reducing Offending and Safer Custody and responsible for their contracts and custody policy. If a complaint of illtreatment is

made, Police Ombudsman investigators would interview the complainant with no PSNI officers present.

#### 8.1.3.3. Right to a lawyer

An arrested person has the right, if he or she so requests, to consult a solicitor privately at any time. Such a request must normally be recorded in the person's custody record and consultation with a solicitor must then be permitted as soon as practicable and in any event no longer than 36 hours after the arrest. Access to a solicitor can be delayed for up to 36 hours on certain grounds related to the success of the investigation. If delay is authorised, the reason for it must be noted in the detainee's custody record.

Although there is no fixed period between informing the lawyer about the scheduled interrogation and the actual start of it, but in practice, the police would wait for the arrival of the defence lawyer, and no complaints are known about the lack of sufficient notice. The complainant also has the possibility to consult the lawyer before the interrogation starts. In case of a claim of ill-treatment, the lawyer can take actions, such as contacting the 24 hour on-call Ombudsman investigator to attend immediately at the police station. The vast majority of lawyers in Northern Ireland will be legal aid lawyers and would be expected to follow exactly the same procedure as a privately retained lawyer.

#### 8.1.3.4. Right to inform a third person

Under the PACE Order a person arrested and held in custody is entitled, if he or she so requests, to have one friend, relative or other person who is known to the person or who is likely to take an interest in the person's welfare told, as soon as is practicable, that the person has been detained and where the detention is taking place. In the case of persons arrested for an indictable offence the exercise of this right can be delayed for up to 36 hours and for the same reasons as in the case of delaying access to a lawyer.

#### 8.1.3.5. Risk of being pursued for false accusation

There is a possibility that the complainant could be prosecuted for perjury if the court is satisfied that he or she lied about the injury and it would require to be proved beyond reasonable doubt that the complainant deliberately and maliciously lied. In such a case, the Ombudsman's investigation into the complaint about the police would run in parallel to the police investigation of the alleged offence by the complainant. This fact would mitigate against any manipulation of evidence or perjury by police officers.

### 8.1.4. Mechanisms for dealing with torture and ill-treatment

#### 8.1.4.1. Complaints system

Any member of the public can make a complaint at OPONI within 12 months after the event. After the expiration of this period, the Ombudsman will only lead an investigation in grave and exceptional circumstances where investigation is warranted in the public interest. The complaint should not be anonymous, and the complainant must co-operate with the investigation. An application for judicial review is possible to challenge the decision that a complaint cannot be investigated by the Ombudsman. Actions of the

Office are subject to judicial review (on the grounds of unreasonableness, acting ultra vires etc.).

#### 8.1.4.2. Procedures upon complaint

If the matter is classified as a complaint by OPONI, steps must be taken by the Chief Constable and the Ombudsman's office to preserve any relevant evidence. A complaints investigator may arrange to meet with the complainant to take further details somewhere where the complainant feels comfortable. After this meeting a complainant should be told how the Police Ombudsman proposes to deal with the complaint and should be given the name of the OPONI staff member responsible for dealing with the complaint. A complaint can be dealt with either by informal resolution, where the matter is 'not serious' and the complainant has consented, or by formal investigation. Informal resolution will cover cases where the behaviour complained of, even if proved, would not justify criminal proceedings. At this point, the matter is handed over to the Chief Constable (or to the Policing Board in the case of senior officers) for the appointment of a senior police officer to carry out informal resolution procedures. The Police Ombudsman will simply monitor that this is done and receive a copy of a report of the outcome in due course.

An investigation will occur where the complaint is not deemed suitable for informal resolution. If a complaint is deemed to be serious (i.e. it involves death or serious injury) the Ombudsman must conduct an independent formal investigation. In other cases he or she can refer the matter to the Chief Constable for investigation by the police. The Ombudsman can continue to supervise the Chief Constable's investigation if he or she deems it in the public interest to do so. In fact, all investigation of all complaints against the police is carried out by the Ombudsman. Where investigation is carried out by an investigator from OPONI, he or she has the same powers and duties as any police officer of equivalent rank as regards how the investigation is carried out. This includes the right to search, arrest and detain suspects and to use reasonable force where necessary. The Police Ombudsman and his or her staff have a right of access to all PSNI information and documents deemed necessary for their investigation.

#### 8.1.4.3. Procedures upon referral

OPONI also deals with matters referred to it by the PSNI Chief Constable. The Chief Constable is required to refer to the Police Ombudsman any discharge of a police firearms (including those used in riot situations), any fatal road traffic collisions involving police officers, death which may have occurred as a result of the actions of a police officer and any other serious allegation.

#### 8.1.4.4. Criminal proceedings

If the evidence shows that a police officer may have committed a crime, OPONI will recommend to the Director of Public Prosecutions (DPP) that he or she prosecute the officer. The DPP will take the decision whether to prosecute on the basis of the standard Prosecutorial Test, which is the same whoever the alleged perpetrator. The Test for Prosecution is met if the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test – and prosecution is required in the Public Interest – the Public Interest Test. If the DPP decides to prosecute, the criminal

proceedings will be conducted as they would be against any individual. In 2014/15 12 recommendations were made by OPONI to the DPP that a police officer be prosecuted. If a file goes to the PPS and it decides a criminal offence has not been committed, or there is insufficient evidence or it is not in the public interest to prosecute (there is a Prosecutor's Code governing these decisions) the Ombudsman could still recommend a misconduct proceeding.

It is to be noted that no relevant difference can be identified in the procedure where a police officer is accused of assaulting an accused compared to where a person is accused of assaulting a police officer, except for the fact that the Police Ombudsman would be investigating the first case and the police would be investigating the second. There would be no higher evidential threshold or difference in sanctions except that a police officer could suffer disciplinary as well as criminal sanctions.

#### 8.1.4.5. Disciplinary action

If the evidence shows that a police officer may have broken the police's Code of Ethics, OPONI will decide what disciplinary charges could be brought against the police officer and will recommend disciplinary action. The PSNI is not obliged to accept OPONI's recommendations on disciplinary action but any discrepancy will generally be made public. In 2014/15 OPONI recommended disciplinary action against 380 officers. In addition to these recommendations made about officers, the Police Ombudsman made 67 policy recommendations to the Chief Constable in the PSNI. These included recommendations that would help ensure people's safety in custody suites, help ensure the safety of police vehicles, and about policing of public order situations.

#### 8.1.4.6. Victim's rights

Victims would be kept informed of the progress of an investigation by the Police Ombudsman.

A juvenile, a person who is mentally disordered or otherwise mentally vulnerable, has the right to have an appropriate adult attend at the police station and any interview with the detainee. If relevant, such a person could communicate with, or facilitate the communication of the detainee with investigators from the Ombudsman.

#### 8.1.4.7. Private prosecution

Private prosecution is not an effective remedy in Northern Ireland, although it is theoretically possible, but state legal aid is not available for such an enterprise. It is believed that only one private prosecution has ever reached the Crown Court in Northern Ireland, where it failed.

#### 8.1.4.8. Civil action, tort

A complainant can take civil proceedings against the police for the tort of assault or for breach of the Human Rights Act (the European Convention on Human Rights applied in domestic law). Detention for a period longer than that permitted by the law will leave the police open to be sued in a civil action for false imprisonment.

A civil case cannot be seen as an alternative to the complaints process since such a case would be highly unlikely to succeed unless the complaint had been upheld by the Police

Ombudsman. There are no statistics published on civil proceedings categorised by the status or nature of the defendant, but since there are hardly any complaints about ill-treatment in custody, there are unlikely to be any relevant civil cases.

#### 8.1.4.9. Exclusion of evidence

For many years, the most significant restriction on the power of the police to question suspects was the rule that a statement could be used as evidence only if it had been made voluntarily. In a major change brought about by article 74 of the PACE Order, the prosecutor now has to prove that a confession made by an accused was not obtained by oppression of the person who made it or in consequence of anything said or done which was likely to render it unreliable. The voluntariness principle no longer applies.

PACE Order requires to exclude from court proceedings any confessions which are rendered inadmissible for being obtained by oppression of the person who made it or in consequence of anything said or done which was likely to render it unreliable. Oppression is defined to include torture, inhuman or degrading treatment and the use or threat of violence, whether or not amounting to torture. Aside from that requirement, judges have a discretion under the common law to exclude from court proceedings any statement which has been obtained unfairly. In addition, in any criminal proceedings the court may refuse to admit evidence on which the prosecution proposes to rely if it appears that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. The effect of this is that, just as the courts have a broad common law discretion to exclude statements that have been obtained unfairly, they also have a broad statutory discretion to exclude statements obtained in breach of a Code of Practice issued under the Order.

### 8.1.5. Experience in practice

The remarkable fact about Northern Ireland relevant to this report is that there are no allegations about any kind of systematic or frequent ill-treatment of persons in police custody. The last time the CPT visited Northern Ireland was in 2008. In the course of the visit, the CPT's delegation received no allegations of ill-treatment of persons detained by the Police Service for Northern Ireland. On the contrary, most persons interviewed stated that they had been well treated by members of the PSNI at the time of their apprehension and during custody.

Each year the Policing Board publishes a Human Rights Annual Report which contains an overview of the human rights monitoring work carried out during the year, highlighting both good police practice and areas in which practice could be improved. Formal recommendations are made where it is believed that PSNI action is necessary. Since 2005 (the year the first Human Rights Annual Report was published), the PSNI has implemented 192 recommendations contained within Human Rights Annual Reports. The Performance Committee of the Board, with the assistance of the Board's Human Rights Advisor, oversees PSNI's implementation of these recommendations.

As far as can be ascertained, since the Human Rights Monitoring Process started in 2005, neither have there been complaints made to independent visitors appointed by the Northern Ireland Policing Board about physical assault or ill-treatment.

#### 8.1.5.1. Data available

The OPONI has an obligation to supply statistical information to the Policing Board.

OPONI provides detailed information in its Statistical Bulletin every year, structured also by type of allegation (a person who makes a complaint may express a number of different concerns about the exchange they have had with a police officer and OPONI will record this as one complaint broken down into a number of 'allegations') and by the outcome of the complaint procedure, however, does not publish outcomes against specific categories of allegation. The Police Ombudsman does not record complaints about assaults in custody as a separate category. Such complaints would be recorded under the general category of Oppressive Behaviour allegations and under the specific category of Serious Non-sexual Assault. There were 16 such complaints recorded in 2014/15. Data provided by the Ombudsman on special request about the outcomes of the 16 cases recorded in the year 2014/15 shows that 8 cases were closed because the claimant did not cooperate or fully engage with the process and 8 were investigated but found "not substantiated. Only one of these cases related to an incident in a custody suite.

The Current Investigation Teams of OPONI investigate about 1,500 complaints a year. The largest category of complaint dealt with by these teams is failure of duty, involving allegations that police failed to do their job as they should (e.g. failed to respond quickly enough to a 999 call, or failed to conduct a thorough investigation). The next largest category involves allegations of oppressive behaviour, which includes allegations of assault and harassment. Other allegations include that officers were rude or uncivil.

Around one in ten (12%) complaints closed in 2014/15 were closed after the initial assessment. These complaints tend to be closed fairly quickly, and often involve issues which are not a matter for the Police Ombudsman's Office. A larger proportion of complaints (44%) were closed after initial inquiries. Initial inquiries can occur prior to an investigation commencing or at the start of an investigation. It involves getting more information from the complainant, looking for evidence regarding the matter complained about or making initial contact with the police officer(s) involved. Complaints closed at this stage are normally those where the complainant ceases to engage with the Office. Complaints that were informally or locally resolved accounted for 6% of all complaints closed. This is an alternative way to resolve less serious complaints e.g. rudeness or incivility. Nearly four in ten (38%) complaints closed were fully investigated. This is when a Police Ombudsman's Investigator looks into each allegation within the complaint and reaches a conclusion about it. The Office found evidence to substantiate all or part of the complaint, or identified another concern during the investigation in 28% of these complaints in 2014/15.

| **8. 2. Assesment of Northern Ireland** | | | *1* | *2* | *3* | *no data/not relevant* |
|---|---|---|---|---|---|---|
| *Prohibition of torture – regulation and practice* | Implementation/reflection of Art. 3 of the Convention in national criminal law | | no direct implementation | partial implementation with missing elements | complete implementation | |
| | | | | | | **X** |
| | Detailed rules and practical guidance for police officers | | insufficient/non-existent | partial normativity/vague and general | thoroughly regulated | |
| | | | | | **X** | |
| | Application of the rules in practice | | systematic non-compliance in certain questions | individual breaches are not unusual | culture of compliance, profound intent to respect | |
| | | | | | **X** | |
| *Documentation of facts, potential evidences* | Burden of proof concerning the admission of an allegedly compromised statement into evidence | | on the complainant | | on the State | |
| | | | | | **X** | |
| | *Use of cameras* | Dash board | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | | | **X** |
| | | Body worn | not available/prohibited | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory | |
| | | | | **X** | | |
| | | By third person | prohibited | possible but obstructed | possible and accepted | |
| | | | | | **X** | |

| | | | | | |
|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | *Use of cameras* | Custody suites | not available/prohibited | possible/police officer's decision | widely available/ general practice/ compulsory |
| | | | | | X |
| | | Audio and video recording of the interrogation | not available | partly available/ possible/ police officer's decision | widely available/ general practice/ compulsory |
| | | | | | X |
| | | regulation and practice concerning the use of cameras | systematic non-compliance in certain questions | individual breaches are not unusual | respect of the rules |
| | | | | | X |
| | Medical examination | Medical examination upon admission | not always/upon request/ police discretion | | compulsory |
| | | | X | | |
| | | Status of examining doctor | police employee/contractor | national healthcare services/ independent on a case by case basis | independent forensic doctor |
| | | | | | X |
| | | Right to choose one's doctor and the implementation of this right | no such right | typically not respected in practice | typically respected in practice |
| | | | | | X |
| | | Expertise, thoroughness, professional standards | no standardized requirements/formal/ superficial examination | standardized protocols/ thorough examination | forensic expertise/targeted, high-quality examination |
| | | | | | X |
| | | Access to medical examination documentation | no access/obstructed | upon request | access granted automatically |
| | | | | | X |

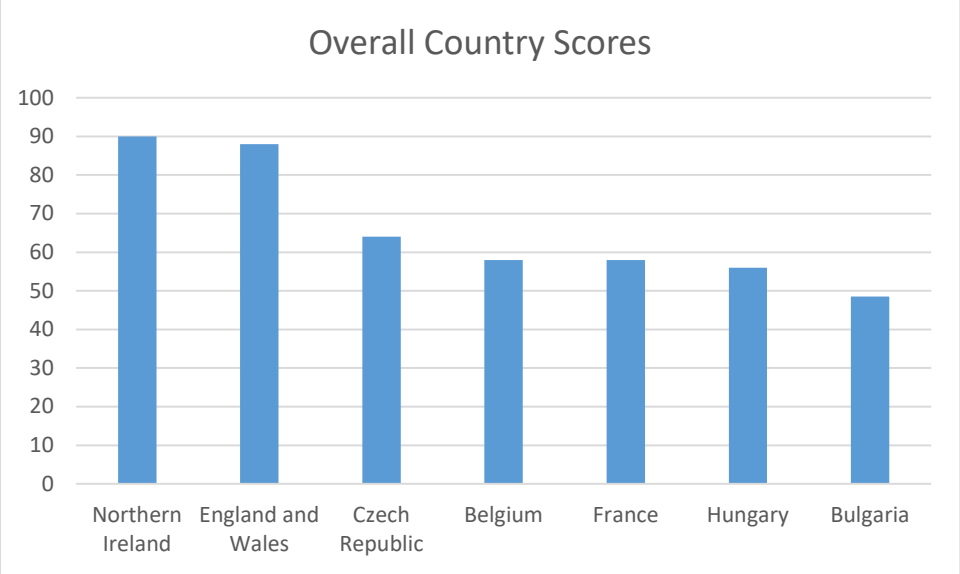
| | | | | | | |
|---|---|---|---|---|---|---|
| *Documentation of facts, potential evidences* | Medical examination | Evidentiary value of the documentation | poor value/no photos/not sufficient documentation | acceptable/not criticized/ photos of limited usability | thorough and reliable documentation/useful photos | |
| | | | | | X | |
| | | Doctor's professional opinion on the possible reasons of injury/alleged ill-treatment | prohibited/never appears | might appear | should be included | |
| | | | | | X | |
| | | Obligation to refer the medical file to the investigative authority in case of suspicion of ill-treatment | ex officio submission is prohibited/doctors do not refer in practice | doctors may refer/ are obliged to do so but rarely comply with this obligation | obligation to refer/ compulsory submission | |
| | | | | | X | |
| | | Privacy | privacy is not granted | privacy can be granted upon request | privacy is granted by default, unless requested otherwise | |
| | | | | | X | |
| | | Attending police officer is present if privacy is not granted | always the arresting police officer | the arresting officer might be present | never the arresting officer | |
| | | | | | | X |
| | Right to inform a third person | | obstructed | limited | effective | |
| | | | | | X | |
| | Right to a lawyer | Access | not guaranteed/guaranteed on paper but systematically disrespected | guaranteed and typically respected | respected | |
| | | | | | X | |
| | | Consultation | not provided before interrogation/guaranteed on paper but obstructed | limited | guaranteed before interrogation | |
| | | | | | X | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Right to a lawyer | Presence at the interrogation | not provided/obstructed | partially guaranteed/police decision | provided | |
| | | | | | X | |
| *Investigation, prosecution, evidence* | Formal independence of the investigative body | | part of the police | independent organ with connecting points and mutual interests/prosecutor | fully independent organ | |
| | | | | | X | |
| | Personal independence of the investigative body | | former/seconded/actual policemen | connecting points and mutual interests/prosecutor | total independence | |
| | | | | | X | |
| | Public perception of the investigation | | not independent | number of concerns/not fully trusted | independent | |
| | | | | | X | |
| | Evidentiary value of police officers' testimony | | decisive | stronger than other testimonies | same as other testimonies | |
| | | | | | | X |
| | Private prosecution | | not possible | possible on paper but not in practice | available in practice | |
| | | | | X | | |

| | | | | | |
|---|---|---|---|---|---|
| *Disciplinary proceedings* | Probability | | not usual | | regular |
| | | | | | X |
| | Relation to a criminal procedure | | closely linked/subsidiary | parallel | independent procedures |
| | | | X | | |
| | Possible dismissal of a police officer | | sanction not applied/regular exemption | possibility of exemption | effective dismissal in case of conviction |
| | | | | | X |
| | Claim for damages | | separate civil action based on a final and binding conviction | within the criminal procedure | separate and independent civil action |
| | | | X | | |
| *Monitoring* | Data | Number of complaints | not gathered/ not reliable | gathered but not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Number and type of procedures | not gathered/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Outcome of procedures | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| | | Number of convictions, type of sanctions | not gathered centrally/ not reliable | gathered but not systematically/not available/ not public | centrally gathered and available for the public |
| | | | | | X |
| *Total* | **91** | | | | |

# 9. Conclusions

This substantial pool of data provides a basis for drawing several conclusions. As mentioned above, the methodological background of these results is always debatable. One may allege that some of the categories or aspects analysed are not important for the purposes of the research while some other would be of utmost relevance, therefore no matter what our conclusions are, our Index provides a false picture of the systems assessed. Part of this is inevitably true: the analysis of such complex and different matters can probably never be even close to complete. But we are convinced that there some lessons to be learnt and conclusions to be drawn from our results.




## 9. 1. Does the regulation matter at all?[1]

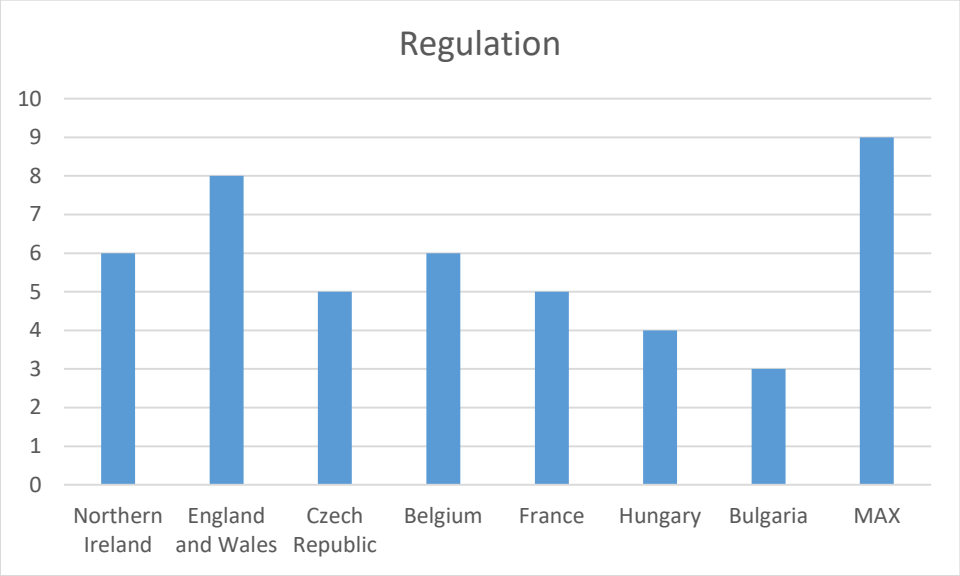
It is a commonplacethat rules do no execute themselves and even systems with apparently good legal frameworksmight produce bad results. The law in itself will never be a solution to real-life problems. Therefore our assessment tried to focus on both sides of the legal reality, on how the law in books and how the law in action can be evaluated. Based on the numbers in our Index, it seems justified to conclude that there is a correlation between the overall quality of the regulative framework and the overall performance of a system. Bulgaria received the lowest grades in both respects, while Northern Ireland and England and Wales are among the highest ranking countries in terms of regulation and overall performance as well. However, the case of Belgium shows that the above-the-average qualityof regulation can also be paired with systemic non-compliance which will necessarily result in poor overall performance.

The first interesting issue in this regard is how to assess the quality of legislation. The international legal framework (i.e. the relevant treaties) and the increasingly systematic monitoring of the implementation thereof (by the different UN and Council of Europe bodies) seem to guarantee that the most important principles and safeguards make their way into the legal systems of EU members states. On this level, the differences

1 For the extreme discrepancy between rules and practice in torture prevention see: Richard Carver – Lisa Handley: Does Torture Prevention Work? Liverpool University Press, Liverpool,pp. 52-57.

between the examined countries are not significant: the police's obligation to respect human rights, medical examination of injured detainees, the right to inform a third party etc. are stipulated in all the countries participating in the research. At the same time, the degree of respect for these norms shows great diversity. While it is obvious that extra-legalfactors play a significant role in the extent of compliance, the question must be raised whether there is anything at the level of legislation that can be done to increase the degree to which the existing norms are complied with.

What seems to have an important impact on this matter isthe amount and depth of the detailed rules and practical guidance for police officers, and that guidance that should not be formulated in anabstract, legal-technical manner. The only two countries that scored 3 points in this category are England and Wales and Northern Ireland, which were in fact the two best performing countries. The PACE Codes of Practice are really detailed and easily understandable – not only for police officers, but for lay persons too. These two sides are equally important. If rules are too legalistic and abstract, their practical meaning will be difficult to understand for police officers, broad concepts will be difficult to apply in real-life situations. On the other hand, in the absence of detailed rules of practice it will also be difficult for the judges adjudicating police misconduct cases – and lacking full expertise in actual policing matters –to establish the violation of professional rules if those professional rules are not detailed and published in codes of practice.




To mention just one example: if it is not detailed what it means that an arrest is "necessary" it will be almost impossible to have a conclusive argument in an actual case. To illustrate the difference:, it is worth pointing out that the PACE Code of Practice G on how to use the power to arrest istwelve pages long and full of real-life examples, while the Hungarian Police Act stipulates similar grounds for arrest as the PACE Code but does not explain any of them through using practical examples. Besides police officers and judges, it also makes it difficult for potential complainants to decide whether the action taken against him/her was lawful or not and whether the submission of a complaint is justified and carried the prospect of success. And similarly, without very

detailed guidance it will be difficult for the judge to take a stance on issues such the proportionality and professional necessity of a given police action.

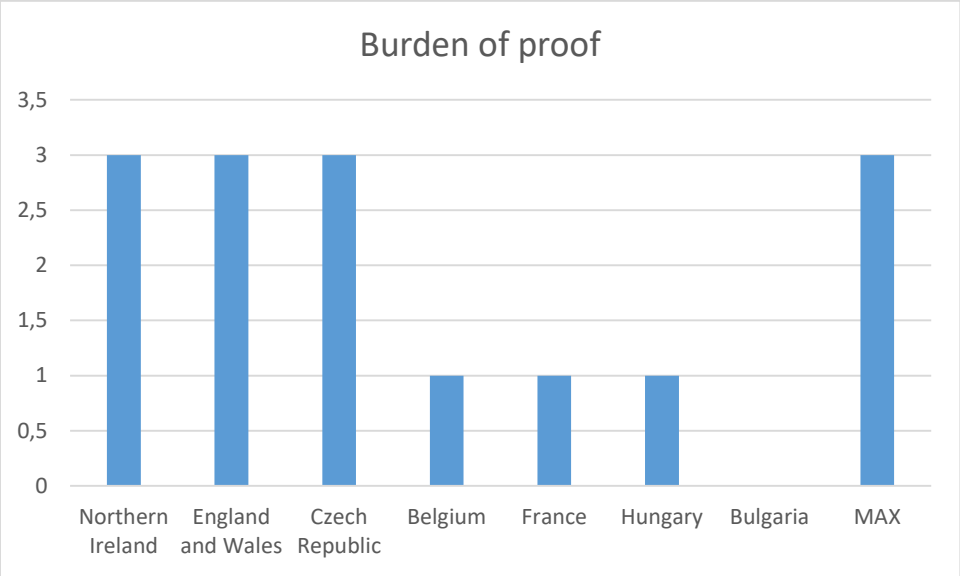
Out of the examined countries, not only in Hungary was the lack of detailed standards identified as a problem. Similar criticism was voiced about the Belgian Code of Ethics with regard to which it is stated that the standards of behaviour described in them are "too vague to comply with and to be sanctioned".

Thus, this type of "accessibility" of the normative framework – for both those who apply it and those with regard to whom it is applied – seems to be a factor in the level of compliance. Naturally, the question may be posed whether these detailed codes of practice are produced in the first place because there is a political-societal will for compliance, and whether this political-societal will is the real force behind the better performance, we are however of the view that producingmore detailed guidance on certain issues (grounds for arrest, use of force, etc.) on the basis of past cases and incidents could contribute to more accountability and a higher degree of compliance with the norms even if the extent of political will leaves room for improvement.

## 9. 2. Documentation of facts, evidentiary issues

Anyone with some knowledge of the field of investigation of ill-treatment will be aware that the most difficult task in these cases is collecting reliable evidence. In a typical ill-treatment case, there will be no witnesses of the incident apart from the officers involved, therefore the most effective way of combating ill-treatmentis preventing it. And when ill-treatment happens, there will be two kinds of possibly available evidence for proving officer's misconduct: medical evidence of injuries and camera recordings of the incident. That is why our research has put great emphasis on these evidentiaryissues. Because of our methodology, in which a great proportion of the total score of a given country's Index is based on the evidentiary system, our results might be interpreted as a self-fulfilling prophecy: if around 40 per cent of the total score that can be given in our Index to a certain country comes from the evaluation of the evidentiary issues then it is evident that countries performing well in this category will receive a higher total score, i.e. a better overall evaluation. However, we believe that the decision to attribute such a determinative role of this aspect is justified by the huge influence evidentiary matters have on the performance of the torture prevention and investigation systems. It might not be a coincidence that countries with high grades in this category reported actually the least problems related to Article 3 of the ECHR and are among the ones with the least such violations established by the ECtHR.

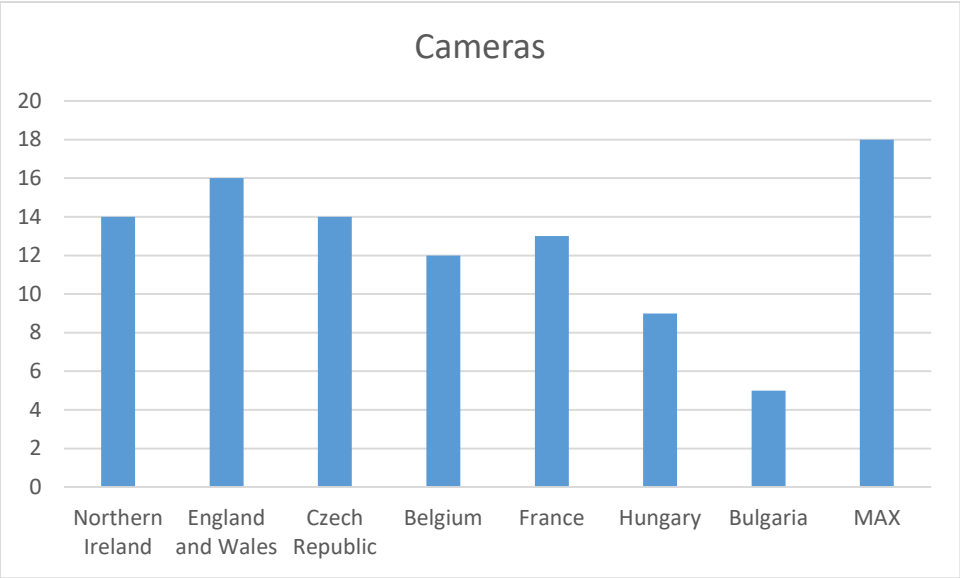
The question arises: what does the actual availability of these pieces of evidence depend on? In our minor sample, there seems to be a clear correlation between a particular procedural rule and the actual reality, i.e. between the rule establishing the burden of proof concerning the admission of an allegedly compromised statement into evidence and the use of audio and video recording. The three countries (Northern Ireland, England and Wales and the Czech Republic) where the burden of proof concerning the admissibility of evidence lies with the state (i.e. the state authorities must prove that no torture has occurred if the suspect represents that his/her statement was made under duress)have the highest total score under this category.




It seems that tangible resultscould be achieved in ensuring evidence by adding a provision to the code of criminal procedure prescribing that unless the Prosecution can prove beyond reasonable doubt that the confession was not obtained in a compromised way the evidence may not be admitted. While this may primarily seem as a preventive measure, it has a bearing on the prosecution of ill-treatment as well, since it generates such a wide-ranging use of cameras (as a means for state authorities to protect themselves against allegations of torture) that evidentiary problems will be less likely to occur when claims of ill-treatment are made.

There is another aspect of the use of cameras with regard to which the introduction of new evidentiary rules may be considered. A number of the countries examined have reported that it is general practice on the part of the police or detention personnel to claim that the recordings taken in the premises of alleged violations were somehow compromised. According to the Belgian report, the police sometimes allege that cameras were not operating at the time when the events took place, and in a lot of cases police officers do not send recordings to lawyers or judges who ask for them, instead, they send a statement of what images show. In Hungary, prosecutors investigating ill-treatment cases have complained that it is often claimed that the cameras were temporarily out of order, or that the recordings had already been deleted by the time the prosecution's request was received.

In this regard it is noteworthy that – relying on ECtHR case law – the Czech Supreme Administrative Court has concluded that it is a responsibility of the State to prove that the injuries were not caused by ill-treatment, and if a police video-recording is incomplete and misses key moments of the action, it is a failure of the State to bear the burden of proof.

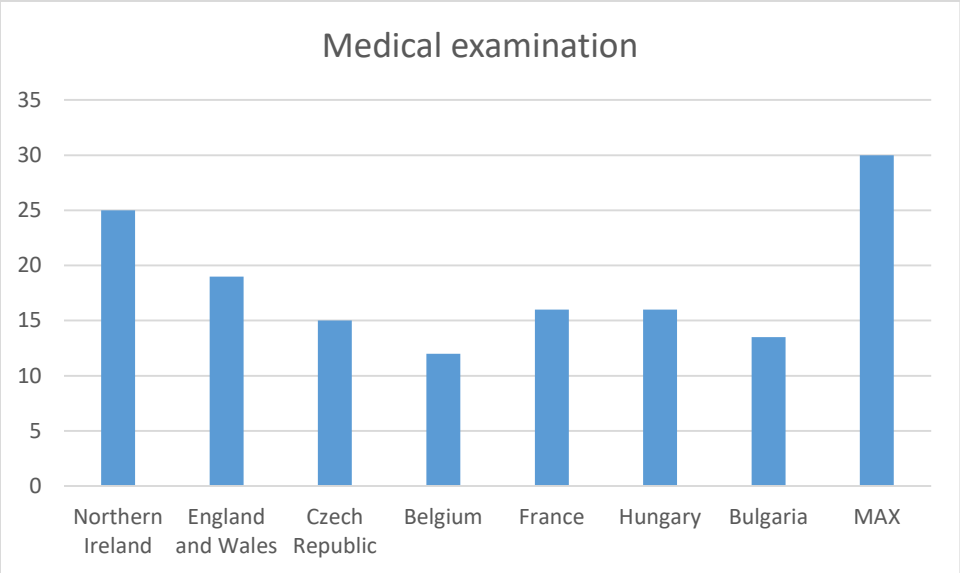



Such a special provision on the burden of proof could be introduced to create institutional interest in using cameras adequately. It must be borne in mind however that such reversed burden of proof cannot be applied in criminal procedures against individual officers charged with ill-treatment or torture, as that would be against the fundamental principles of criminal law. Both the ECtHR and the Czech Supreme Administrative Court have used this concept in proceedings vis a vis the State as such. Therefore, the introduction of such a solution can only be imagined in lawsuits for damages against the police as an entity ultimately responsible for the dignity and physical integrity of those who come under its authority. However, as certain instances (for example the ECtHR's pilot judgments in prison overcrowding cases) have shown, even in the absence of true political will, financial incentives can work towards promoting fuller respect for fundamental rights.

Doctors examining arrested people have special forensic expertise only in Norther Ireland. With a view to this shortcoming, it would be of crucial importance to ensure that the medical doctors not chosen by the alleged victims of ill-treatment work in an environmentwhich makes it likely that injuries are recorded in a manner that enables these records to be used as evidence in the ensuing criminal procedure, and also that if medical doctors record injuries they forward the documentation directly to the body vested with the power to investigate possible misconduct by officials. Unfortunately, neither one is the case in most of the examined countries.

In Belgium, Bulgaria, the Czech Republic and partly in Hungary, the medical examination isdescribed as superficial, the evidentiary value of the documentation poor and access to this poor documentation problematic. The doctor's professional opinion on the possible reasons of injury is prohibited to be displayed or rarely appears, there is no obligation on the side of the doctors to refer the medical file to the investigative authority upon suspicion of ill-treatment or if they do, they rarely comply with it. The most telling example is Bulgaria where the medical examination rarely takes place, but will be automatic in practice when a detainee is transferred from one detention facility to another, which proves that employees of the system know that there is a fair chance of ill-treatment and the only way they can protect themselves from being prosecuted for crimes committed in another institution is to record all the injuries before the admission

of a person into a cell in the new institution. Similar experiences can be quoted from Hungary as well.

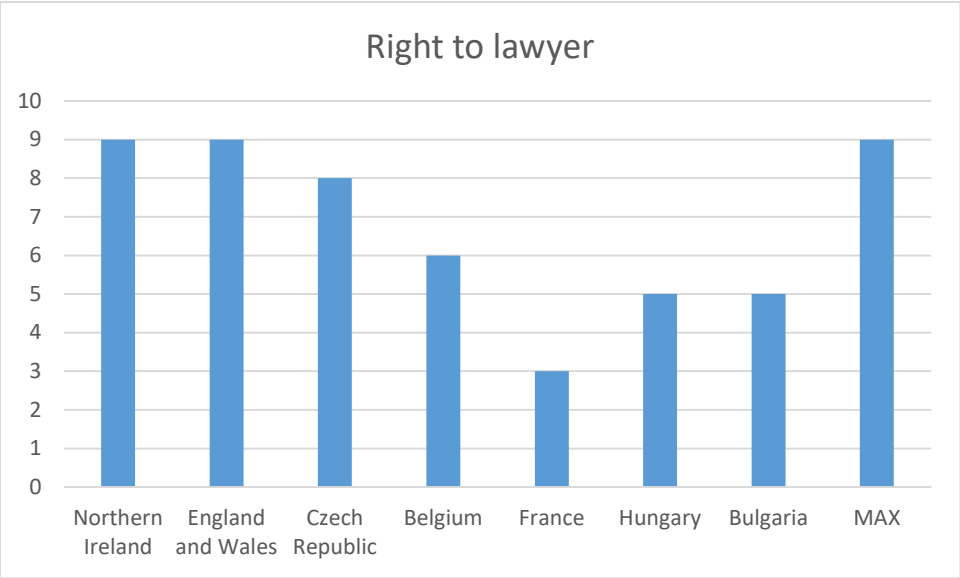



Out of the seven countries examined, only in Northern Ireland are photos taken of the injuries routinely. Paired with the lack of forensic expertise (which has an obviously negative impact on whether the doctor is capable of describing the injuries in a manner that later on a forensic medical expert may be able to rely on when assessing whether ill-treatment might have taken place), this contributes to the already existing evidentiary difficulties in torture cases. Therefore, it seems justified to recommend that in the case of any visible physical injury (or at least if the concerned person complains of ill-treatment) it would be mandatory for the physicians to take pictures of the injuries.

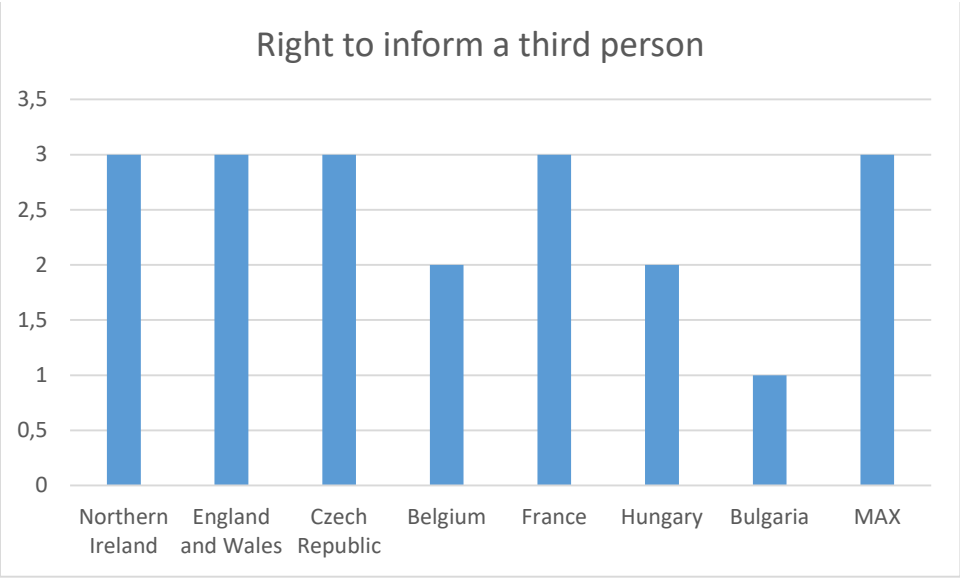
## 9. 3. Right to a lawyer and to inform a third person

It is stunning that these two "classical" rightscontinuously monitored and emphasized by the CPT are so poorly respected in four out of the seven countries analysed. With regard to the right to a lawyer the most problematic aspects are:

- the substandard legal aid system (Hungary, Bulgaria, Belgium),
- the late notification of lawyers (the Czech Republic, Hungary, Bulgaria),
- the "creative" interpretation of law and "innovative" solutions to evade the legal obligations (see the Bulgarian report, e.g. holding a person for longer periods of time without charging him, thus delaying the time from which it is mandatory to provide access to a lawyer),
- the express limitation of the time for consultation (Belgium and France) and
- the obligation of lawyers to remain silent during the interrogation (Belgium) or even their exclusion from the interrogation (France).




The right to inform a third a person is less problematic but not a flawless area. From Hungary it was reported that people subject to police measures are rarely allowed to call a relative themselves and if the first police attempt to contact the person identified by the suspect fails, nothing ensures that it will be repeated. In Bulgaria, the problem seems systemic in light of the 2015 CPT report. On the basis of the Czech report it seems that notification by the police is regular, but there is no period specified in which the third person should be notified, furthermore, it depends on the behaviour of the person concerned whether he/she will be allowed to talk to the third person as this right is not guaranteed either.

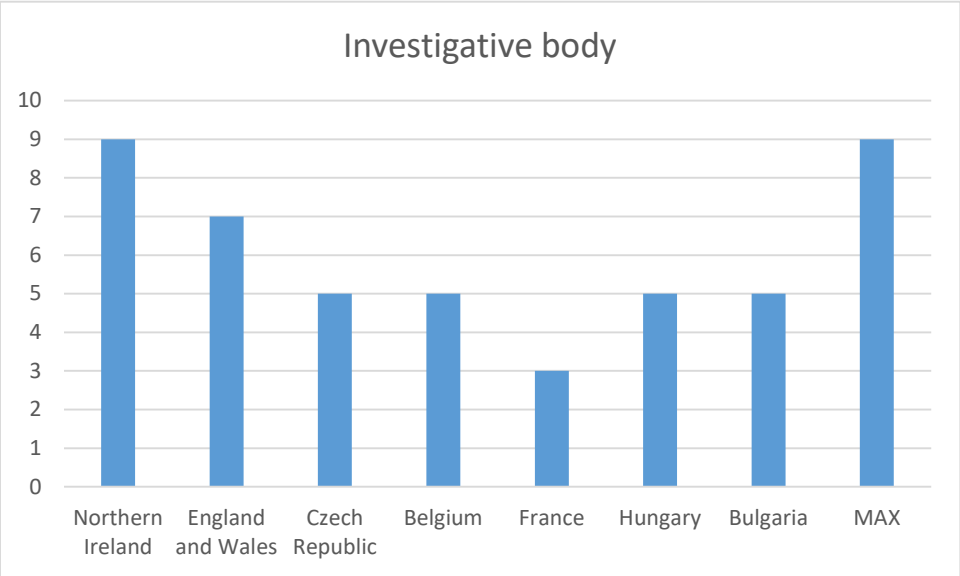



In this regard the importance of detailed norms (practice directions) must be emphasized again and contrasted with the mere declaration that a detainee may request that a third person be informed within a certain period of time. In England and Wales it is prescribed that if the nominated person cannot be contacted, the detainee may choose up to two alternatives and that a record must be kept of any request and call made. As opposed to this, in Hungary, the law simply states the obligation of notification without detailing

how it must be carried out, the obligation is regarded to be met even if one unsuccessful attempt is made by the police.

## 9. 4. The investigative body

There are almost as many solutions for the institutional status of the body or bodies responsible for the investigation of allegations of ill-treatment as countries involved in the research. The police itself has always a certain role, but it varies to such an extent that makes their function in the torture-prosecution system totally incomparable in the different countries.




In Belgium investigation of police ill-treatment is mainly ensured by the Committee P, which is formally independent but its Investigation Service employs mainly police officers who are appointed for a renewable five-year term and seconded from a police department to which they will return after their time spent at the Committee P. A similar problem is identified in the Czech Republic, where the institutional reform set up a formally independent General Inspection whose employees are mostly the same as those of its predecessor, the Police Inspectorate.

It is interesting to see that a similar reform was carried out in Northern Ireland where the Office of the Police Ombudsman for Northern Ireland (OPONI) was set up almost twenty years ago, but still many of the OPONI's investigating officers are ex-police officers – although usually from outside Northern Ireland with some seconded police officers from services other than the PSNI. Still, unlike in the Czech Republic, this does not seem to have caused serious problems with regard to the perceived independence of the OPONI. The possible explanation for this difference is the uniquely strong political and societal will in Northern Ireland to put an end to a period of bad policing and the regular use of torture and ill-treatment. It seems justified to conclude that unless such cathartic social circumstances prevail, the employment of retired or seconded police officers is not a desirable solution for obvious loyalties may arise even if the persons investigating police violations come from different units.

In Bulgaria and Hungary, prosecutors are vested with the task of investigating ill-treatment cases. The military prosecution had had competence in this field in Bulgaria

until 2008, when the investigation of such offences was rendered into the competence of civilian prosecutors. In Hungary a similar change was made around the transition from socialism to democracy (driven by the democratic opposition's conviction that civilian prosecutors will be tougher on the police than their military peers, who have a certain collegiality towards police officers due to the similarities of their statuses), but since 2014, it is again military prosecutors who have been vested with the task of investigating a prosecuting this type of police misconduct. The Hungarian experience seems to suggest that the military or civilian status of prosecutors does not have a significant bearing on their performance or the trust that victims of ill-treatment have in them. As it is suggested by the Hungarian report, the close institutional connection between police and prosecution (in ordinary cases the police investigation prepares the prosecution's case for the court) and also the similar perception of their respective roles ("putting bad guys behind bars") is seen to create a feeling of collegiality between members of the two organisations, which diminishes the positive impacts of the factual independence of the two entities.

The criminal justice organisations' perception of their own roles does not only create an obstacle to the effective investigation of police abuses, but seems to have a serious impact on the sanctioning of such actions as well.

## 9. 5. Consequences of misconduct

One of the most disappointing findings of the comparative study is that the sanctions imposed for police ill-treatment do not seem to be proportionate compared to the severity of these crimes. Northern Ireland is an exception from this aspect as well, but an unusual exception: as there have been no serious cases recorded in the past decade, there is no demonstrable practice of sanctioning them.

In Belgium, the final conclusion of report is that "de facto there is an almost total impunity for police officers who commit unlawful violence". In Bulgaria, out of 1099 disciplinary proceedings carried out between 2000-2015, 121 ended up with a sanction, but only 18 with dismissal, while out of the 129 officers found guilty by criminal courts in the same period only 28 were sanctioned with effective imprisonment. The majority of officers found guilty continue to serve as police officers. Similar experiences and numbers were shared from Hungary and France as well. Even the England and Wales report writes that "Even where criminal acts have been identified by the IPCC, only a remarkably limited number of police killings since 1990 have led to a prosecution for a serious offence (e.g. murder or manslaughter) and/or an inquiry which has found that the killing was unlawful. […] With regard to the sentencing practice, there seems to be a perception that the system is skewed in favour of the police". This shows that even a system with a high score in our analysis can produce bad results in extreme cases, which is an aspect that is worth further research efforts.

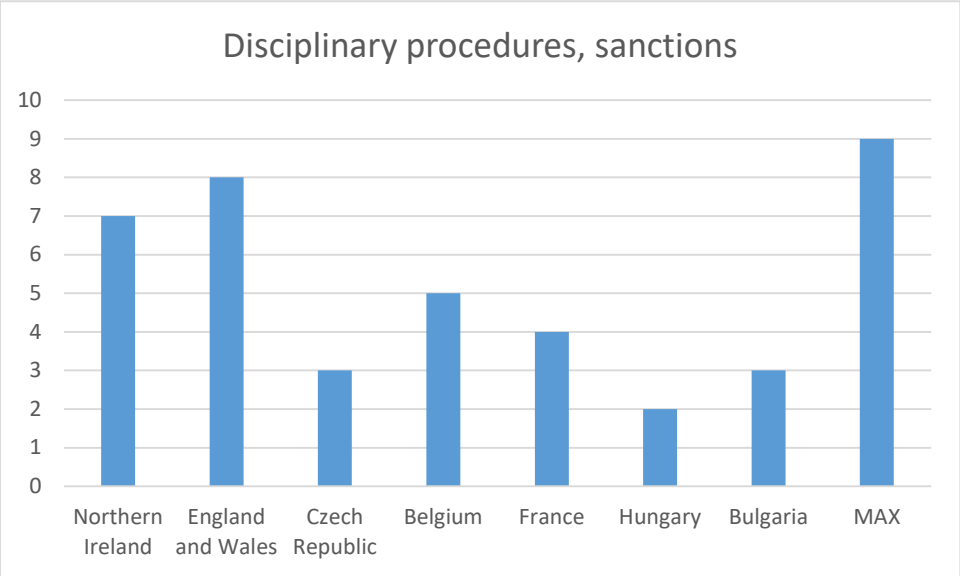
From a strictly legal point of view, it is worth mentioning that where torture or intentional inhuman or degrading treatment has been established, a penal sanction must be imposed according to the practice of the ECtHR. It might be worth testing certain cases where the sanction for an established ill-treatment by the police is penal on its face but very mild (e.g. a fine or a reprimand) to see whether the lack of dismissal or anything

less than a prison sentence imposed on officials committing torture or ill-treatment can be seen by the ECtHR as a violation of the procedural limb of Article 3 of the ECHR.

As to the sociological aspects of the sanctioning practice, it was very interesting to see that a number of countries reported that other typical offences committed by the police were sanctioned more severely than ill-treatment.

In Hungary, in one of its annual reports, the Chief Public Prosecutor's Office's department responsible for the overseeing of detention facilities stated that court sentences graver than a fine are only characteristic with regard to police corruption, but not in relation to ill-treatment.

This is similar to the finding of the Belgian report, according to which the Committee P has repeatedly noted that disciplinary authorities punish more heavily and almost solely facts which are done outside the operation of the service or infringements of professional obligations while abuses of authority or power that occurs mostly during the operation of the service is not sufficiently sanctioned (e.g. a disciplinary sanction was applied in 6 out of the 39 court cases (15%) where the police officers had ultimately been convicted for assault, compared to an almost 60% in cases that involved a forgery conviction.

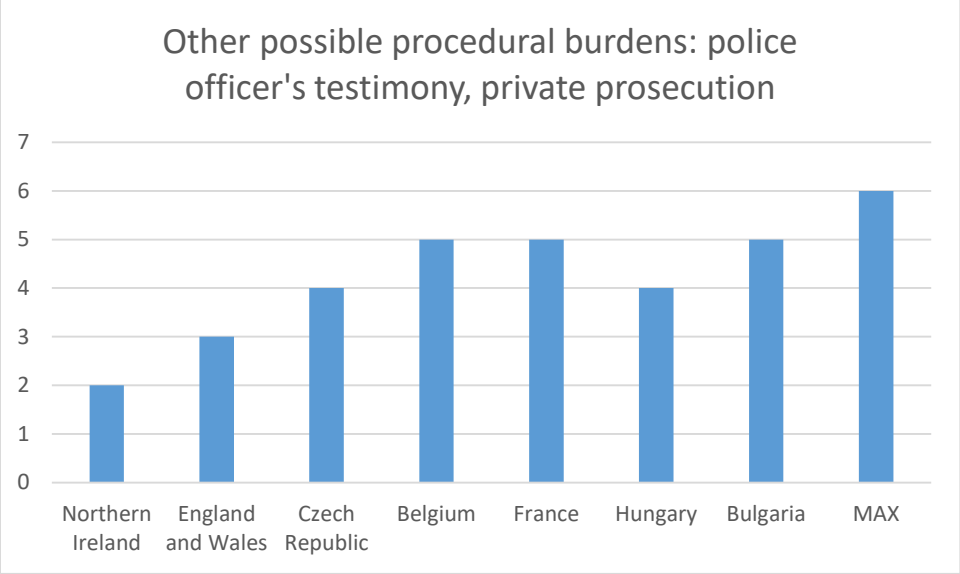



Similarly, the French report notes that "the Ministry of Interior is much more severe on breaches of internal rules than on police violence" and that "sanctions taken against police officers are in an inversed proportionality to the seriousness of the investigated facts. Thus, police officers have a higher risk to be sanctioned for, for instance, losing their professional card than for illegitimate violence".

These examples all show that in many societies (including the legal profession) there seems to be a kind of "understanding" for police violence, an acceptance of this phenomenon as "part of the job" (as opposed for instance to corruption). This most probably stems from the role of the police (maintaining social order and public security protecting society from deviant individuals) and the fact that the most usual victims of such acts are persons who themselves are – at least – suspected of having violated social norms, committed criminal offences. Although the norms banning unlawful police

violence are applied by highly trained legal professionals investigating, prosecuting and adjudicating claims of ill-treatment, it seems that this fundamental perception cannot be disposed of (only in very unique situations, after significant cataclysms, such as in Northern Ireland) – and this is not only true in less developed democracies, but in established ones too, such as France or Belgium.

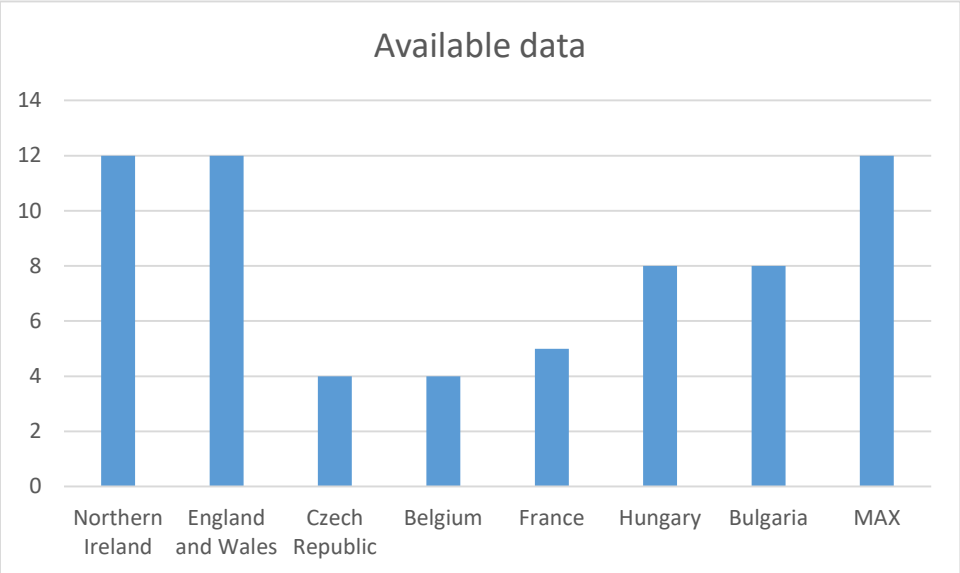
This realization has a significant bearing on the solutions to be proposed. If it is true that we are dealing with a very deeply rooted almost archetypical perception of the police as "good guys" being provided with a wide authorization to take action that they deem necessary in order to deal with the "bad guys" threatening the social order, we have to look for ways that create an institutional interest within the police (and probably other actors of the system, such as the prosecution) pressing them in the direction of reducing the use of excessive force. The reversed burden of proof for the admissibility of testimonies with regard to which the suspicion of undue pressure may be raised and in cases when the camera recordings are compromised may be suitable for creating such organizational interest. In addition, very detailed practice directions on certain "suspect" situations (such as the use of coercive measures) can somewhat limit the wideness of the authorization and make it more difficult for organisations that are created to supervise police activities to "look away" and label as being within the tolerable range certain actions and behaviours that may fringe upon degrading treatment.




## 9. 6. Data available

The final aspect of our analysis is the evaluation of the available data on different aspects of the system. The results are rather disappointing. Apart from England and Wales and Northern Ireland, there were no countries among those researched within the project which regularly collect and publish relevant information, which is indispensable if we want have an overview of the actual situation or the long-time trends in terms of torture allegations and investigations and sanctions applied in criminal or disciplinary proceedings. In Belgium, Bulgaria, France there is no relevant and sufficient data collection at all, in the Czech Republic and in Hungary the data collection is either not systematic or not public. This makes any kind of monitoring or systemic analysis

extremely difficult and time consuming, and constitutes a clear obstacle to talking honestly about the issue.



# 10. Recommendations

On the basis of our conclusions we can formulate some recommendations which might improve the efficiency of torture investigation and analysis and comparison of the different states.

1. Introduction of truly independent investigative bodies in the sense the ECtHR uses the concept (Jordan v UK [2001] 24746/94): "For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the. This means not only a lack of hierarchical or institutional connection but also a practical independence."The practical indepence can be evaluated on the basis of the actual behaviour of the persons acting on behalf of the investigative body.
2. Introduction of systemic and comprehensive, state-run data collection which is publicly available is essential to give a clear picture of the "torture situation" in a given country.
3. Introduction of very detailed practice directions for "suspect" situations (such as the use of coercive measures) based on previous cases and experiences of the police in order to provide guidance for officers, professionals vested with the task of adjudicating complaints and also a means for concerned individuals to assess whether a complaint is justified and carries a reasonable prospect of success.
4. Adoption of criminal procedure rules in every state with respect to exclusion of evidence in case the state cannot prove that it was obtained through duress or coercion.
5. Prescribing the general use of cameras during interrogation, promoting the use of body-worn and dash board cameras by the police and allowing to record public police activities by civilians.
6. Introduction of a reversed burden of proof provision in damage and tort cases if a reasonable suspicion of ill-treatment is raised and the camera recordings that would be capable of clarifying the situation are compromised or deleted without an acceptable explanation.
7. Ensuring that medical doctors examining possible victims of torture or inhuman or degrading treatment have adequate forensic knowledge, and prescribing that doctors forward their findings to the competent investigative authorities when on the basis of their medical findings there is an implication of ill-treatment. Prescribing that doctors take photographs of visible injuries (at least in cases when the concerned person complains of ill-treatment).
8. Making clear in the legal system that recording a police action by civilians is permitted.
9. Ensuring that information about the right to complain of any police action is communicated in an easily accessible manner.

10. Introducing legal norms and practical solutions to ensure effective protection of “whistle blowers”, i.e. officers who want to report on irregularities experienced within a police force.
11. Fully ensuring the access to a lawyer and the notification of a third person. Detailed practice directions for potential difficulties and accessible letters of rights should be drafted in order to provide guidance both for police and the concerned individuals.
12. Presciribing that officials having found to be guilty of ill-treatment are imposed criminal sanctions commensurate with the gravity of the crime and that they are banned from continuing to serve as public officials.
13. In-depth research into the criminal courts’ practice in ill-treatment cases.
14. Strategic litigation before the ECtHR to test whether lenient sanctions are in compliance with the procedural limb of Article 3 standards of the ECtHR.

# 11. Annexes

## 11. 1. Annex I – the standardized questionnaire and the hypothetical case

### 11.1.1. Overview of the criminal legal system and regulation of the police

1. Brief description of the criminal legal system (in about 500 words the most typical characteristics of the criminal process in your jurisdiction and tendencies for change since 2000)
2. Brief description of how the police and are regulated (structure of the police, basic principles of police conduct and obligations of police officers)
3. Description of the legal provisions regulating official misconduct (criminalization of ill-treatment torture, sanctions)
4. Preventive measures and solutions (analysis with a view to the international standards)
5. Brief outline of the mechanisms for dealing with ill-treatment and torture (e.g. criminal action, civil action, complaints procedures, disciplinary procedures, exclusion of evidence)
6. Special oversight institution (if any)

### 11.1.2. The experience of police ill-treatment and torture in your jurisdiction

#### 11.1.2.1. Statistical data

1. Number of registered ill-treatment and torture cases (ill-treatment, forced interrogation, unlawful detention, torture or other types of relevant crime) broken down by year since 2000 or later
2. Statistical information on the outcome of the investigations into complaints of ill-treatment and torture
3. Success rate of indictments
4. Sanctions for ill-treatment
5. Number of perpetrators
6. Significant cases or court decisions

#### 11.1.2.2. Criticism concerning the legal system and practice plus specific issues

(based on CPT reports or other international or national bodies, ECtHR and domestic cases, statistics, analyses, studies, etc. – referenced opinion required)

##### *11.1.2.2.1. Procedural status of the victim*

1. Is there any concern as to the status of the victims of police ill-treatment? (e.g. rights victims should have but they do not, or the practical shortcomings of the otherwise good-quality legal framework)

#### *11.1.2.2.2. Investigation of complaints of torture and ill-treatment*

1. Is there any criticism as to the independence of the investigation of the torture-related cases? If so, please explain the merits of the concerns.
2. Do you think if the investigative body fails to carry out a thorough investigation the available remedies offer effective avenues for the victims to have the perpetrators punished? If not, what are the reasons for the shortcomings?
3. Are there any legal provisions prohibiting or limiting psychological torture (e.g. threating with torture or ordering prospective pre-trial detention in case of remaining silent)?
4. How long does the whole legal procedure typically last (from the day the criminal procedure was launched against those officers who have allegedly ill-treated or tortured the victim until the delivery of the final court decision)?

#### *11.1.2.2.3. Medical examination and medical documentation*

1. Is there an obligation for the police and the penitentiary to examine those detained upon admission or is it carried out only upon complaint/request?
2. Is there any criticism as to possibility or to the quality of the examination upon admission to a police or while detained in a penitentiary institution? If yes, please explain the concerns raised in this matter.
3. What is the status of the medical doctors examining the victims? Has the status of the medical doctors examining the victims ever been criticized? If so, what is the reasoning of the criticism?
4. If it is possible to request a doctor by the choice of the victim, what is the proportion of examinations carries out by independent doctor?
5. If it is possible to request a doctor by the choice of the victim, can it be proven or established that the quality of these examinations is better than those carried out by doctors employed by the police or the penitentiary?
6. Do doctors receive special training on how to document injuries in case of possible or alleged ill-treatment? (i.e. do doctors know which factors will be treated as relevant by the forensic medical experts, the prosecution or the court?)

#### *11.1.2.2.4. Prosecution by the complainant*

1. If it is possible for the victim to act as "prosecutor" under any circumstances (basic rules to be detailed under I.5.), how frequently is this special legal remedy used?
2. Is there any difference in the success rate of the cases prosecuted by prosecutors as opposed to those prosecuted by supplementary private prosecutors?
3. Are there any powers or rights a supplementary private prosecutor should have beyond her existing powers?

#### *11.1.2.2.5. Consequences*

1. Is it possible for an officer to continue to be employed as a police officer after they have been found guilty of a criminal offence involving ill-treatment of a person?
2. Is there any criticism to the gravity of typical sanctions imposed in ill-treatment or torture cases?

### 11.1.3. Analysis of the relevant provisions of the legal system with a view to a hypothetical case

The facts of the hypothetical case

The complainant was riding his motorbike at 10.00 p.m., when he was stopped by the police for a check of his ID and blood alcohol level. The complainant insisted that he had not committed any violation of the traffic rules, so the police had no legal basis to perform the check on him. The officers told him that if he did not comply with their instructions, they would use coercive measures and take him to the police station. The complainant told the officers that he would undergo the test if his friend, a former police officer confirmed that the officers had the right to perform it without any reasonable suspicion of a violation. He stepped aside and attempted to make the cell phone call to the lawyer, when Officer "A" started to behave aggressively and kicked him. Officer "B" first tried to calm down his colleague.

At this point, the complainant kicked towards one of the officers then tried to run away, and in his attempt to escape he pushed Officer "A" aside. Officer "A" fell to the ground, but officer "B" started to chase the complainant and finally managed to stop him by grabbing his clothes. The two officers forced the resisting complainant to the ground and handcuffed him. After he was on the ground, they started to hit him. The reinforcement that was called in by Officer "B" arrived and joined their colleagues in beating and kicking the complainant. An officer knelt on the complainant's back, while another forced his truncheon against his neck, thus compressing his throat. The complainant lost consciousness. Eventually, he was driven to the police station. In the police car, two officers sat next to him (one on each side), who slapped him from time to time during the 15-minute drive to the station.

At the police station an alcohol test was taken on the complainant. The complainant was over the legal limit. He was placed in custody until the morning. In the middle of the night he was taken to the basement of the police station, where two officers slapped and hit him and then took him back to his cell. In the morning, he was interrogated into drunken driving and attempted violence against a police officer. The officer interrogating him was not one of those involved in the beatings. After the interrogation, he was released.

The complainant suffered the following injuries: a contusion and a haematoma on the right cheek, another over the right eye, a further one behind the right knee, several abrasions and contusions on the chest and the belly, and a brain commotion. The complainant wants action to be taken against the officer in respect of his ill-treatment.

**Based on the questions below, please outline the most probable course of action of the investigation into the complainant's claim of police ill-treatment in your jurisdiction. Please in relation to all the questions outline the most important legal provisions, and also indicate whether the most probable course of action would be based on these laws and the practice (that may be in line or in contradiction with the law).**

**Please, indicate the legal basis of your answers in footnotes whenever it is possible.**

### 11.1.3.1. Recording of police action

1. Would there be a recording of the actions of the police in the street (stopping and apprehension) e.g. through body or dash board cameras?
2. Would there be a recording of what was happening in the police car?
3. Would there be a recording of what was happening in the custody cell and in other parts of the police station?
4. Would there be a recording of the interrogation?
5. Would outsiders (e.g. people walking on the street) be entitled to record the police action by their cell phones or other suitable equipment? Would the person subject to the measure be entitled to do so?
6. With regard to all the different types of recording above: would it be possible for the officers to turn off the cameras at any point? If there would be a recording, for how long would it be kept and would the authority investigating the ill-treatment claim and the victim have unhindered access to it?

### 11.1.3.2. Medical examination and medical documentation

1. Would the complainant always be examined by a doctor upon admission to the police station or at any other time (e.g. what happens if he complains that he was beaten up during the interrogation)?
2. Would he have to ask for it, or is it mandatory?
3. If a medical examination would take place, would it be by a doctor employed by the police or would it be in an independent civilian health care institution? Would it be possible for the victim to request to be examined by a civilian doctor or be transferred to a civilian hospital for the purposes of the examination?
4. Would someone from the police be present at the examination? If yes, would it be those officers who have apprehended the complainant, or different officers? Would the complainant or the doctor have the right to request that police officers escorting the victim get out of sight and/ or hearing distance?
5. If there would be a medical examination, would the doctor ask the complainant about the reason for his injuries and would he/she be likely to record the injuries accurately?
6. Would the doctor record what he/she thinks to be the most plausible origin of the injuries if that differs from what the complainant states (e.g. if the complainant is afraid to tell what has happened)?
7. Would photos be taken by the doctor or by another member of the relevant law enforcement agency of the injuries of the victims?
8. Would the doctor forward the medical documentation to the prosecutor (or to any other entity responsible for the investigation of police brutality) if

   a) the complainant complained of ill-treatment,

   b) injuries are detected but the complainant did not allege to have been subject to ill-treatment?
9. Would the complainant receive a copy of the medical files? If so, would it be for free?

10. Could the complainant submit opinions by experts commissioned by them, or is only the opinion of the expert appointed by the investigating authority taken into account?
11. Would the forensic opinion be conclusive as to the decision of the court, i.e. is it required for the expert to establish that what the complainant said about the way the injuries had been sustained were true beyond reasonable doubt for the court to sentence the suspect, or is it enough if the forensic expert opinion provides that it is possible that the victim's story is true?
12. Could the complainant be taken under a criminal procedure (e.g. for "false accusation") for telling the doctor that he has been ill-treated if the accused officers are acquitted or the criminal investigation is terminated for want of evidence?

#### 11.1.3.3. Right to a lawyer

1. Would the complainant have a right to a lawyer whilst in police detention?
2. Would the complainant's legal counsel be present at the interrogation from the very first moment of the interrogation?
3. Are there any rules establishing minimum period between informing the lawyer about the scheduled interrogation and the actual start of it?
4. Would the police wait for the arrival of the defence counsel before starting the interrogation?
5. Would the complainant have the possibility to consult the lawyer before the interrogation starts?
6. Would the lawyer be likely to take any action in relation to the complainant's claim of ill-treatment (insisting to put it on the record, taking photos, filing a report with the competent authority, etc.)?
7. Would there be any difference in the course of action in relation to all the above depending on whether the lawyer was a retained or a legal aid lawyer?

#### 11.1.3.4. Right to inform a third person

1. Would anyone inform a third party of the fact that the complainant has been arrested by the police? If so, who would call the third person, the police or the complainant?
2. What would be the latest deadline informing the third person? What would happen if upon the effort the person indicated by the complainant would not be available?

#### 11.1.3.5. Investigation of the complaint of ill-treatment

1. Which are the possible avenues for the investigation into the complainant's claim of ill-treatment to start? (E.g. would the doctor send the medical documentation to the competent authority, would the lawyer make a claim, would the interrogating officer report to his/her superiors or the prosecution, etc.?)
2. Which state organ would investigate the alleged ill-treatment? (police, prosecutors, special part of the prosecutor service, special judge, special independent body, etc.) If there is any special feature about the investigative body's role, competence or independence, please elaborate on this aspect.

3. In case there is a special body, could any other investigative organ investigate the case under any circumstances? If so, can the evidence collected in course of its action be used by the prosecutor/court?
4. Would there be any remedy against the decision saying that no criminal action should be taken against the police officers?
5. Does the complainant run the risk of being accused by the officers of violence against them if he files a complaint against the officer?

#### 11.1.3.6. Procedural status of the complainant

1. Would the complainant have a legal standing in any criminal proceedings taken against the police officers? If so, what rights would the complainant have?
2. If the complainant was a member of a vulnerable group, would he be heard under special circumstances?
3. Would the victim be entitled to any kind of protection measures? (who can have access to victim's personal data recorded in the case files, what happens if there is a real risk of retribution by the perpetrators, etc.)

#### 11.1.3.7. Prosecution by the complainant

1. Would it be possible for the complainant to act as "private prosecutor" against the police officers? If yes, under what legal conditions?
2. If prosecution by the complainant is possible, is it a prerequisite that the police officers be formally charged in the criminal proceedings or does he have an independent right to initiate criminal proceedings against them? Does the qualification of the crime by the prosecutor have any relevance in terms of the availability of supplementary private prosecution? (e.g. in Hungary a person falsely accused of having committed a crime may not act as a private prosecutor, on the basis that the primary aim of sanctioning false accusation is to protect the justice system, and not the falsely accused person)
3. If prosecution by the complainant is possible, would legal representation be mandatory? Would the complainant be entitled to legal aid? If so, under what conditions?
4. If prosecution by the complainant is possible, would there be any problems for the complainant in doing so, for example, restrictive time limits?
5. Would there be any relevant differences between the rights of the public prosecutor and those of the private prosecutor?
6. Apart from prosecution, what other remedies for the police ill-treatment might be available to the complainant?

#### 11.1.3.8. Evidentiary issues

(please indicate if there are any differences in cases prosecuted by private prosecutor)

1. Would police officers involved in the incident be required to write a report on the police measure/use of means of restraint?

2. Could these reports be used as evidence in any criminal prosecution of the police officers? If so, would there be any difference in terms of the "evidentiary force" of these reports compared to evidence provided by the complainant?
3. Would all the police officers involved in the torture incidents be heard as witnesses?
4. Would the complainant and the police officers be confronted (would they be cross-examined) in any criminal proceedings?
5. Would identity parades be held in the case? Would it be done in person or by showing photographs?
6. Would the doctors who examined the detained person be heard as witnesses?
7. Would the complainant have the right to propose any question to be asked of other witnesses in the proceedings?
8. What would happen if the complainant alleged that he had been tortured to extract confession? In the prosecution of the complainant for assault on the police, would the allegation of ill-treatment by the police be relevant to whether the evidence of his interrogation was admissible or to the weight given to that evidence (assume for the purpose of this question that the complainant confessed to assaulting the police in the interrogation)?
9. Is there any relevant difference in the procedure where a police officer is accused of assaulting an accused compared to where a person is accused of assaulting a police officer (e.g. higher evidential threshold, difference in the level of sentence/ sanction, etc.)?

#### 11.1.3.9. Conclusions

With regard to the ways in which police ill-treatment is dealt with in your jurisdiction, please identify those things that work well and those things that do not work well, i.e. that increase or decrease the efficiency of investigation of ill-treatment and torture. Include in your answer laws, procedures, practical arrangements and institutions and provide statistical evidence if probable.

# 11. 2. Annex II - Sample questions for interviews

## 11.2.1. Questions for judges

### 11.2.1.1. Investigation of ill-treatment by official person, forced interrogation and unlawful detention

1. In your experience, how do these crimes to light typically, in other words what prompts/triggers the criminal procedures (complaint or charges brought by the victim, internal police complaint, or investigation, criminal report by third party etc.)?
2. Have you experienced, and if yes, how often, that deficiencies in the investigation of these crimes have hindered the judicial procedure? What are some of the typical deficiencies related to the investigation of such cases? When investigating and deciding upon the submission of bill of indictment, does the state prosecution use the same standards in these cases as when the accused is not an official person? In your opinion, what are the typical problems caused by deficiencies and mistakes?
3. In your opinion, if prosecutors fail to practice due diligence in the investigation of these cases, can the institution of supplementary private prosecution function as an effective tool to ensure that all such cases can be brought to a criminal court for proper adjudication?
4. In your experience, what factors hinder the expedient and effective investigation of these crimes?

### 11.2.1.2. Proof

1. In your experience, do defence attorneys of victims of these crimes tend to make a motion, observation, or file charges when their client claims to have been ill-treated during arrest or detention?
2. In your experience, how useful are the reports or minutes prepared by the police in these cases for the purposes of the evidentiary procedure / in investigating the facts of the case? In terms of their evidentiary value, what are the greatest deficiencies of such reports/records? Are these deficiencies limited to the particular cases or to the investigation of any crime in general?
3. In these criminal procedures is confrontation of the accused and the victim usually ordered, during the investigation/court procedure for evidence, if there are contradictions in their testimonies? Are there cases where this is unnecessary in spite of the contradictions? In your experience how useful are such cross examinations?
4. In these criminal procedures are police lineups normally ordered as part of evidence? Are there cases where this is not necessary? In your experience how useful are police lineups for evidentiary purposes? Are they normally conducted as a police-lineup, or as a photo-lineup? If it is normally a photo-lineup, what is your opinion on this practice based on 122§ (1) of the Criminal Procedure Code, and how reliable is this mode of identification in your opinion?

5. Is it customary during these criminal procedures to order the doctor in charge of medical examination to testify (in case the victim was in custody and the doctor examined them during the intake process)? In what instances would you find it unnecessary to require testimony from the examining doctor?
6. Is it customary during these criminal procedures to order the questioning of all other police officers/detention facility staff potentially present or in any way involved in the case besides the accused officers? If not, why?
7. Is it customary during these criminal procedures to order the testimony of witnesses who are called by the victim, the supplementary private prosecutor, or by their legal representatives?
8. In your experience, how adequate are medical examinations and related documentation as evidence in these criminal procedures for proving the concerned crimes? Does the evaluation of such documentation detail the circumstances of its preparation (for example: was the accompanying police officer present during the medical examination; was the accompanying police officer the one charged with the alleged abuse etc.)? In your opinion is there any significant difference in the quality of the medical examinations and their documentation performed by doctors working for the police, for detention facilities or in public health institutions? What in your opinion could be improved with regards to the medical examinations and their documentation in order to support the investigation of these cases?
9. In your experience, how relevant are the findings of the forensic medical expert with regard to the judicial decision? For example: between the testimony of the victim and the findings of the medical examiner which have more evidentiary weight; to what degree do the victim's claims have to be supported by the medical expert's opinion? Is it problematic if the same medical experts are serving in these cases whose participation in other cases is ordered by the concerned investigating authority?
10. In your opinion, what are the evidentiary means which are most effective in proving these crimes? How typical is it that video recordings are at hands for evidentiary purposes? How relevant is it if an alleged ill-treatment/forced interrogation took place in a room, where a camera should have been recording, but for some reason the camera at the time was not functioning, or the footage is otherwise unavailable (due to damage, deletion)? Have there been instances when in such cases the police officers' uniforms, the inside of police vehicles were examined (for example for recording traces of blood)? Would such investigative measures be necessary?
11. When evaluating the defendant's testimony, do you/ or would you take into consideration if they state that they have been victim of ill-treatment, forced interrogation or unlawful detention?
12. In your opinion, what differences can be found with regards to evidentiary issues/ proof/demonstrability, based on whether the proceedings were initiated on charges of ill-treatment, forced interrogation, unlawful detention or violence against public officials?

13. According to your opinion, in the time frame of your service, have there been changes in the law that have made it easier to prove charges of ill-treatment, forced interrogation, unlawful detention? If yes, how have these made proof easier? In your opinion, what changes in the law or practices would help enhance the determination/proving of such crimes?

#### 11.2.1.3. Victim

1. In your opinion, what are the concerns with regards to the rights and procedural status of victims of ill-treatment, forced interrogation, unlawful detention? (For example: what rights should be ensured for victims; or what are some of the failures and deficiencies of implementation of otherwise high quality legal rules?)

#### 11.2.1.4. Supplementary private prosecution

1. In your opinion, what are the typical procedural difficulties faced by a person filing supplementary private prosecution? Are there undue burdens of obligations in connection to supplementary private prosecution supplementary private prosecution, or with regards to such rights that – although reasonable – current legislation does not provide for such persons (with particular regard to prosecutors rights and duties)?
2. In your experience, what differences can be observed (if they can be observed at all) in the procedure, depending on whether the supplementary private prosecutor is represented by a privately hired attorney or legal aid lawyer ?

#### 11.2.1.5. Sanctions

1. In your opinion, are the sentencing guidelines outlined in the Criminal Code for crimes of ill-treatment, forced interrogation, unlawful detention proportional?
2. Looking at judicial practice, do you find the sentences handed down by judges for crimes of ill-treatment, forced interrogation, unlawful detention proportional? In our experience, police officers found guilty of abuse charges are never banned from practicing their profession. What do you think is the reason for this? In fact, in our experience the use of preliminary exemption is common in such cases, which makes it possible for offending officers who have been found guilty to continue to serve on the police force. What is the reason for this practice?
3. What is the reason behind the fact that even though only a fraction of charges filed (4-8%) result in impeachment, (leading us to conclude that prosecutors only impeach in the most severe cases) the success rate of impeachment is significantly lower than in any other type of crime (around 66% compared to the average 92-95%)?
4. What is the judicial practice with regards to bringing charges of false accusation if the criminal procedure against a public official does not lead to a finding of guilt? Is there a difference in this matter between cases brought against public officials and other similar procedures?

### 11.2.2. Questions for medical doctors

The following questionnaire pertains to the medical examination and documentation of injuries committed against detainees, sustained by torture, degrading or inhumane treatment, committed by public officials serving in the ranks of the police force (hereinafter ill-treatment).

1. Do doctors conducting the health screening of defendants receive specialized medical training on the modes of investigating and on identifying injuries related to ill-treatment? If yes, what international organization recommendations, or guidelines are part of this training?
2. Do doctors conducting the health screening of defendants receive specialized legal training on what acts qualify as ill-treatment or forced interrogation?
3. In your experience, how can one identify injures resulting from ill-treatment and distinguish these from other injuries? Aside from the methods and tools of medical examination, what other ways do you have to determine the likely cause of injuries (such as: accounts of the defendant; questioning the police etc.?)
4. During the examination, do you evaluate the psychological state of the defendant? How much emphasis is put on the examination of injuries incurred as a result of psychological abuse?
5. What are the usual methods used during the medical examination of defendants? In your experience, which of these methods are particularly useful in identifying injuries resulting from ill-treatment?
6. In your experience are there particular material or personal conditions, in absence of which, the identification of the actual cause of detainees' injuries is particularly problematic? Can you recall any instance during your medical practice, when despite your well founded professional opinion, you were unable to demonstrate that a particular injury was a result of ill-treatment?
7. Please list the elements of the medical documentation produced during the defendants' intake process and briefly describe them. Do medical documentations usually contain photographs of injuries?
8. In case you cannot decide with certainty that an injury is a result of ill-treatment, would you still list ill-treatment as a possible cause of injury?
9. In your experience, what is the threshold of certainty for the likelihood that an injury is a result of ill-treatment, for you to report it to the prosecutor? Under what circumstances do you report injuries found on a defendant as related to ill-treatment to the prosecutor?
10. What role does the severity of the injury (time of recovery, level of pain… etc.) play in identifying the injury as a result of ill-treatment and/or reporting it to the prosecutor?
11. In your opinion, are there any deficiencies or causes in connection with the legal status of doctors responsible for the medical examination of inmates/arrestees that constrain doctors' willingness to identify injuries related to ill-treatment and/or reporting these to the prosecutor?
12. Do you have knowledge of practices that prefer the "in house" handling of cases of ill-treatment in detention, instead of reporting them to the prosecutor? (for

example, the doctor doesn't inform the prosecutor, but rather the official with disciplinary power)

13. In your opinion, in unveiling the real causes of their injuries, how prohibitive are defendants' fears of possible police retaliation, negative treatment during the criminal procedure, or being prosecuted for false accusation, for claiming ill-treatment? Have you had any cases in your practice where someone was retaliated against, or had charges brought against them for false accusation, because they reported instances of ill-treatment?
14. Are police officers present during the medical examination of defendants in the intake process? In case the examining doctor finds it reasonable, can they request that police officers leave the examining room? In what instances does the doctor find it reasonable to conduct medical examination in the absence of police officers? Does the documentation on medical examination contain information on the presence of police officers during the examination?
15. In your experience, if a defendant requests medical examination based on allegations of ill-treatment, do authorities secure them the opportunity to see a doctor? Please provide an answer under this question regarding the presence or absence of police officers, if you think your response would be different from the previous questions.
16. In your experience, during criminal procedures for charges of ill-treatment against police officers, are you normally asked to testify as a witness in the criminal proceedings? Do you think including your testimony is reasonable in these cases?
17. In your experience, during disciplinary procedures for charges of ill-treatment against police officers, are you normally asked to testify as a witness in the disciplinary proceedings? Do you think including your testimony would be reasonable in these cases?
18. In your experience, in what stages of the criminal process are ill-treatments most common? Which police officers are most likely to commit abuses against defendants? (for example: arresting officer, interrogating officer, detention officer, etc.)
19. In your experience, what are the most common injuries related to ill-treatment? What are the most common types of ill-treatments?
20. According to your opinion, have there been changes in the law or any new practices introduced in the past two decades, that have made it easier to identify injuries caused by ill-treatment, launch accountability procedures, hold perpetrators accountable and protect the defendants? In your opinion, what changes in the law or practices would help enable the above goals?

### 11.2.3. Questions for police officers

The following questionnaire pertains to the disciplinary proceedings against members of the police force, in relation to acts broadly belonging to the category of ill-treatment.

#### 11.2.3.1. Consequences of disciplinary procedures

1. In your experience, how do abuses most commonly come to light in the broadly interpreted cases of these misconducts (hereinafter misconduct)/what prompts the disciplinary procedures (the complaints of the defendant, internal police examination and complaints etc.)?
2. In your experience, during which police procedure, in what stages of the criminal process is misconduct most common? Which police officers are most likely to commit misconduct? (for example: arresting officer, interrogating officer, detention officer, etc.)
3. In your experience, what are the typical forms of misconduct committed by police officers during arrest, detention and interrogation?
4. In your opinion, how prohibitive are the victims' fears of being prosecuted for false accusation, in investigating instances of misconduct? Based on your experiences, how common are prosecutions based on false accusations against victims?
5. In your experience, what factors hinder the expediency of disciplinary proceedings and the examination of alleged misconduct?
6. In your experience, do defence attorneys of the victim tend to make a motion, observation, or file charges when their client claims to have been abused during arrest, or detention? In your experience, is there a difference in this matter based on whether the defence attorney is an ex officio lawyer or a private defence attorney?
7. In your experience, how useful are the minutes/reports prepared of the police measures in investigating the facts of the case? In terms of their evidentiary value, what are the greatest deficiencies of such minutes/records? Are these deficiencies limited to the particular cases, or in general to the examination of misconduct?
8. Is the injured accused normally heard during the disciplinary proceedings?
9. In case of a contradiction between the accounts of the victim and the police officer in question, how is it normally resolved?
10. During disciplinary proceedings, is it customary to order the doctor in charge of the medical examination of the defendant, to testify? In what instances would you find it unnecessary to hear testimony from the examining doctor?
11. During disciplinary proceedings are other police officers affected by or involved in the incident normally ordered to testify, besides the officer(s) against whom the proceedings are brought? If not, why not?
12. In your experience, how adequate are medical examinations and related documentation in proving misconduct? Does the evaluation of such documentation detail the circumstances of its preparation (for example: was the accompanying police officer present during the medical examination; was the accompanying police officer the one charged with the alleged abuse etc.)? What are the usual

elements of such medical documentation (for example: does it normally contain photographic documentation of injuries?)

13. In your opinion, what changes should be made with regards to medical examination and related documentation to enhance the examination of these cases?
14. Have you had cases in your practice where the doctors in charge of medical examination of the victim, signalled the finding of injuries consistent with the probability of police abuse, to the official with disciplinary power rather than to the prosecutor?
15. Is a forensic medical experts' testimony usually ordered during disciplinary proceedings? If not, why not? In cases of contradiction between the medical expert and the doctor in charge of the medical examination of the accused, how are such contradictions resolved?
16. In your opinion, which means evidence are most useful/adequate for proving misconduct?
17. How typical is it that video recordings are at hands for evidentiary purposes? How relevant is it if an alleged ill-treatment/forced interrogation took place in a room, where a camera should have been recording, but for some reason the camera at the time was not functioning, or the footage is otherwise unavailable (due to damage, deletion)?
18. Have you had cases in your practice, where during the disciplinary proceedings the misconduct was found to be so severe that criminal charges were brought against the police officer?
19. According to your opinion, have there been changes in the law, or have there been new practices introduced in the past two decades, that have made it easier to prove misconducts/crimes? If yes, how have these made examinations more successful? In your opinion, what changes in the law or practices would help enhance the determination of misconduct, or crimes?

#### 11.2.3.2. The victims' protection

1. In your opinion, what legal changes or practical solutions could reduce the frequency of misconduct/crimes committed against defendants?
2. How is the safety of the abused defendants ensured during the duration of the disciplinary proceedings, from start to finish?
3. Are those examined for probable misconduct, usually suspended from their positions?

#### 11.2.3.3. Consequences of misconduct

1. What disciplinary sanctions are normally used against police officers in cases of misconduct? How common is the dismissal of the concerned officer? Based on your experience, what acts are considered severe enough to merit dismissal?
2. In evaluating the severity of misconduct, where do you put the boundary between a misconduct and a criminal act? Based on what considerations do you decide whether an act constitutes misconduct or crime?

3. In our experience the use of preliminary exemption is common in criminal proceedings brought in cases ill-treatment, forced interrogation and unlawful detention, which makes it possible for offending officers who have been found guilty to continue to serve on the police force. What is your opinion of this practice and what do you think are the reasons behind it?

### 11.2.4. Questions for prosecutors

Investigation of ill-treatment by official person, forced interrogation and unlawful detention

1. In your experience, how do these crimes come to light typically, in other words what prompts/triggers the criminal procedures (complaint or charges brought by the victim, internal police complaint, or investigation, criminal report by third party etc.)?
2. In your opinion, how prohibitive are the victim's fears of being prosecuted for false accusation, in investigating crimes of ill-treatment, forced interrogation and unlawful detention? Based on your experiences, how common are prosecutions based on suspicions of false accusations against victims?
3. In your experience, what factors hinder the expedient and effective investigation in cases of abuses in official procedures, coerced confessions, or unlawful detention?
4. In your experience, do defence attorneys of victims of these crimes tend to make a motion, observation, or file charges when their client claims to have been ill-treated during arrest or detention?
5. In your experience, how useful are the reports or minutes prepared by the police in these cases for the purposes of the evidentiary procedure / in investigating the facts of the case? In terms of their evidentiary value, what are the greatest deficiencies of such reports/records? Are these deficiencies limited to the particular cases or to the investigation of any crime in general?
6. In these criminal procedures is confrontation of the accused and the victim usually ordered, during the investigation/court procedure for evidence, if there are contradictions in their testimonies? Are there cases where this is unnecessary in spite of the contradictions? In your experience how useful are such cross examinations?
7. In these criminal procedures are police lineups normally ordered as part of evidence? Are there cases where this is not necessary? In your experience how useful are police lineups for evidentiary purposes? Are they normally conducted as a police-lineup, or as a photo-lineup? If it is normally a photo-lineup, what is your opinion on this practice based on 122§ (1) of the Criminal Procedure Code, and how reliable is this mode of identification in your opinion?
8. Is it customary during these criminal procedures to order the doctor in charge of medical examination to testify (in case the victim was in custody and the doctor examined them during the intake process)? In what instances would you find it unnecessary to require testimony from the examining doctor?
9. Is it customary during these criminal procedures to order the questioning of all other police officers/detention facility staff potentially present or in any way involved in the case besides the accused officers? If not, why?
10. In your experience, how adequate are medical examinations and related documentation as evidence in these criminal procedures for proving the concerned crimes? Does the evaluation of such documentation detail the circumstances of its preparation (for example: was the accompanying police officer present during the medical examination; was the accompanying police officer the one

charged with the alleged abuse etc.)? What are the usual elements of such medical documentation (for example: does it normally contain photographic documentation of injuries?)

11. In your opinion is there any significant difference in the quality of the medical examinations and their documentation performed by doctors working for the police, for detention facilities or in public health institutions? What in your opinion could be improved with regards to the medical examinations and their documentation in order to support the investigation of these cases?
12. In your experience, do doctors normally notify the prosecutor when they identify injuries on the defendant that are likely consistent with ill-treatment committed during official proceedings, or when the defendant claims to have been ill-treated?
13. In your experience, how relevant are the findings of the forensic medical expert with regard to the judicial decision? For example: between the testimony of the victim and the findings of the medical examiner which have more evidentiary weight; to what degree do the victim's claims have to be supported by the medical expert's opinion?
14. In your opinion, what are the evidentiary means which are most effective in proving these crimes? How typical is it that video recordings are at hands for evidentiary purposes? How relevant is it if an alleged ill-treatment/forced interrogation took place in a room, where a camera should have been recording, but for some reason the camera at the time was not functioning, or the footage is otherwise unavailable (due to damage, deletion)? Have there been instances when in such cases the police officers' uniforms, the inside of police vehicles were examined (for example for recording traces of blood)? Would such investigative measures be necessary?
15. In your opinion what differences can be found with regards to evidentiary issues/ proof/demonstrability, based on whether the proceedings were initiated on charges of ill-treatment, forced interrogation, unlawful detention or violence against public officials?
16. According to your opinion, have there been changes in the law, or have there been new practices introduced in the past two decades, that have made it easier to prove charges of ill-treatment, forced interrogation or unlawful detention? If yes, how have these made proof easier? In your opinion, what changes in the law or practices would help enhance the determination/proving of such crimes?

#### 11.2.4.1. Victim and protection

1. In your opinion, what are the concerns with regards to the rights and procedural status of victims of ill-treatment, forced interrogation, unlawful detention? (For example: what rights should be ensured for victims; or what are some of the failures and deficiencies of implementation of otherwise high level legal rules?)
2. In your experience how is the person of interest, identified by the defendant, notified? Is it normally the defendant or an official who notifies? What happens when the person identified by the defendant is not available?

### 11.2.4.2. Supplementary private prosecution

1. In your opinion what are the typical procedural difficulties faced by a person filing supplementary private prosecution? Are there undue burdens of obligations in connection to supplementary private prosecution supplementary private prosecution, or with regards to such rights that – although reasonable – current legislation does not provide for such persons (with particular regard to prosecutors rights and duties)?

### 11.2.4.3. Sanctions

1. In your opinion, are the sentencing guidelines outlined in the Criminal Code for crimes of ill-treatment, forced interrogation, unlawful detention proportional?
2. Looking at judicial practice, do you find the sentences handed down by judges for crimes of ill-treatment, forced interrogation, unlawful detention proportional? In our experience, police officers found guilty of abuse charges are never banned from practicing their profession. What do you think is the reason for this? In fact in our experience the use of preliminary exemption is common in such cases, which makes it possible for offending officers who have been found guilty to continue to serve on the police force. What is the reason for this practice?
3. What is the reason behind the fact that even though only a fraction of charges filed (4-8%) result in impeachment, (leading us to conclude that prosecutors only impeach in the most severe cases) the success rate of impeachment is significantly lower than in any other type of crime (around 66% compared to the average 92-95%).