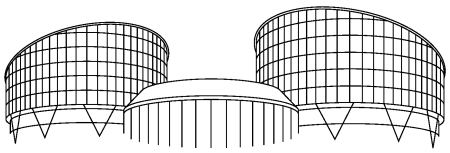

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 3 of the European Convention on Human Rights

Prohibition of torture

Updated on 31 August 2024

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 3 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 1978, § 154 and *Jeronovičs v. Latvia* [GC], 2016, § 109).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 2012, § 89). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 156, and more recently, *N.D. and N.T. v. Spain* [GC], 2020, § 110).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

* The hyperlinks to the cases cited in the electronic version of the Guide refer to the text in English or French (the two official languages of the Court) of the judgment or decision delivered by the Court and of the decisions or reports of the European Commission of Human Rights (hereafter "the Commission"). Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. General considerations

A. Interpretation of Article 3

1. The Court's approach to the interpretation of Article 3 must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. Any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideas and values of a democratic society (*Soering v. the United Kingdom*, 1989, § 87).

2. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (*Bouyid v. Belgium* [GC], 2015, § 81). The prohibition in question is absolute, no derogation from it being permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation or in the most difficult circumstances, such as the fight against terrorism and organised crime or influx of migrants and asylum-seekers, irrespective of the conduct of the person concerned (*A. and Others v. the United Kingdom* [GC], 2009, § 126; *Mocanu and Others v. Romania* [GC], 2014, § 315; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 195 and *Z.A. and Others v. Russia* [GC], 2009, §§ 187-188) or the nature of the alleged offence committed by him or her (*Ramirez Sanchez v. France* [GC], 2006, § 116 and *Gäfgen v. Germany* [GC], 2010, § 87).

B. State obligations under Article 3

3. Article 3 has been commonly applied in contexts in which the proscribed form of treatment has emanated from intentionally inflicted acts of State agents or public authorities. It may be described in general terms as imposing a primarily negative obligation on States to refrain from inflicting serious harm on persons within their jurisdiction (*Hristozov and Others v. Bulgaria*, 2012, § 111).

4. However, the Court has also considered that States have positive obligations under Article 3 of the Convention, which comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment. Generally, speaking, the first two aspects of these positive obligations are classified as "substantive", while the third aspect corresponds to the State's procedural obligation (*X and Others v. Bulgaria* [GC], 2021, § 178).

C. Scope of Article 3

5. The prohibition under Article 3 of the Convention does not relate to all instances of ill-treatment (*Savran v. Denmark*, [GC], 2021, § 122). According to Court's well-established case-law, in general, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Muršić v. Croatia* [GC], 2016, § 97).

6. In order to determine whether the threshold of severity has been reached, other factors may be taken into consideration, in particular: (a) the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 of the Convention; (b) the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension

and emotions; and (c) whether the victim is in a vulnerable situation (*Khlaifia and Others v. Italy* [GC], 2016, § 160).

7.When assessing whether a person has been subjected to ill-treatment attaining the minimum level of severity, in particular those inflicted by private individuals, the Court takes into account an array of factors, each of which are capable of carrying significant weight. All these factors presuppose that the treatment to which the victim was "subjected" was the consequence of an intentional act. Therefore, bodily injuries and physical and mental suffering experienced by an individual following an accident which is merely the result of chance or negligent conduct cannot be considered as the consequence of "treatment" to which that individual has been "subjected" within the meaning of Article 3 (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, §§ 121 and 123).

8. However, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any conduct by the latter vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention (*Bouyid v. Belgium* [GC], 2015, §§ 100-101).

D. Types of prohibited treatment or punishment

1. Torture

9. The prohibition of torture has achieved the status of *jus cogens* or of a peremptory norm in international law (*Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], § 59, 2022). In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court will have regard to the distinction embodied in Article 3 between this notion and that of inhuman or degrading treatment. It was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering; the same distinction is drawn in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "UNCAT" (*Ireland v. the United Kingdom*, 1978, § 167, *Selmouni v. France* [GC], 1999, § 96 and *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 426).

10. In addition to the severity of the treatment, there is a purposive element, as recognised in the UNCAT, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information or a confession, inflicting punishment or intimidation (*Selmouni v. France* [GC], 1999, § 97; *Salman v. Turkey* [GC], 2000, § 114; *Al Nashiri v. Poland*, 2014, § 508 and *Petrosyan v. Azerbaijan*, 2021, § 68).

11. Having regard to the fact that the Convention is a living instrument which must be interpreted in the light of present-day conditions, acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. The Court has taken the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (*Selmouni v. France* [GC], 1999, § 101).

12. In this respect, the Court has emphasized that the prohibition of torture has achieved the status of jus cogens or a peremtory norm in international law.

13. For instance, treatment was found to amount to "torture" when:

- the applicant was stripped naked, with his arms tied together behind his back and suspended by his arms ("Palestinian hanging") by State agents while in police custody in order to extract a confession (*Aksoy v. Turkey*, 1996, § 64; see also *Israilov v. Russia*, 2023, § 165, where the

applicant was subjected to severe physical and mental suffering, inflicted intentionally with the aim of extracting information);

- the applicant was raped and subjected to a number acts of other physical and psychological ill-treatment while in custody (*Aydın v. Turkey*, 1997, §§ 83-87, see also *Maslova and Nalbandov v. Russia*, 2008, § 108 where the applicant was repeatedly raped as well as subjected to a number of acts of physical violence during interrogation and *Zontul v. Greece*, 2012, § 92 where an illegal immigrant was raped by a coastal guard responsible for supervising him);
- the applicants were deprived of sleep, subjected to "Palestinian hanging" and "falaka", sprayed with water, beaten for several days while in custody in order to extract a confession (*Batı and Others v. Turkey*, 2004, § 110 and §§ 122-124);
- the applicant, a detainee who was on hunger strike, was forced fed, despite the absence of medical necessity and with the use of handcuffs, a mouth-widener, a special rubber tube inserted into the food channel and, in the event of resistance, with the use of force (*Nevmerzhitsky v. Ukraine*, 2005, § 98);
- the applicant was subjected to combined and premeditated measures involving handcuffing, hooding, forcibly undressing, forcibly administrating a suppository while held on the ground without any medical necessity, in the framework of "extraordinary rendering", geared to obtaining information from the applicant or punishing or intimidating him (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 205);
- severe beatings by police officers resulting in the death of the applicants' relative (*Satybalova and Others v. Russia*, 2020, § 76; see also *Lutsenko and Verbytskyy v. Ukraine*, 2021, §§ 79-80 where Mr Verbyskyy was beaten to death by non-State agents hired by police in the context of the Maidan protests);
- the applicant was subjected to physical violence, including with PVC pipes as well as psychological abuse such as threat of rape and sexual violence, while held incommunicado at the basement of Chechen police headquarters on account of his homosexuality (*Lapunov v. Russia*, 2023, §§ 107-110).

14. The Court has held that, a particular type of conduct, such as rape of a detainee by an official of the State, must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim. Moreover, rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence. The victim also experiences the acute physical pain of forced penetration, which leaves her feeling debased and violated both physically and emotionally (*Maslova and Nalbandov v. Russia*, 2008, § 105).

15. The Court has not ruled out that a threat of torture can also amount to torture, as the nature of torture covers both physical pain and mental suffering. In particular, the fear of physical torture itself may in certain circumstances constitute mental torture. However, it has underlined that the classification of whether a given threat of physical torture amounted to psychological torture or to inhuman or degrading treatment depended upon all the circumstances of a given case, including, notably, the severity of the pressure exerted and the intensity of the mental suffering caused (*Gäfgen v. Germany* [GC], 2010, § 108).

16. In *Tunikova and Others v. Russia*, 2021, the applicants asked the Court to rule that ill-treatment perpetrated by non-State actors also constituted "torture". While the Court acknowledged that such an additional characterisation would be important for the applicants and would be capable of influencing the public perception of domestic violence, it considered that it was not necessary in the circumstances of that case, where there was no doubt that the treatment inflicted on the applicants attained the necessary threshold of severity so as to fall within the scope of Article 3 of the Convention (§ 77).

2. Inhuman treatment or punishment

17. The distinction between torture, inhuman treatment or punishment and degrading treatment or punishment derives principally from a difference in the intensity of the suffering inflicted (*Ireland v. the United Kingdom*, 1978, § 167). The Court has considered treatment or punishment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (*Labita v. Italy* [GC], 2000, § 120 and *Kudła v. Poland* [GC], 2000, § 92).

18. For instance, treatment or punishment was held to be "inhuman" when:

- the applicant was threatened with torture while in police custody (*Gäfgen v. Germany* [GC], 2010, §§ 91 and 101-108; see *Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, §§ 137 and 144 where the applicant was subjected to the fear of being executed by foreign authorities and *Al Nashiri v. Romania*, 2018, § 675 where the applicant, previously ill-treated, was subjected to harsh detention conditions in complete isolation with the prospect of being subjected to torture; see also *Al-Hawsawi v. Lithuania*, §§ 213-214, 2024);
- the applicants' homes and property were intentionally destroyed by security forces, depriving the applicants of their livelihoods and forcing them to leave their village (*Selçuk and Asker v. Turkey*, 1998, § 77; *Hasan İlhan v. Turkey*, 2004, § 108);
- the applicant suffered uncertainty and apprehension over a prolonged and continuing period due to the disappearance of his relative (*Orhan v. Turkey*, 2002, § 360; see also *Musayev and Others v. Russia*, 2007, § 169 where the applicant witnessed the extrajudicial execution of several of his relatives and neighbours as well as the authorities' inadequate and inefficient response after the events);
- The applicant, a conscript suffering from health problems, was subjected to excessive level of physical exercise imposed as punishment (*Chember v. Russia*, 2008, § 57).
- The applicant was serving his life sentence for a long time in poor conditions and under a very restrictive regime (*Simeonovi v. Bulgaria* [GC], 2017, § 90).

3. Degrading treatment or punishment

19. Treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others. Furthermore, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (*Gäfgen v. Germany* [GC], 2010, § 89; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 425; *M.S.S. v. Belgium and Greece* [GC], 2011, § 220).

20. For a punishment to be "degrading" and in breach of Article 3, the humiliation or debasement involved must attain a particular level. The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution (*Tyrer v. the United Kingdom*, 1978, § 30). A punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control and it is never permissible to have recourse to punishments which are contrary to Article 3, whatever their deterrent effect may be (*Tyrer v. the United Kingdom*, 1978, § 31).

21. In this regard, the Court has emphasized that there is a particularly strong link between the concepts of "degrading" treatment or punishment within the meaning of Article 3 of the Convention and respect for "dignity" (*Bouyid v. Belgium* [GC], 2015, § 90).

22. For instance, treatment or punishment was held to be "degrading" when:

- a severely disabled person was detained in inappropriate conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty (*Price v. the United Kingdom*, 2001, § 30; see also *Vincent v. France*, 2006, §§ 101-103 where the applicant, paraplegic, could not leave his cell nor move about the prison independently);
- the applicants hair was forcefully shaved by the prison administration, without any justification or legal basis (*Yankov v. Bulgaria*, 2003, §§ 120-121; see also *Slyusarev v. Russia*, 2010, § 44 where the applicant's glasses were confiscated after his arrest for five months, without justification and legal basis);
- an unaccompanied foreign minor had to live in precarious conditions in a shantytown due to the authorities' failure to execute a judicial placement order (*Khan v. France*, 2019, §§ 94-95);
- use of force on the applicants when searching their home was not strictly necessary (*Ilievi and Ganchevi v. Bulgaria,* 2021, §§ 56-57);
- judicial corporal punishment was inflicted on the applicant (*Tyrer v. United Kingdom*, 1978, § 35).
- the authorities failed to ensure that a twelve-year old child, who witnessed the arrest of his parents, was looked after by an adult, and was informed about the situation while his parents were held in police custody (*Ioan Pop and Others v. Romania*, 2016, § 65).
- the applicant was detained for a lengthy time in a severely overcrowded and unsanitary environment in prison (*Kalashnikov v. Russia*, 2002, § 102);
- the applicant was subjected to a strip search in an inappropriate manner, such as the making of humiliating remarks (*Iwańczuk v. Poland,* 2001, § 59; see also *Valašinas v. Lithuania,* 2001, § 117 where the applicant was stripped naked in front of a female prison officer and prison guards examined his sexual organs as well as the food he had received without gloves);
- the detention of an asylum-seeker for three months on police premises pending the application of an administrative measure, with no access to any recreational activities and without proper meals (*Tabesh v. Greece*, 2009, §§ 38-44, see also *Z.A. and Others v. Russia* [GC], 2019, § 195 where, pending their request for asylum, the applicants were confined in inadequate conditions not fit for a lengthy stay in an airport transit zone as well as *N.H. and Others v. France*, 2020, § 184 where asylum seekers were destitute and lived rough for several months due to administrative delays preventing them from receiving the support for which the law provided);
- twenty-seven LGBTI activists were subject to vicious verbal abuse and random physical attacks by a mob of counter demonstrators and the promised police protection was not provided in due time or adequately (*Women's Initiatives Supporting Group and Others v. Georgia*, 2021 § 60; see also *Oganezova v. Armenia*, 2022, § 97 where, following a televised interview, the applicant – a well-known member of the LGBTI community – was the target of a sustained and aggressive homophobic campaign, including an arson attack on her club, as well as receiving death threats and subjected to physical mobbing and hate speech);
- as a result of the procrastination of the health professionals in providing access to genetic tests, the applicant, who was pregnant, had had to endure six weeks of painful uncertainty concerning the health of her foetus and, when she eventually obtained the results of the tests, it was already too late for her to make an informed decision on whether to continue the pregnancy or to have recourse to a legal abortion (*R.R. v. Poland*, 2011, § 159).
- the applicant was handcuffed during a bus journey lasting around 20 hours in the context of forced deportation (*Akkad v. Türkiye*, 2022, § 115).

- prisoners were segregated, humiliated, and abused by fellow inmates on account of their inferior status ("outcasts") in an informal prisoner hierarchy. The stigmatisation, assignment to menial labour and denial of basic needs, enforced by threats of violence and also occasional physical and sexual violence, had lasted for years (*S.P. and Others v. Russia*, 2023, §§ 92-96; see also *D v. Latvia*, § 49, 2024).

E. Relationship between Articles 2 and 8 of the Convention

23. There are certain situations where the treatment complained of by the applicant can fall within the ambit of two or more articles of the Convention. In such cases, depending on the circumstances, the Court may examine the complaint separately under each provision (see, for example, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006; and *D.P. and J.C. v. the United Kingdom*, 2002) or in conjunction (see, for example, *M.C. v. Bulgaria*, 2003). It may also consider it unnecessary to examine the same complaint under Article 8, if it finds a violation of Article 2 or 3 of the Convention (see, for example, *Öneryıldız v. Turkey* [GC], 2004; and *Z and Others v. the United Kingdom* [GC], 2001).

24. In principle when a person is assaulted or ill-treated by State agents, their complaints will fall to be examined under Article 3 of the Convention (*Makaratzis v. Greece* [GC], 2004, § 51; *İlhan v. Turkey* [GC], 2000, § 76). However, in exceptional circumstances, depending on considerations such as the degree and type of force used and the nature of the injuries, use of force by State agents which does not result in death may disclose a violation of Article 2 of the Convention, if the behaviour of the State agents, by its very nature, puts the applicant's life at serious risk even though the latter survives (*Makaratzis v. Greece* [GC], 2004, § 55; *Soare and Others v. Romania*, 2011, §§ 108-109; and *Trévalec v. Belgium*, 2011, §§ 55-61).

25. In cases concerning applicants who survived a potentially lethal attack by non-State actors, the Court has adopted a similar approach to the one taken in respect of cases concerning use of force by State agents (*Yotova v. Bulgaria*, 2012, § 69).

26. Moreover, where a treatment falls short of treatment proscribed by Article 3, it may, however, fall foul of Article 8 which, *inter alia*, protects physical and moral integrity, aspects of the right to respect for private life (*Wainwright v. the United Kingdom*, 2006, § 43).

27. The Court has, for example, found that treatment, which had failed to reach the minimum level of severity under Article 3, breached Article 8 when:

- military personnel were investigated and discharged because of their sexual orientation (*Smith and Grady v. the United Kingdom*, 1999, §§ 117-123);
- a waste-treatment plant close to the applicant's home caused a nuisance (*López Ostra v. Spain*, 1994, §§ 58-60);
- there was a lack of courtesy by prison officers when strip searching visitors in prison, but no verbal abuse or physical contact (*Wainwright v. the United Kingdom*, 2006, §§ 44-49);
- the applicant was attacked by a pack of stray dogs due to the failure of the authorities to implement adequate measures against stray dogs (*Georgel and Georgeta Stoicescu v. Romania*, 2011, § 45).

II. The prohibition of torture, inhuman or degrading treatment or punishment, inflicted or facilitated by State agents

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Preliminary remarks

28. A Contracting State will be responsible under the Convention for violations of human rights caused by acts of its agents carried out in the performance of their duties. The Court has held that where the behaviour of a State agent is unlawful, the question of whether the impugned acts can be imputed to the State requires an assessment of the totality of the circumstances and consideration of the nature and circumstances of the conduct in question. Moreover, whether a person is an agent of the State for the purposes of the Convention is defined on the basis of a multitude of factors, none of which is determinative on its own. The key criteria used to determine whether the State is responsible for the acts of a person, whether formally a public official or not, are as follows: manner of appointment, supervision and accountability, objectives, powers and functions of the person in question (*V.K. v. Russia*, 2017, § 174).

29. Linked to the above, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of others within its jurisdiction may engage that State's responsibility under the Convention (*Chernega and Others v. Ukraine*, 2019, § 127).

B. Assessment of evidence

30. In cases of alleged violations of Article 3 of the Convention, it must, in its assessment of the evidence, apply a particularly thorough scrutiny. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a rule, it is for these courts to assess the evidence before them. While in Article 3 cases the Court is prepared to be more critical of the conclusions of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (*Cestaro v. Italy*, 2015, § 164 and the cases cited therein).

31. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. The specificity of its task under Article 19 of the Convention - to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention - conditions its approach to issues of evidence and proof (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 151).

1. Standard of proof

32. Allegations of treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Salman v. Turkey* [GC], 2000, § 100; *Bouyid v. Belgium* [GC], 2015, § 82).

2. Burden of proof

33. The level of persuasion necessary for reaching a particular conclusion, and in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 151).

34. The Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) (*Blokhin v. Russia* [GC], 2016, § 140). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (*Salman v. Turkey* [GC], 2000, § 100). In the absence of such an explanation, the Court can draw inference which may be unfavourable for the Government (*Bouyid v. Belgium* [GC], 2015, § 83; see, for example, *Lapunov v. Russia*, 2023, §§ 103-106).

35. The aforementioned principle applies to all cases in which a person is under the control of the police or a similar authority (*Bouyid v. Belgium* [GC], 2015, § 84).

C. Use of force by State agents

1. General considerations

36. As mentioned above where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. In this regard, the Court has emphasised that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the severity threshold has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason, any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question (*Bouyid v. Belgium* [GC], 2015, §§ 100-101).

37. The Court has further underlined that Article 3 does not prohibit the use of force by State agents, in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive (*Necdet Bulut v. Turkey*, 2007, § 23; *Shmorgunov and Others v. Ukraine*, 2021, § 359). In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence (*Mafalani v. Croatia*, 2015, § 120 and the cases cited therein).

38. For example, the Court found that the methods employed by the police, including using batons to control the applicant during an identity check, to be disproportionate given that the applicant was not armed and had remained largely passive before being pinned to the ground even if he bit one of the police officers (*Dembele v. Switzerland*, 2013, § 47; see also *A.P. v. Slovakia*, 2020, § 62 where the applicant spat on the officers and attempted to punch them).

39. By contrast, the Court found that the force used on the applicants – bodybuilders – who had resisted and assaulted police officers in the course of an arrest to be necessary by their own conduct (*Berliński v. Poland*, 2002, § 62, see also *Barta v. Hungary*, 2007,§ 72, where the applicant sustained injuries in the course of an arrest where she obstructed the police officer and *P.M. and F.F. v. France*,

2021, § 88 where the applicants, who were in a state of inebriation, sustained injuries during their arrest for the offence of damaging private property).

40. Moreover, in the context of a police operation pursuing legitimate aims, such as carrying out an arrest, a search and a seizure of items as well as the public-interest objective of prosecuting criminal offences, the Court has previously found that the possible presence of family members, particularly, children, whose young age makes them psychologically vulnerable, at the scene of an arrest is a factor to be taken into consideration in planning and carrying out that operation (*Gutsanovi v. Bulgaria*, 2013, § 132). In *Gutsanovi v. Bulgaria*, 2013, the Court found that the fact that the police operation had taken place in the early hours of the morning and had involved special agents wearing masks had served to heighten the feelings of fear and anxiety experienced by the children who had witnessed their father's arrest, to the extent that the treatment to which they had been subjected exceeded the threshold of severity required (§ 134; see also *A v. Russia*, 2019, § 67, where a nine-year old child witnessed the violent arrest of her father who put up no resistance and by contrast *Ilievi and Ganchevi v. Bulgaria*, 2021, § 60 where all the family members who witnessed the arrest of their relatives in their house were adults).

41. For the use of force in the specific context of detention, see the *Case-Law Guide on Prisoners' Rights* and in the specific context of public assemblies and demonstrations, see *Case-Law Guide on Mass Protests*.

2. Use of specific instruments or measures of restraint

42. The use of instruments of restraint, such as handcuffing, does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances (*Shlykov and Others v. Russia*, 2021, § 72). The Court attaches particular importance to the circumstances of each case and examines whether the use of restraints was necessary (*Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020, § 72). In this regard, it is of importance, for instance, whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 117 and the cases cited therein).

43. In particular, the Court has held that the use of handcuffs could be warranted on specific occasions, such as for transfers outside prison; when used for short periods of time or when it constitutes an individual and periodically reviewable measure in respect of the applicant which related to a personal risk assessment based on his/her behaviour (*Shlykov and Others v. Russia*, 2021, § 73). When assessing the level of severity in this context, the Court assesses a variety of factors, such as: the gravity of the applicant's sentence; his criminal record and his history of violence; compliance of the measure with domestic law; proportionality of the measure vis-à-vis the individual's conduct; the lawfulness of the detention; public nature of the treatment; consequences for health; the applicant's state of health; other security arrangements applied; and the period of time the handcuffs were applied (*Shlykov and Others v. Russia*, 2021, § 73 and the cases referred therein).

44. Concerning the use of *pepper spray* in law enforcement, the Court has endorsed the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). According to the CPT, pepper spray is a potentially dangerous substance and should not be used in confined spaces: if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place (*Tali v. Estonia,* 2014, § 78; see also *El-Asmar v. Denmark*, 2023, §§ 78-79). In particular, it should never be deployed against a person who has already been brought under control (*İzci v. Turkey*, 2013, §§ 40-41 and *Ali Güneş v. Turkey*, 2012, §§ 39-40).

45. Similarly, the Court has also referred to the strong reservations of the CPT regarding the use of electroshock weapons, particularly, when applied in contact mode, as it causes intense pain and

temporary incapacitation. In this regard, it has emphasised that properly trained law enforcement officers have many other control techniques available to them when they are in touching distance of a person who has to be brought under their control (*Anzhelo Georgiev and Others v. Bulgaria*, 2014 §§ 75-76).

46. As regards holding a person in a metal cage during a trial – the Court has found such a measure, having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – to constitute in itself an affront to human dignity in breach of Article 3 of the Convention (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 138; see also *Karachentsev v. Russia*, 2018, § 53 where the applicant participated in his trial *via* video link in a metal cage inside the prison). By contrast, the placement of defendants behind glass partitions or in glass cabins does not in itself involve an element of humiliation sufficient to reach the minimum level of severity. This level may be attained, however, if the circumstances of their confinement in glass partitions or in glass cabins, taken as a whole, would cause them distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (*Yaroslav Belousov v. Russia*, 2016, § 125).

47. For the use of such techniques and others in the specific context of detention, see the *Case-Law Guide on Prisoners' Rights*.

D. Strip or intimate body search

48. A strip or intimate body search carried out during arrest will be compatible with Article 3 provided that it is conducted in an appropriate manner with due respect for human dignity and for a legitimate purpose (*Wieser v. Austria*, 2007, § 39; see also *Roth v. Germany*, 2020, § 65 in the context of detention and the *Case-Law Guide on Prisoners' Rights*).

E. Military service

49. Mandatory military service often involves elements of suffering and humiliation, as do measures depriving a person of his liberty. However, many acts that would constitute degrading or inhuman treatment in respect of prisoners may not reach the threshold of ill-treatment when they occur in the armed forces, provided that they contribute to the specific mission of the armed forces in that they form part of, for example, training for battlefield conditions (*Chember v. Russia,* 2008, § 49).

50. Nevertheless, the State has a duty to ensure that a person performs military service in conditions which are compatible with respect for his human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are adequately secured by, among other things, providing him with the medical assistance he requires (*Chember v. Russia,* 2008, § 50).

51. Even though challenging physical exercise may be part and parcel of military discipline, the Court has stressed that, to remain compatible with Article 3 of the Convention, it should not go beyond the level above which it would put in danger the health and well-being of conscripts or undermine their human dignity (*Chember v. Russia,* 2008, § 51).

52. The Court has, for example, found a violation of Article 3 in respect of a man with knee problems who was ordered to do 350 knee bends as punishment for insufficiently thorough cleaning of the barracks (*Chember v. Russia,* 2008, §§ 52-57). Likewise, Article 3 was also violated in *Taştan v. Turkey*, 2008, when a man of 71 years of age was called up to do military service and was made to take part in training tailored for much younger recruits (§ 31). The Court also considered Article 3 was breached in *Lyalyakin v. Russia,* 2015, where a military conscript who had tried to escape was required to stand in front of the battalion wearing only his military briefs (§§ 72-79).

F. Conditions of detention

53. For detention specifically to fall under Article 3 of the Convention, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with the deprivation of liberty itself. That said, the authorities must ensure that a person is detained in conditions compatible with respect for human dignity, that the manner and method of execution of a custodial sentence or other type of detention measure do not subject the person concerned to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, this person's health and well-being are adequately secured (*Neshkov and Others v. Bulgaria*, 2015, § 227 and *Muršić v. Croatia* [GC], 2016, § 99).

54. When assessing conditions of detention, account must be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered (*Ananyev and Others v. Russia*, 2012, § 142; *Idalov v. Russia* [GC], 2012, § 94 and *Muršić v. Croatia* [GC], 2016, § 101).

55. More detailed information can be found in the *Case-Law Guide on Prisoners' Rights*.

G. Medical treatment in detention

56. Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (*Blokhin v. Russia* [GC], 2016, § 136 and *Mozer v. Moldova and Russia* [GC], § 178).

57. In this regard, the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit (*Rooman v. Belgium* [GC], 2019, §§ 147-148).

58. More detailed information can be found in the *Case-Law Guide on Prisoners' Rights*.

H. The suffering of a victim's relatives

1. Preliminary remarks

59. The Court has always been sensitive in its case-law to the profound psychological impact of a serious human rights violation on the victim's family members who are applicants before the Court. However, in order for a separate violation of Article 3 of the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitable stemming from the aforementioned violation itself (*Janowiec and Others v. Russia* [GC], 2013, § 177). The case-law under this head has been developed mainly in respect of the relatives of disappeared persons. However, the Court has also

exceptionally applied the principles laid down in these disappearance cases outside of the disappearance context (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 227).

2. Relatives of disappeared persons

60. The phenomenon of disappearances imposes a particular burden on the relatives of missing persons, who are kept in ignorance of the fate of their loved ones and suffer the anguish of uncertainty. Thus, the Court's case-law recognised from early on that the situation of the relatives may disclose inhuman and degrading treatment contrary to Article 3. The essence of the violation is not that there has been a serious human rights violation concerning the missing person; it lies in the authorities' reactions and attitudes to the situation when it has been brought to their attention (*Varnava and Others v. Turkey* [GC], 2009, § 200).

61. Other relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, and the involvement of the family member in the attempts to obtain information about the disappeared person. The finding of such a violation is not limited to cases where the respondent State has been held responsible for the disappearance but can arise where the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person (*Varnava and Others v. Turkey* [GC], 2009, § 200; *Janowiec and Others v. Russia* [GC], 2013, § 178).

62. For example, in the case of *Orhan v. Turkey*, 2002, the applicant complained that the disappearance of his eldest son and two brothers caused him suffering in breach of Article 3. The Court noted that the applicant had been present and had witnessed his son and brothers leaving the village with soldiers and that they had disappeared almost eight years previously. It further observed that the applicant bore the weight of the pursuit of the numerous enquiries and petitions and that he never received information or explanation from the authorities nor was he informed of the outcome of the investigations pursued. It further noted that the applicant had just lost the security of his home and village. All these factors led the Court to find that the uncertainty and apprehension suffered by the applicant over a prolonged and continuing period had caused him severe mental distress and anguish constituting inhuman treatment contrary to Article 3 (§§ 359-360; see also *Imakayeva v. Russia*, 2006, § 165 where the Court also emphasized that authorities' had unjustifiably denied the applicant access to the documents of the criminal investigation files, which could shed light on the fate of her disappeared relatives, either directly or through the proceedings in the European Court of Human Rights; and *Enzile Özdemir v. Turkey*, 2008, §§ 64-65 where the Court also highlighted the existence of an official stamp confirming the applicant's husband's detention, thus reassuring the applicant of the whereabouts of her disappeared husband, which was later disowned by the authorities without any explanation).

63. By contrast, the Court did not find a violation of Article 3 in respect of the applicant whose husband had disappeared in life-threatening circumstances because she had neither witnessed the alleged events leading to his disappearance nor had demonstrated her involvement in the ongoing investigations (*Nesibe Haran v. Turkey*, 2005, §§ 83-84; see also *Kagirov v. Russia*, 2015, § 113 where the Court was not persuaded that the conduct of the investigating authorities, while negligent, reached the required level of severity under Article 3 of the Convention).

3. Confirmed deaths

64. A more restrictive approach is taken by the Court in situations where the person is taken into custody but later found dead, following a relatively short period of uncertainty as to his fate. In a series of Chechen cases in which the applicants had not witnessed the killing of their relatives but had found out about their deaths only on discovery of their bodies, the Court considered that no separate finding

of a violation of Article 3 was necessary, given that it had already found a violation of Article 2 of the Convention in its substantive and procedural aspects. Furthermore, in cases concerning persons who were killed by the authorities in violation of Article 2, the Court has held that the application of Article 3 is usually not extended to the relatives on account of the instantaneous nature of the incident causing the death in question. A separate finding of a violation of Article 3 was found only in situations of confirmed death where the applicants were direct witnesses to the suffering of their family members (*Janowiec and Others v. Russia* [GC], 2013, §§ 179-181 and the cases cited therein).

4. Treatment of dead bodies

65. The Court has held that the human quality is extinguished on death and, therefore, the prohibition on ill-treatment is no longer applicable to corpses (*Akpınar and Altun v. Turkey*, 2007, § 82). However, the treatment of dead bodies has given rise to a violation of Article 3 with respect to the deceased's relatives (§§ 84-87).

66. In *Khadzhialiyev and Others v. Russia*, 2008, the Court found a violation of Article 3 where the applicants were unable to bury the dismembered and decapitated bodies of their children in a proper manner, since only parts of the remains had been found (§ 121). In *Akkum v. Turkey* ,2005, Article 3 was violated in respect to a father who was presented with the mutilated body of his son (§ 259). In *Elberte v. Latvia*, 2015, the Court found a violation of Article 3 on account of the removal of tissue from the applicant's deceased husband without her prior consent or knowledge and contrary to domestic law (§ 143).

67. No violation arose in *Cangöz and Others v. Turkey*, 2016, where bodies of the applicants' relatives, who had been killed by soldiers, had been brought to a Military base. There they were placed outdoors in a place where they could be seen by soldiers at the base, stripped of their clothes and examined by the prosecutor and two doctors. The Court held that, regardless of whether the applicants had seen the bodies in person, their knowledge of the conditions in which the bodies of their relatives were examined had resulted in mental suffering. However, having particular regard to the purpose of the treatment (to carry out examinations on the bodies), the circumstances had not given the applicants' suffering a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to any family member of a deceased person in a comparable situation (*Cangöz and Others v. Turkey*, 2016, §§ 157-168).

5. Other

68. The case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006 concerned the detention and deportation of an unaccompanied minor asylum seeker. The Court, having regard to the conduct of the national authorities, found that the first applicant – mother of the detained child of five years of age - had suffered deep distress and anxiety as a result of her daughter's detention. In view of the circumstances of the case, the Court concluded that the level of severity required for a violation of Article 3 had been attained (§§ 55-59). By contrast, the Court found that the anxiety felt by the mother of an eight-year-old child, who spent a day at the police station in the course of an investigation against the mother without being reported to the child welfare authorities, failed to reach the requisite minimum level of severity (*Tarak and Depe v. Turkey*, 2019, § 79).

69. In a case where the applicant's son died in prison from AIDS due to inadequate medical care, the Court, taking into account a number of factors, including the many attempts by the applicant to draw attention to her son's situation and the cynical, indifferent and cruel attitude towards her appeals demonstrated by the authorities, both before her son's death and during the subsequent investigation, found that she had been a victim of inhuman treatment (*Salakhov and Islyamova v. Ukraine*, 2013, § 204).

70. In the context of an investigation into allegations of sexual abuse, the Court considered that the applicant -father of the alleged victim - had failed to show any examples of inappropriate reactions or attitudes on the part of the authorities vis-à-vis him and therefore dismissed this part of the application *(M.P. and Others v. Bulgaria*, 2011, §§ 123-125).

I. Conviction and sentencing

1. Age of criminal responsibility

71. In *V. v. the United Kingdom*, 1999*,* and *T. v. The United Kingdom,* 1999, the Court considered whether the attribution to the applicants of criminal responsibility in respect of acts committed when they were ten years of age could give rise to a violation of Article 3 of the Convention. It found that there was not, at that stage, any clear common standard amongst the member States of the Council of Europe as to the minimum age of criminal responsibility. Even if England and Wales were among the few European jurisdictions to retain a low age of criminal responsibility, the age of ten could not be said to be so young as to differ disproportionately from the age-limit followed by other European States. The Court therefore concluded that the attribution of criminal responsibility to the applicants did not, in itself, give rise to a breach of Article 3 of the Convention (*V. v. the United Kingdom* [GC]*,* 1999, §§ 72-74; *T. v. The United Kingdom* [GC], 1999, §§ 70-72).

2. Grossly disproportionate sentences

72. The Court accepts that while, in principle, matters of appropriate sentencing largely fall outside the scope of Convention, a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 at the moment of its imposition. However, the Court has emphasized that "gross disproportionality" is a strict test and it will only be on rare and unique occasions that the test will be met (*Babar Ahmad and Others v. the United Kingdom*, 2012, § 237; *Harkins and Edwards v. the United Kingdom,* 2012, § 133).

73. For example, the Court did not accept that an applicant's extradition would give rise to a real risk of treatment contrary to Article 3 of the Convention in a case where the evidence suggested that the applicant could be sentenced to anything up to thirty-five years' imprisonment if extradited to the United States, but there was no minimum sentencing requirement. Having regard the nature of the alleged offences, which included terrorism offences, and the high threshold required to demonstrate that a sentence would be grossly disproportionate, the Court did not accept that the applicant's extradition would give rise to a real risk of treatment contrary to Article 3 of the Convention as a result of the length of any sentence imposed (*Aswat v. UK*, 2013, § 58).

74. In a case where the applicants complained of the continued enforcement, in the United Kingdom pursuant to a prisoner transfer agreement, of a lengthy sentence imposed by Thai courts, the Court underlined that, when examining whether a sentence violates Article 3 in the context of the continued enforcement of a sentence under a prisoner-transfer agreement, the focus must be on whether any suffering or humiliation involved go beyond that inevitable element of suffering and humiliation connected to the enforcement of the sentence of imprisonment imposed by the foreign court. In assessing the degree of suffering and humiliation, it is necessary to make allowance for the varying sentencing practices adopted by the States and the legitimate and reasonable differences between States as to the appropriate length of sentences. The Court must also consider the fact that the transfer has occurred within the framework of international cooperation in the administration of justice, which is in principle in the interests of the persons concerned. Thus, where a measure of international cooperation is directed at promoting and protecting the fundamental rights of those subject to criminal sanctions abroad, the benefit enjoyed by the applicant as a result of the execution of that measure is an important factor in favour of finding that the manner and method of the execution of the sentence do not subject the applicant to distress or hardship exceeding the

unavoidable level of suffering inherent in detention (*Willcox and Hurford v. the United Kingdom*, 2013, § 76).

3. The death penalty

75. In *Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, the Court noted that all but two of the member States had signed Protocol No. 13 concerning the abolition of the death penalty in all circumstances and all but three of the States which had signed it had ratified it. These figures, together with consistent State practice in observing the moratorium on capital punishment, were found to be strongly indicative that Article 2 had been amended to prohibit the death penalty in all circumstances.[1] Against this background, the Court did not consider, as it had previously held in *Soering v. the United Kingdom*, 1989, §§ 102-104, that the wording of the second sentence of Article 2 § 1 continued to act as a bar to its interpreting the words "inhuman or degrading treatment or punishment" in Article 3 as including the death penalty (*Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, § 120). Capital punishment has therefore become an unacceptable form of punishment that is no longer permissible under Article 2 as amended by Protocols Nos. 6 and 13 and which amounts to "inhuman or degrading treatment or punishment" under Article 3 (*A.L. (X.W.) v. Russia*, 2015, § 64).

76. Article 3 of the Convention prohibit the extradition, deportation or other transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, §§ 123 and 140-143; *A.L. (X.W.) v. Russia*, 2015, §§ 63-66; *Shamayev and Others v. Georgia and Russia*, 2005, § 333).

77. More detailed information can be found in the *Case-Law Guide on Immigration*.

4. Life imprisonment

78. The Convention does not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. However, to be compatible with Article 3, such a sentence must be reducible *de jure* and *de facto*, meaning that there must be both a prospect of release for the prisoner and a possibility of review. The basis of such review must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the prisoner. These grounds include punishment, deterrence, public protection and rehabilitation. The balance between them is not necessarily static and may shift in the course of a sentence, so that the primary justification for detention at the outset may not be so after a lengthy period of service of sentence. The importance of the ground of rehabilitation, that is, the reintegration into society of a convicted person, is underlined, since it is here that the emphasis of European penal policy now lies, as reflected in the practice of the Contracting States, in the relevant standards adopted by the Council of Europe, and in the relevant international materials (*Murray v. the Netherlands* [GC], 2016, § 102; and *Hutchinson v. the United Kingdom* [GC], 2017, § 42).

79. A life sentence does not become irreducible by the mere fact that in practice it may be served in full (*Murray v. The Netherlands* [GC], 2016 § 99, with further references). However, respect for human dignity requires prison authorities to strive towards a life sentenced prisoner's rehabilitation (*Murray v. the Netherlands* [GC], 2016, § 104). It follows that the requisite review must take account of the progress that the prisoner has made towards rehabilitation, assessing whether such progress has been so significant that continued detention can no longer be justified on legitimate penological grounds. A review limited to compassionate grounds is therefore insufficient (*Hutchinson v. the United Kingdom* [GC], 2017, § 43).

[1] The Russian Federation ceased to be a member of the Council of Europe on 16 March 2022 and ceased to be a party to the Convention on 16 September 2022. At the date of the latest update to this Guide, Protocol No. 13 has been signed by all member States of the Council of Europe and ratified by all but one (Azerbaijan).

80. The criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty, and also reflect the relevant case-law of the Court. This means that prisoners who receive a whole life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. This includes when a review of sentence will take place or may be sought (*Vinter and Others*, 2013, § 122). In this respect the Court has noted clear support in the relevant comparative and international materials for a review taking place no later than twenty-five years after the imposition of sentence, with periodic reviews thereafter (*ibid.*, §§ 68, 118, 119 and 120). It has however also indicated that this is an issue coming within the margin of appreciation that must be accorded to Contracting States in the matters of criminal justice and sentencing (*ibid.*, §§ 104, 105 and 120).

81. As for the nature of the review, the Court has emphasised that it is not its task to prescribe whether it should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States (*Vinter and Others*, 2013, § 120). It is therefore for each State to determine whether the review of sentence is conducted by the executive or the judiciary (*Hutchinson v. the United Kingdom* [GC], 2017, § 44).

82. The continued detention of a prisoner owing to the practical impossibility of a transfer, in circumstances where his detention was no longer considered necessary by the domestic authorities, amounted to a *de facto* irreducible life sentence due to the lack of a realistic prospect of release (*Horion v. Belgium*, 2023, § 75).

83. In the extradition context, the Convention compliance of a life sentence imposed in a third country is not assessed by reference to all of the standards which apply to life prisoners in the Contracting States. Accordingly, the procedural safeguards set out in *Vinter and Others v. the United Kingdom* [GC], which concern the domestic context, are not applicable in the extradition one. The Court applies rather an adapted approach comprising two stages: at the first stage, it must be established whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited and in the event of his conviction, there is a real risk that a sentence of life imprisonment without parole would be imposed on him. If so, at the second stage, it must be ascertained whether, as from the moment of sentencing, there is a review mechanism in place allowing the authorities of the third country to consider the prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances (*Sanchez-Sanchez v. the United Kingdom*, §§ 83-97).

84. More detailed information can be found in the *Case-Law Guide on Prisoners' Rights* and the *Case-Law Guide on Immigration*.

J. Extradition and expulsion

85. The Court has underlined that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Khasanov and Rakhmanov v. Russia* [GC], 2022, § 93). A right to political asylum is not contained in either the Convention or its Protocols. However, deportation, extradition, or any other measure to remove an alien may give rise to an issue under Article 3 and hence engage the responsibility of the Contracting State under the Convention, where substantial grounds have been shown for believing that the person in question, if removed, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to remove the individual to that country (*Ilias and Ahmed v. Hungary* [GC], 2019, §§ 125-126).

86. More detailed information can be found in the *Case-Law Guide on Immigration*.

K. Forced medical interventions

a. General principles

87. A measure which is a therapeutic necessity from the point of view of established principles of medicine cannot, in principle, be regarded as inhuman and degrading. The Court must, nevertheless, satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (*Jalloh v. Germany* [GC], 2006, § 69).

b. Forced feeding

88. Force-feeding that is aimed at saving the life of a detainee who consciously refuses to take food cannot in principle be regarded as inhuman and degrading. The Court must, nevertheless, satisfy itself that the medical necessity has been convincingly shown to exist and that the procedural guarantees for the decision to force-feed are complied with (*Ciorap v. Moldova*, 2007, § 77). Moreover, the manner in which the applicant is subjected to force-feeding during the hunger strike should not trespass the threshold of a minimum level of severity envisaged by the Court's case law under Article 3 of the Convention (*Nevmerzhitsky v. Ukraine,* 2005, § 94).

89. In *Herczegfalvy v. Austria*, 1992, which involved, *inter alia*, the force-feeding of a psychiatric patient who refused to take food, the Court found the treatment justified by medical necessity and that therefore it did not violate Article 3 (§§ 79-84).

90. By contrast, the Court found that the force-feeding of a prisoner on hunger strike in protest of prison conditions was not prompted by valid medical reasons but rather with the aim of forcing him to stop his protest and performed in a manner which exposed him unnecessarily to great physical pain and humiliation amounted to torture (*Ciorap v. Moldova*, 2007, § 89; see also *Nevmerzhitsky v. Ukraine,* 2005, § 98).

91. More recently, the Court considered that the State authorities had failed to manage the applicant's protest hunger strike, given the lack of medical necessity for the force-feeding which took place shortly after the start of his hunger strike and given the absence of legal regulation and deficient procedural safeguards as to implementation. In the absence of an investigation, the Court could not rule out that the aim of the force-feeding at issue was to suppress the protests in that prison (*Yakovlyev v. Ukraine*,2022, §§ 46-51).

c. Forced psychiatric treatment

92. In the case of *Gorobet v. Moldova*, 2011, the Court found no medical necessity to subject the applicant to forty-one days of confinement and forced psychiatric treatment in hospital and that such unlawful and arbitrary treatment had aroused in the applicant feelings of fear, anguish and inferiority amounting to degrading treatment (§ 52).

93. Likewise, while the initial involuntary hospitalization of the applicant (who had attempted suicide) was justified, the Court found, in the case of *Bataliny v. Russia*, 2015, that no medical necessity had been shown for his continued involuntary hospitalisation and treatment, including his confinement and participation in scientific research for a new drug (§§ 88-91).

94. In the same vein, the Court found a violation of Article 3 where an orphaned 15-year-old child, with mild intellectual disability in the State's care, was involuntarily placed in a psychiatric hospital and subjected to psychiatric treatment including with neuroleptics and tranquilizers without a proven medical necessity. In that case, it also found the material conditions of the applicant's subsequent placement in the adults' section and the use of chemical restraint, again in the absence of a therapeutic necessity, to be a breach of Article 3 (*V.I. v the Republic of Moldova*, (§§ 136-142, § 144 and §§ 147-157).

95. By contrast, in *Naoumenko v. Ukraine*, 2004, §§ 113-116, the Court did not find evidence establishing beyond any reasonable doubt that the treatment given to the applicant in prison, even if forced, was contrary to Article 3, having regard, notably, to the fact that the applicant was suffering from serious mental disorders, had twice made attempts on his life and that he had been put on medication to relieve his symptoms (see also *Dvořáček v. the Czech Republic*, 2014, § 106, where the applicant complained, *inter alia*, about the sexological treatment administered allegedly without his informed consent).

d. Involuntary sterilization and forced abortion

96. The Court has held that sterilisation constituted a major interference with a person's reproductive health status. It may be legitimately performed at the request of the person concerned, for example as a method of contraception or for therapeutic purposes where the medical necessity had been convincingly established. However, it has considered that the imposition of such medical treatment without the consent of a mentally competent adult patient is incompatible with the requirement of respect for human freedom and dignity, one of the fundamental principles on which the Convention is based (*V.C. v. Slovakia*, 2011, §§ 106- 107).

97. In *V.C. v. Slovakia*, 2011, where the applicant, a Roma, was sterilised without her informed consent immediately after she gave birth via c-section, the Court concluded that, although there was no indication that the medical staff had acted with the intention of ill-treating the applicant, they had nevertheless acted with gross disregard for her right to autonomy and choice as a patient. Such treatment was therefore in breach of Article 3 of the Convention (§§ 106-120; see also *N.B. v. Slovakia,* 2012*,* where the Court found that the sterilisation of the applicant, a minor, had not been a life-saving medical intervention and that it had been carried out without the informed consent of the applicant and/or her representative. Such a procedure was found to be incompatible with the requirement of respect for the applicant's human freedom and dignity (§§ 74-81) and by contrast *Y.P. v. Russia*, 2022, where the Court found that the sterilisation of the applicant without her consent failed to reach the requisite severity threshold, given that the sterilisation of the applicant during a Caesarean section was driven by the doctors' genuine concerns for her health and safety in an unexpected and urgent context and given the absence of any additional elements, such as, for instance, the applicant's particular vulnerability (§§ 36-38).

98. In *G.M. and Others v. the Republic of Moldova*, 2022, where the applicants – women with intellectual disabilities residing in a psychiatric asylum - were victims of rape by a doctor and subjected to non-consensual abortions and birth control, the Court noted that legal instruments and reports adopted by the United Nations and the Council of Europe indicated that forced abortion, sterilisation and birth control were forms of gender-based violence (§ 88). It found, in particular, that the legal framework at issue lacked: the safeguard of a requirement to obtain a valid, free and prior consent for medical interventions from intellectually disabled persons; adequate criminal legislation to dissuade the practice of non-consensual medical interventions carried out on intellectually disabled persons in general and women in particular; and other mechanisms to prevent such abuse of intellectually disabled persons in general and women in particular (§ 128).

99. Where an abortion was performed at a public hospital in breach of medical standards and against the will of a vulnerable young adult coerced by her parents, the Court found the treatment in question contrary to human dignity and an egregious form of inhuman and degrading treatment, given its immediate and long term physical and psychological effects on the applicant (*S.F.K. v. Russia*, 2022, § 81).

e. Removal of drugs and other evidence from a person's body

100. The Court has underlined that even where it is not motivated by reasons of medical necessity, Article 3 of the Convention does not, as such, prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence. However, any recourse to a forcible medical intervention to obtain evidence of a crime must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual's body real evidence of the very crime of which he is suspected. The particularly intrusive nature of such an act requires a strict scrutiny of all the surrounding circumstances. In this connection, due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health (*Jalloh v. Germany* [GC], 2006, §§ 70-71).

101. Moreover, as with interventions carried out for therapeutic purposes, the manner in which a person is subjected to a forcible medical procedure in order to retrieve evidence from his body must not exceed the minimum level of severity prescribed by the Court's case-law on Article 3 of the Convention. Relevant factors in this regard include: whether the person concerned experienced serious physical pain or suffering as a result of the forcible medical intervention; whether the forcible medical procedure was ordered and administered by medical doctors; whether the person concerned was placed under constant medical supervision, and whether the forcible medical intervention resulted in any aggravation of the state of health of the applicant and had lasting consequences for his or her health (*Jalloh v. Germany* [GC], 2006, §§ 72-74).

102. For example, the Court found that the applicant had been subjected to inhuman and degrading treatment in breach of Article 3 when the applicant had been forced to catheterisation at a police station in order to obtain a urine sample to determine whether he had been involved in a traffic-related offence. In this regard, it noted that the authorities had retrieved the same evidence by taking the applicant's blood sample as well and that the manner in which the measure was carried had caused the applicant both physical pain and mental suffering (*R.S. v. Hungary*, 2019, § 72; see, by contrast, *Schmidt v. Germany* (dec.), 2006 where the taking of blood and saliva samples from a suspect against his will in order to establish his participation in an offence did not attain the minimum level of severity required under Article 3).

III. The protection from torture, inhuman or degrading treatment or punishment administered by non-State actors

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The scope of the positive obligations of the State

103. While no direct responsibility can be attributed to a Contracting State under the Convention for the acts of private individuals (*Beganović v. Croatia*, 2009, § 68) or State agents acting in their private capacity (*Çevik v. Turkey*, (no.2), 2010, § 33), the Court has considered that State responsibility may, nevertheless, be engaged through the obligation imposed by Article 1 of the Convention.

104. In this regard, it held that, the obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (*Z and Others v. the United Kingdom* [GC], 2001, § 73 and *O'Keeffe v. Ireland* [GC], 2014, § 144).

105. In particular, children and other vulnerable individuals are entitled to effective protection (*X and Others v. Bulgaria* [GC], 2021, § 177 and *R.B. v. Estonia*, 2021, § 78).

106. In this regard, it has also been the Court's constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen (*Premininy v. Russia*, 2011, § 73).

107. The Court has examined the States' positive obligation to protect from ill-treatment in a number of different contexts, such as, for example:

- In the context of child abuse (see, for example, *A. v. the United Kingdom*, 1998; *Z and Others v. the United Kingdom* [GC], 2011; *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020);
- In the context of domestic violence (see, for example, *T.M. and C.M. v. the Republic of Moldova*, 2014; *Talpis v. Italy*, 2017; *Volodina v. Russia*, 2019; *Luca v. the Republic of Moldova*, 2023 and, for cyberviolence see *Buturugă v. Romania*, 2020, §§ 74, 78-79);
- In the context of sexual crimes (see, for example, *M.C. v. Bulgaria*, 2003; and regarding minors, see *I.C. v. Romania*, 2016; *M.G.C. v. Romania*, 2016);
- In the context of inter-prisoner conflicts (see, for example, *Pantea v. Romania*, 2003; *Rodić and Others v. Bosnia and Herzegovina*, 2008; and *D.F. v. Latvia*, 2013);
- In the context of demonstrations (see, for example, *Identoba and Others v. Georgia*, 2015, §§ 72-74, § 81; and *Women's Initiatives Supporting Group and Others v. Georgia*, 2021, §§ 70-78; *Romanov and Others v. Russia*, 2023, §§ 71-74);
- In the context of physical and verbal harassment of a person with disabilities (see *Đorđević v. Croatia*, 2012);
- In the context of physical and verbal harassment of a minor (see *V.K. v. Russia*, 2017) or of an elderly person (see *Irina Smirnova v. Ukraine*, 2016);
- In the context of violence inflicted on the basis of hatred (see, for example, *Škorjanec v. Croatia*, 2017; *Burlya and Others v. Ukraine,* 2018);
- In the context of hazing and bullying in the military (see, for example, *Filippovy v. Russia*, 2022).

B. The nature of the positive obligations of the State

108. The substantive positive obligations on the State under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision (*X and Others v. Bulgaria* [GC], 2021, § 178).

1. Duty to set up an appropriate legislative and regulatory framework

109. The positive obligation under Article 3 of the Convention necessitates in particular establishing a legislative and regulatory framework to shield individuals adequately from breaches of their physical

and psychological integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice (*X and Others v. Bulgaria* [GC], 2021, § 179).

110. This obligation assumes particular importance in the context of a public service with a duty to protect the health and well-being of children, especially where those children are particularly vulnerable and are under the exclusive control of the authorities. It may, in some circumstances, require the adoption of special measures and safeguards. In this regard, the Court has specified, in relation to cases of child sexual abuse, particularly where the abuser is in a position of authority over the child, that the existence of useful detection and reporting mechanisms is fundamental to the effective implementation of the relevant criminal laws (*X and Others v. Bulgaria* [GC], 2021, § 180).

111. Likewise, in the context of domestic violence, the Court has held that this obligation would usually require the domestic authorities to adopt positive measures in the sphere of criminal-law protection. Such measures would include, notably, the criminalization of acts of violence within the family by providing effective, proportionate and dissuasive sanctions (*Volodina v. Russia*, 2019, § 78). In addition, in so far as protection measures are concerned, the Court requires that the toolbox of legal and operational measures available in the domestic legal framework must give the authorities involved a range of sufficient measures to choose from, which are adequate and proportionate to the level of risk that has been assessed in the circumstances of that particular case (*Tunikova and Others v. Russia*, 2021, § 95).

2. Duty to take preventive operational measures

112. As with Article 2 of the Convention, Article 3 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of ill-treatment (*X and Others v. Bulgaria* [GC], 2021, § 181).

113. This positive obligation to protect is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources. Accordingly, not every risk of ill-treatment could entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (*O'Keeffe v. Ireland* [GC], 2014, § 144).

114. Therefore, for a positive obligation to arise it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of the third party and that they failed to take measures within the scope of their powers which judged reasonably, might have been expected to avoid that risk (*X and Others v. Bulgaria* [GC], 2021, § 183).

115. The Court observes that in this context, the assessment of the nature and level of risk constitutes an integral part of the duty to take preventive operational measures where the presence of a risk so requires. Thus, an examination of the State's compliance with this duty must comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and, where a relevant risk triggering the duty to act was or ought to have been identified, the adequacy of the preventive measures taken (*Kurt v. Austria* [GC], 2021, § 159, albeit under Article 2 of the Convention).

116. The Court has also underlined that it is not necessary to show that "but for" the State omission the ill-treatment would not have happened. A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (*O'Keeffe v. Ireland* [GC], 2014, § 149).

C. Some illustrations

117. The Court found the respondent State had failed to discharge its obligation to protect persons from ill-treatment when:

- the detention administration failed to prevent a detainee's systematic ill-treatment by fellow inmates (*Premininy v. Russia*, 2011, § 90; see also *I.E. v. the Republic of Moldova,* 2020, § 46 where a juvenile with a mental disability was placed in a cell with violent crime offenders and suffered beatings and rape);
- the domestic legal framework failed to define domestic violence as a separate offence or an aggravating element of other offences and to establish a minimum threshold of gravity of injuries required for launching public prosecution as well as the authorities failure to take any preventive operational measures to protect the applicant (*Volodina v. Russia*, 2019, § 85 and § 91; see also *M.C. v. Bulgaria*, 2003, § 166, where the Court found that the domestic regulatory framework provided insufficient protection to the victim of an alleged rape);
- the authorities failed to protect a member of a vulnerable religious minority from being systematically targeted (*Milanović v. Serbia*, 2010, § 90; see also *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 2007, §§ 100-105 and § 124 where the police failed to take sufficient action against an ongoing attack on a meeting of Jehovah's witnesses by members of the Orthodox Church, despite being alerted at a sufficiently early stage to take action promptly to end the violence and to protect the victims).
- military authorities failed to protect the applicants' son – a victim and denouncer of bullying and hazing in the army – from retaliation at the hands of fellow conscripts (*Filippovy v. Russia*, 2022, § 103).
- the State failed to protect a 14-year-old pupil with an intellectual disability from sexual abuse in her school by a teacher who was also a public official at the time of the events on two grounds: no adequate regulatory framework for the prevention, detention and reporting of the sexual abuse of minors and a failure to take appropriate measures (*A.P. v. Armenia*, 2024, § 141; see also *Z v the Czech Republic*, §§ 57-62, 2024, where the Court found a breach of Article 3 and 8 on account of the faulty approach of the authorities to interpreting the facts and the legal framework, thus failing to provide adequate protection to a vulnerable adult from sexual abuse by a priest who was also her university professor).

118. By contrast, in the case of *X and Others v. Bulgaria* [GC], 2021, § 183 which concerned allegations of sexual abuse in an orphanage, the Court considered that the manner in which the regulatory framework had been implemented did not give rise to a violation of Article 3, particular, since no systemic issue concerning the sexual abuse of young children in residential facilities had been established. It further found that, in the particular facts of the case, there was insufficient information to find that the Bulgarian authorities had known, or ought to have known, of a real and immediate risk to the applicants of being subjected to ill-treatment, such as to give rise to the above obligation to protect them against such a risk.

IV. The duty to investigate allegations of torture, inhuman or degrading treatment or punishment

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The scope of the procedural obligations

119. Where an individual raises an arguable claim that she or he has suffered treatment infringing Article 3 at the hands of State agents, 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 (*Assenov and Others v. Bulgaria*, 1998, § 102 and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 182). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, 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 (*Labita v. Italy* [GC], 2000, § 131).

120. Linked to the above, the Court has underlined that a proper response by the authorities in investigating serious allegations of ill-treatment at the hands of the police or other similar agents of the State in compliance with the Article 3 standards is essential to maintain public confidence in their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts (*Lyapin v. Russia*, 2014, § 139).

121. This procedural obligation also extends to a requirement to investigate allegations of ill-treatment administered by private individuals when they are "arguable" (*M. and Others v. Italy and Bulgaria*, 2012, § 100 and *X and Others v. Bulgaria* [GC], 2021, § 184; see also *Ghişoiu v. Romania*, (dec.), 2023, §§ 62-64where no procedural obligations were triggered in the absence of an arguable claim in the context of alleged violence towards a minor).

B. The purpose of the investigation

122. The essential purpose of an investigation is to secure the effective implementation of the domestic laws prohibiting torture and inhuman or degrading treatment or punishment in cases involving States agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility (*Bouyid v. Belgium* [GC], 2015, § 117).

C. The nature and degree of scrutiny

123. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (*X and Others v. Bulgaria* [GC], 2021, § 190).

124. For example, in cases where children may have been victims of sexual abuse, compliance with the positive obligations arising out of Article 3 requires, in the context of the domestic proceedings, the effective implementation of children's right to have their best interests as a primary consideration and to have the child's particular vulnerability and corresponding needs adequately addressed, to protect them against secondary victimisation (*B v. Russia*, 2023, § 54). In particular, the procedural obligation under Article 3 in such cases must be interpreted in the light of the obligations arising out

of the other applicable international instruments, and more specifically the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention") (*X and Others v. Bulgaria* [GC], 2021, § 192).

125. Likewise, in a case where the victim of incest (rape) received death threats from her abuser, the Court underlined that, since the authorities were aware of the victim's particular vulnerability on account of her sex, ethnic origin and past traumas, they should have reacted promptly and efficiently to her criminal complaints to protect her from the realisation of that threat as well as from intimidation, retaliation and repeat victimization (*J.I. v. Croatia*, 2023, § 97).

D. The Standards of the investigation

1. Preliminary remarks

126. In *S.M. v. Croatia,* [GC], 2020, §§ 311-320, the Court summarised its case-law on the procedural obligation under the converging principles of Articles 2, 3 and 4 of the Convention. It noted, in particular, that whereas the general scope of the State's positive obligations might differ between cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the procedural requirements are similar (*Sabalić v. Croatia*, 2021, § 96).

127. In particular, the authorities have an obligation to act as soon as an official complaint has been lodged. However, even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture, or ill-treatment might have occurred. The authorities must act of their own motion once the matter has come to their attention (*Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 2007, § 97).

128. The procedural obligation under Article 3 continues to apply in difficult security conditions, including in a context of armed conflict. Even where the events leading to the duty to investigate occur in a context of generalized violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Article 3 requires that all reasonable steps must be taken to ensure that an effective and independent investigation is conducted (*Mocanu and Others v. Romania* [GC], 2014, § 319).

129. Finally, the parameters for the assessment of compliance with the procedural requirement of Article 3, which converge with those under Article 2, is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the victim in the investigation and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (*R.R. and R.D. v. Slovakia*, 2020, § 178, see also *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 2015, § 225 with respect to Article 2).

2. Independence

130. For an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of any hierarchical or institutional connection but also practical independence (*Bouyid v. Belgium* [GC], 2015, § 118).

131. In this regard, the applicable requirements call for a concrete examination of the independence of the investigation in its entirety, rather than an abstract assessment. Moreover, they do not call for the persons and bodies responsible for the investigation to enjoy absolute independence, but rather that they be sufficiently independent of the persons and structures whose responsibility is likely to be

engaged. The adequacy of the degree of independence is thus to be assessed in the light of all the circumstances, which are necessarily specific to each case (*M.B. and Others v. Slovakia*, 2021, § 91).

132. The Court found that the investigation at issue lacked independence where:

- the investigators were military prosecutors who, like the accused (two of whom were generals), were officers in a relationship of subordination within the military hierarchy (*Mocanu and Others v. Romania* [GC], 2014, § 333);
- the prosecutor who conducted the investigation had also officially filed criminal charges against the applicant and applied for the applicant's remand in custody (*Boicenco v. Moldova*, 2006, § 124);
- the investigating 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, and then proceeded to rely on its finding that it was not possible to identify the police officers in question, without taking any further action (*Najafli v. Azerbaijan*, 2012, §§ 52-54; see also *Bursuc v. Romania*, 2004, § 104 where the evidence was taken and witnesses were heard by police officers belonging to the same force in the same town as the officers being investigated; and, in a similar context, *Lapunov v. Russia*, 2023, § 116);
- the spokesman for the Ministry of Internal Affairs, which was the employer of the investigator in charge of the investigation stated to the media three days after the beginning of the criminal inquiry and without waiting for its conclusions, that the applicant had not been ill-treated by the police and that his allegations were not true (*Emin Huseynov v. Azerbaijan*, 2015, § 74);
- the investigators conduct lacked the necessary transparency and appearance of independence, due to having failed to take any independent steps, such as interviewing the second applicant, the officers involved and the eyewitnesses or else ordering a forensic examination of the second applicant's injuries (*Đurđević v. Croatia*, 2011, §§ 89-90);
- the investigators established the circumstances of the criminal case relying solely and without any justification on the version of events provided by the police officers, including the alleged perpetrators and their colleagues who were all in some way involved in the events at stake, without even hearing the applicant or any other witnesses (*Virabyan v. Armenia*, 2012, §§ 165-167; see also *Suleymanov v. Russia*, 2013, § 144);
- when the prosecutor's office requested assistance from police who were subject to the same chain of command as the officers under investigation (*Baranin and Vukčević v. Montenegro*, 2021, § 144).

133. Conversely, the Court did not find an issue regarding the independence of the investigation in the following circumstances:

- the impugned administrative authority or its employees were not implicated in the case and there was no evidence showing that they lacked independence (*X and others v. Bulgaria* [GC], 2021, § 207);
- the investigation had notably been carried out, not only by the judiciary authorities in the context of criminal proceedings, but also by an independent administrative authority presenting all the guarantees of independence (*P.M. and F.F. v. France*, 2021, § 71);
- the investigation had been carried out by the State Attorney's Office, which was both hierarchically and institutionally independent of those targeted by the investigation and that the latter undertook all the investigative measures itself and did not rely on any findings of those who might have lacked the requisite hierarchical or institutional independence (*V.D. v. Croatia (no. 2)*, 2018, § 69).

3. Adequacy

134. In order to be "effective" an investigation must be adequate. This means that it must be capable of leading to the establishment of the facts and to a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate –punishing those responsible (*Labita v. Italy* [GC], 2000, § 131 and *Jeronovičs v. Latvia* [GC], 2016, § 103). 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 (*Cestaro v. Italy*, 2015, § 204).

135. The investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 183).

136. The Court found that the investigation at issue was inadequate where:

- the investigative authorities mostly relied on the statements of the alleged perpetrators and other police officers as well as on internal records of the police when dismissing the applicant's claims of ill-treatment in the hands of the police (*M.F. v. Hungary* (2017, § 55; see also *Archip v. Romania*, 2011, §§ 66-71 where the judicial authorities concluded without providing many details about the actual circumstances and without careful consideration of the facts and circumstances of the incident and the investigating authorities adopted a selective and somewhat inconsistent approach to the assessment of evidence (§§ 66-71);
- the relevant authorities remained passive and failed to conduct an official investigation, despite credible allegations of ill-treatment brought to their attention (*M.S. v. Croatia (no. 2)*, 2015, §§ 81-84; see also *Hovhannisyan v. Armenia*, 2018, §§ 58-59 and *Lapunov v. Russia*, 2023, § 115);
- one of the perpetrators of ill-treatment was never formally identified and charged, despite his identification by the applicant (*Barovov v. Russia*, 2021, § 39; see also *Ochigava v. Georgia*, 2023, § 59 where the authorities failed to investigate the involvement of senior prison officials in a case where seven prison officers were found guilty of systematic ill-treatment of inmates at a prison, including the applicant);
- the domestic authorities failed to identify and question police officers from the specialised unit, wearing masks with no identifying numbers or letters, which took part in the home raid where the applicant claimed to have been ill-treated (*Hristovi v. Bulgaria*, 2011, § 91);
- the relevant authorities committed procedural errors which rendered the principal body of evidence inadmissible, leading to a stalemate in the criminal proceedings (*Maslova and Nalbandov v. Russia*, 2008, §§ 92-97).

137. Conversely, having regard to the various steps undertaken by the domestic authorities, the Court did not find an issue with respect to the adequacy of the investigation in:

- *Baklanov v. Ukraine*, 2013, which concerned the alleged ill-treatment and bullying of the applicant in the course of his compulsory military service;
- *V.D. v. Croatia (no. 2)*, 2018, which concerned the fresh investigation opened by the State Attorney's Office in respect of allegations of ill-treatment for which the Court had previously found a violation of Article 3;

- *P.M. and F.F. v. France*, 2021, which concerned allegations of ill-treatment of the applicants at the hands of the police during interrogation and while in police custody.

4. Promptness and reasonable expedition

138. Article 3 requires investigations to be prompt and to proceed with reasonable expedition. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential to maintain public confidence in their adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (*Bouyid v. Belgium* [GC], 2015, § 121).

139. The Court has found that the domestic authorities have, *inter alia*, failed to investigate promptly and with reasonable expedition when:

- eight years and four months elapsed at three levels of jurisdiction in criminal proceedings concerning domestic violence against a minor (*D.M.D. v. Romania*, 2017, § 53; see also *Y. v. Slovenia*, 2015, § 99 where more than seven years had elapsed from the time the applicant lodged her complaint about having been sexually abused until the first-instance judgment was rendered);
- in the context of ill-treatment in prison the trial of the warders did not began until five years and eight months after the criminal complaints had been lodged and the proceedings were still pending at the time of the examination of the case before the Court (*Indelicato v. Italy*, 2001, § 37);
- there were unjustified delays in identifying witnesses or taking their statements (*Baranin and Vukčević v. Montenegro*, 2021, § 142, 11 and *Mătăsaru and Saviţchi v. Moldova*, 2010, §§ 88 and 93);
- there was unjustified protraction of the criminal proceedings resulting in the expiry of the statute of limitations (*Angelova and Iliev v. Bulgaria*, 2007, §§ 101-103; see also *Barovov v. Russia*, 2021, §§ 39 and 42);
- there were delays in the interviewing of a key specialist at the relevant time, failure to reach to clear signs of ill-treatment as well as a long overall period during which not a single judgment was adopted (*I.E. v. the Republic of Moldova*, 2020, § 52);
- there were delays in obtaining oral evidence from the applicants, who were minors and victims of alleged racially motivated ill-treatment (*M.B. and Others v. Slovakia*, 2021, §§ 82-83);
- several investigations and ensuing criminal proceedings into the applicant's allegations of assault, harassment, threats and ill-treatment – all in the context of domestic violence – were either time-barred or were still pending many years after the events, due to the passivity of the authorities (*M.S. v. Italy*, 2022, §§ 141 and 150).

140. Conversely, the Court found that investigations did not contravene to the requirement for promptness and reasonable expedition in the conduct of the investigations when, for example:

- the length of the investigation could be explained by the scope of the inquiries carried out, since numerous hearings, and no less than four expert assessments, were conducted (*Ghedir and Others v. France*, 2015, § 133);
- where compensation proceedings were very lengthy (15 years) but it did establish the facts surrounding the infliction of grievous bodily harm upon the applicant holding those responsible accountable and awarded her compensation (*Isayeva v. Ukraine*, 2018, §§ 63-66);

- despite the relative complexity of the case, which required the questioning of several witnesses, the obtaining of an expert report and other evidence concerning the incident, the investigation lasted in total some six months (*V.D. v. Croatia (no. 2)*, 2018, § 80).

5. Public scrutiny and the participation of the victim

141. The investigation must afford a sufficient element of public scrutiny to secure accountability in practice as well as in theory (*Al Nashiri v. Romania*, 2018, § 641 and the cases cited therein).

142. Moreover, the victim should be able to participate effectively in the investigation (*Bouyid v. Belgium* [GC], 2015, § 122 and *X and Others v. Bulgaria* [GC], 2021, § 189). However, the disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects for private individuals or other investigations. It cannot therefore be regarded as an automatic requirement that a victim or his or her next-of-kin be granted access to the investigation as it progresses. The requisite access may be provided for in other stages of the available procedures and the investigating authorities do not have a duty to satisfy every request for a particular investigative measure in the course of an investigation (*Stevan Petrović v. Serbia*, 2021, § 109).

143. The Court has found that the investigation was not sufficiently accessible to the victim or that it did not allow for adequate public scrutiny where:

- the investigator failed to hear the victims in person or mention their version of events in the decisions which were also not even served on them (*Dedovskiy and Others v. Russia*, 2008, § 92;
- there was no specific procedure in domestic law granting access to the case file at the pre-trial stages and, in particular, listing the grounds for refusing and granting access, the extent to which a claimant may be given access, the time-limits for consideration of the relevant requests and providing the access (*Oleksiy Mykhaylovych Zakharkin v. Ukraine*, 2010, § 73);
- the authorities had consistently withheld information about their decisions, or considerably delayed the provision of such information to the applicants, contrary to the explicit requirement of the domestic law (*Chernega and Others v. Ukraine*, 2019, § 166).

144. Conversely, the Court found no issue regarding public scrutiny or participation of the victim when adequate information and access to the file, had been given to the victim providing him with the possibility to indicate facts and propose evidence to be obtained in the investigation (*V.D. v. Croatia (no. 2)*, 2018, §§ 78).

E. Issues related to prosecution, sanction, and compensation

145. The Court has underlined that the obligation to conduct an effective investigation is an obligation not of result but of means (*X and Others v. Bulgaria* [GC], 2021, § 186). When the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention. This includes the sanctions imposed at the end of those proceedings. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow grave attacks on physical and mental integrity to go unpunished, or for serious offences to be punished by excessively light punishments. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny, so that the deterrent effect of the judicial system in place, and the significance of the role it was required to play in preventing violations of the prohibition of ill-treatment, are not undermined (*Sabalić v. Croatia*, 2021, § 97).

146. It follows that, while granting substantial deference to the national authorities and courts in the choice of appropriate sanctions for ill-treatment, the Court must exercise a certain power of review

and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (*Myumyun v. Bulgaria*, 2015, § 67).

147. Moreover, in a case where the applicant's complaint concerned the commutation of the prison sentence to community service, the Court, bearing in mind the wide margin accorded to States in matters of criminal justice and sentencing policy, held that its review in such a case must be directed at assessing whether, in the circumstances of the present case, the domestic court exercised the requisite careful scrutiny when commuting the sentence. It therefore examined whether the commutation in this case was based on criteria and reasons which were adequate so as to ensure that the punishment remained commensurate with the nature and gravity of the ill-treatment involved in the criminal acts committed against the applicant as victim (*Vučković v. Croatia*, 2023, § 55; see also, *M.G. v. Lithuania*, 2024, § 118, in relation to a decision to suspend a prison sentence of the perpetrator in the context of sexual assault of a minor).

148. Linked to this, for an investigation to be effective in practice it is a prerequisite that the State has enacted criminal-law provisions penalising practices that are contrary to Article 3 (*Cestaro v. Italy*, 2015, § 209).

149. Where State agents have been charged with offences involving ill-treatment, it is important that they should be suspended from duty while being investigated or tried and should be dismissed if convicted (*Gäfgen v. Germany* [GC], 2010, § 125; *Barovov v. Russia*, 2021, § 43).

150. The Court has also held that, in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period, and that amnesties and pardons should not be tolerated in such cases. Furthermore, the manner in which the limitation period is applied must be compatible with the requirements of the Convention. It is therefore difficult to accept inflexible limitation periods admitting of no exceptions (*Mocanu and Others v. Romania* [GC], 2014, § 326). This principle has also been extended to acts of violence committed by private individuals, particularly, when they concern grave breaches of fundamental human rights (*Pulfer v. Albania*, 2018, § 83 in the context of physical assault; *E.G. v. the Republic of Moldova*, 2021, § 43 in the context of sexual assault and *M.S. v. Italy*, 2022, § 144 in the context of domestic violence).

151. Thus, the Court has found a violation under the procedural limb of Article 3 in cases where the application of limitation periods was brought about by the failure of the authorities to act promptly and with due diligence or where prosecutions became time-barred owing to the inadequate characterisation by the domestic authorities of acts of torture or other forms of ill-treatment as less serious offences, leading to shorter limitation periods and allowing the perpetrator to escape criminal liability (*Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], 2022, §§ 61-62,).

152. Finally, in cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (*Gäfgen v. Germany* [GC], 2010, § 116; *Razzakov v. Russia*, 2015, § 50).

F. Investigation of hate crimes

153. The Court has highlighted the specific requirement for an investigation into an attack with racial overtones to be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of racism in order to maintain the confidence of minorities in the

ability of the authorities to protect them from the threat of racist violence (*Antayev and Others v. Russia*, 2014, § 110).

154. Thus, when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights (*Abdu v. Bulgaria*, 2014, § 44). The said obligation is part of the responsibility incumbent on States under Article 14 of the Convention taken in conjunction with Article 3, but it is also an aspect of the procedural obligations flowing from Article 3 of the Convention (*M.F. v. Hungary*, 2017, § 73). It also applies where a given type of treatment incompatible with Article 3 is inflicted by a private individual (*Abdu v. Bulgaria*, 2014, § 44).

155. Moreover, such an investigation concerns not only acts of violence based on a victim's actual or perceived personal status or characteristics, but also acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic (*Škorjanec v. Croatia*, 2017, § 56).

156. Proving racial motivation will often be difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially motivated violence (*Antayev and Others v. Russia,* 2014, § 122).

157. The same considerations arise for violence resulting from, for instance, religious intolerance or for violence motivated by gender-based discrimination or by sexual orientation (*Sabalić v. Croatia*, 2021, § 94; see, for example, *Romanov and Others v. Russia*, 2023, §§ 78-79; see also, for violence resulting from political intolerance, *Verzilov and Others v. Russia*, 2023, § 78).

158. More detailed information can be found in the *Case-Law Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of Discrimination*.

G. Procedural obligations in trans-border contexts

159. The requirement of effectiveness of the criminal investigation may in some circumstances include an obligation for the investigating authorities to cooperate with the authorities of another State, implying an obligation to seek or to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there. This means that the States concerned must take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention, it normally verifies in this context whether the respondent State has used the possibilities available under these instruments (*X and others v. Bulgaria* [GC], 2021, § 19).

H. The revival of procedural obligations

160. A procedural obligation may be revived subsequent to a new development, as the discovery of new evidence or information casting doubt on the results of an earlier investigation or trial (see *Egmez v. Cyprus* (dec.), 2012, § 63). The nature and extent of any subsequent investigation required by the procedural obligation will inevitably depend on the circumstances of each particular case and may

well differ from that to be expected immediately after the ill-treatment has occurred (*Jeronovičs v. Latvia* [GC], 2016, § 107).

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Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<*http://hudoc.echr.coe.int*>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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