



Strasbourg, 29 January 2010

DH-I(2010)001

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

COMMITTEE OF EXPERTS ON IMPUNITY
(DH-I)

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**Guidelines of the Committee of Ministers
of the Council of Europe on impunity
(DH-I)**
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2nd meeting
Strasbourg, Wednesday 03 March (9.30am) – Friday 05 March 2010 (1pm)

Agora-Building, Room G04
Council of Europe
—————

Guidelines of the Committee of Ministers of the Council of Europe on impunity

Preamble

The Committee of Ministers,

[a] Recalling that all perpetrators of acts amounting to serious human rights violations must be held to account for their actions, including the instigators and organisers of such crimes;

[b] Considering that the lack of ~~such~~ accountability encourages repetition of crimes, as perpetrators and others feel free to commit further offences without fear of punishment;

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[c] Recalling that impunity for the perpetrators of acts amounting to serious human rights violations inflicts additional suffering on victims and their families;

[d] Considering that impunity must be fought as a matter of justice for the victims, of prevention of new violations by deterrence, and of upholding the rule of law as well as the public trust in the justice system;

[e] Bearing in mind the need for States to cooperate at the international level in order to put an end to impunity;

[f] Reaffirming that it is the goal of the Council of Europe to eliminate impunity throughout the continent;

[g] ~~Bearing in mind~~ **Considering** notably the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as interpreted by the European Court of Human Rights ~~in its~~ **throughout its** case-law, and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Comment [SJ1]: 'Considering' seems to be a stronger term, more appropriate to mean that the guidelines are based on those resources.

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[h] Bearing in mind the need to ensure that, when fighting impunity, the fundamental rights of persons accused of serious human rights violations as well as the rule of law are respected;

adopts the following Guidelines and invites member States to ensure that they are widely disseminated among all authorities responsible for the fight against impunity.

Comment [SJ2]: Proposition of amendment - To make reference to the rights to a effective remedy, guaranteed by article 13 of the Convention

A. The need to combat impunity

- I. These Guidelines address the problem of impunity in respect of serious human rights violations. Impunity arises where individuals responsible for acts that amount to serious human rights violations are not brought to account. It occurs in member States of the Council of Europe in many contexts, including *inter alia* abuses committed by police officers and prison guards; forced disappearances; killing of journalists, human rights defenders and witnesses by allegedly unknown persons; as well as large-scale violations of human rights committed by security forces in conflict situations.
- II. The lack of accountability for such acts is facilitated by factors playing at each moment encircling the commitment of the act (or something like that) such as the willingness of officials to cover up serious human rights violations and the creation of negative peer pressure on those who attempt to report them, as well as by passivity of the prosecution service, delays in criminal proceedings ~~and~~ excessive leniency by judges, ineffective condemnation of perpetrators. ...
- III. States must fight impunity as a matter of individual justice, as a deterrent with respect to future human rights violations and as a matter of upholding the rule of law.

Comment [SJ3]: Vocabulary used by the Court

Deleted: large-scale violations of human rights committed by security forces in conflict situations

Comment [SJ4]: I would place abuses of police officers and prison guards at first considering the particular importance of those acts, illustrated notably by the high number of condemnation by the Court. On the other side, as conflict situations are in principle exceptional, reference to them should be placed at the end of the list.

Deleted: abuses committed by police officers and prison guards.

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B. Scope of the guidelines

- I. These Guidelines deal with impunity for acts that amount to serious human rights violations and which are within the jurisdiction of the State concerned.
- II. They are addressed to States; and cover the actions of States, including those carried out through their agents. They also cover the positive obligations of States in respect of the actions of non state agents ~~individuals~~.
- III. For the purposes of these Guidelines, “serious human rights violations” concern the right to life (Article 2 ECHR), the prohibition of torture and inhuman and degrading treatment or punishment (Article 3 ECHR) and the prohibition of forced labour and slavery (Article 4 ECHR).
- IV. Where expressly stated in the Guidelines, certain serious violations of the right to liberty and security (Article 5 § 1 ECHR) are also covered.
- V. In the Guidelines, the term “perpetrators” refers to persons having committed acts or omissions amounting to serious human rights violations
- VI. These Guidelines complement, rather than replace, other standards relating to impunity. In particular they neither replicate nor qualify the obligations and

Comment [SJ5]: We should insist in the guidelines on the specific and enhanced obligations that states have regarding persons deprived of their liberty - see notably *Slimani c. France*, § 27 and many other arrests

Comment [SJ6]: Wider concept covering also groups and enterprises

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responsibilities of States under international humanitarian law and international criminal law. ~~For the avoidance of doubt, they also do not deal with the~~ ~~Accountability of international organizations is excluded from the scope of the present guidelines.~~

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Comment [SJ7]: Seems to be clearer like that

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C. Preventing impunity

I. Practical measures ~~(/public policies)~~ to prevent impunity

Comment [SJ8]: Maybe to add here a title on non judicial mechanism capable of combating impunity > establishment of ombudsmen, - control committee, parliamentary inquiry, ...

Comment [SJ9]: Alternative practical measures

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1. ~~States authorities including state officials and state representative should show commitment to combat impunity. When necessary, those authorities should publicly condemn serious human rights violations.~~

Comment [SJ10]: Proposition of amendment - Reference to CPT contribution, § 42

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2. States should take ~~practical measures~~ policies to prevent or combat an institutional culture within their authorities which promotes impunity. Such measures may include:

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- Making the relevant authorities aware of their obligations with respect to preventing impunity;
- Sending clear signals from the very top of the respective hierarchies that human rights violations will not be tolerated;
- Raising awareness that culpability for such acts extends beyond the actual perpetrators to anyone who knowingly fails to reports them;
- Establishing or reinforcing appropriate training and control mechanisms;
- Promoting transparency;
- Introducing anti-corruption policies;
- Promoting a culture where it is regarded as unprofessional and potentially career-damaging to work and associate with colleagues who commit human rights violations;
- Promoting a culture of respect for human rights and systematic work for the implementation of human rights at the national level.
- States should establish clear reporting lines through which serious human rights violations may be notified.

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Comment [SJ11]: Redacted as such, the link with the institutional culture does not clearly appear.

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Comment [SJ12]: Such measures also aim at combating institutional culture – they should therefore be part on point 1.

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- States should take measures to encourage the reporting of serious human rights violations and consider making such reporting compulsory.
- States should take measures to protect those reporting such acts from retaliation.

Comment [SJ13]: On my opinion, this is not the good place for this. I suggest to have one separate title on non judicial mechanisms.

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~~Non judicial mechanisms at the national level are useful supplementary tools to combat impunity.~~

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3. Establishing a strong criminal policy aiming at preventing, suppressing and punishing serious human rights violations, including law-enforcement machinery for the prevention, suppression and punishment

Comment [SJ14]: This point is taken from the Paragraph II.1 - >Criminal policy would be better placed as it does not generally consist in legislative measures but rather in practical measures, plan of actions, ...

II. Legislative measures to prevent impunity

1. ~~With regard to the rights listed in Part B.III. of the guidelines,~~ States have positive obligations to adopt corresponding criminal-law provisions to protect against serious human rights violations ~~these rights,~~ backed up by a law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Those provisions should provide for appropriate statutory penalties for those found guilty of breaching them.
2. In addition to criminal proceedings, States should provide for the possibility of disciplinary proceedings against state agents officials along with safeguards that alleged victims are not dissuaded from lodging complaints.
3. States should ensure that their legislative framework contains no loopholes or gaps which contribute to impunity.
4. need for a legal and administrative framework for the use of firearms likely to deter and penalise personal injuries¹

Comment [SJ15]: clearer

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Comment [SJ16]: proposition to have a separate title on non-judicial mechanisms

III Procedural guarantees in order to protect persons in custody or detention from serious human rights violations

States should ensure procedural guarantees to individuals in custody or in detention, in order to prevent ~~detect~~ any ill-treatment or unlawful detention that might otherwise go unpunished. In particular, states should take any legislative or other measure in order to ensure:

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Comment [SJ17]: Proposition of new title

1. The right of the person in custody to inform a relative and a lawyer
2. The right of the person in custody or in detention to be examined by a doctor of his own choice.
3. That States must take effective measures to safeguard against the risk of disappearance such as the keeping of “custody records” concerning the date, time and location of detainees, as well as the grounds for the detention and the name of the persons effecting it. States must conduct investigations into arguable claims that a person has been taken into custody and has not been seen since.
4. When carrying out ~~arrests or~~ interrogations, State officials must not take measures such as wearing masks or blindfolding detainees which would hamper their identification in later criminal investigations.

Comment [SJ18]: Peut être développer les nuances dans le rapport explicatif - see exception if would hamper the good conduct if the investigation

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Proposition of amendment: ~~When conducting arrest or transferring of detainees from one establishment to another, State agents must not take measures such as wearing~~

Comment [SJ19]: This might need to be nuanced. Concerning the wearing of masks by states agents, such measures might sometimes be necessary for the protection of states agents conducting special interventions, for instance. According to the CPT, such practice do not need to be prohibited but strictly controlled and only used in exceptional cases duly justified – considering that it is rarely justified in prison. Concerning the blindfolding of detainee, such measures might be used for their transfer, notably from the prison to the tribunal. It is then justified by the avoidance of evasion.

¹ See *Dlhan v. Turkey* [GC], no 22277/93, para. 63, *Reports 2000-VII, Kelly and Others v. United Kingdom*, no 30054/96, para. 94, 4 May 2001 ; *Tashin Acar v. Turkey*, n° 26307/95, 8 April 2004, para. 221 ; *Kukayev v. Russia*, n° 29361/02, 15 November 2007 and also *Bati and Others v. Turkey*, n° 33097/96 et 57834/00, concerning ill-treatment of young detainees and a pregnant woman while in police custody

masks or blindfolding detainees unless exceptional situations dully justified and under strict control.

Comment [SJ20]: (In addition, information on specific situation targeted here might be given in the explanatory report)

5. Use of force by state agents for the performance of their duty should be systematically recorded

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6. Regarding guarantees against arbitrary or unlawful detention, states must ensure the respect of article 5.3 and 5.4 of the Convention.

Comment [SJ21]: Proposition of amendment - I am trying to make here reference on the use of force by prison staff – see cpt standards, p.17, § 53

Comment [SJ22]: Proposition of amendment -The respect of such dispositions is a mean of avoiding unlawful or arbitrary detention and so impunity on it as there is a control by judicial authority

D. Determining facts, responsibility and consequences of violations

I. The duty to investigate

1. The obligation to protect the right to life under Article 2 ECHR requires that there should be some form of effective official investigation when individuals have been killed, whether by State agents or private persons. This duty to investigate applies to all killings involving the use of force as well as other suspicious or unlawful killings. It also arises in situations in which it is uncertain whether or not the victim has died, such as in cases of disappeared persons. When a detainee is found dead, states must always conduct effective investigations, even if he allegedly committed suicide.² The duty has an absolute character; neither the prevalence of violent armed clashes nor a high incidence of fatalities can justify exemptions from it. Obligation of states to protect the right to life imply also an obligation of conducting an effective investigation when persons have been killed following dangerous activities or natural disasters.³

2. The same procedural obligation applies in cases of indications of violations of the prohibition of torture and inhuman and degrading treatment or punishment (Article 3 ECHR). ~~In order to detect any ill treatment that might otherwise go unpunished, a person in custody or detention has the right to an examination by a doctor of his or her choosing as well as access to a lawyer and a relative, coupled with prompt judicial intervention. Whenever a suspect brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination should be ordered and the necessary steps should be taken in order to ensure that allegations are properly investigated.~~

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Comment [SJ23]: Moved to the title 'procedural guarantees in order ...' as it constitutes preventive measures.

Comment [SJ24]: Proposition of amendment - CPT contribution, § 29

Comment [SJ25]: Proposition of amendment – general obligation of investigation for violation of articles 4 and 5, as there is no specific Court case law, for what I know

3. States authorities have obligation to investigate in any cases of serious suspicions of violation of articles 4 and 5 ECHR

Deleted: <#>States must take effective measures to safeguard against the risk of disappearance such as the keeping of “custody records” concerning the date, time and location of detainees, as well as the grounds for the detention and the name of the persons effecting it. States must conduct investigations into arguable claims that a person has been taken into custody and has not been seen since. When carrying out ~~arrests or~~ interrogations, State officials must not take measures such as wearing masks or blindfolding detainees which would hamper their identification in later criminal investigations.¶

II. Criteria for an effective investigation

In order for an investigation to be effective, it should respect the following essential conditions:

² Slimani v. France; Renolde v. France, Paul and Audrey Adwards v. United Kingdom, ...

³ Öneriyıldız v. Turkey, [GC], no 48939/99, Reports 2004-XII, 30 November 2004

Boudaieva and Others v. Russia, no 15339/02, 21166/02, 20058/02, 11673/02 et 15343/02

- **Adequacy**

The investigation must be capable of leading to the establishment of the true facts of the alleged incidents as well as the identification and punishment of those responsible.

- **Thoroughness**

The investigation should be comprehensive in scope. This requires the taking of all reasonable steps to secure relevant evidence such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; as well as gathering forensic and medical evidence by independent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

- **Impartiality and independence**

Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. This requires the absence of hierarchical or institutional links; in particular, the investigators may not form part of the same unit or service as the officials who are subject of the investigation. If the investigation is not conducted by the prosecuting authorities on itself, the latter must exercise close and effective supervision. Investigators must be independent in practice.

- **Promptness**

The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. It must be completed within a reasonable time.

- **Public scrutiny**

There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability and to prevent any appearance of collusion in or tolerance of unlawful acts.

. In particular serious cases, a public inquiry might be appropriate. States should ensure the appropriate participation of victims and their families (see Part E.I.).

- **Involvement of victims in the investigation**

- Victims and their families must be involved in the investigation process to the extent necessary to safeguard their legitimate interests.
- State should ensure that their legislative framework deal with access to the case-file and the possibility to obtain copies of any witness statements of the testimony.
- Victims and their families should be able to ask the investigating judge (/authorities in charge of the investigations) to order any necessary measures, including hearing of their evidence or that of the witness, a confrontation or inspection of the scene of the events, and ordering the

Comment [SJ26]: (It can be added in the explanatory report that effective investigation must not be based only on statements of someone part of the operation, potentially involved or the commander – ECHR case law)

Comment [SJ27]: in England en Wales, it seems that the police prosecute together with the Crown prosecution service. The term 'prosecution' would not therefore be convenient here

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Comment [SJ28]: Proposition of amendment Compendium of the case law of the Court, p. 9

Comment [SJ29]: Initially Point E.I.
As it appears from the content of those lines, the participation of victims and next of kin is particularly essential at the moment of the investigation –and should be seen therefore as a criteria for an effective investigation.

Comment [SJ30]: In Belgium, it is the right of the "partie civile" to be involved in the investigation. In principle, anyone has the right to apply for being "partie civile". The investigating judge might however refuse if he considers that the individual has no interest in the dossier.

Comment [SJ31]: Or "next of kin's" – only victim and if incapacity of the victim, the next of kin

Comment [SJ32]: Sometimes, access to the file may hamper the good conduct of the investigation – the prosecuting authorities { ... [1]

Deleted: Victims and their families should have

Comment [SJ33]: In Belgium, there is either a right to access to the file at the end of the investigation or a possibility { ... [2]

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Comment [SJ34]: In Belgium, proceedings are inquisitorial which involves that it is not possible to obtain access to witness statements { ... [3]

Deleted: in order to be able to question the witnesses upon giving evidence.

production by another party of a document relevant to the investigation or of an expert report.

- Where it is necessary for their participation in the proceedings, legal aid should be granted.
- States should apply protective measures to ensure that victims and their families are not intimidated or otherwise dissuaded from participating in investigations.
- Victims and their families should be regularly informed of the progress of investigations and all relevant decisions made, including the outcomes of investigations.

Comment [SJ35]: Proposition of amendment - Additionally, in the explanatory report, it can be added, that "in order to avoid any unnecessary or abusive request, the authorities in charge of the investigations might not give satisfaction to the request. In such cases, they must however dully justify their decision

Comment [SJ36]: Should be defined on the explanatory memorandum – States may impose conditions to legal aid – in referenced with financial means but also the kind of proceedings, for instance

Comment [SJ37]: Should be defined in the explanatory memorandum – indeed we have different types of 'legal aid'. For us, I may mean the ability to have a free lawyer or to be exempted from the cost of the proceedings.

III. Authorities must act of their own motion

1. Once indications of serious human rights violations have come to their attention, authorities must act of their own motion and commence an investigation.
2. The fact that the victim wishes not to lodge an official complaint, later withdraws such a complaint or decides to discontinue the proceedings does not of itself absolve the authorities from their obligation to carry out an effective investigation.

IV. International cooperation

States should foster international cooperation when investigating serious human rights violations.

V. Investigation of motives for the offence

When investigating serious human rights violations, State authorities have the additional duty to take all reasonable steps to establish whether the incident was hate-motivated.

Comment [SJ38]: We often have this kind of provision in documents aiming at protecting specific groups of people. However, in a document aiming at combating impunity, I do not really see the added value of this point. In my opinion, in regard with impunity the problem is the act in itself and not really the motive.

VI. Termination of investigations

1. Decisions to refuse to initiate or to terminate investigations may be taken only by an independent and competent authority upon thorough and prompt consideration of all the relevant facts. They should be duly reasoned (~~/motivated?~~).
2. Such decisions must be subject to appropriate scrutiny and challengeable by means of a public and adversarial judicial process.

Comment [SJ39]: Proposition of alternative to the word 'reasoned'

VII. The duty to prosecute

1. Investigations must be capable of leading to effective criminal proceedings against those responsible, where the facts warrant this; ~~it being understood that~~

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~~there is no right to secure the prosecution and conviction of a particular individual.~~

2. The essential conditions for an effective investigation also apply at the prosecution stage.

VIII. Command responsibility

1. In considering prosecution, the doctrine of command responsibility should be applied, according to which superiors are held responsible for the acts of their subordinates if they knew or should have known of those acts but failed to take reasonable measures to prevent them.
2. While the following of superior orders or instructions may mitigate punishment, it is not a valid excuse and may not serve as a defence from accountability.

IX. Restrictions and limitations

States should ensure that legitimate restrictions and limitations on investigations and prosecutions are kept to the minimum necessary to achieve their aim. ~~[Amnesties and time bars should not impede the prosecution of perpetrators.]⁴~~

Proposed amendment: Les Etats devraient faire leur maximum pour permettre que l'enquête aboutisse avant la prescription (time bars). When prosecution is however not possible because of time bars, this should not impede the continuing of investigation in order to allow for compensation of the victims and their families. Amnesties should not impede the prosecution of perpetrators.

X. Court proceedings

1. States should ensure the independence and impartiality of the judiciary as well as the separation of powers, in particular in politically sensitive cases. Prosecutors and judges should not fear dismissal or reprisals after taking decisions on individual cases.
2. Undue procedural delays may violate the duty of a prompt investigation which extends to the criminal proceedings as a whole, including the judicial phase.
3. Persons accused of having committed serious human rights violations have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

XI. Commensurate appropriate sentences

⁴ To be discussed whether this passage should rather be included in the "Texts of reference".

Comment [SJ40]: This part of the sentence could be interpreted as denying the first part of the sentence. – It could be replaced by “ without prejudice of the presumption of innocence

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Comment [SJ41]: Should be placed In the explanatory report. Moreover, we think that this need to be nuanced. Indeed, if we refer to the scope of the guidelines, this would mean that there could never be time bars in cases of murders, tortures, inhuman or degrading treatments or punishments, forced labor and slavery, arbitrary detention, either at the responsibility of the states or of privates > this seems to be very wide and not very practicable – time bars have an utility and must not be seen only from the angle of impunity – for instance, it is also a mean of protecting rights of defendants.

If we take the case, of Belgium, prosecution may be impede by time bars but we consider it necessary as the author has a right to be forgotten and the victim has a right to turn the page after several years.

However, time bars only impede prosecution but not the ability of investigating on the file. This has the effect that if the investigation is successful, victim would have the possibility to ask for compensation.

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Comment [SJ42]: Proposed amendment - indeed, judges and prosecutors are independent for the decision on individual case. However, we couldn't exclude a disciplinary proceedings for judges and prosecutors regarding their work in general

Comment [SJ43]: This word seems to be more suitable

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1. Serious human rights violations may in effect go virtually unpunished if insignificant or minimal penalties, which may include suspended sentences, are imposed on the perpetrators or if they are not subjected to disciplinary proceedings and measures. While courts are free to fix sentences within the parameters set by law in any given case, sentences appropriate to the offence committed and capable of deterring others must be handed out to those perpetrators who are found guilty.
2. When fixing a sentence, courts must take into account all relevant factors prescribed by domestic law, e.g. the particular nature of the offence and the gravity of the damage done.

Comment [SJ44]: It must be pay attention to the rights of the condemned persons.

We should not for instance fall into an extreme criminalist system in favor of long and strong sentences, which is not promoted by the CPT. We could for instance have a word for alternative measures to prison detention.

XII. Implementation of domestic court judgments

Domestic court judgments should be fully and speedily executed by the law-enforcement authorities.

XIII. Non-judicial complaint procedures

States should also consider providing for non-judicial complaint procedures such as parliamentary inquiries or the establishment of ombudspersons as useful complementary procedures to the judicial remedies guaranteed under the ECHR.

Comment [SJ45]: Maybe, it would be better to have a separate title "F" for the non judicial complaint mechanisms and procedures.

E. *Reparation*

I. Involvement of victims in the investigation

1. ~~Victims and their families must be involved in the investigation process to the extent necessary to safeguard their legitimate interests.~~
2. ~~Victims and their families should have access to the case file and be able to obtain copies of any witness statements in advance of the testimony in order to be able to question the witnesses upon giving evidence.~~
3. ~~Where it is necessary for their participation in the proceedings, legal aid should be granted.~~
4. ~~States should apply protective measures to ensure that victims and their families are not intimidated or otherwise dissuaded from participating in investigations.~~
5. ~~Victims and their families should be regularly informed of the progress of investigations and all relevant decisions made, including the outcomes of investigations.~~

Comment [SJ46]: To replace with something more suitable considering the content hereafter, and for instance the implementation of judgment ECHR

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Comment [SJ47]: Proposition to move this point to II. Criteria for an effective investigation

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II. ~~Access to effective remedies; compensation~~

1. ~~Victims of serious human rights violations have the right to an effective remedy pursuant to Article 13 ECHR.~~
2. ~~Victims of serious human rights violations are entitled to get an appropriate compensation for pecuniary and non-pecuniary damages flowing from the violation.~~
3. ~~When appropriate and in particular, in case of a breach of article 2, family members are also entitled to compensation for such damages.~~
4.
5. ~~In the case of a breach of the right to life (Article 2 ECHR) or the prohibition of torture and inhuman and degrading treatment or punishment (Article 3 ECHR), States are not only obliged to carry out a thorough and effective investigation; appropriate compensation for pecuniary and non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies.~~
6. ~~Everyone who has been a victim of arrest or detention contrary to the right to liberty and security (Article 5 ECHR) has the right to compensation.~~

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Comment [SJ48]: the right to effective remedy represent the main point of the guidelines - this would therefore be better placed in the preamble, possibly with additional reference to the right to fair trial guaranteed by article 6

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Comment [SJ49]: There should always be right compensation for violation of serious human rights violations (article 2, 3, 4, 5).

The distinction that must to be done refers to cases when family member also suffer of the situation which occur especially when there is a breach of Article 2, implying that the main victim is dead or has disappeared

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III. Implementation of judgments of the European Court of Human Rights

1. When the European Court of Human Rights finds a violation on the basis of a failure to investigate effectively in a particular case, the State concerned must fully and speedily execute that judgment. The execution of the judgment is not limited to the payment of just satisfaction. The State concerned should take all necessary measures to ensure that an effective investigation is carried out.

2. States must take general measures to address the underlying causes of the violation in order to ensure that similar violations do not occur in the future.

Page 7: [1] Comment [SJ32] SPF JUSTICE 2/23/2010 12:17:00 PM

Sometimes, access to the file may hamper the good conduct of the investigation – the prosecuting authorities should then have the possibility to refuse access.

Page 7: [2] Comment [SJ33] SPF JUSTICE 2/23/2010 4:18:00 PM

In Belgium, there is either a right to access to the file at the end of the investigation or a possibility to ask for an access (which might be refused, for the good conduct of the investigation) during the investigation.

Page 7: [3] Comment [SJ34] SPF JUSTICE 2/24/2010 10:30:00 AM

In Belgium, proceedings are inquisitorial which involves that it is not possible to obtain access to witness statement in advance. Secondly, we know different types of rules, regarding time and specific terms modality of access to the file depending on the position statut of the victim ('partie civile' or not for instance) and the type of proceedings (started at the motion of the prosecution office or of the victim or ...). Therefore, we prefer something more general considering that victims and families should have access to the file but that time of the access and specific terms may differ from one case to another.