MANUAL ON CONDUCTING EFFECTIVE INVESTIGATIONS IN THE CASES OF ILL-TREATMENT

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Council of Europe

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Table of Contents

Foreword

The purpose of this manual is to help state prosecutors and police officers during investigations concerning allegations of torture and other ill-treatment. The aim is to exercise the powers and duties of state prosecutors and police officers, as defined by the Criminal Procedure Code (CPC) and other laws, in accordance with the European standard of effective investigation of torture and other ill-treatment.

The manual pools the most important instructions for the implementation of this standard, based on the case law of the European Court of Human Rights and standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Please note that the manual does not include an exhaustive list of actions that should be taken in order for an investigation to be effective. In each individual case, state prosecutors and police officers are obliged to take all the measures required in that particular case in order to fully and objectively establish the facts and identify all the perpetrators of ill-treatment.

The manual uses the term "investigation" so as to include actions taken by state prosecutors and the police during preliminary investigation and after an investigation order has been issued.

Finally, please find enclosed a list of titles of other useful manuals on implementing the prohibition of torture and other ill-treatment (inhuman or degrading treatment or punishment) that may offer more detailed instructions.

The manual has been prepared within the Action "Fighting Ill-treatment and Impunity and Enhancing the Application of the ECtHR Case-law on National Level (FILL)", *Horizontal Facility for Western Balkans and Turkey*, co-financed by the European Union and the Council of Europe, and implemented by the Council of Europe.

The views and opinions presented in the manual are those of the authors and do not necessarily reflect the official position of the Council of Europe and the European Union.

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Introduction

Prohibition of torture, cruel, inhuman and degrading treatment and punishment (in one word: ill-treatment) is absolute in character, which means that such treatment is prohibited regardless of the occasion, even in case of war or other state of emergency ("public danger threatening the survival of a nation"), as well as in the most difficult circumstances of fighting terrorism and organised crime in times of peace. This human right is peremptory to the norms of the international law, *ius cogens*, a custom applicable also to states that have not accepted international treaties that explicitly stipulate such a prohibition.

Montenegro has ratified the international multilateral treaties stipulating the prohibition of ill-treatment (the most important being the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - UNCAT, International Covenant on Civil and Political Rights - ICCPR and the European Convention on Human Rights - ECHR) and accepted the authority of international bodies to take care of the implementation of those treaties in Montenegro. Article 9 of the Constitution of Montenegro ensures that ratified international treaties shall be treated as part of the legal order of Montenegro and shall prevail where they govern relations differently from the national legislation.

In the legal order of Montenegro, implementation of the international guarantee of prohibition of ill-treatment is secured by the Constitution, Criminal Code, Criminal Procedure Code, Law on Internal Affairs and other laws governing the enforcement of criminal sanctions, and operations of health, social care and educational establishments in which ill-treatment may take place.

The obligations of the state are to refrain from ill-treatment, to prevent it through appropriate preventative measures. The first of such measures implies that acts of torture and other ill-treatment shall be prohibited, as criminal offences, that they shall be punishable by appropriate sanctions, and that, when it happens, ill-treatment shall be investigated in accordance with the standard of effective investigation. This standard also implies an appropriate punishing of perpetrators.

It is important to bear in mind that the international standard of effective investigation is implemented in Montenegro directly, based on positive obligations of the state arising from international human rights treaties. The ECtHR explained that the state under no circumstances may allow any attacks against the physical and men-

tal integrity of persons within its jurisdiction to remain unpunished.[1] Particularly where ill-treatment results from an excessive use of force by civil servants, their proper prosecution and punishing ensures the survival of public trust in state's monopoly over the use of coercion.[2] The implementation of prompt, independent, impartial and thorough investigations, with an appropriate participation of the injured party and under the control of the public, is necessary to maintain public trust, ensure the rule of law and prevent any impression that competent judicial authorities are being lenient with or accomplices in illegal actions.[3]

1 *Cestaro v. Italy,* application no. 6884/11, 2015, para. 205
2 See the ECtHR judgment in the case *Ramsahai v. The Netherlands*, application no. 52391/99, 2007, para. 325.
3 For example, ECtHR, *Cestaro v. Italy,* application no. 6884/11, 2015, para. 205.

1. Concept of Torture and other Ill-treatment

1.1. International instruments

Torture and other ill-treatment were prohibited in international law in 1984, by Article 5 of the Universal Declaration of Human Rights, by the common Article 3 of all four Geneva Conventions[4] in 1949, by Article 3 of the European Convention on Human Rights (ECHR)[5] in 1950, by Articles 7 and 10, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) in 1966,[6] by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)[7] in 1984, and by the Statute of the International Criminal Court (ICC)[8] in 1998.

All of the above international law instruments are binding upon Montenegro.[9]

1.2. International bodies responsible for supervision

Montenegro has also accepted the authority of the international bodies to scrutinise individual complaints against their authorities for any violations of international human rights treaties, and to use periodical analyses to monitor the implementation of the prohibition of torture and other ill-treatment. Thus, Montenegro

4 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II), Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention III), Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), all dated August 12, 1949, *Official Gazette of the Federal People's Republic of Yugoslavia*, no. 24/50.

5 *European Convention on Human Rights* (ECHR), Law on the Ratification of the European Convention on Human Rights and Fundamental Freedoms, as amended in accordance with Protocol No. 11 and supporting protocols, *Official Gazette of Serbia and Montenegro - International Treaties*, nos. 9/2003 and 5/2005.

6 *International Covenant on Civil and Political Rights* (ICCPR), Law on the Ratification of the International Covenant on Civil and Political Rights, *Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties*, no. 9/91.

7 *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT), Law on the Ratification of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, promulgated in the *Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties*, no. 9/91.

8 *International Criminal Court* (ICC), Law on the Ratification of the Statute of the International Criminal Court, *Official Gazette of the Federal Republic of Yugoslavia – International Treaties,* no. 5/2001.

9 Decision on the Declaration of Independence of Montenegro, item 3, *Official Gazette of the Republic of Montenegro*, 36/2006. See also Article 9 of the Constitution of Montenegro.

falls within the competences of the UN Committee Against Torture (CAT),[10] the Committee for Human Rights (CCPR)[11] and the European Court of Human Rights (ECtHR).[12] In addition, the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment (CPT)[13] periodically visits Montenegro, as well as other member states of the Council of Europe, and reports on the implementation of international commitments regarding the prevention of ill-treatment. Montenegro has also accepted the authority of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (SPT), whose members also visit custody sites for persons deprived of liberty.[14]

Case law of all those international bodies is important because it specifies the standard of ill-treatment prohibition and provides states with useful recommendations to improve law and practice.

1.3. Torture and other ill-treatment

1.3.1. Torture

1.3.1.1. Definition

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture in the first article thereof, which reads as follows:

> *For the purposes of this Convention, the term "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 acquies-*

10 *Committee against Torture* (CAT), established based on Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx.

11 *Human Rights Committee* (CCPR), established based on Article 28 of the International Covenant on Civil and Political Rights, op. cit, https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx.

12 *European Court of Human Rights* (ECtHR), established based on Article 19 of the European Convention on Human Rights, https://echr.coe.int.

13 *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT), established based on Article 1 of the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, https://www.coe.int/en/web/portal/home.

14 Established based on Article 2 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Official Gazette of Serbia and Montenegro - International Treaties*, nos. 16/2005 and 2/2006. See *Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (SPT), https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx.

cence 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.

The UNCAT requires from the signatory states to incriminate torture and attempted torture, as well as being an accomplice or in any other form participating in the act of torture as a criminal offence, and to set forth measures proportionate to the severity of such an act.[15] There is a requirement to prohibit also other acts of ill-treatment - cruel, inhuman or degrading treatment or punishment.[16]

Downscaling the severity of torture, by qualifying and prosecuting an act with the elements of torture as some other ill-treatment, is contrary to the international standard.[17]

1.3.1.2. Criminal offences of torture and extorting a testimony

In Article 167, the Criminal Code of Montenegro (CCME)[18] incriminates torture as a separate criminal offence:

1. *Whoever inflicts severe pain or great suffering on another, whether bodily or mental, in order to obtain from him or a third party a confession or another information, or in order to illegally punish or intimidate him, or to exert pressure over him, or to intimidate or exert pressure over a third party, or does so for some other reason based on discrimination, shall be punished by a prison sentence for a term from six months to five years.*
2. *Where the offence set forth in paragraph 1 of this Article is committed by a public official while performing his duties or where the offence was committed under his explicit or implied consent, or where a public official incited another person to commit an offence set forth in paragraph 1 of this Article, he shall be punished for the offence set forth in paragraph 1 of this Article by a prison sentence for a term from one to eight years.*

In Article 166 of the CCME, extorting a testimony is set forth as a separate criminal offence:

1. *A public official who while performing his duties uses force or threats or other inadmissible means or inadmissible manner with the intention to extort a*

15 Article 4 of the UNCAT, op.cit. In 2004, the Committee Against Torture (CAT) requested that Montenegro increase punishments and ensure that criminal prosecution for torture was not subject to time bars (see *Concluding observations on the second periodic report of Montenegro*, CAT/C/MNE/CO/2, 17/6/2014, item 6).

16 Article 16, para. 1 of the UNCAT, *op.cit.*

17 Committee against Torture, General comment no. 2, Implementation of Article 2 by States parties, 2008, item 9.

18 *Official Gazette of the Republic of Montenegro*, nos. 70/2003, 13/2004 and 47/2006, and *Official Gazette of Montenegro*, nos. 40/2008, 25/2010, 32/2011, 64/2011 – other law, 40/2013, 56/2013, 14/2015 42/2015 58/2015 – other law and 44/2017.

testimony or another statement from the accused, witness, expert witness or another person shall be punished by a prison sentence for a term from three months to five years.

2. *Where the extortion of a testimony or statement is accompanied by severe violence, or where extremely grave consequences occur for the accused in criminal proceedings due to extorted testimony, the offender shall be punished by a prison sentence for a term from two to ten years.*

According to the UNCAT, the qualified form of this criminal offence from paragraph 2 falls under torture, while the basic form of the offence would constitute torture if "severe pain" or "great suffering" was inflicted by the force or threat used.

1.3.1.3. Offender

In Montenegro, the perpetrator of the basic form of the criminal offence of torture can be anyone, while the perpetrator of the criminal offence of extorting a testimony can only be a public official performing his duty.

Where the criminal offence of torture is committed by a public official while performing his duties, or where the offence was committed with his consent or acquiescence, or where a public official incited another person to commit the offence, it constitutes a qualified form of the offence, punishable by a prison sentence from one to eight years.

For attempted torture, only the perpetrator who is a public official shall be punished (Art. 20 of the CCME).[19]

1.3.1.3.1. Public official

Who is deemed a public official is stipulated in Article 142, paragraph 3 of the CCME:

1. *A person who performs official duties in a state authority;*
2. *An elected, appointed or designated person in a state authority, local self-government authority or a person performing, on a permanent or temporary basis, official duties or official functions in these authorities;*
3. *A person in an institution, business organisation or another entity who has been entrusted with the performance of public powers, a person who decides on the rights, obligations or interests of natural or legal persons or on the public interest; and*
4. *Any other person performing official duties under a law, regulations adopted pursuant to laws, contracts or arbitration agreements, as well as a person*

19 Article 20, para. 1 of the CCME stipulates as follows: "(1) Whoever commences the commission of a criminal offence with criminal intent but does not complete it shall be punished for attempted offence punishable under law by a prison sentence of five years or more...". Given that the basic form of torture is punishable by up to five years, and the qualified one by up to eight years, the conclusion is that only a public official shall be punished for an attempt in relation to Article 167, para. 2 of the CCME.

who is de facto entrusted with the performance of certain official duties or affairs;

5. *A serviceman, with the exception of provisions of Title Thirty-Six of this Code;*

5a) *A person performing in a foreign state legislative, executive, judicial or other public office for a foreign state, a person who performs official duties in a foreign state on the basis of laws, regulations adopted on the basis of laws, contract or arbitration agreement, a person performing official duty in an international public organisation and a person performing judicial, prosecutorial or another office in an international tribunal.*

According to the CCME, the concept of public official refers to civil servants and state employees, defined under the Law on Civil Servants and State Employees, as persons who have entered into employment contracts with state authorities,[20] but it also implies a wider circle of persons.

In practice, torture is most often committed by police or prison officers. However, perpetrators of torture and ill-treatment may also be employees in other state institutions such as hospitals, schools, social care establishments charged with custody over parentless children, disabled and elderly persons, the armed forces,[21] embassies, etc.

The international standard requires that, in case of torture, the liability of all public officials in the chain of command be investigated, as well as that of direct perpetrators.[22] The chain of responsibility implies also the highest government representatives, a state administration director (e.g. of the Police Administration), state secretary, minister, even the heads of the government, parliament and state.

In addition to civil servants, the obligation of the state to prevent and punish torture and other ill-treatment applies also to all persons who act de facto in the name of, in conjunction with, or at the behest of the state.[23]

To that regard, item 3 of the quoted Article 142, para. 3 of the CCME includes, for example, employees in institutions and organisations with which a contract on public-private partnership has been concluded for the provision of social-care services[24] or a contract on the enforcement of the community-restitution punishments.[25] Private persons are deemed servants of the state if they are "effectively entrusted

20 Law on Civil Servants and State Employees, *Official Gazette of Montenegro*, no. 2/2018, Art. 2.

21 With regard to a military commander who ill-treats a subordinate who is on duty or in relation to his duty, a separate criminal offence is stipulated in Article 462 of the CCME.

22 Committee against Torture, General comment no. 2, Implementation of Article 2 by States parties, 2008, items 7 and 9.

23 Committee Against Torture, General comment no. 2, Implementation of Article 2 by States parties, 2008, item 7.

24 See Article 6 of the 2018 Draft Law on Public-Private Partnership, as well as the Law on the Participation of Private Sector in the Delivery of Public Services (*Official Gazette of the Republic of Montenegro, no. 030/02, Official Gazette of Montenegro*, no. 008/09, 073/10).

25 See Article 18 of the Law on the Execution of Probation and Community Restitution (*Official Gazette of Montenegro*, no. 32/2014).

with the performance of certain official duties or affairs" (Article 142, para. 3, item 4 of the CCME). This category of persons includes also informal state agents such as collaborators of security services, members of paramilitary and parapolice units,[26] and other persons authorised to take actions in the name of, or on behalf of, or in conjunction with the state, regardless of the form of authorisation.

1.3.1.4. Act of commission

A criminal offence of torture exists if a person is being inflicted "severe pain" or "great suffering", either physical or mental, with a specific goal in mind:

- *To obtain from him or a third person information or a confession,*
- *To unlawfully punish or intimidate that person,*
- *To exert pressure over that person,*
- *To intimidate or exert pressure over a third party, or*
- *It was done for other reasons based on discrimination.*

In the criminal offence of extorting a testimony (Article 166 of the CCME), the infliction of pain or suffering as an element of the offence has not been separately stipulated, although - as a rule - bodily or mental suffering is inflicted by the use of force or threat. One kind of the qualified form of the offence implies the use of "severe violence" and any such case would actually constitute torture.

Some authors believe that the helplessness of a victim who has been deprived of liberty and is under the full control of the abuser, e.g. by being tied, constitutes a separate element of torture which distinguishes it from a milder form of ill-treatment.[27]

1.3.1.4.1. Severe pain and great suffering

When assessing whether something constitutes "severe pain" or "great suffering", which, as a rule, is done by way of forensic examination, it should be borne in mind that the European Court of Human Rights (ECtHR) thinks that the severity of the case is a relative concept and that, when assessing whether something is torture or a milder form of ill-treatment, other circumstances should also be taken into consideration, apart from the intensity of pain, such as personal characteristics of the injured party, age, gender, health status, racial or religious affiliation, social and

26 *Sprečavanje i kažnjavanje mučenja i drugih oblika zlostavljanja – Priručnik za sudije i tužioce* (*Prevention and Punishment of Torture and Other Forms of Ill-treatment - Manual for Judges and Prosecutors*), Radmila Dragićević-Dičić, Dr Ivan Janković and Dr Vesna Petrović, Beogradski centar za ljudska prava (Belgrade Centre for Human Rights), 2011, p. 54.

27 *Zabrana zlostavljanja – pojam mučenja, nečovečnog i ponižavajućeg postupanja i efikasna i delotvorna istraga u pogledu ozbiljnih navoda o zlostavljanju (pravni okvir i praksa u Republici Srbiji) (Prohibition of ill-treatment - the concept of torture, inhuman and degrading treatment, and efficient and effective investigation with regard to serious allegations of ill-treatment (legal framework and case law in the Republic of Serbia)*), Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, Beogradski centar za ljudska prava (Belgrade Centre for Human Rights), 2017, p. 35.

family situation, etc. The same threat made to a ten-year-old child or to an adult may not have an equally intimidating effect. A slap causes greater suffering to a child that to an adult, inflicting pain while depriving a person of liberty brings forth additional severity, etc.[28]

With regard to assessing the intensity of pain, in the case in which it was concluded that torture had been inflicted through a large number of blows to the injured party by police officers, the ECtHR pointed out that it could be presumed that such intensity of blows would cause substantial pain regardless of the person's state of health.[29]

Although prolonged physical or mental harm particularly indicates torture, it should be taken into account that torture may exist even if it did not result in any prolonged adverse effects to the mental health[30] or long-term damage to health in general.[31]

The method of the infliction of suffering in the criminal offence of torture is not defined; thus, it is possible to inflict suffering in any way. In the criminal offence of extorting a testimony, this is defined as being done by using "force or threats or other inadmissible means or inadmissible manner". If the extortion of a testimony is accompanied by severe pain or suffering, it constitutes torture within the meaning of the international standard, while other forms fall within ill-treatment, i.e. inhuman or degrading treatment.

In extorting a testimony, taking any inadmissible action aimed at extorting a testimony is deemed a commission of the criminal offence, and it does not necessarily have to result in the actual extortion of a statement or testimony. In case where a testimony was extorted, having led to severe consequences in criminal proceedings, such as, e.g., a conviction, it will constitute a qualified form of this offence. Please note here that the UNCAT explicitly prohibits the use of confession that has been made as a result of torture or ill-treatment in any criminal proceedings, except as evidence for punishing a torturer (Article 15). Accordingly, the Criminal Procedure Code of Montenegro sets forth that the evidence obtained by violating human rights shall be excluded from the case file immediately (Article 17, para. 2 and Article 211).[32]

The qualified form of the offence of extorting a testimony while deploying "severe violence", which causes severe pain or great suffering, has all the elements of torture. Given that a narrower range of punishment is stipulated for the qualified form of torture, from one to eight years, while the range for the qualified form of extort-

28 *Selmouni versus France*, application no. 25803/94, 1999, para. 100.
29 *Selmouni versus France*, application no. 25803/94, 1999, para, 102.
30 CAT, Concluding Observations: United States, CAT/C/USA/CO/2, 2006, item 13.
31 *Polonskiy v. Russia*, application no. 30033/05, 2006, para. 124 (about blows and electric shocks).
32 *Official Gazette of Montenegro*, no. 57/2009, 49/2010, 47/2014 - Constitutional Court decision, 2/2015 - Constitutional Court decision, 35/2015, 58/2015 - other law and 28/2018 - Constitutional Court decision.

ing a testimony is from two to ten years, a stricter qualification should be applied, which is closer to the international standard for the range of sentences for punishing torture, from six to 20 years.[33]

The definition of torture does not refer to pain or suffering arising only from, inherent in, or incidental to lawful sanctions (UNCAT, Article 1). Here, please take into account the provisions of the Law on Internal Affairs which govern the legal and proportionate use of the means of coercion, as well as of the Criminal Procedure Code and the Law on the Execution of Prison Sentences, Fines and Security Measures, which set forth the conditions under which a person may be deprived of liberty. Overcrowding and other poor material and other conditions in detention and prison may constitute forms of ill-treatment, which is going to be discussed in more detail hereunder.

1.3.1.4.2. Examples

Please find below the examples of the acts of committing torture by which public officials - which, as a rule, are police officers - members of different security services or prison guards, have tried to extort confessions from victims, get information from them, or unlawfully punish or intimidate them:

a. Inflicting multiple injuries by a truncheon,[34] kicking, whipping, battering with wire, steel rope,[35] causing to fall; multiple and fierce foot whipping ('falaka'):[36]
b. Long-lasting stringing up by arms in a painful position ('Palestinian hanging'),[37] painful and long-lasting tying up, stretching of extremities,[38] long-lasting restriction of movement;
c. Threats of death, harm to family, further torture, mock execution;[39]
d. Kidnapping and holding in a secret location (incommunicado), with torture;[40]

33 Chris Ingelse, *The UN Committee Against Torture: An Assessment*, Kluwer Law International, 2001, p. 342. Ibid., *Opinion on Definition of Torture and its Absolute Prohibition in Polish Legislation*, OSCE Office for Democratic Institutions and Human Rights, 2018, § 13B. CAT has critisised Montenegro for light punishments stipulated for the acts of torture and requested that they become heavier. See CAT, *Concluding observations on the second periodic report of Montenegro,* 2014, item 6.

34 *Vladimir Romanov v. Russia*, application no. 41461/02, 2009, paras. 68-70, about the beating of a prisoner who complied with the order to leave the cell, but with a delay. ECtHR found that such an act was "a form of reprisal or corporal punishment", as the prisoner was not resisting in any way, and found that it was torture.

35 *Selmouni v. France*, application no. 25803/94, 1999. See also the case CAT, *Dimitrov v. Serbia and Montenegro*, application no. 171/2000.

36 *Denmark, Norway, Sweden and The Netheralnds v. Greece*, applications no. 3321-23/67, 33444/67, 1968; 4480/70, 1976.

37 *Aksoy v. Turkey*, application no. 21987/93, 1996.

38 *Baran and Hun v. Turkey*, application no. 30685/05, 2010.

39 Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN, 2004, Review of torture methods, item 145.

40 *Hajrulahu v. The Former Yugoslav Republic of Macedonia*, application no. 37537/07, 2015; Razzakov v. Russia, application no. 57519/09, 2015.

e. Suffocating by bags or drowning by submerging in water;[41]
f. Burns with cigarettes, heated instruments, scalding water or caustic substances, burning or pulling one's hair;[42]
g. Electric shocks;[43]
h. Denial of necessary medical help after ill-treatment;[44]
i. Using toxic doses of drugs, sedatives, neuroleptics, paralytics;[45]
j. Sexual violence[46] and rape;[47]
k. Forced engagement in practices against the religious beliefs of the victim (e.g. forcing Muslims to eat pork), forced harm to others through torture or other abuses, forced destruction of property, forced betrayal of someone by placing them at risk or possible harm; forcing victim to witness torture or atrocities being inflicted on others; threats of killing close persons.[48]

1.3.1.4.3. Torture by omission

Torture may also be committed by omission, i.e. by not fulfilling the duty of preventing it (see Article 6 paras. 2 and 3 of the CCME). The Committee Against Torture (CAT) has emphasised that public officials must be held liable for torture too, where their omission to prevent it supports the acts of gender-based violence such as rape, domestic violence and trafficking in persons.[49] In the case of Hajrizi Džemajl v. SR Yugoslavia, the CAT found that the state had breached its international obligations arising from the Convention regardless of the fact that its officials had not committed the ill-treatment directly, but had "acquiesced" to third parties' committing it.[50]

1.3.1.4.4. Discrimination and hatred

The existence of the elements of discriminatory acts particularly implies torture. The state must prevent, effectively investigate and punish any act of violence against persons belonging to vulnerable groups, who, as such, face particular risk of torture and ill-treatment.[51] This refers to persons of different race, colour, eth-

41 CAT, *Gerasimov v. Kazahstan*, application no. 433/2010, *Evloev v. Kazahstan*, application no. 441/2010.
42 Istanbul Protocol, *op.cit*, Review of torture methods, item 145.
43 *Lolayev v. Russia*, application no. 58040/08.
44 *Ilhan v. Turkey*, application no. 22277/93, 2000; CAT, *Sahli v. Algeria*, application no. 41/2008 and *Bendib v. Algeria*, application no. 376/2009.
45 Istanbul Protocol, *op. cit*
46 *Paduret v. Moldova*, application no. 33134/03, 2010.
47 *Aydin versus Turkey*, application no. 23178/94, para. 86, *Maslova and Nalbandov versus Russia,* application no. 839/02, paras. 101, 104-106, *Memesheva v. Russia*, application no. 59261/00, para. 14.
48 For a more detailed list of possible acts of torture, see Istanbul Protocol, *op.cit*.
49 Committee Against Torture, General comment no. 2, Implementation of article 2 by States parties, 2008, item 18.
50 *Hajrizi Džemajl and Others v. The Federal Republic of Yugoslavia*, application no. 161/2000, 2002, item 9.2. Ibid., see also Osmani v. Serbia, application no. 261/2005, paras. 10.4-10.6.
51 Committee Against Torture, General comment no. 2, Implementation of article 2 by States parties, 2008, item 21.

nic affiliation, very young or very old persons, members of minority religious communities, gay and transgender persons, persons with mental, intellectual or other disabilities, persons with health issues, persons accused of terrorism or criminal offences related to political engagement, asylum-seekers, refugees and other persons under international protection, etc.[52]

The CAT has particularly demanded that states prevent or effectively investigate and punish any ill-treatment of men and women based on their actual or presumed non-conformity with socially determined gender roles.[53]

1.3.1.4.4.1. Special Circumstances for Fixing the Sentence for a Hate Crime

The Criminal Code of Montenegro, in Article 42a, Special Circumstances for Fixing the Sentence for a Hate Crime, provides for a more severe punishment of a person who commits a criminal offence out of hatred motivated by discrimination or a person who commits the offence against a person who belongs to a particularly vulnerable category of persons, such as children, persons with disabilities, pregnant women, elderly persons, and refugees. As early as in the preliminary investigation, it should be examined whether the statements or actions of the perpetrators of torture or other ill-treatment indicate that the offence was committed with such motives.

1.3.1.5. Criminal liability

Torture exists where the perpetrator commits the act with a certain degree of intention, i.e. with criminal intent which can be direct or oblique. Direct intent exists where there is awareness and intent of the perpetrator to inflict pain or severe suffering upon another person in order to intimidate him/her, in order to extort a confession from him/her, etc. Oblique intent exists when the perpetrator was aware that he/she could commit torture by their actions and decided to assent to such a consequence. An oblique intent would exist in case of acquiescence in torture that is explicitly envisaged as an act of commission of the criminal offence in Article 167, para. 2 of the CCME:

It is important to note that a civil servant can commit this act also by omission, by not fulfilling the duty to prevent torture.[54] The state must ensure the punishing of such conduct through proper qualification of the offence in accordance with all the circumstances of the case.

It is mandatory to take all possible measures to discover and punish persons who in any way participated in the commission of, or assisted in the commission of a criminal offence of torture, or assisted the perpetrators after the commission of the criminal offence so that they could remain undiscovered. Thus, for example, the participation of medical workers in torture includes: "evaluating an individual's

52 *Ibid.*
53 *Ibid*, item 22.
54 *Hajrizi Džemajl, op.cit*, item 9.2.

capacity to withstand ill-treatment; being present at, or supervising maltreatment; resuscitating individuals for the purposes of further maltreatment or providing medical treatment immediately before, during or after torture on the instructions of those for whom it can be reasonably assumed to be responsible for it; providing professional knowledge or individuals' personal health information to torturers; intentionally neglecting evidence and falsifying reports, such as autopsy reports and death certificates".[55]

An order by a superior public official or other government authority to commit torture may not serve as a justification for the torturer and accomplices thereof.[56] On the other hand, those who refused to commit such an order may not be punished or suffer any adverse consequences.[57]

1.3.1.5.1. Liability of superior civil servants

Torture has no justification; thus, an order from a superior officer or public authority may not be invoked as justification of torture or ill-treatment either (Article 2, para. 3 of the Convention against Torture). Persons who committed torture shall be held liable personally, regardless of whose order they were following. The state shall inform all its civil servants about that rule.

All those who are superior to direct perpetrators, including state officials, such as the director of the Police Administration, minister or prime minister, may not avoid criminal liability for torture or ill-treatment committed by their subordinates or employees if they knew, or should have known, that such illegal conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary measures to prevent it.[58]

The Committee against Torture deems essentially important that the responsibility of all superior civil servants be fully investigated through competent, independent and impartial state prosecutors and courts, whether for direct instigation or encouragement of torture or ill-treatment, or for consent or acquiescence therein.[59]

In such a case, superiors could be accused of torture, ill-treatment or extorting a testimony by omission (Article 6 of the CCME), of negligence in discharging one's duties (Article 417 of the CCME) or abuse of office (Article 416 of the CCME), depending on all the merits of the case.

If the superior police officers or civil servants fail to cooperate with the state prosecutor towards discovering the perpetrators of torture or ill-treatment, they should

55 Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *op. cit*, item 53.
56 Article 2, para. 3 of the UNCAT, *op.cit*.
57 CCPR, General comment no. 20 "Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", 1992, para. 13.
58 CAT, General comment no. 2, Implementation of Article 2 by States parties, 2008, item 26.
59 *Ibid*.

face criminal prosecution for assisting the criminal offender, in accordance with the CPT recommendation.[60]

Persons who resist what they view as unlawful order or who cooperate in the investigations of torture or ill-treatment, including those that refer to the highest officials, must be protected against retaliation of any kind.[61]

1.3.2. Ill-treatment

1.3.2.1. Definition

Ill-treatment includes cruel, inhuman or degrading treatment or punishment that is not torture. In comparison to torture, ill-treatment implies inflicting a lower degree of pain and suffering, even without any particular goal.[62]

International treaties themselves do not provide definitions of torture, but international bodies have defined such acts in their case law. In Article 16, the UNCAT stipulates that states "shall undertake to prevent...other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

1.3.2.1.1. Cruel and inhuman treatment or punishment

According to the case law of the European Court of Human Rights, cruel and inhuman treatment or punishment means ill-treatment whose intensity does not amount to torture and which most often implies the infliction of bodily injuries along with serious physical or mental suffering.[63] Having been committed for hours and having caused either bodily injury or intense physical or mental pain, these are most often planned acts.[64] Cruel and inhuman treatment or punishment exists even when, for example, a person deprived of liberty is continuously held in extremely poor conditions or when such a person is being deprived of necessary health care.[65]

1.3.2.1.2. Degrading treatment or punishment

Degrading treatment or punishment are actions that arise in victims' feelings of fear, anguish and inferiority capable of showing disrespect for or negation of hu-

60 See *2008 Report on the CPT visit to Montenegro*, footnote no. 17.
61 *Ibid*.
62 CAT, General comment no. 2, op.cit, item 10.
63 *Ireland versus United Kingdom*, application no. 5310/71, para. 167.
64 See, for example, the judgment in the case of *Kudla versus Poland*, application no. 30210/96.
65 See, for example, the ECtHR judgments in the cases of *Poltoratskiy versus Ukraine*, application no. 38812/97, *Ostrovar versus Moldavia*, application no. 35207/03, *Engel versus Hungary,* application no. 46857/06, *Khudobin versus Russia*, application no. 59696/00, *Slimani versus France,* application no. 57671/00.

man dignity, treatment capable of humiliating and debasing them and breaking their physical or moral resistance.[66] Degrading treatment exists also when there is no intention to degrade a person; it may well suffice that the victim is feeling humiliated in his own eyes, even if no one else witnesses thereto.[67] The violation of human dignity touches the very essence of the European Convention of Human Rights, so any treatment of a person by police officers that degrades human dignity shall constitute a violation of Article 3 of the Convention.[68] [69]

1.3.2.1.3. Criminal offence of ill-treatment

In Article 166a, the Criminal Code of Montenegro defines the criminal offence of ill-treatment:

1. *Whoever ill-treats another or treats another in a manner that offends human dignity shall be punished by a prison sentence for a term not exceeding one year.*
2. *Where the offence set forth in paragraph 1 of this Article is committed by a public official while performing his duties, he shall be punished by a prison sentence for a term from three months to three years.*
3. *An attempted offence set forth in paragraphs 1 and 2 of this Article shall be subject to punishment.*

1.3.2.2. Offender

Offender, as in the case of torture, may be anyone. The qualified form of the offence is committed by a public official while performing his duty. For the definition of a public official, see 1.3.1.3.1.

It is separately stipulated that an attempt shall also be punished, given that such a criminal offence is set forth as punishable by a penalty of less than five years.[70]

1.3.2.3. Act of commission

Act of commission is "ill-treatment" or "treatment in a manner that offends human dignity".

In comparison to the criminal offence of torture, the differences are:

a. *A lower intensity of pain and suffering inflicted,*
b. *The act of commission is not necessarily taken in order to reach some impermissible aim.*

66 ECtHR, *Ireland versus United Kingdom*, application no. 5310/71, para. 167; *Boyuid v. Belgium,* application no. 23380/09, 2015, para. 87.
67 ECtHR, *Boyuid v. Belgium*, application no. 23380/09, 2015, para. 87.
68 ECtHR, *Boyuid v. Belgium*, application no. 23380/09, 2015, para. 101.
69 *ECtHR, V. v. United Kingdom*, application no. 24888/94, para. 71; *Smith and Grady versus United Kingdom*, applications no. 33985/96 and 33986/96, para. 120.
70 Article 20, para. 1 of the CCME.

Ill-treatment may as well be committed by omission, i.e. by neglecting the duty to take action in order to prevent ill-treatment. The Committee against Torture has found the members of the Montenegrin police accountable for ill-treatment (cruel, inhuman or degrading treatment) because, in 1995, they had omitted to take any action to prevent private persons from burning down the Roma settlement in Danilovgrad, as an act of retaliation, although they had been present at the scene.[71] It was concluded that they had agreed to the acts of ill-treatment by third parties, which constitutes a violation of Article 16 of the UNCAT.[72]

When a civil servant "ill-treats" someone, he/she should be deemed committing what international treaties and case law consider cruel or inhuman treatment or punishment (1.3.2.1.1), and when he/she acts in a manner that "offends dignity", then he/she undertakes what is considered degrading treatment or punishment (1.3.2.1.2).[73] A broadly established definition of the acts of commission of this criminal offence enables the sanctioning of any ill-treatment recognised in the international case law as well.

1.3.2.3.1. Minimum level of severity

In order for something to constitute ill-treatment, according to the international standard, an act in which a public official played a certain role needs to reach the "minimum level of severity".[74] That level is relatively low: a slap on a young man's face in the police station by a police officer is also considered ill-treatment, i.e. degrading treatment.[75] The assessment of this minimum depends on all the circumstances of the case, such as: the place and time of commission, duration of the acts of commission, and their physical and mental effects on the injured party.[76]

1.3.2.3.2. Place of commission of the offence - in prison or at large

With regard to the place of commission of an act of ill-treatment, it is to be taken into account whether a person who was subjected to ill-treatment was deprived of liberty, i.e. whether such person was under the control of civil servants at the time of ill-treatment. The person deprived of liberty is deemed, as a rule, more vulnerable than a person at large.[77] The state shall be held accountable for ill-treatment if it is not capable of providing a credible explanation for the injuries sustained by a person while under its power, in police custody, prison, hospital or social care institution, while being under the control of civil servants.[78]

71 *Hajrizi Džemajl, op.cit*, item 9.2, 9.3.
72 *Idem*.
73 ECtHR, *Boyuid v. Belgium*, application no. 23380/09, Judgment of the Grand Chamber, 2015, para. 90.
74 See ECtHR, e.g. *Ireland v. United Kingdom*, application no. 5310/71, 1978, para. 162, and *Boyuid v. Belgium*, application no. 23380/09, 2015, para. 86.
75 *Ibid*.
76 ECtHR, *Selmouni versus France*, application no. 25803/94, 1999, para. 100.
77 ECtHR, *Rodić and Three Others versus Bosnia and Herzegovina*, application no. 22893/05, 2008, para. 48.
78 ECtHR, *Tomasi v. France*, application no. 12850/87, 1992, para. 109.

Any use of physical force against a person who is deprived of liberty or who gets into contact with public officials, which is not absolutely necessary due to the behaviour of that person, degrades human dignity and, in principle, constitutes a violation of the prohibition of ill-treatment.[79]

1.3.2.3.3. Time of commission and duration of ill-treatment

Relevant circumstances are also whether ill-treatment happened at night, whether the victim was deprived of sleep, what weather conditions were like at the time, whether the victim was exposed to excessive cold or heat, etc.

As for the duration of ill-treatment, individual unjustifiable blows most often constitute ill-treatment, while beating that lasts for a longer time or is repetitive, to an impermissible aim and with a high level of suffering, constitutes torture.

1.3.2.3.4. Intensity of suffering and degradation

In relation to assessing the intensity of the pain, suffering and degradation of the injured party, the personal characteristics thereof shall be taken into account - gender, age, health status, disability, ethnic affiliation, religion and so on.[80] The more sensitive a person, e.g. due to their age, health condition or other personal or social circumstances, the less hurt they should be in order for ill-treatment to be established.

1.3.2.4. Examples

Ill-treatment is most often committed due to excessive, disproportionate use of the means of coercion, and at times when the aim to which civil servants are acting is legal, e.g. breaking resistance during arrest, preventing escape, bringing a prisoners' riot under control, etc. Typical examples of ill-treatment in such cases are situations in which civil servants use too excessive a force against an unarmed person who is not showing strong resistance or when they continue to hit a person who has already been put under control and is not resisting.

Examples of ill-treatment from the case law of the international bodies:

- hitting of a person deprived of liberty in the police station which resulted in scratches on his face, chest and arm, as well as a haematoma on his left ear;[81]
- slap to a minor's face in the police station;[82]
- excessive use of a rubber truncheon in prison, lighter injuries to the head

79 ECtHR, *Ribitsch v. Austria*, application no. 18896/91, 1995, para. 38; *Boyuid v. Belgium*, application no. 23380/09, 2015, para. 88.
80 *Ibid*, para. 86.
81 *Tomasi v. France*, application no. 12857/87, 1992, para. 108, 115. *Similarly, Siništaj and Others v. Montenegro*, applications no. 1451/10, 7260/10 and 7382/10, 2015, paras. 146-149.
82 *Boyuid v. Belgium*, application no. 23380/09, 2015.

and leg;[83]
- corporal punishment of children (caning);[84]
- prolonged keeping of a person in solitary confinement;[85]
- threats of torture;[86]
- causing forced vomiting;[87]
- burning and demolishing homes;[88]
- transport of persons deprived of liberty in a tight space;[89]
- not preventing attacks by one prisoner against another,[90]
- stripping off clothes in front of a person of the opposite sex,[91]
- shaving of the prisoner's head,[92]
- unnecessary tying of ill prisoners while bringing them in;[93]
- prolonged tying of a prisoner to the bed for lacking discipline;[94]
- deprivation of medical assistance.[95]

1.3.2.4.1. Poor living conditions in state establishments

In the case of prisoners, the state must ensure that prison sentences are served in the conditions appropriate to the respect of human dignity, that the manner and method of enforcing the punishment do not subject prisoners to threats or hardship of any intensity that exceeds the inevitable level of suffering present due to their deprivation of liberty, and that their health and well-being are adequately protected, having in mind practical requirements of serving a prison sentence.[96]

International bodies often found that poor living conditions in prisons and social care establishments in many states, including Montenegro, had been reaching the level of inhuman and degrading treatment of prisoners and residents of social care establishments who had been forced to stay in such conditions for a long time.

83 *Milić and Nikezić versus Montenegro*, applications no. 54999/10 and 10609/11, 2015, para. 15, 80-82.
84 *Tyrer v. United Kingdom*, application no. 5856/72, 1975; *A. v. United Kingdom*, application no. 100/1997/884/1096, 1998.
85 CCPR, GC 20, item 6.
86 *Gafgen v. Germany*, application no. 22978/05, 2010, para. 108.
87 *Jalloh v. Germany*, application no. 54810/00, 2006.
88 *Hajrizi Džemajl,* op.cit, item 92.
89 *Maria Alekhina and Others v. Russia*, application no. 38004/12, 2018, para. 135-139.
90 *Rodić and Others v. B&H*, application no. 22893/05, 2008, para. 73 or *Gjini v. Serbia*, application no. 1128/16, 2019.
91 *Valasinas v. Lithuania*, application no. 44558/98, 2001, para. 117.
92 *Yankov v. Bulgaria*, application no. 39084/97, 2004.
93 *Mouisel v. France*, application no. 67263/01, 2003, paras. 47–48, *Henaf v. France*, application no. 65436/01, 2004, paras. 56–60.
94 In its last two reports, the CPT warned Montenegro that the prolonged restraining of prisoners, lasting for days, cannot not be justified and constitutes inhuman and degrading treatment, and they requested that such practice be abandoned, 2013 Report on the visit to Montenegro, item 73 and 2017 Report on the visit to Montenegro, item 41.
95 As degrading treatment, see, for example, *Khudobin v- Russia*, application no. 59696/00, 2006, para. 96 (HIV virus, mental disorder in conjunction with other health);as inhuman and degrading treatment, see *McGlinchey v. United Kingdom*, application no. 50390/99, 2003 (heroin addict treatment) and *Menchenkov v. Russia*, 2008, para. 111 (diagnosis and treatment of hepatitis C).
96 *Rodić and Three Others v. Bosnia and Herzegovina*, application no. 22893/05, 2008, para. 67.

In its 2008 report on the visit to Montenegro (CPT), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment announced that the conditions which residents of the institution for persons with mental disability "Komanski most" were forced to live in had amounted to the level of "inhuman and degrading treatment".[97] Particular emphasis was put on "dreadful material conditions", "physical restraint of residents by use of chains", "an almost total lack of activities for residents" and extreme understaffing.[98]

In the case of Bulatović v. Montenegro, the ECtHR reiterated its standpoint that the overcrowding of prisons constituted ill-treatment in itself.[99] In this particular case, the court found that the applicant had been forced to stay for years in an overcrowded, stale and damp cell of the remand prison, in which prisoners were spending 23 hours a day because the outdoor time had been reduced below the legal minimum, while making reference to the CPT finding from the 2008 report on the visit to Montenegro that, in this prison, twenty one male prisoners had been accommodated in a cell of 28m^2 with 15 beds, i.e. much below the standard of 4m^2 per person recommended by the CPT.[100] In the judgment in Bigović v. Montenegro, the ECtHR again found a violation of Article 3 of the Convention due to the conditions hereabove in which the applicant had been forced to stay in the remand prison from February 2006 until August 2009.[101]

1.3.2.5. Criminal liability

According to the CCME, the acts of the criminal offence of ill-treatment may be initiated only with intent, either direct or oblique. However, the international standard does not require that "intent" be proven in order for an act to constitute cruel, inhuman or degrading treatment; such acts may also be committed by negligence. This may be the case when exceeding the use of means of coercion, failing to prevent ill-treatment by not paying due attention, or in relation to keeping people in poor living conditions in prisons and other establishments owned by the state.[102] In the circumstances of the existing definitions of criminal offences in the CCME, such treatment would have to be punished by another adequate qualification, e.g. as negligence in discharging one's duties.[103]

In addition, the international standard requires that civil servants be punished for ill-treatment, i.e. for cruel, inhuman and degrading treatment, when such acts are

97 Report to the Montenegrin Government on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008, items 6, 127.

98 *Ibid*, item 130.

99 *Bulatović v. Montenegro*, application no. 67320/10, 2014, para. 119, referring to the judgment of *Kadiķis v. Latvia* (no. 2), application no. 62393/00, 2006, the case in which the injured party had to stay in poor conditions for only 9 months, unlike Bulatović, who spent 7 years in the remand prison in Podgorica.

100 *Ibid*, paras. 119-127.

101 *Bigović v. Montenegro,* application no. 48343/16, paras. 144-147.

102 See, e.g., *Peers v. Greece*, application no. 28524/95, 2001, para. 74.

103 See *Sprečavanje i kažnjavanje mučenja i drugih oblika zlostavljanja (Prevention and Punishment of Torture and Other Forms of Ill-treatment)*, Beogradski centar za ljudska prava (Belgrade Centre for Human Rights), R. Dragičević-Dičić, I. Janković, pp. 174-175.

committed by them directly or at the instigation or with the acquiescence thereof (Article 16 of the UNCAT). However, the CCME stipulates only the act of commission of the criminal offence of torture in this way (Article 167 para. 2 of the CCME), not the ill-treatment. Punishing of public officials in accordance with the international standard should be ensured either by qualifying the commission of the act by instigating or aiding, or by omission - not fulfilling the duty of acting, or by charging the official with the criminal offence of negligence in discharging one's duties (Article 417 of the CCME) or abuse of office (Article 416 of the CCME).

In the case of Hajrizi Džemajl v. Federal Republic of Yugoslavia, the CAT found that police officers, by omitting to prevent the setting of the Roma settlement on fire, "acquiesced" in cruel, inhuman and degrading treatment of third parties against the residents of that settlement, and that the state thereby indirectly violated Article 16, para. 1 of the UNCAT.[104]

1.3.2.5.1. Rubber truncheon example - from legal use to torture

The example of the use of a rubber truncheon can illustrate the range from a legal use of the means of coercion to the most severe form of torture.[105] If a truncheon is used against protesters during a violent, illegal protest, in order to break their resistance to disperse or arrest them, and in proportion to that aim, this would constitute a legal use of the means of coercion even if it causes injuries to the persons against which said coercion was used.[106] However, if a rubber truncheon was used against persons who did not resist or had ceased to resist, that would be ill-treatment. Finally, tying a person deprived of liberty and hitting him/her in an attempt to extort a testimony would constitute the criminal offence of extorting a testimony, or torture, if severe pain and suffering were inflicted. If the intensity of violence was extremely high and if it implied what is called "severe violence" in the criminal offence of extorting a testimony, then it would constitute a qualified form of extorting a testimony, which, for now, in the CCME, constitutes a form of torture punishable by the maximum penalty of up to 10 years of imprisonment.

1.3.2.5.2. Special Circumstances for Fixing the Sentence for a Hate Crime

In relation to these circumstances, all that applies to torture also applies to ill-treatment; see 1.3.1.4.4.1.

1.3.2.5.3. Liability of superior public officials

For the liability of superiors, see 1.3.1.5.1.

104 The case of *Hajrizi Džemajl, op.cit*, item 9.2.

105 This example was drafted based on the example from the report of the UN Special Rapporteur on torture Manfred Nowak, mentioned in the publication Zlostavljanje (Ill-treatment) by authors N. Kovačević, R. Dragićević Dičić, G. Jeknić Bradajić and J. Tintora, Beogradski centar za ljudska prava (Belgrade Centre for Human Rights), 2017, p. 39.

106 *Hurtado v. Switzerland*, application no. 17549/90, 1994, is an example of the case in which the European Commission for Human Rights concluded that the fracture of a rib during the use of means of coercion aimed at breaking resistance of a person while being arrested did not constitute ill-treatment. The ECtHR took this case off the list of cases after an amicable settlement has been reached between the state and the applicant, and after an agreement on indemnity.

2. Concept of Effective Investigation

2.1. United Nations

The UNCAT explicitly stipulates the obligation of the state to "proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction" (Article 12).

Any criminal investigation must be aimed at establishing the nature of the offence and the circumstances in which it was committed, as well as the identity of all the persons involved in the commission of the act.[107] In the case of Hajrizi Džemajl v. The Federal Republic of Yugoslavia, the CAT found that the state had violated Article 12 of the Convention herein, because, although several hundred persons participated in the attack on the Roma settlement in Danilovgrad on 15 April 1995, in the presence of multiple police officers, no one ever stood trial for it. The investigation had been carried out against one person only and it was suspended for lack of evidence.[108]

2.2. Council of Europe

At the international level, the standard of "effective investigation" has been most developed by the ECtHR, acting on the basis of Articles 2, 3 and 8 of the ECHR, which guarantee the right to life, prohibition of torture, inhuman or degrading treatment and punishment, and protection of the mental and physical integrity, together with Article 1 of the ECHR, which requires from a state to secure the exercise of all rights arising from the ECHR to all persons within its jurisdiction.

In three judgments issued to date in relation to Montenegro, the court found that the state had failed to secure that investigations be carried out in accordance with this standard.[109]

107 CAT, *Encarnacion Blanco Abad v. Spain*, application no. 59/1996, 14.5.1998; CAT, *Hajrizi Dzemajl, op.cit*, 9.4.

108 *Hajrizi Džemajl, op.cit*, 2.21.

109 *Milić and Nikezić v. Montenegro*, applications no. 54999/10 and 10609/11, 28/4/2015, *Siništaj and Others v. Montenegro*, applications no. 1451/10, 7260/10 and 7382/10, 24/11/2015, *Alković v. Montenegro*, application no. 66895/10, 5/12/2017. In the first two cases, the Court found a violation of Article 3 in the cases of ill-treatment in prison and police station, while in the third case it found a violation of Articles 8 and 14, i.e. of the right to family life and prohibition of discrimination in the case in which the state had failed to secure an effective investigation of racially motivated attacks against private persons.

In order to be deemed effective, an investigation, in principle, should be such that it can lead to establishing the facts about ill-treatment, as well as to identifying and punishing all the perpetrators responsible.[110] Otherwise, the general prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, remain ineffective because in practice it would be possible "for agents of the State to abuse the rights of those within their control with impunity".[111] The point here is in the necessity for discovering and punishing those officials who betrayed the trust of the public, namely those who committed the ill-treatment directly, but also all those responsible in the chain of command who had ordered, failed to prevent, or concealed it.

The concept of investigation in this context is broader than the concept of investigation in our criminal-procedure legislation and implies also a pre-investigation procedure - preliminary investigation, as well as a proper organisation and action by both the investigating authorities and courts, and finally by the authorities in charge of enforcing the criminal sanctions imposed on the perpetrators of ill-treatment. As it is impossible to exclude the possibility of unsuccessful investigation, even despite a conscientious approach to it by competent state authorities and their undertaking of all the available and reasonable measures towards discovering the perpetrators, the obligation of conducting an effective investigation is deemed an obligation to use appropriate means, and not to reach the target in each individual case.

In order for an investigation to be deemed effective, it must meet several requirements elaborated upon in the case law of the European Court for Human Rights, namely: 1) independence and impartiality; 2) promptness; 3) thoroughness; 4) involvement of the victim, i.e. injured party; 5) public scrutiny; 6) proper punishment of responsible perpetrators. The same criteria apply also to the investigations of violations of the right to life.

2.3. Competences of the state

The ECHR binds Montenegro to investigate every case of ill-treatment within its jurisdiction. The UNCAT requires something called universal jurisdiction over the prosecution of torture, i.e. the state shall prosecute all perpetrators of torture found within its territory, regardless of their nationality or place of commission of the offence, or shall extradite such persons to the demanding state so that it undertakes the prosecution thereof.[112]

110 For example, see the ECtHR judgments in the cases of *Milić and Nikezić v. Montenegro*, applications no. 54999/10 and 10609/11, paras. 91-92, *Siništaj and Others v. Montenegro*, applications no. 1451/10, 7260/10 and 7382/10, paras. 144-145, *Assenov and Others v. Bulgaria*, application no. 24760/94, para. 102.

111 The ECtHR, in their judgments of *Milić and Nikezić v. Montenegro*, 28/4/2015, para. 91 and *Siništaj and Others v. Montenegro,* 24/11/2015, para. 144.

112 UNCAT, Article 7. Title XII of the CCME includes provisions on the applicability of criminal legislation.

3. When Does the Obligation of Conducting an Effective Investigation Arise?

3.1. Reasonable grounds to suspect that torture or ill-treatment has been committed

When competent state authorities find out, regardless of the way, that there are reasonable grounds to suspect that an act of torture or ill-treatment has been committed in the territory within the jurisdiction of the state, they shall undertake an effective investigation.[113] These reasonable grounds imply someone's credible assertion that such an act has been committed, but also any knowledge thereof that the Prosecutor's Office or police might acquire autonomously, by direct insight or otherwise, through the media, social networks etc.[114]

The obligation to undertake an effective investigation exists also in cases where it is not obvious that torture or ill-treatment has been committed, or where it was subsequently found that it did not happen.[115]

3.1.1. Credible assertion

A credible assertion is any report which is filed by any person, in whatever way, whether in writing or orally, to the police or State Prosecutor's Office or other state authority, and which is backed by some sort of evidence (e.g. medical reports acknowledging injuries, witness statements, photographs, videos etc.). Such an assertion shall also be deemed an assertion of the victim of or witness to an alleged ill-treatment, not backed by other evidence, if it is sufficiently credible, i.e. if it does not seem to be unreasonable and factually incredible.[116]

113 "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction", Article 12 of the UNCAT (in Article 16, this obligation is extended to all acts of cruel, inhuman and degrading treatment or conduct; *Bati and Others v. Turkey,* applications no. 33096 and 57834/00, *para. 100. See also, the General Report of the European Committee for the Prevention of Torture no. 14 - Combating the impunity of torture,* 2004, para. 27.

114 The ECtHR found in numerous judgments, inter alia in the cases of *Milić and Nikezić v. Montenegro* and *Siništaj and Others v. Montenegro*, that the state had to undertake an effective investigation of every credible assertion that the torture or ill-treatment had been committed. This term is translated into Montenegrin as "kredibilna tvrdnja", "uvjerljiva tvrdnja" or "ozbiljna tvrdnja".

115 In multiple cases, the ECtHR found violations of a state's obligation to undertake an effective investigation even when it was incapable of finding that the ill-treatment had actually been committed, e.g. *Assenov and Others v. Bulgaria*, application no. 24760/94, 1998, para. 102.

116 *"97 Members of the Gldani Congregation of Jehovah's Witnesses and Four Others v. Georgia"*, application no. 71156/01, para. 97.

For example, a letter submitted to the state prosecutor by the parents of a person deprived of liberty about their suspicion of their son being ill-treated, is deemed a sufficient reason to investigate.[117]

3.1.2. Complaint form and time of complaint as non-compulsory

An assertion does not necessarily have to be filed as a criminal complaint or formal claim, or be worded as an accusation against a particular person; it is enough that the competent state authority finds out about a credible assertion that someone has been ill-treated.[118] In addition, the victim does not necessarily have to file the assertion immediately after the ill-treatment, as it should be taken into account that there may be fear, especially in persons deprived of liberty, of filing a complaint against public officials.[119] In one case, where the injured party expressed assertions of ill-treatment as late as 7 months after it had been committed during his time in police custody, the ECtHR found the liability of the state for the omission to conduct an effective investigation.[120]

3.1.3. Obligation of launching an investigation even if there is no complaint

Reasonable grounds for suspicion that torture or ill-treatment has been committed may exist even if no one has made such an assertion. As these acts are prosecuted ex officio, an obligation to investigate exists even without a criminal complaint or an assertion about ill-treatment when there are other sufficiently clear indications pointing out that it did occur.[121] This primarily applies to situations like those when a person brought by the police before a public prosecutor or judge, or to a medical examination, does not complain about anything, most often out of fear, but the appearance or behaviour of that person gives reason to suspect that he/she has been ill-treated - for example, has visible injuries, is completely mentally broken, terrified, or has suddenly confesses to having committed an entire series of criminal offences, although there is no evidence indicating that he/she has actually committed them. In such cases, competent civil servants are expected not to remain passive but to take appropriate measures to establish if there has been any ill-treatment and, if yes, who is responsible for it. It has been recognised in practice that people previously exposed to severe ill-treatment are less ready and willing to file a complaint.[122]

> *It is also not uncommon for persons deprived of liberty to allege that they had been too frightened to complain about ill-treatment, because of the presence at the hearing with the prosecutor or judge of the very same law enforcement officials who had interrogated them, or that they had been expressly discouraged from doing so, on the grounds that it would not be in their best interests.*[123]

117 *Poltoratskiy v. Ukraine*, application no. 38812/97, 2003, paras. 126-128.
118 See, for example, *Hajnal v. Serbia*, application no. 36937/06, paras. 94-99.
119 *Krsmanović v. Serbia,* 2017, para. 73.
120 *Kapustyak v. Ukraine*, application no. 26230/11, 2016.
121 *Otašević v. Serbia*, 2013, para. 30.
122 *Ibid*.
123 CPT *General Report No. 14 – Combating the Impunity of Torture*, 2004, para. 28.

Assertions about ill-treatment of a person deprived of liberty, backed by evidence of bodily injuries, are deemed prima facie evidence of ill-treatment requiring a prompt investigation.[124]

3.2. Obligation of public officials to report a criminal offence

Where a complaint has been filed to a state authority not authorised to receive such a complaint, this may not serve as justification of the omission to conduct an investigation.[125] The CPC sets forth an explicit obligation of any public official in Montenegro to report a criminal offence that is subject to prosecution ex officio.[126] This obligation particularly applies to officers in prisons and other confined establishments, who are obliged to report ill-treatment as soon as they notice or hear of serious indications that it has taken place.[127] Judges, too, are obliged to report ill-treatment to the state prosecutor as soon as they find out about it, for example, while proceeding in court cases launched for reasons other than ill-treatment. The accused may complain within the criminal proceedings,[128] in a complaint for damages due to ill-treatment,[129] in a letter to the judge where the person complains about forced hospitalisation,[130] or in a constitutional complaint,[131] while the judge who receives it shall notify the competent state prosecutor thereof.

3.3. Presumption of liability of civil servants

The ECtHR uses the presumption that civil servants are liable for any bodily injuries of a person deprived of liberty until they offer a credible justification for such injuries.[132] In other words, on them falls the burden of proof that a person has already been injured prior to the arrest, or that the person has gotten hurt on their own or gotten hurt by someone else other than the civil servant, and such a presumption should also be practiced by those in charge of investigations domestically.

For example, in the ECtHR case Milić and Nikezić v. Montenegro, the state prosecutor and the court did not think that injury to the prisoners amounted to ill-treatment, while the ECtHR found both ill-treatment and omission to undertake an effective investigation. In that judgment, it was emphasised that any person deprived of

124 *Ibid*.
125 Zabrana zlostavljanja (Prohibition of Ill-treatment), Beogradski centar za ljudska prava (Belgrade Centre for Human Right, 2017, p.
126 Article 254, para. 1 of the CPCME.
127 In the case of *Gjini v. Serbia,* application no. 1128/16, 2019, the ECtHR concluded that prison guards must have reacted to the prisoner's visible injuries, and that they must have heard his screaming at nights and nationalist songs he had been forced to sing (paras. 86-87, 101-102).
128 *J. L. v. Latvia*, application no. 23893/06, 2012, paras. 11-13, 73-75.
129 *Muradova v. Azerbaijan*, application no. 22684/05, 2019, paras. 122-126.
130 *M.S. v. Croatia (no. 2)*, application no. 75450/12, 2015, paras. 82-83.
131 *Mađer v. Croatia*, application no. 56185/07, 2011, paras. 88-89
132 *Tomasi v. France*, application no. 12850/87, 1992, para. *Milić and Nikezić v. Montenegro*, applications no. 54999/10 and 10609/11, 2015, *Siništaj and Others v. Montenegro*, applications no. 1451/10, 7260/10 and 7382/10, 2015.

liberty faces particular risk of ill-treatment and that "any recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of Article 3 of the ECHR".[133]

3.4. When a person has no visible signs of ill-treatment

Whenever a suspect for a criminal offence, brought before judge or state prosecutor at the end of or after police custody, asserts ill-treatment by the police, the state prosecutor should:

a. Make a record of such allegations in writing,
b. Promptly order an examination by a forensic medical expert (including an examination by a psychiatrist - forensic medical expert, as needed), and
c. Take any other necessary steps towards an adequate scrutiny of ill-treatment allegations.[134]

This should be the way of proceeding even if a person has no visible bodily injuries.[135]

It is general knowledge that some forms of ill-treatment (suffocating, electric shocks, mental ill-treatment, sleep deprivation) do not leave visible marks or will not leave marks if applied skillfully.[136] That is exactly why the CPT emphasised that investigating authorities should particularly ensure not to give too much importance to a lack of visible injuries on the body of the person complaining of ill-treatment.

Even without any explicit allegations of ill-treatment, the state prosecutor should request an examination by a forensic-medicine specialist once he notices other grounds to suspect that a person had been a victim of ill-treatment.[137]

133 *Milić and Nikezić, op.cit*, para. 78.
134 See Report to the Government of the Republic of Serbia and Montenegro on the visit carried out by the CPT from 16 to 28 September 2004, CPT 2016 Report on the visit to Montenegro, item 40, 2008 Report on the visit to Montenegro, item. 19, 2013 Report on the visit to Montenegro, item. 22. See also the *General report of the European Committee for the Prevention of Torture No. 14 - Combating the Impunity of Torture*, 2004, para. 29.
135 *Ibid*.
136 *General report of the European Committee for the Prevention of Torture No. 14 - Combating the Impunity of Torture*, 2004, para. 29.
137 *Ibid*.

4. Who conducts the investigation?

The state prosecutor is in charge of leading the preliminary investigation and conducting the investigation in accordance with the rights and duties thereof, referred to in Articles 44 and 276 of the CPC. He or she shall impartially and objectively consider each criminal complaint and decide thereon (Article 256a of the CPC and Article 4 of the Law on State Prosecutor's Office).

In the preliminary investigation, the prosecutor shall direct the activities of the police and other state authorities, by issuing binding orders or through direct management (Article 44, para. 2, item 1 of the CPC) and perform urgent evidentiary actions (Article 44, para. 2, item 3 of the CPC).

The state prosecutor shall issue investigation orders, conduct the investigation, and file and represent indictments. The managing powers in the preliminary investigation and investigations are aimed at securing a successful collection of evidence necessary for criminal prosecution.

The police and other public authorities shall notify the competent state prosecutor before taking any action, except in cases of emergency (Article 44, para. 3 of the CPC).

The police and other public authorities in charge of discovering criminal offences shall proceed upon the request of the competent state prosecutor (Article 44, para. 3 of the CC).

The Criminal Procedure Code and particularly the Law on Internal Affairs do not presume any possibility that police officers might not comply with the binding orders of the state prosecutor. The police shall notify the state prosecutor of the grounds for suspicion that an act of ill-treatment has been committed, i.e. as a criminal offence that shall be prosecuted ex officio (Article 257, para. 1 of the CPC), and then the police shall act as per the state prosecutor's requests (Article 44, para. 3, Article 251, para. 1 of the CPC), shall provide all crime-investigation and technical assistance to the state prosecutor (Article 283 of the CPC), and shall promptly notify the state prosecutor of any measures taken (Article 271, para. 5 of the CPC).

The Agreement on Joint Work of the State Prosecutor's Office and the Ministry of Interior - Police Administration during the preliminary investigation and criminal

proceedings (as of p April 2014) includes more detailed instructions on the cooperation between the two authorities in relation to what is stipulated by law. However, this agreement does not set out any special procedure in the preliminary investigation and investigations conducted against the officials of the Ministry of Interior - Police Administration.

Non-compliance with and disrespect of the state prosecutor's orders is defined in the Law on Internal Affairs as a severe violation of office by police officers that may even result in a termination of employment (Article 106 of the Law on Internal Affairs). In addition, the Criminal Code incriminates acts such as Negligence in Discharging One's Duties (Article 417) and Abuse of Office (Article 416) or Assisting an Offender after the Crime (Article 387), that have been applied in case of rejecting the cooperation towards the execution of justice.[138]

138 See also the CPT conclusion, 2008 Report on the visit to Montenegro, item 25, footnote no. 17.

5. Who conducts the investigation?

To deem an investigation independent, the persons who conduct it must be fully independent from persons whose acts are subject to investigation.[139] Investigators must be independent, both legally and factually, from the persons they investigate, which means that there must be no hierarchical, institutional and other relations between them.[140]

Independence is requested not only from the competent state prosecutor, but also from any other person who has made any decision during the investigation or has been in charge of certain investigating actions. The forensic medical expert engaged in the investigation,[141] as well as the police officer appointed a duty therein, must also be independent, both de jure and de facto.[142]

It is unacceptable for an investigation to be practically conducted by police officers who belong to the same organisational unit of the police (e.g. Police Administration) as the suspected police officers,[143] even if investigators are ranked superior than the suspects,[144] and regardless of whether the investigation is under the supreme control of a prosecutor who is independent.[145] Police officers conducting the investigation must not be subordinate to the same chain of command as police officers under investigation.[146]

The Committee against Torture sent the explicit message to Montenegro, as early as in 2008, that all investigations of allegations of ill-treatment by the police should not be conducted by the police itself, but rather by an independent body.[147]

> In the case in which a journalist was beaten by police officers dispersing protests in Azerbaijan, the ECtHR found that there had been no independent, effective investigation as it had been conducted by the police division whose agents had been accused by the journalist of ill-treatment. The court

139 See, for example, the judgments in the cases of *Güleç v. Turkey*, application no. 21593/93, paras. 81-82, and *Yazgül Yılmaz v. Turkey,* application no. 36369/06, paras. 61-63.
140 *Ergi v. Turkey,* application no. 66/1997/850/1057.
141 *Barabanshchikov v. Russia*, application no. 36220/02, para. 59.
142 See, for example, *Mikhayev v. Russia*, application no. 77617/01, para. 116.
143 *Rehbock v. Slovenia*, application no. 29462/95.
144 *Aydin v. Turkey*, application no. 24561/94, para. 74.
145 *Ramsahai and Others v. The Netherlands,* application no. 52391/99, paras. 333-341.
146 *Đekić and Others v. Serbia,* application no. 32277/07, para. 35.
147 CAT/C/MNE/CO/1, 2008, item 17.

found that the State Prosecutor's Office, as an independent authority, delegated "a major and essential part of the investigation – identification of the perpetrators of the alleged ill-treatment – to the same authority whose agents had allegedly committed the offence", i.e. to their colleagues employed with the same authority, and concluded that in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent.[148] Similarly, in the case of Siništaj and Others v. Montenegro, the court concluded that the Internal Control investigation could not be deemed independent, as it had actually been conducted by the police itself, and that it had not been thorough either, as the injuries of the applicant had been completely ignored, as well as the assertions that they had been inflicted on him by the police.[149]

In order to secure the independence of investigations conducted in relation to police acts, some states have established separate investigation services that assist the Prosecutor's Office instead of the police, acting with powers equal to those of the police. The staff in such services is neither part of the Ministry of Interior's apparatus nor are they accountable for their work to that ministry; they rather operate under the control of the Special State Prosecutor, independent from the police.[150] In principle, such an organisational model of the authorities in charge of investigation and criminal prosecution is the best way to achieve independence, on condition that such authorities have appropriate human and material resources at their disposal and that they are not isolated or obstructed in their work. In their last report on the visit to Montenegro in 2017, the CPT proposed the establishment of such an independent investigation body in Montenegro as well, proposing for the meantime to increase powers of the officials of the Ministry of Interior's Internal Control and to establish cooperation between them and the state prosecutor in the investigations of criminal offences of ill-treatment and torture in which police officers are the suspects.[151]

In the current situation, in the absence of any independent authority, the State Prosecutor's Office must not delegate any important part of the investigation - for example, actions towards the identification of perpetrators of alleged ill-treatment or discovering of witnesses - to the same authority in which the alleged perpetrators work, namely, to the Police Administration. Such actions should rather be

148 *Najafli v. Azerbaijan,* application no. 2594/07, para. 52.

149 *Siništaj and Others v. Montenegro*, applications no. 1451/10, 7260/10 and 7382/10, 2015, para. 148.

150 *Ibid*., paras. 258-267. In Slovenia, the Special Section for the Investigation and Prosecution of Official Persons Having Special Authority, as part of the Specialised State Prosecutor's Office, has exclusive authority in case of criminal offences whose perpetrators are members of: 1) the police; 2) police internal control service, with police powers; 3) military police, with police authority in pre-trial proceedings; 4) military intelligence and security service; 5) Slovenian intelligence and security agency. See the Law on the State Prosecutor's Office of the Republic of Slovenia of 2011 ("Zakon o državnem tožilstvu"), Articles 199-203.

151 *Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) from 9 to 16 October 2017, Strasbourg, 2019, item 19.

taken by the state prosecutors themselves, in accordance with the powers referred to in Article 44, para. 2 of the CPC.[152]

In case of allegations of ill-treatment by police officers, there should be strict application of the legal provisions that require the police to:

a. Promptly submit a criminal complaint to the competent State Prosecutor's Office (Article 256, para. 3 of the CPC),
b. In the preliminary investigation, prior to any action taken, notify the competent state prosecutor, unless it is, exceptionally, a case of emergency (Article 44, para. 3 of the CPC).

It is then the prosecutor's duty to secure that the incident is scrutinized in accordance with the principle of independence and impartiality, i.e. without the participation of persons whose lack of independence could compromise the investigation and prevent it from achieving the standard of effectiveness.

Investigations of ill-treatment cases most often include interrogation of the injured party, identification and interrogation of witnesses and suspects, forensic-medicine examination, reviewing of police documentation, tracking of photos or video or sound recordings of the incident etc., which all together, if acting promptly, can be done without any or at least without any dominant assistance from the police.

Naturally, there are actions in extraordinary situations that the police must take without any delay and before they notify the state prosecutor or receive orders therefrom, in accordance with the provisions of the Rulebook on the method of performance of certain police affairs and exercise of authorisations concerning visits to the crime scene (Article 26-28). However, pursuant to the CPC (Articles 44, para. 3, 254 and 257, para. 1), even such actions should be subject to prompt notification to the state prosecutor by the police.[153]

With regard to meeting the requirements of impartiality, the state prosecutor who conducts the investigation of ill-treatment must not show partiality and clemency towards police officers or other suspected civil servants, tending to ignore or disrespect allegations against them. In the same way, the state prosecutors must not start from a presumption that those who act in the name of the state are right, that signs of ill-treatment are probably the result of some legal action, or that the injured party has probably caused them by his or her own misconduct.[154] The state prosecutor must not make decisions only on the basis of documents or information submitted by the police, whose members have been suspected of participating in the ill-treatment of the complainant, but must demonstrate that he/she has exam-

152 See the judgment in *Krsmanović v. Serbia*, 2017, para. 82, where it was recognised that the actions of identification had been carried out by the police officers who belonged to the same chain of command, as well as by the officers under investigation.

153 *Official Gazette of Montenegro*, nos. 021/14 of 06 May 2014, 066/15 of 26 November 2015.

154 See, for example, *Aydin v. Turkey,* application no. 23178/94, para. 106, and *Aksoy v. Turkey*, application no. 21987/93, para. 189.

ined them critically by taking independent steps.[155] A decision to reject a criminal complaint must not be based solely on the testimonies of police officers, or even an expert witness whose report has been downscaled to an opinion on whether the method of injury infliction explained by the police officers is credible.[156]

The investigation must not stop only at collecting the testimonies of suspected police officers and their colleagues, while neglecting other accessible evidence.[157]

The state prosecutor who proceeds upon a complaint of ill-treatment of the injured party may not at the same time be in charge of the case in which the same person is suspected of a criminal offence connected with allegations of ill-treatment, such as an attack against a person acting in the official capacity or preventing a person in the official capacity from performing his duty.[158]

In addition, the state prosecutor or police officer who previously proceeded in a case where the injured party was accused of some criminal offence should not proceed in the case established upon the ill-treatment complaint thereby.[159]

All of the above circumstances should be deemed reasons for the exemption of the prosecutor under in Article 38, para. 6, in conjunction with Article 43 of the CPC.

155 See *El-Masri v. FYR Macedonia*, application no. 39630/09, para. 189 and *Đurđević v. Croatia,* application no. 52442/09, para. 90.

156 *Kapustyak v. Ukraine*, application no. 26230/11, 2016, paras. 79-80.

157 *Bouyid v. Belgium*, application no. 23380/09, paras. 128-134. In relation to an omission to perform recognition and confrontation of suspects with the injured party, see also the judgment in the case of *Kmetty v. Hungary*, 57967/00, para. 41.

158 *Boicenco v. Moldova*, application no. 41088/05, 2006; *Timofejev v. Latvia*, application no. 45393/04, 2012, para. 98.

159 See, for example, the ECtHR judgment in the case of *Toteva v. Bulgaria*, application no. 42027/98, para. 63.

6. Duty of Prompt Action

The investigation in the cases of torture must be prompt and may not last longer than justifiable in any circumstances.[160] This refers to all the phases of investigation - preliminary investigation, investigation, criminal proceedings and the procedure of criminal sanction enforcement - which means that the legal system as a whole must function efficiently, thus enabling courts to decide on the merits of cases within a reasonable period of time.[161]

As soon as they receive information about an alleged ill-treatment, competent investigating authorities must promptly and decisively respond in each and every case, not allowing undue delays that may destroy the entire investigation.[162]

> Prompt, timely proceeding of state authorities in investigating any allegations concerning ill-treatment is considered crucial for preserving the public trust in their commitment to the rule of law and in eliminating suspicions that the government tends to cover up or tolerate illegal acts of civil servants.[163]

The state prosecutor shall promptly:

- Interrogate the injured party,
- Instruct forensic medical examination of the injuries thereof,
- Identify witnesses and possible perpetrators, split them up and interrogate them, thus preventing them from agreeing on their testimonies or removing evidence;[164]
- Instruct the forensic examination of clothes, shoes and other objects potentially used during the commission of the act;
- Request reports on the use of the means of coercion from each individual civil servant involved in the event;
- Set up a lineup of potential criminal offenders;[165]
- Go to the crime scene and personally establish where and how the re-

160 See, for example, the ECtHR judgment in the case of *Selmouni v. France*, application no. 25803/94, paras.78-79.
161 *Calvelli and Ciglio v. Italy*, application no. 32967/96, para. 53.
162 *Jasar v. FYR Macedonia*, application no. 69908/01, para. 57.
163 *Bati and Others v. Turkey,* applications no. 33096 and 57834/00, para. 136.
164 *Ramsahai and Others v. The Netherlands*, application no. 52391/99, para. 326.
165 *Mikheyev v. Russia*, application no. 77617/01, paras. 113-114.

cording devices are installed, and secure that the available recordings are collected immediately;
- Once the recordings have been received, they should be promptly inspected and, in case that some specific video recording is missing (e.g. of the room suspected to be the scene of the criminal offence), immediately insist on that particular recording, which is important in order to prevent the recordings from being overwritten or otherwise destroyed.

In the case of excessive use of force, a violation of the duty to conduct effective investigation was found because 15 and a half hours had passed between the incident and the moment of investigators' engagement, and because the police officers involved in the incident had been interrogated more than two days later, without being split up. They thus had a chance to align their statements, although it was not possible to conclude that they actually did do so.[166] In the second case, in which an investigation had been instituted six days after the complaint, allegedly due to a public holiday and a weekend, it was found that "weekends and public holidays cannot serve as an excuse for unacceptable delays in carrying out an effective investigation".[167]

Dramatic examples of failure to meet the criteria of promptness and timeliness are the cases where criminal proceedings are taking place superficially, with interruptions, for years, so that the event fades away from the witnesses' memory and they may not take part in the reconstruction,[168] or where proceedings are being dragged out for so long that they become subject to the statute of limitations concerning criminal prosecution or enforcement of punishment.[169] The CAT has warned Montenegro that even a mere legal possibility that there may be a statute of limitation is incompatible with the international standards.[170]

The Criminal Procedure Code requires also promptness in the actions of the authorities who take part in the proceedings. The complaints of the criminal offences of ill-treatment, light bodily injury, extorting a testimony (core form), which are punishable by imprisonment of up to five years, are processed in summary proceedings, in which the state prosecutor has a one-month deadline to decide on the criminal complaint (Article 256a, para. 3 of the CPC). In other cases, this time limit is three months, while in particularly complex cases it is no more than six months (Article 256, paras. 1 and 2 of the CPC). Exceptionally, the time limit may be extended by no more than one month (Article 256, para. 3 of the CPC).

A state prosecutor may indict the accused directly and without conducting an investigation (Article 288 of the CPC), but if it is to be conducted, it should take place within six months from issuing the investigation order (Article 290, para. 3 of the

166 *Ibid*., paras. 94, 107, 330, 334 and 339.
167 *Mihhailov v. Estonia*, application no. 630/08, 2016, paras. 85-87.
168 *Balajevs v. Latvia*, application no. 8347/07, 2016, paras. 103-104.
169 *Yeşil and Sevim v. Turkey*, application no. 34738/04, paras. 36-43.
170 *Concluding observations on the second periodic report of Montenegro*, CAT/C/MNE/CO/2, 2014, item 6, c).

CPC). If that happens, the state prosecutor shall promptly notify the immediately superior prosecutor of the reasons for not completing the investigation. The immediately superior state prosecutor shall take such measures as may be necessary to complete the investigation (Article 290, para. 3 of the CPC). Finally, the court is obliged to conduct the proceedings without delay, and to prevent all abuses of rights vested in participants to the proceedings (Article 15, para. 2 of the CPC).

The most common problems leading to ineffective investigations in practice are:

- Delay in the identification and interrogation of potential perpetrators, thus enabling suspects, or the accused, to agree on and align their statements, as well as to destroy or remove other evidence;
- Late or incomplete forensic medical examination;
- Late obtaining of evidence (e.g. video recordings), which get destroyed or disappear after a while;
- Omission to identify all the witnesses and to timely organise for them a lineup of potential perpetrators of ill-treatment.

The omission to promptly conduct investigative actions, resulting in the disappearance of and threat to the evidence and investigation results, should be investigated and prosecuted separately, as criminal offences of assisting an offender, negligence in discharging one's duties, and abuse of office.

7. Duty to Conducting a Thorough Investigation

Prosecutors and police are obliged to thoroughly investigate any suspicion of ill-treatment.

They are required to act actively and always make a serious effort to determine all relevant facts and gather all the evidence necessary to determine whether ill-treatment in the particular case had occurred and, if so, identify all persons responsible for it (not only direct pepetrator(s) but also persons in the chain of command), including superior officers.

Responsibility for thoroughness of the investigation ultimately always lies with the prosecutor. In cases of alleged ill-treatment, all investigative activities should be undertaken by prosecutor, not by the police.

Testimony of a victim, although important, should be corroborated by other evidence to the greatest extent possible. Prosecutor should strive to find and obtain such evidence in order to secure the continuation of investigation and prosecution regardless of the victim's testimony (or any changes thereof during the subsequent stages of proceedings).

7.1. Receiving a notification of ill-treatment

Any information about possible ill-treatment received by a prosecutor should be treated as a criminal complaint, and prosecutor shall act upon it in accordance with the Criminal Procedure Code (Article 256 and 256a).

When such information is received by the police (either by a person or an institution or if police has discovered it through its own activities), it shall immediately inform thereof the prosecutor on duty.

Once alleged ill-treatment has been reported to the prosecutor, the prosecutor shall immediately instruct the police on how to proceed. The police shall conduct investigative activities only upon such instructions, except those which cannot be postponed.

In exceptional cases, when life or health of victim is threatened, the police shall see

to it that adequate medical assistance is provided, without the instruction of the prosecutor.

7.2. Content of a criminal complaint

If a criminal complaint is submitted in person (either by the alleged victim or by a witness), it should be received by the prosecutor.

Criminal complaint should contain at least the following information:

- Description of what happened, when and where it happened;
- Why it happened;
- Who (which police officer/s) has allegedly committed ill-treatment, or a detailed description of the alleged perpetrator;
- Detailed description of the actions of the alleged perpetrator;
- Information on possible witnesses, including their contact or personal data,
- Information on any physical injuries (or the possibility of existence thereof).

Any corroborating documentation existing at that stage should be enclosed with the criminal complaint.

7.3. Interrogation of the injured party

7.3.1. Method of interrogation

Interviewing of the alleged victim should always be conducted by prosecutor. It is not sufficient for police to only inform the prosecutor on duty about the interview. The police should never conduct such interviews, particularly not without the presence of the prosecutor. Prosecutor should interview the alleged victim as soon as possible and as a matter of urgency.

The prosecutor should conduct the interview actively. Victim should be given opportunity to give as accurate and as detailed a description of the alleged ill-treatment as possible, but it is not enough for the prosecutor to simply rely on the accounts given by the victim. Relevant questions should be asked by the prosecutor to collect all available information regarding the alleged ill-treatment.

Questions to the victim should be formulated in such a way as to enable the victim to give full account of all relevant circumstances of the alleged ill-treatment and to provide precise answers.

Interview with the victim should be conducted at the earliest possible time. This

minimises the risk of losing the accuracy or level of details in the statement (caused either by the lapse of time or by any undue influence).

While interviewing the alleged victim, attention should be put on avoiding further trauma. Questions should be formulated corresponding to personal circumstances of the victim (health, age, gender). It should be considered by a person conducting an interview that the victim my still be under pressure (i.e. is being detained by the police or otherwise deprived of liberty). For victim protection measures, please see chapter 8.

At the beginning of each interview, the victim should be informed about the identity and capacity of all the persons present at the interview.

Whenever possible, the interview of the alleged victim should be audio and/or video recorded.

The victim has the right to be accompanied by his/her attorney as well as by other person s/he trusts (e.g. representative of an NGO offering support to victims of crime).

Subject to conditions of the CPC, the prosecutor should request that the victim be granted the status of protected witness.

7.3.2. Information to be obtained

During the interview, in general, three clusters of information should be gathered:

1. Information on the act of ill-treatment itself and its consequences;
2. Information on perpetrators and witnesses; and
3. Information on the location of alleged ill treatment,

With regard to **ill-treatment itself and its consequences,** the following should be determined:

- Location and time of the alleged ill-treatment;
- Description of the act of ill-treatment and description of means used;
- Possible reasons for ill-treatment, with a description of what was requested from a victim and why (e.g. extortion of specific testimony – in this case, description of questions posed to the victim and answers he was requested to give should be recorded);
- Description of the consequences of ill-treatment – especially the bodily injuries, with a focus on the description of causes of the injuries;
- Possible existence of any traces that remained at the scene (e.g. traces of blood or other body liquids, markings of handcuffs on the furniture where victim was cuffed to it, etc.);

What clothes and shoes was the victim wearing, and are there any traces on them.
With regard to **perpetrators**, the following should be determined:

- Who is/are the persons who committed ill-treatment;
- Is the victim able to identify them;
- Detailed description of perpetrators – this should not be limited only to facial features but should include any other individual characteristics, such as physique, speech/dialect or gait;
- If identification of perpetrator is possible, official identification as required by CPC should be conducted;
- Are there any witnesses to the alleged ill-treatment and who are they;
- Possible existence of any personal relation between victim and alleged perpetrator.

Possible existence of any personal circumstances of the victim that might have contributed to the ill-treatment (nationality, ethnic origin, sexual orientation, religion, etc. in view of Article 42a CCME).

With regard to the **location of the ill-treatment** itself, the following should be determined:

- Description of the location of ill-treatment – this description has to be provided by the victim, autonomously (e.g. victim has to describe the premises on which the ill-treatment took place, they should specify in which part of the premises it took place and possibly make a sketch of the layout of the premises, etc.);
- Was the victim in custody (or otherwise deprived of liberty) at the time of the alleged ill-treatment;
- Was the victim moved to a different facility (or room within the same facility), who were the persons accompanying him during these transfers, what were the reasons for said transfers and from where to where was he transferred.

Additionally, some specific circumstances should also be determined, such as:

- Did the victim have, at any stage, a legal representative in a form of a defence lawyer or attorney;
  Has the alleged ill-treatment, at any stage, been reported – by whom and to whom – and what was the outcome/result of such report;
- Was the victim, at any time after the alleged ill-treatment, in contact with any medical personnel or a doctor, was the victim medically examined or medically assisted in any way, were the injuries registered or detected and what was undertaken by medical personnel or a doctor;
- If the victim was medically examined, when, where (at which institution) and by whom, and whether any record was made by anybody thereof;
- Was that examination conducted without any possibility of undue influence (were there any other persons present, in particular were there any police officers present) and, if yes, who and in what capacity.

7.4. Crime scene investigation

7.4.1. Crime scene investigation in general

An inspection is carried out when determination or explanation of an important fact for the proceedings calls for immediate observation.

In cases of alleged ill-treatment inspection is always conducted by a prosecutor.

Inspection is to be conducted urgently.

Prosecutor shall ask for the assistance of forensic specialists, including forensic experts, who may also look for, protect or describe traces, make the necessary measurements and recordings, draw sketches or gather other information.

The inspection should be documented by means of photographic and, if possible, also video recording.

7.4.2. Content of the crime scene investigation record

All actions carried out during the inspection should be entered in a record. Photo and video recordings made during the inspection shall be a part of that record.

Besides information about who is conducting the inspection and where it is taking place, record shall contain also information about whether or not the scene has been secured (when and by whom), whether or not it has been in any way altered (if yes, how it was altered and by whom) as well as descriptions of object and traces found and protected, in order of their discovery.

All facts and circumstances should be recorded objectively and thoroughly.

7.4.3 Crime scene investigation concerning persons - the injured party and the accused

Whenever traces of criminal offence are found (or may be found) either on the victim or perpetrator(s) or whenever the victim has been injured in any way, traces and injuries should be immediately protected.

If traces are found on clothes or shoes, they shall be seized for the purposes of forensic examination.

In case of injuries, the prosecutor will, as a rule, order forensic examination of a person and such examination shall be carried out immediately.

If, exceptionally and due to objective reasons, immediate forensic examination is not possible, the prosecutor will direct the injured person (victim) to a medical examination. Such examination should be conducted by a doctor and in a manner described under next chapter of this manual.

7.4.3.1. Medical examination

Medical examination should be conducted as soon as possible.

Injuries must be described in detail (colour, size, shape), technical aids should be used for better description (colour scale for more accurate colour matching, ruler for demonstration of the size). Direction of injuries and other features useful for the determination of their origin (e.g. sharp edges indicating injuries inflicted with a sharp/narrow object, soft edges indicating injuries caused a blunt object, or characteristic injuries of crushing, etc.) should be described in as many details as possible.

Injuries should always be photographed. When a colour scale and/or ruler are used, they should be photographed alongside the injuries.

Whenever possible, photographs should be taken by a crime technician. When this is not possible, photographs may be taken also by doctor or prosecutor himself (for instance, by the use of mobile phone).

7.4.3.2. Forensic medical examination

As a rule, forensic examination of the victim shall be conducted as soon as possible.

Forensic examination is ordered by a prosecutor and conducted by a forensic expert.

A forensic expert shall examine the victim, record the injuries and give his findings and opinion. This should, in particular, contain an opinion regarding the origin of the injuries and their gravity. The victim's account of the origin of injuries should be written down, as well as the opinion of the forensic expert on the probability that the injuries were indeed caused in the way described by the victim.

Forensic examination can be ordered also at a later stage, typically when the initial examination was conducted by a doctor and not a forensic expert. In such cases, a forensic examination should be ordered and conducted as soon as possible.

7.4.4. Crime scene investigation concerning location

Inspection of a crime scene should be conducted by a prosecutor in all the cases of alleged ill-treatment.

Inspection should be conducted as a matter of urgency.

Inspection and recording of the crime scene should be conducted according to the recommendations provided under 6.4.1 and 6.4.2 of this Manual.

Special attention must be given to any possible alteration/manipulation of the crime scene. Any such alteration/manipulation should be carefully determined and a description thereof should be entered into the record. It shall also be determined who or what had conducted the alteration/manipulation.

7.4.5. Securing a crime scene

Crime scene should be urgently protected from any alteration/manipulation.

Special attention should be given to denying any person connected to the alleged ill-treatment access to the crime scene. This is particularly important when, prior to the arrival of the prosecutor, initial protection of the crime scene is performed by police.

The arrangement of the premises (e.g. distribution of rooms, arrangement of furniture in relevant rooms) where the alleged ill-treatment took place, as well as areas through which the victim was transported to and from the crime scene, should be carefully identified and entered into the record.

The existence of any private or public surveillance cameras (CCTV) should be checked as soon as possible. Angles of their coverage, particularly their blind spots, need to be determined and properly documented by the prosecutor.

7.4.6. Securing the recordings

Whenever available, all video, audio or photographic material of any potential use for the investigation of the alleged ill-treatment should be seized and protected. This should be done by the prosecutor and as soon as possible, to avoid deletion or destruction.

Prosecutor should actively check all possibilities for the existence of any such material (accepting explanations of CCTV that is out of order or automatic deletion of recordings is not acceptable without additional verification). In order to be able to conduct such checks thoroughly, the assistance of professional, i.e. expert witness (able to assess service documentation, etc.) is advisable.

The prosecutor should ensure that all seized material is protected against potential manipulation (particularly by making sure that all such materials are immediately surrendered to him and stored under his supervision for the duration of the proceedings).

7.5. Securing evidence

All material evidence and traces need to be adequately protected.

They must be collected, entered into the record, labelled, processed and stored in a manner that enables analysis and prevents any contamination or alteration.

The following materials should be particularly protected: samples of body fluids and other biological traces, fingerprints and objects found at the crime scene.

Official police documentation, relevant for the investigation of alleged ill-treatment (e.g. rosters of officers on duty, official notes, orders, reports on the use of coercive measures, etc.), should be seized and protected. Means of communication of police officers suspected of having participated in ill-treatment should be identified (telephones, wireless communication), and records of their use should be seized and protected.

Clothes and shoes of persons suspected of having committed ill-treatment should be protected for future analysis of biological traces (DNA analysis).

If the victim was examined by a doctor or other medical personnel, all records of such examination should be protected, while doctors and medical personnel should be identified (and examined as witnesses).

Any person who was, or might have been, at the crime scene or near it at the time of the alleged ill-treatment, should be identified for the purpose of future examination.

7.6. Interrogation of the accused

Interview of the suspect shall be always conducted by prosecutor.

Interview shall be conducted in accordance with the CPC.

When more than one person is suspected of ill-treatment, the prosecutor should apply all the measures necessary to prevent collusion and synchronisation of statements (detention, custody, etc.).

In principle, the same set of questions used to interviewisuspects is used to interview victims, mutatis-mutandis.

7.7. Interrogation of witnesses

All the witnesses should be interviewed by a prosecutor. This should be done as soon as possible (to avoid loss of memory or possible collusion).

Any person who might provide any information useful for the investigation of the alleged ill-treatment should be formally interviewed as a witness. This should not be substituted by seeking of information from citizens by police.

This particularly applies to any person present at or near the scene of the alleged ill-treatment (either at the time of its commission or immediately after), as well as to any person who could either see or hear the victim during or after the alleged ill-treatment (including police officers present in the same police station, other people present on the premises or other persons deprived of liberty who had contact with the victim).

Prosecutor is required to conduct interviews actively and in detail. Special attention is required in relation to potentially biased witnesses (e.g. police officers and other colleagues of the suspect). In such cases, the prosecutor must be particularly focused on determining the truth using a critical and active approach which includes asking relevant questions, confronting contradictions and inconsistencies, and insisting on clarifications.

7.8. Analysis and evaluation of evidence

All the evidence collected during the investigation must be assessed carefully, thoroughly and objectively. Assessment should be particularly meticulous in the case of a decision not to prosecute (dismissal of the case). This applies to all the phases of the proceedings (including the pre-trail and pre-investigation phase).

Assessment of evidence should be conducted after all available evidence has been collected.

All evidence should be assessed in their entirety and as a whole. Assessment should be reasonable and logical and should not over-extensively rely on minute details (e.g. if the victim claims to have been beaten about the head a with truncheon and such injuries are confirmed by forensics, the mere fact that there is a difference in the number of blows stated by a victim and determined by forensics should not be overrated).

It is not uncommon for victims to change their statements in the course of time. This may occur either in a form of denying existence of ill-treatment after initially claiming its existence or vice-versa. Assessment of such testimonies should therefore not be limited to assessing the content of the testimony but should also include careful assessment of circumstances under which contradicting statements were given and reasons for such contradiction.

The specific nature of criminal acts of ill-treatment, as well as the specific position of victims and alleged perpetrators must always be considered when assessing evidence and deciding on prosecution (e.g. difficulties in obtaining evidence due to the fact that ill-treatment is in principle committed in police premises and by police officials, and, consequently, the difficult position of the victim). Therefore, it should be expected that evidence would be difficult to obtain.

Any complaint that contains allegations of ill-treatment that are not obviously unfunded should be carefully examined and verified by a prosecutor. All specificities, as described in the previous paragraph, should be taken into consideration during such examination.

Special care is required in cases where physical injuries of a person detained by the police are determined (either by doctors, medical personnel, prosecutor, police or any other person). The extent, nature and origin of such injuries should be clearly documented and convincingly explained in the official police records and the documentation related to deprivation of liberty and detention. Whenever this is not the case, it should be assumed that injuries occurred as a consequence of ill-treatment.

Testimonies of police officers (regardless of whether they were given in the capacity of suspect or witness) should be assessed carefully and critically in cases of ill-treatment allegedly committed by police officers. It should be kept in mind that, due to the principle of hierarchical subordination and collegial loyalty, police officers will often be reluctant to testify against their own colleagues.

When giving testimony, persons deprived of liberty (detained by the police or serving a prison sentence) may feel pressured by police or prison guards. Such witnesses should be protected from undue influence and possible reprisals. Their testimonies should be assessed accordingly.

Special attention should be paid to the medical documentation on the injuries of victims, if medical examination was conducted by doctors or medical personnel in the presence of police officers or in medical facilities within a prison. In case of any doubts regarding such findings, they shall be subjected to review by forensic experts.

8. Rights of the Injured Party

A victim of ill-treatment shall have all the rights, as provided in CPC.

A victim must always be interviewed as a witness by a prosecutor.

A victim should have access to information and documentation obtained during the investigation and shall always be given a possibility to put forward his/hers observations and proposals, either regarding the course of the investigation or regarding the facts of the case. Prosecutor and the police should consider statements, proposals and suggestions of the victim to the largest extent possible.

He/she should be allowed to participate in the proceedings with regard to the protection of his/her rights and in accordance with the CPC. In order to exercise that right, a victim should be timely informed about the planned investigative activities (such as interviews, inspections, etc.).

A victim's right to participate in the investigative activities should be exercised in accordance with the law and to the largest extent possible.

Victim should be adequately informed about the dismissal of the criminal report or the discontinuation of prosecution. Such information should be provided in a timely manner. Reasons for such decisions should be sufficiently elaborated, so as to enable the victim to use all available legal remedies and other legal means as provided by the CPC, particularly the right to subsidiary prosecution.

At the earliest possible stage, the victim should be informed about any possible aid and support, provided either by governmental or non-governmental institutions, including the means of witness protection and the right to a doctor of his/her own choosing.

A victim should be provided basic information regarding the witness-protection system and the possibility of being assisted by an attorney.

The victim has the right to a doctor of his/her own choosing.

List of Abbreviations

CAT	Committee against Torture
CCPR	Human Rights Committee (Centre for Civil and Political Rights)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
KZCG	Criminal Code of Montenegro
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture)

List of important handbooks or instructions on conducting investigations of torture and other ill-treatment

1. *Istanbulski protokol - Priručnik za delotvornu istragu i dokumentovanje torture i drugog svirepog, nečovečnog ili ponižavajućeg postupanja ili kažnjavanja*, Kancelarija Ujedinjenih nacija, Visoki komesar za ljudska prava, Ženeva, 2004.
2. *United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, U.N. DOC. E/ST/CSDHA/.12 (1991), dostupno na: https://www.un.org/ruleoflaw/files/UN_Manual_on_the_Effective_Prevention_and_Inve stigation%5B1%5D.pdf
3. *Priručnik za izveštavanje o slučajevima mučenja – Dokumenovanje slučajeva mučenja i postupci u okviru međunarodnog sistema za zaštitu ljudskih prava*, Kamil Gifard, Centar za ljudska prava Univerziteta u Eseksu, 2000, dostupno na: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=49 918d472
4. *Borba protiv mučenja – Priručnik za sudije i tužioce, Konor Foli, Organizacija za evropsku bezbednost i saradnju*, Misija u Srbiji i Crnoj Gori, 2004, dostupno: https://www1.essex.ac.uk/combatingtorturehandbook/serbian/borba_protiv_mucenja_ serbian.pdf
5. *The United Nations Convention against Torture – A Commentary*, Manfred Nowak and Elizabeth McArthur, Oxford University Press, Oxford, 2008.
6. *Zabrana zlostvaljanja – Priručnik za policiju i zatvorsko osoblje*, dr Ivan Janković, Radmila Dragičević Dičić, dr Vesna Petrović i Žarko Marković, Beogradski centar za ljudska prava, 2010: http://www.hraction.org/wp-content/uploads/Zabrana-zlostavljanja-Prirucnik.pdf
7. *Sprečavanje i kažnjavanje mučenja i drugih oblika zlostavljanja – Priručnik za sudije i tužioce*, Radmila Dragićević-Dičić, dr Ivan Janković i dr Vesna Petrović, Beogradski centar za ljudska prava, 2011: http://www.hraction.org/wp-content/uploads/Sprecavanje-i-kaznjavanje-mucenja.pdf
8. *Prosecution of Torture A Manual*, Atty. Eric Henry Joseph F. Mallonga, The Asia Foundation, 2011: https://www.asiafoundation.org/resources/pdfs/ManualontheProsecutionofTorture.pdf
9. *Eradicating impunity for serious human rights violations - Guidelines and reference texts adopted by the Committee of Ministers on 30th of March 2011*, Directorate General of Human Rights and Rule of Law, Council of Europe, Strasbourg: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?docume ntId=0900001680695d6e
10. *Guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee against Torture*

under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against Torture, 4 September 2015: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/200/17/PDF/G1520017.pdf?O penElement

11. *Zabrana zlostavljanja – Pojam mučenja, nečovečnog i ponižavajućeg postupanja i efikasna i delotvorna istraga u pogledu oubiljnih navoda o zlostavljanju (pravni okvir i praksa u Republici Srbiji)*, Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić i Jugoslav Tintor, Beogradski centar za ljudska prava, 2017.
12. *Metodologija za sprovođenje istrage u slučajevima zlostavljanja od strane policije*, dr Jasmina Kiurski, Tamara Mirović, Tatjana Lagumđija, Miloš Oparnica, Dejan Košanin i Ana Petrović, Misija OEBS-a u Srbiji, 2018.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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