In 2009 the Council of Europe published the Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (Commissioner for Human Rights, 2009a; Smith, 2010). The Opinion set out five effective investigation principles developed in the case law of the European Convention on Human Rights (ECHR), and recommended that compliance with human rights standards could most effectively be achieved by creation of an independent police complaints body.

The police play a pivotal role in the human rights arena, and during the course of the last quarter of a century the influence of human rights law has spread to touch many aspects of operational policing (Das & Palmiotto, 2002; Murdoch & Roche, 2013; Bayley, 2014). When performing their duties to prevent and detect crime, and maintain public order, the police serve to protect individual human rights. Operational law enforcement, which permits police to resort to coercive powers, inter alia, to arrest and engage in surveillance operations, intrinsically interferes with the human rights of suspects (this extends to the Public Prosecutor in jurisdictions where prosecuting authorities rather than the police have responsibility for criminal investigation). The police are vulnerable to complaints on two counts: that they violated individual human rights as a result of their acts or omissions (in breach of a negative obligation), on the one hand, or that they failed to protect human rights (in breach of a positive obligation), on the other. Focussing on developments in Europe, this chapter explores the interface between international human rights and police complaints. The chapter is separated into two sections. The first examines the standards laid down in the jurisprudence of the European Court of Human Rights for the investigation of complaints against the police, with references to other international instruments. The second section examines the promotion and monitoring of state compliance with the ECHR standards, with particular reference to a joint Council of Europe and European Union programme to combat ill-treatment and impunity in five former Soviet bloc states.

The ECHR and effective investigation of complaints against the police

Since adoption of the Universal Declaration on Human Rights by the United Nations (UN) General Assembly in 1948, international treaties have been introduced around the globe for the practical purpose of protecting human rights. The Council of Europe led the way with adoption of the ECHR in 1950; after many years discussion, the UN adopted the International Covenant on Civil and Political Rights in 1966; the Organisation of American States followed suit with the American Convention on Human Rights (ACHR) in 1969; and the Organisation of African Unity adopted the African Charter on Human and Peoples’ Rights in 1981. A similar treaty does not currently exist in the Asia Pacific region.

International treaties protect human rights by laying down minimum standards which contracting state parties are obliged to comply with, as decided by regional human rights courts. In Europe, the European Court of Human Rights, which sits in the Council of Europe’s home in Strasbourg, France, determines whether or not a state is liable for violation of the ECHR (Rainey, Wicks & Ovey, 2014). Substantive rights that are of particular importance to a human rights based approach to police complaints are the right to life, under Article 2 of the ECHR, and prohibition of torture, inhuman or degrading treatment or punishment, under Article 3. In addition, the Court has relied on the obligation on states to secure to everyone within their jurisdiction the rights set out in
the ECHR (Article 1) and the right to an effective remedy (Article 13). Alongside negative obligations not to violate a Convention right, states are subject to positive obligations that require them to take measures to protect human rights (Mowbray, 2004). Among the first of the positive obligations introduced by the Strasbourg Court was the requirement that prosecutors bring criminal proceedings for the purpose of protecting the right to privacy (under Article 8 of the ECHR), in X & Y v The Netherlands (1985) 8 EHRR 235, and that police take operational measures to protect the rights of protesters to demonstrate under Article 11 (Platform "Artze fur das Leben" v Austria (1991) 13 EHRR 204). Included in the doctrine of positive obligations, the procedural obligation to effectively investigate arguable violations of substantive ECHR rights have been developed in the jurisprudence of the European Court of Human Rights (Mowbray, 2002; Smith, 2004). Difficulties associated with evidencing a negative violation of a right, because information may be restricted to state officials who also have responsibility for investigation, are prominent in this area of human rights law.

An early example of this type of procedural obligation was introduced by the Inter-American Court of Human Rights in the seminal forced disappearance case of Velásquez Rodriguez v Honduras (1989) 28 ILM 291. Acknowledging that it was difficult to obtain direct evidence in cases where officials sought to conceal state involvement in the disappearance of an individual, the Inter-American Court ruled that violation was imputable on the basis of circumstantial evidence or logical inference that was consistent with the known facts. In regard to the obligation on a state to respect human rights (Article 1 of the ACHR) the Court observed that the authorities were required to effectively investigate alleged violations.

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention. (Velásquez Rodriguez v Honduras: para. 176)

The Inter-American Court of Human Rights took the failure of the Honduran authorities to investigate the reported disappearance of Manfredo Velásquez into consideration when ruling that the right to life (under Article 4 of the ACHR), right to humane treatment (under Article 5) and right to liberty (Article 7) had been violated. A few years later, the UN Human Rights Committee was to follow a similar line of reasoning in the case of Mojica v. Dominican Republic (Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991 (1994)).

Development of the obligation to conduct an effective investigation in the jurisprudence of the European Court of Human Rights can be traced back to a complaint of ill-treatment in police custody. In Tomasi v France (1992) 15 EHRR 1, the Court relied on similar logic to the Inter-American Court of Human Rights in Velásquez Rodriguez when ruling that the applicant had been subjected to degrading and inhuman treatment in contravention of Article 3 of the ECHR. Several reasons were given for this decision. Firstly, no one claimed that marks noted by medical examiners on Tomasi’s body predated his period in detention, were self-inflicted or occurred during an attempt to escape. Secondly, at his first appearance before the investigating judge, the complainant drew attention to the marks on his body and an expert was appointed to examine him. Thirdly, four different doctors examined Tomasi and concurred on the timing of his injuries, which corresponded with the hours when he was in police custody. Although reference was not made to the rigour of the investigation into Tomasi’s complaint that he had been assaulted by police officers, the Court was satisfied that the State’s failure to offer an alternative explanation for his injuries was sufficient to establish a causal connection. In the similar case of Ribitsch v Austria (1996) 21 EHRR 573, the Court expressly referred to the obligation on the government to provide a “plausible explanation” for injuries that had been recorded separately by two medical examiners, which the applicant complained were as a result of assaults committed by police officers when he was in custody.
Whereas ineffective investigation of the two above complaints of police ill-treatment was inferred, in *McCann v the United Kingdom* (1996) 21 EHRR 97, the implication that an effective official investigation must be conducted into an allegation that a state official violated the right to life was spelt out.

The obligation to protect the right to life under this provision (Art. 2), read in conjunction with the State's general duty under Article 1 (Art. 2+1) of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State. (*McCann v the United Kingdom*: at para. 161).

In making this observation the European Court of Human Rights referred to the UN (1989a) *Principles on the Effective Prevention and Investigation of Extra-Judicial, Arbitrary and Summary Executions* and UN (1990) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Importance attaches to these international instruments because they require that an effective and prompt investigation must be carried out into the use of force by law enforcement officers that results in death or serious injury, and victims or bereaved relatives must have access to the investigative process. The European Court of Human Rights did not find it necessary to rule on the effectiveness of the investigation in *McCann*, where a coroner’s inquest was held to establish the cause of death of three members of an Irish Republican Army Active Service Unit killed by members of the British Army’s Special Air Service in Gibraltar.

Having asserted that killings by state officials, including police officers, must be officially and effectively investigated, that is regardless of whether or not a formal complaint had been made, a little more than a year later the Court considered the duty to investigate an allegation of torture. In *Aksoy v Turkey* (1997) 23 EHRR 553, the Court followed the same approach adopted in *Tomasi* and *Ribitsch* and found that the suspension of the victim by his arms, which were tied behind his back (known as “Palestinian hanging”), was in violation of the prohibition of torture. The effectiveness of the investigation into the complaint of torture by the Turkish authorities was dealt with separately under Article 13 of the ECHR, the right to an effective remedy (again, the Court referred to an international human rights instrument in support of the judgment).

...where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an "effective remedy" entails, ... a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure. It is true that no express provision exists in the Convention such as can be found in Article 12 of the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which imposes a duty to proceed to a "prompt and impartial" investigation whenever there is a reasonable ground to believe that an act of torture has been committed. However, in the Court’s view, such a requirement is implicit in the notion of an "effective remedy" under Article 13. (*Aksoy v Turkey*: para. 98)

*McCann* was not referred to in *Aksoy*, or when the Court delivered a similar judgment in *Aydin v Turkey* (1997) 25 EHRR 251, another torture case, in September 1997.

At this stage in the emerging nexus between human rights law and police complaints, the European Court of Human Rights had followed separate pathways in concluding that there was a duty to effectively investigate alleged breaches by law enforcement officers of the right to life and prohibition of torture. For alleged violations of the right to life, the procedural obligation to investigate was for the purpose of giving practical effect to the protections afforded under Article 2 of the ECHR. For allegations of torture or ill-treatment, in contrast, the obligation was an element of the right to an effective remedy under Article 13, and not under Article 3. The Court demonstrated a willingness to extend the duty to investigate other substantive rights when finding there had been a violation of Article 13 for failure to effectively investigate the alleged destruction of homes and
property purposely by agents of the state (in breach of the right to privacy under Article 8) in Mentes v Turkey (1997) 26 EHRR 595.

The Strasbourg jurisprudence on effective investigations developed rapidly in the next few years in a series of applications involving allegations of unlawful killing, torture and enforced disappearance. In Kaya v Turkey (1998) 28 EHRR 1, the absence of an effective investigation was material to the finding that there had been violations of both the right to life and to an effective remedy. After concluding that there was insufficient evidence to find beyond reasonable doubt that the victim had been unlawfully killed by security forces, the Court went on to rule that violation of Article 2 was as a result of the failure of the Turkish authorities to conduct an effective investigation.

... the procedural protection of the right to life inherent in Article 2 of the Convention secures the accountability of agents of the State for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of leading to a determination of whether the force used was or was not justified in a particular set of circumstances. (Kaya v Turkey: at para. 87)

The Court clarified the difference between the investigative obligations in the two articles in Kaya by explaining that the duties on the state under Article 13 were broader than implied in Article 2. Whereas the obligation under Article 2 served to establish whether the use of fatal force was justified, the purpose of the investigative duty under Article 13 was to remedy the harm suffered by bereaved relatives, which entitled a complainant or bereaved relatives to have effective access to the investigation process. Some years later the Court was to expand on the purpose of the Article 2 obligation in Jordan v the United Kingdom (2003) 37 EHRR 52 (see further below):

The essential purpose of such investigation [under Article 2] is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. (Jordan v the United Kingdom: para. 105)

In the forced disappearance case of Kurt v Turkey (1998) 27 EHRR 373, the European Court of Human Rights was not persuaded that the beyond reasonable doubt evidential burden should be relaxed when asked to determine that the right to life and prohibition of torture had been breached. The applicant made reference to the decision of the Inter-American Court of Human Rights in Velásquez Rodriguez (see above), and unsuccessfully sought to establish that the European Court’s reasoning in Tomasi should also be applied in circumstances where the State had failed to satisfactorily account for the disappearance of a person. The Court explained that it was unable to find a violation of Article 2 for failure to conduct an effective investigation in the absence of concrete evidence: of the fatal shooting, for example, by state agents that was present in the McCann and Kaya judgments. The same reasoning was applied to the applicant’s Article 3 claim. There was sufficient evidence, however, for the Court to conclude that the victim had been taken into custody by members of the security forces and that there had been a “particularly grave” violation of the substantive and procedural limbs of Article 5, the right to liberty (Kurt v Turkey: para. 129), and Article 13.

In regard to the duty to investigate alleged violations of the right to life by private persons (which the Inter-American Court of Human Rights established in Velásquez Rodriguez), the Article 2 obligation was extended to include killings by non-state agents which the state had knowledge of, in Ergi v Turkey (1998) 32 EHRR 388.

... this [investigative] obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased’s family or others have lodged a formal complaint about the killing with the relevant investigatory authority. In the case under consideration, the mere knowledge of the killing on the part of the authorities gave rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death. (Ergi v Turkey: para. 82)
The threshold for investigation of an alleged violation of Article 2 of the ECHR involving the acts of a private person was further explained in *Osman v the United Kingdom* (2000) 29 EHRR 245, when the European Court ruled that there would be a duty on the police to take operational measures to protect the right to life in cases where the police ought to have known about a real and immediate risk to life (para. 116).

In the torture case of *Assenov v Bulgaria* (1999) 28 EHRR 652, the Strasbourg Article 2 jurisprudence on the obligation to conduct an effective investigation was applied to Article 3.

...where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible ... If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance ..., would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity. (*Assenov v Bulgaria*: para. 102)

The Court’s insistence that a high evidential standard was required for it to find that the right to life had been violated in forced disappearance cases was relaxed in *Timurtas v Turkey* (2001) 33 EHRR 6, which was distinguished from *Kurt* on the facts. Referring to the absence of a “plausible explanation”, introduced in *Ribitsch*, circumstantial evidence was relied on and the Court ruled that there had been multiple violations of the ECHR; including substantive violation of Article 2 and breach of the procedural obligation to conduct an effective investigation. Furthermore, the Court was satisfied beyond reasonable doubt that the victim had been subjected to torture, and found that there had been a substantive violation of Article 3. As in the *Aksoy* and *Aydin* torture cases, the failure to effectively investigate the alleged breach was dealt with under Article 13. Despite the European Court’s recalibration of its forced disappearance jurisprudence, in closer alignment with that developed by the Inter-American Court, questions have been asked of the principles underpinning the decisions of the Strasbourg Court, and its conservatism when considering allegations that states attempted to evade censure for serious human rights violations (Sethi 2001; Antkowiak 2002; Claude 2010).

In *Jordan v the United Kingdom*, the European Court of Human Rights, referring extensively to international instruments and ECHR case law, summarised the developments of the preceding years to explain the nature of the obligation on a state to act on its own motion and conduct an effective investigation into an alleged killing by an agent of the state which, in light of the *Assenov* judgment, also applies to torture, inhuman or degrading treatment or punishment allegations.

... to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events ... This means not only a lack of hierarchical or institutional connection but also a practical independence. (*Jordan v the United Kingdom*: para. 106)

The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances ... and to the identification and punishment of those responsible ... The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death ... Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard. (para. 107)
A requirement of promptness and reasonable expedition is implicit... It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. (para. 108)

... there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. (para. 109)

In similar fashion to the way in which the European Court of Human Rights aligned the effective investigative obligation that was first read into Article 2, in McCann, into Article 3, in Assenov, the investigative duty which was first introduced to allegations against private persons in regard to Article 2, in Ergi, was later applied to private persons alleged to have breached Articles 3 and 8 in MC v Bulgaria (2005) 40 EHRR 20, a rape case: “the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.” (para. 153)

Shortly after this expansion of the effective investigation obligation, in recognition of the difficulty with evidencing whether discrimination played a part in breaches of the ECHR, the Court was to impose an additional duty on states to thoroughly examine the evidence to determine whether or not there may have been discriminatory motives for an alleged violation of the right to life in Nachova v Bulgaria (2005) 42 EHRR 43.

To summarise, during the space of less than 12 years, between 1992 and 2004, the Strasbourg jurisprudence laid down standards for the investigation of alleged human rights violations. The interface between human rights and police complaints in Europe currently rests on the duties laid down by the European Court of Human Rights on a state to conduct an effective investigation into death or injury alleged to have been caused by a police officer that is independent, adequate, prompt, open to public scrutiny, and involves the complainant in the investigation process. The standards discussed, succinctly laid down in Jordan, were reaffirmed in Ramsahai v The Netherlands (2008) 46 EHRR 43, when the Court found that a delay of 15 hours before police handed over the investigation of a fatal shooting by a colleague to independent investigators was in breach of Article 2. On the issue of independent investigation the Court observed: “What is at stake here is nothing less than public confidence in the State’s monopoly on the use of force.” (para. 325) In regard to Article 3, the threshold is not necessarily high. In Stefan Iliev v Bulgaria (Application No. 53121/99, Judgment of 10 May 2007) the Court ruled that an independent and effective investigation was required into a complaint by a 72 year old man who alleged that he was left with minor injuries after an assault by police officers. Although the injuries sustained were insufficient to amount to inhuman or degrading treatment, the allegation that they were caused by police when acting unlawfully warranted an investigation that was capable of establishing the criminal liability of the officers whom were responsible. Failure of the police (or prosecuting authorities in states where the Public Prosecutor has responsibility for criminal investigations) to effectively investigate to the same standard analogous allegations against private persons, will leave the investigative authority liable to a complaint of having failed to protect human rights.

In addition to the international instruments cited by the European Court of Human Rights mentioned above, the Court has also referred to guidance on the investigation of violations of the right to life and prohibition of torture provided in the Minnesota Protocol (UN 1989b) and the Istanbul Protocol (UN 2004), respectively.

Promoting and monitoring state compliance with ECHR investigation standards
The European Court of Human Rights sits at the hub of a network of Council of Europe institutions that has evolved to regulate compliance with the ECHR (de Beco, 2012; Directorate General Human Rights and the Rule of Law, 2014). Accession of former Soviet bloc states to the Council in the 1990s, following which there was an unprecedented increase in the case load of the Court, prompted far reaching reorganisation of the Strasbourg institutions in the 2000s (Helfer, 2008).

Execution of the judgments of the Court by national governments found to be in breach of human rights is supervised by the Committee of Ministers (2014). The Committee ensures compliance with individual measures ruled necessary by the Court as a consequence of violation, for example payment of compensation to a victim. In addition, the Committee oversees any general measures required to protect against similar violations occurring in the future, for example improvement to the efficacy of investigation mechanisms.

Created in 1990, by Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe 1987), the European Committee for the Prevention of Torture (CPT) organises country visits and inspects how people are treated when held in detention facilities, including police custody (Murdoch, 2006; Kicker, 2012). The CPT serves a preventative function, and recommendations on how human rights protections may be improved are included in reports to national governments following country visits (CPT 2006). In countries where the CPT has identified systemic failure to protect human rights, it is not unusual for the European Court of Human Rights to cite reports (see, for example, reference to the CPT (2000) report of a visit to the United Kingdom regarding deficiencies in arrangements to investigate complaints against the police in Jordan v the United Kingdom (para. 93)).

Established in 1999, by Resolution 99/50 of the Committee of Ministers (1999), the primary function of the Commissioner for Human Rights is to promote awareness and respect for human rights. For this purpose the Commissioner also arranges country visits, liaises with civil society and undertakes thematic inquiries (Sivonen, 2012). Other Strasbourg institutions especially interested in police complaints include the European Commission against Racism and Intolerance (2007) and the Group of States against Corruption (Dzhekova, Gouvev & Bezlov, 2013); civil society and human rights defenders (Amnesty International, 2014; Human Rights Watch, 2014) also make meaningful contributions.

Figure 8.I. Violations of Articles 2 and 3 of the ECHR due to lack of an effective investigation: 2003-13

The number of violations of Articles 2 and 3 of the ECHR due to the lack of an effective investigation increased dramatically in the 2000s. After the European Court of Human Rights commenced
publishing statistics on violations, the annual total increased more than 10 fold in the space of five
years, from 10 in 2003 to 118 in 2008; see Figure 8.1, above. As a percentage of the total violations
annually, lack of effective investigation increased from 1.3% in 2003 to 9.4% (n=179) in 2011, and fell
back to 8.6% in 2013 (n=118). The Russian Federation (n=372) and Turkey (n=305) account for 65.6%
of the total of 1032 lack of effective investigation violations between 2003 and 2013. Ukraine (75),
Romania (68), Bulgaria (50) and the Republic of Moldova (40), have also been regularly called to
account before the Court for their failure to investigate allegations of serious abuse.

With concern mounting, a number of Council of Europe initiatives were launched, including
a thematic inquiry on police complaints by the Commissioner for Human Rights (2007); a Committee
of Experts (Steering Committee for Human Rights 2010) was established for the purpose of issuing
guidance on eradicating impunity for serious breaches of human rights (Committee of Ministers
2011; and a joint Council of Europe and European Union programme to combat impunity for ill-
treatment in the five former Soviet bloc states of Armenia, Azerbaijan, Georgia, Moldova and
Ukraine was also established (Svanidze, 2009; Council of Europe/European Union, 2011; 2014).

In the summer of 2008, the Commissioner for Human Rights (2008), Thomas Hammarberg,
organised an expert workshop which was attended by senior representatives of independent police
complaints bodies (IPCBs). Published the following year, the Opinion of the Commissioner for Human
Rights concerning Independent and Effective Determination of Complaints against the Police
(Commissioner for Human Rights 2009a) outlines the five investigation standards developed in the
case law of the ECHR and proposes how they may be effectively implemented. Recommending that
the creation of an IPCB with powers to investigate complaints represents an ideal way of ensuring
compliance with ECHR investigation standards, the Opinion currently serves as a core policy
document on police complaints (Commissioner for Human Rights, 2009b). In the five years since
publication, however, there has been limited success in achieving reform. Since 2009 two new IPCBs
with powers of investigation have been established in Europe, in countries which had not been
singled out for criticism. In 2012 the Independent Police Complaints Authority of Denmark was
created (Commissioner for Human Rights, 2014b; Johansen, 2014), and the Police Investigations and
Review Commissioner replaced the Police Complaints Commissioner in Scotland the following year
(Scott 2013). The government of Norway has not acted to date on a recommendation to set up an
IPCB by an independent commission of inquiry (Norges Offentlige Utredninger, 2009).

In 2013, the Commissioner for Human Rights (2013b; 2014a), Nils Muižnieks, found it
necessary to revisit the theme of police misconduct and highlighted concern with death and ill-
treatment in custody, disproportionate use of force when policing demonstrations and/or arresting
suspects, violence targeted against minorities and migrants and abusive stops and searches targeted
against minorities and migrants. Reiterating the importance of independent mechanisms for
investigating complaints against the police, the Commissioner pointed to allegations of torture and
ill-treatment in police custody in Greece (Commissioner for Human Rights, 2013a: see also CPT,
2012; UN Special Rapporteur on Torture, 2011) and the Republic of Moldova (Commissioner for
Human Rights, 2013c: see also UN Special Rapporteur on Torture, 2009; and see further below); and
excessive use of force when policing protests in Spain (Commissioner for Human Rights, 2013c: see
also CPT, 2013), Turkey (Commissioner for Human Rights, 2013e) and Ukraine (Commissioner for
Human Rights, 2014c; see also CPT, 2013; and see further below).

The joint Council of Europe/European Union project to combat ill-treatment and impunity in
five former Soviet bloc states, which commenced in 2009 and was extended in 2011 until 2014,
illustrates how Strasbourg resources may be harnessed to promote human rights compliant police
complaints systems. Ukraine became the 37th member of the Council of Europe in November 1995,
and was joined by neighbouring South Caucasus states, Armenia, Azerbaijan, Georgia, and the
Republic of Moldova, by January 2001. In Table 8.1, below, violations of the right to life and
prohibition of torture recorded against these five states are presented. Since accession there have
been a total of 232 substantive violations of Articles 2 and 3 and 133 for lack of an effective
investigation.
Table 8.1. Violations of Articles 1 and 2 of the ECHR by South Caucuses states, Republic of Moldova and Ukraine: until 2013

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<td></td>
<td>Deprivation of life</td>
<td>Ineffective investigation</td>
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<td>Armenia</td>
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<td>Georgia</td>
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<td>Ukraine</td>
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Source: European Court of Human Rights (2014: 202-3)

Further indication of the problems faced by these states is given in the annual reports of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights. The 2013 Annual Report (Committee of Ministers, 2014) records that the execution of 11 lack of effective investigation judgments that involve the five states (Murdoch & Svanidze, 2015), some of which date back to 2005, were under enhanced supervision. These are procedures reserved for judgments that have been determined to require urgent individual measures, pilot judgments or disclose major structural and/or complex problems (Committee of Ministers, 2014: para 24).

With the overarching objective of strengthening capacity to effectively investigate allegations of ill-treatment, the purpose of the programme was to support the national authorities develop complaints systems which comply with international standards, giving particular attention to the training of judges, prosecutors, police officers, penitentiary officials and lawyers. In pursuit of these objectives, the programme drew on the expertise of Strasbourg institutions, practitioners and scholars to organise a series of international events, including seminars, training courses and exchange visits.

Although the criminal justice systems that operate in each country are jurisdictionally distinct, there were clearly identifiable commonalities in the administration of police complaints in the baseline assessments conducted at the beginning of the programme. Three institutions have primary responsibility for handling complaints: the Ministry of Internal Affairs (renamed the Police Department in Armenia in 2002), the Office of the Prosecutor-General (Office of the Chief Prosecutor in Georgia) and the Office of the Ombudsman (known as the Human Rights Defender in Armenia; the Human Rights Commissioner in Azerbaijan; the Office of the Public Defender in Georgia; the Parliamentary Advocate in Moldova; and the Parliamentary Human Rights Commissioner in Ukraine).

In each country the Ministry of Internal Affairs is responsible for policing and a separate department in the Ministry (Direktorat of Internal Security in Armenia; Department of Internal Investigations in Azerbaijan; General Inspectorate in Georgia; Internal Security Service in Moldova; and Internal Security Service in Ukraine) handles and investigates complaints of misconduct, which may be referred to the local police department. The Office of the Prosecutor-General is responsible for prosecuting crime, including the direction and control of criminal investigations. In Armenia, an independent body, the Special Investigation Service, was set up in 2007 to investigate allegations against public officials; and in Moldova, prosecutions of police may be delegated to military prosecutors. The Office of the Ombudsman may record a complaint against the police and recommend that it is investigated by the appropriate authority, but it does not have powers to investigate, and neither the Ministry of Internal Affairs nor the Office of the Prosecutor-General have a duty to keep the Ombudsman informed of the progress or outcome of a complaint.

With three institutions sharing responsibility for complaints against the police, and in the absence of a central authority with specific duties to record, track and analyse complaints, the systems in each of these five states are haphazardly organised, and there is the potential for
complaints to be processed in duplicate or get lost in the system. When measured against the ECHR investigation standards, procedures have been found wanting, and recommendations that each country should “establish a genuinely independent and effective system for the investigation of cases involving alleged human rights violations by law enforcement officials” (Council of Europe and European Union, 2013), have been an enduring feature of the programme. Although reforms have been introduced – to criminal procedure codes, creation of a police disciplinary committee, and human rights legislation in Azerbaijan (Smith 2013), for example – that are consistent with the objectives of the programme, there have been significant barriers to reform in the region (Hammarberg, 2013). Not least of which are difficulties attributable to lack of political will, and acknowledgement by senior policy makers and practitioners that police complaints reform is not a national priority in their countries.

Conclusion

In this chapter the insinuation of human rights law into police complaints practice as developed and promoted in Europe has been explored. The first section tracked the development of five investigation standards in the case law of the European Convention on Human Rights – independence, adequacy, promptness, public scrutiny and victim involvement. In the second section, Council of Europe mechanisms for regulating compliance with human rights standards have been outlined, and particular attention has been paid to a programme combating ill-treatment and impunity in five former Soviet bloc states – Armenia, Azerbaijan, Georgia, Moldova and Ukraine. The difficulties encountered with the implementation of reform in the region reinforce the view that accountable policing is a work in process that harnesses the resources and efforts of a broad range of local, national and international actors.

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References


Committee for the Prevention of Torture (CPT). (2000). *Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment from 8 to 17 September 1997*. Strasbourg: Council of Europe.


