

Impact case study (REF3b)

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| Institution: University of Glasgow |
| Unit of Assessment: 20 - Law |
| Title of case study: Influencing Legislation, Policy and Practice on the Treatment of Detainees in European States |
| 1. Summary of the impact (indicative maximum 100 words) |

The ill-treatment of prisoners is a deep-rooted issue in several countries of Eastern Europe, with incidents of coercion and torture frequently appearing before the European Court of Human Rights. Professor Jim Murdoch's fact-finding missions to the Ukraine and Georgia on behalf of the European Union and the Council of Europe have resulted in changes to legislation, regulatory structures and procedural frameworks in the Ukraine and Georgia. Additionally, the reports produced by Professor Murdoch and his colleagues led to a €700,000 training programme affecting more than 7,000 judges, prosecutors, investigators and lawyers across the Ukraine, Georgia, Armenia, Azerbaijan and Moldova.

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| 2. Underpinning research (indicative maximum 500 words) |
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Professor Jim Murdoch (University of Glasgow, 1979 -present) is an international human rights expert with an extensive body of work on the law relating to human rights. A key focus of his research and scholarship has been on the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In 2006, Murdoch published *The Treatment of Prisoners: European Standards*, an authoritative monograph which brought together the wide range of standards established in European case law, and in recommendations and reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) around this issue. The monograph was also published in French in 2007.

Over the course of his research, Murdoch maintained a strong working relationship with the Council of Europe, and in 2009 he was appointed as one of two long-term experts on the Joint Programme of the European Union and the Council of Europe into Combating Impunity through the Introduction of Effective Investigations. The Joint Programme sought to investigate allegations of ill-treatment at police-led detention centres in five 'beneficiary states': the Ukraine, Georgia, Armenia, Azerbaijan, and Moldova.

The Ukraine and Georgia's failure to address the deep-seated use of ill-treatment by police officers or to carry out effective investigations had repeatedly attracted the attention of the European Court of Human Rights. Murdoch led a mission to the Ukraine and Georgia which aimed to understand precisely why the measures overseen by the Council of Europe were not being successfully implemented by the countries' leadership. Murdoch's co-expert, Eric Svanidze (former member of the CPT) undertook similar investigations in Armenia, Azerbaijan and Moldova.

Murdoch's four-month investigation in 2009 involved detailed semi-structured interviews with Ministers, senior officials, judges, judicial training institutes, lawyers' associations, NGOs and international organisations working across different regions in each country. His research also sought to establish whether domestic legal models and norms were compatible with international and European standards.

The key findings and recommendations gleaned from these investigations were published in five Country Reports and disseminated at seminars for high-ranking officials. Due to issues of political sensitivity in respect of the Georgian Country Report and activities, this case study will focus predominantly on the investigation undertaken in Ukraine.

Prior to the Joint Programme, the CPT had only been able to make very short, ad hoc visits to the 5 beneficiary states. The Joint Programme involved the first examination of the legislative,

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organisational and cultural barriers to the effective investigation of allegations of ill-treatment. Murdoch's work provided in-depth insights into these barriers, with the Country Report for Ukraine recommending:

- The establishment of an independent agency to investigate complaints against ill-treatment. The report found that this role is usually filled by Prosecutors, who may have a conflict of interest with pursuing such complaints in that they could jeopardise a conviction;
- That general attitudes and values needed to change;
- The implementation of draft legislation on free legal aid for detained suspects
- Audio and/or visual recordings of all interrogations; and
- That consideration be given to reforming the Code of Criminal Procedure to render confessions inadmissible unless given in the presence of the detainee's legal representative.

3. References to the research (indicative maximum of six references)

1. Murdoch, J (1998) *A Survey of Recent Case Law under Article 5, ECHR*. European Law Review, 23 (Supp). pp. 31-48. (All contributions to this Journal are assessed in their entirety prior to publication by qualified experts who are independent of the author(s)) [Available from HEI]

2. Murdoch, J (1999) *CPT standards within the context of the Council of Europe*. In: Morgan, R. and Evans, M.D. (eds.) *Protecting Prisoners the Standards of The European Committee For The Prevention Of Torture in Context*. Oxford University Press, pp. 103-136. ISBN 0198298218 [Available from HEI]

3. Murdoch, J (2002) *Review: The European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment: 2001 Survey*. European Law Review, 27 (Supp). pp. 47-62. (All contributions to this Journal are assessed in their entirety prior to publication by qualified experts who are independent of the author(s)) [Available from HEI]

4. Murdoch, J (2006) *The Treatment of Prisoners: European Standards*. Council of Europe Publishing, Strasbourg, France. ISBN 9789287159274 [Available from HEI]

5. Murdoch, J (2007) *Detention Preventive et Proces dans un Delai Raisonnable*. In: Cohen-Jonathon, G., Flauss, J. and Lambert, A. (eds.) *De l'effectivité des recours internes dans l'application de la Convention européenne des droits de l'homme*. Bruylant, pp. 26-69. ISBN 2802723316 [Available from HEI]

6. Murdoch, J (2010). *Ukraine: Combating Impunity: the Effective Investigation of Complaints by the Police*. Report published by the European Union and the Council of Europe. [[PDF link](#) or available from HEI]

**In 2012, Professor Murdoch was awarded the Council of Europe Pro Merito medal in recognition of his work on human rights.*

4. Details of the impact (indicative maximum 750 words)

The recommendations of the Country Reports have had a far-reaching impact on the treatment of prisoners, from top-level regulatory and legislative change to encouraging investment in training and awareness-raising. In the Ukraine, this has resulted in concrete institutional efforts towards transparency and fairness, supported by a number of initiatives such as free Legal Aid and the introduction of recording equipment to interrogation rooms. Furthermore, the reports provided the evidence-base for an extensive training and capacity building programme across the Ukraine, South Caucasus (Armenia, Azerbaijan and Georgia), and Moldova.

Georgia

In spite of the political sensitivity relating to the disclosure of the specific findings and recommendations made by Murdoch in the Georgian Country Report, an evaluation report of Joint

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Programmes between the Council of Europe and the European Union published in May 2012 shows that the Georgian authorities initiated a number of legislative and structural changes in line with the recommendations in the country report. As part of these changes the Georgian authorities established an Inter—Agency Coordination Council against Torture as well as establishing a strategy against torture. The working group drafted this directly on the basis of the recommendations set out in the detailed Country Report. The Georgian authorities also adopted an Action Plan (2011-13) against torture, again in line with the Country Report and its recommendations [1].

Additionally, as part of its response to the recommendations in Murdoch’s Country Report, Georgia adopted a new Criminal Procedure Code in 2010 which introduced new safeguards against ill-treatment and other human rights violations [2].

Ukraine

As recommended by the Country Report, a Presidential Working Group on Criminal Justice Reform was established and tasked with developing an independent mechanism for investigating allegations of ill-treatment. The Commission for the Prevention of Torture was established in the Ukraine by Presidential Decree in September 2011 [3].

Ukraine’s Minister of Internal Affairs picked up several more recommendations from the report. In August 2010 the Minister issued a memo instructing that all detainees receive an information leaflet about their rights, whilst in March 2011 a new Regulation was issued to combat ill-treatment and ensure its effective investigation. This new regulation requires the inspection of all detention facilities by Ministry staff and the installation of video recording equipment to all interrogation rooms, along with the continued distribution of the information leaflet [4].

At the time of writing, the Ukraine is working to have free Legal Aid Centres established in every region [5], as outlined in the Ukrainian Law on Free Legal Aid adopted on 2 June 2011 following the recommendation of the Country Report.

In addition to this new law, November 2012 saw the implementation of a revised Ukrainian Criminal Procedure Code which asserts witness’ right to a lawyer, establishes an independent mechanism to investigate ill-treatment and renders confessions obtained where the defendant’s lawyer was absent as inadmissible [6].

The commitment to also addressing Murdoch’s concerns about cultural change is evident in a letter from Ukraine’s Deputy Prosecutor General to all Regional Prosecutors, which emphasises the importance of the Joint Programme. The letter requires prosecutors to “apply a systemic approach to an effective use of all their statutory powers in order to prevent and to counteract illegal violence by the law enforcement personnel. Every investigation conducted on the basis of a grounded allegation of ill-treatment has to lead to establishment of the truth and to punishment of those responsible” [4, at p15].

The Council of Europe has since noted improvements to the quality of the Prosecutor General Office’s statistical data as well as a gradual increase of judgements on satisfaction of claims concerning alleged torture [7].

Training Across Regions

The reports produced by Murdoch and his colleague also provided the basis for an extensive training programme for legal professionals, state officials and civil society groups in the five beneficiary states, which launched in 2010. As part of this campaign the Council of Europe and the European Commission provided an additional €1.5m for a follow-up programme, ‘Reinforcing the fight against ill-treatment and impunity in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine’, which included training on the European Standards for protection of rights of detainees and effective investigation into allegations of ill-treatment [8].

This extensive training programme was delivered to:

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- 2500 prosecutors over 3 international, 26 regional and 13 inter-regional seminars during the period of March 2009- June 2012 [9];
- 60 Human Rights Lawyers and 30 Human Rights NGOs [9];
- 200 Militia Officers over 5 thematic seminars [9]; and
- 1500 Judges through 1 international, and 30 regional, seminars [10].

As well as these seminars and training sessions, the National Academy for Prosecutors in Ukraine extended its curriculum to include an additional lecture on issues relating to ill-treatment and torture and their relationship to the European Convention on Human Rights [4, page 8].

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Letter from Head of the International Relations and Mutual Legal Assistance Unit Georgia Ministry of Justice, detailed in Directorate General of Human Rights and Legal Affairs, Council of Europe, Co-operation Activity Report 2010, P. 11: [Link](#) Further supported by Report from Council of Europe Secretariat, on success of Joint Programme May 2012: [Link](#) (see p13 for evidence of adoption of Action Plan).
2. See comments from Director General of Human Rights and the Rule of Law, Council of Europe at Regional Stock-Taking Conference, 24 September 2013. His presentation included an overview of past success under the Joint Programme, explaining that *'I am happy to note that during the implementation of the project, the substantive and procedural legislation of the partner countries has been amended and supplemented with important provisions drawn up as a response to the Country Reports and Council of Europe's recommendations. New Criminal Procedure Codes were adopted in Georgia and Ukraine'*. [copy of speech available from HEI].
3. Directorate of Co-operation Activity Report 2010, Council of Europe (CoE): [Link](#) discusses Presidential Working Group at p. 11; and Presidential Decree 950/2011 under Administration of President of Ukraine of 27/9/2011 cited in "Reinforcing the fight against ill-treatment and impunity" in South Caucasus, Moldova and Ukraine: Information on the state of the project implementation in Ukraine between July 2011-June 2012, CoE: [Link](#) (see p13)
4. Leaflet-memo on rights of detainees (amendments to MIA Decree as of 13.08.2010 №382); Regulation of Minister of Internal Affairs No. 329 as of 31.03.2011 "On additional measures to prevent torture and ill-treatment by police", discussed in European Union and Council of Europe Joint Programme: "Combating ill-treatment and impunity" in South Caucasus, Moldova and Ukraine Project Report January 2009- June 2011: [Link](#) (see p14)
5. "Reinforcing the fight against ill-treatment and impunity" in South Caucasus, Moldova and Ukraine: Information on the state of the project implementation in Ukraine between July 2011-June 2012, CoE: [Link](#) (see p19, in particular for info on free legal aid centres)
6. Criminal Procedure Code of Ukraine Articles 42; 46; 87: [Link](#)
7. See corroborating source [4] where the CoE notes one of the positive trends during implementation of the programme in Ukraine by the: *'Gradual increase of judgments on satisfaction of claims concerning collection of compensation of moral damages caused by tortures was observed'*. ([Link](#) at p15)
8. See Joint Programmes between the Council of Europe and the European Union in 2011: Implementation of the Memorandum of Understanding between the Council of Europe and the European Union, 29 May 2012: [Link](#) (at pp12-13)
9. Training at National Academy of Prosecutors in Ukraine: [Link](#)
10. Training of Judges in Ukraine: [Link](#) ; and Region Overall: see [4], page 8.