DOI: 10.31648/sp.10700

Anželika Banevičienė
Mykolas Romeris University, Lithuania
ORCID: 0000-0002-2855-6890
a.baneviciene@mruni.eu

Zvonimir Ivanović
University of Criminal Investigation and Police Studies, Serbia
ORCID: 0000-0002-1101-6169
zvonko31@gmail.com

Denis Solodov
University of Warmia and Mazury in Olsztyn, Poland
ORCID: 0000-0003-2884-9420
denis.solodov@uwm.edu.pl

The right to complain about mistreatment during criminal interviews and interrogations – Lithuanian, Polish, and Serbian law and practice*

Introduction

The Mendez Principles on Effective Interviewing for Investigations and Information Gathering developed under the auspices of the United Nations by a group of internationally recognized experts[1], further referred to as the Mendez Principles or the Principles, offer an innovative approach to interviewing, interrogations, and, generally, information gathering conducted by state officials that prioritise the use of non-coercive, non-manipulative, information-centred methods and is compatible with commonly recognised international standards

* The authors also highlight practical issues and challenges related to implementing the Mendez Principles, which are central to the COST Action CA22128 project, „Establishing Networks to Implement the Principles on Effective Interviewing for Investigations (IMPLEMENDEZ)". The article is an outcome of the research conducted by the authors as part of their involvement in the COST Action CA22128 IMPLEMENDEZ. More information on the Action: COST Action CA22128 – Establishing Networks to Implement the Principles on Effective Interviewing for Investigations (IMPLEMENDEZ), https://www.cost.eu/actions/CA22128/ (accessed: 3.10.2024); IMPLERMENDEZ Action official website, https://implemendez.eu/ (accessed: 3.10.2024).

[1] Principles on Effective Interviewing for Investigations and Information Gathering, May 2021, www.interviewingprinciples.com (accessed: 3.10.2024).

and procedural guarantees. While promoting the approach known as investigative interviewing, the Principles also "deviate" to other co-related organisational issues treating the interviewing process as a central piece of a more complex system. Those issues include institutional accountability, which according to the Principles, should be achieved through effective, transparent and confidential complaint-addressing procedures.

The Mendez Principles outline a set of requirements suitable for any country, regardless of its criminal justice model. These requirements are as follows:

1. all complaints about possible mistreatment in criminal proceedings should be processed by an impartial investigative body,
2. clear guidance should be established on a complaint process, appeals mechanisms and possible outcomes available to all interviewees,
3. inquiries into possible mistreatment should ensure an appropriate level of confidentiality for all interested parties,
4. access to a lawyer, including through legal aid, should be ensured to the complainant in the complaint proceeding,
5. access to translation and interpretation should be ensured in the complaint proceeding,
6. authorities dealing with a complaint must have access to comprehensive and objective evidential material to ensure the effectiveness of fact-finding and fact-checking,
7. audio or video recordings of all interviews and interrogations should be provided and later made accessible as evidence sources during an official inquiry,
8. protection of the complainant from any repercussions and reprisals following the complaint should be ensured,
9. the filing of a complaint should stop a criminal proceeding until the complaint is resolved,
10. an external independent agency should periodically evaluate complaints addressing policies and existing practices[2].

In this study, the authors examine legal and practical issues related to the complaint-addressing procedures considering possible mistreatment during interviews or interrogations of adults in criminal procedure in Lithuania, Serbia, and Poland – three countries with distinct legal traditions. The study aims to determine whether, and to what extent, the conditions outlined in the Mendez Principles are being met in each country.

[2] A. Banevičienė, Z. Ivanović, D. Solodov, *Right to complain about mistreatment in criminal interviews and interrogations following international and EU law and the Mendez Principles*, „Studia Prawnoustrojowe" 2024, No. 65, p. 15.

Lithuania

Legal requirements for interviews and interrogations

Speaking about the interviewing or interrogating of suspects, witnesses and victims in the pre-trial investigation, the Constitution of Lithuania[3] specifies, in Article 31, that any person cannot be compelled to give evidence against themselves or their family members or close relatives. The Constitution also defines the approach regarding suspect and accused persons in criminal proceedings. It stresses that "[e]very person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence".

The Code of Criminal Procedure (CCP)[4] is the main legal act defining suspects', witnesses', and victims' status in criminal proceedings, the required attitude toward them, grounds for applying procedural coercive measures, and specifying how interviews and interrogations must be performed. Article 1 (1) of the CCP indicates that criminal procedure aims to discover the truth and justly punish the perpetrator, not to convict an innocent person. This means the focus should be not just getting a confession to a crime.

The pre-trial investigation officer, prosecutor, or court must comply with the principle of proportionality when applying coercive measures. Article 11 (1) of CCP indicates that procedural coercive measures can be applied only when the required objectives of proceedings cannot be achieved without them. Applying any procedural coercive measure must be discontinued immediately after it becomes unnecessary.

Article 11 (2) of CCP prohibits the use of violence and threats, actions that undermine human dignity and are harmful to health when applying procedural coercive measures and performing investigative actions. However, the law does not specify or clarify what actions should be considered violence and threats, actions undermining human dignity, or harmful to health.

It should also be noted that the CCP does not completely prohibit the use of physical force during procedural actions, including interviews and interrogations. Following Article 11 (2), physical force is allowed when necessary to eliminate hindrances to the performance of a procedural action. The law also does not explain what consequences arise when such actions are carried out in practice.

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[3] Constitution of the Republic of Lithuania, adopted by the citizens of the Republic of Lithuania during the Referendum of 25 October 1992.

[4] Seimas of the Republic of Lithuania, Lietuvos Respublikos baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamojo proceso kodeksas (Law on the Approval, Entry into Force and Implementation of the Code of Criminal Procedure of the Republic of Lithuania. Code of Criminal Procedure, No. IX-785, Žin. 2002, Nr. 37-1341; Žin. 2002, Nr. 46-0, i.k. 1021010ISTA00IX-785).

In addition to the CCP, the pre-trial investigation officers, who are also police officers, must obey the Code of Conduct of Police Officers[5]. The Code of conduct requires a police officer to protect and respect the honour and dignity of every person as well as basic rights and freedoms, not tolerate humiliating behaviour, communicate politely, communicate formally and restrainedly in the performance of official duties, remain polite and tactful in all cases, act respectfully, be fair and impartial when making decisions, ensure, that the decisions he/she makes are lawful and objective, to be personally accountable for the decisions made and ready to present the reasons for their adoption, not to misuse the powers of the police officer.

Similarly, the Code of Conduct of Prosecutors[6] requires the prosecutor to communicate politely, matter-of-factly and restrainedly with the participants of the legal process, to behave respectfully, to treat other persons with respect, not to show contempt for anyone, not to rush, not to use offensive words, gestures or violence, not tolerating manifestations of violence and harassment, insulting or humiliating a person, to act honestly, correctly, politely, respectfully in professional activities, not to abuse and not manipulate the freedom of action granted by the law, to write legal documents in such a way that they meet the requirements of legal acts.

The law provides only general guidance on how interviews and interrogations should be performed. Article 188 (3) of CCP indicates that at the beginning of the interrogation, a pre-trial investigation officer or prosecutor must ask the suspect if he/she confesses to committing the criminal act and then propose to comment on the substance of the suspicion. After that, the pre-trial investigation officer or prosecutor may ask the suspect additional questions.

Attention should be drawn to the fact that a pre-trial investigation officer or prosecutor must instruct the suspect about his right to remain silent and/or refuse to give testimony about a criminal act allegedly committed by him just before starting the official interrogation (Article 188 (3) of CCP). The law does not regulate unofficial talks and interviews before raising suspicions and declaring the person a suspect. Therefore, information obtained during unofficial talks and clarifications of the factual circumstances can be obtained, infringing the future suspect's right to remain silent.

The CCP also indicates that a suspect who is unable to appear for questioning or is in arrest, detention, or prison may be questioned by audiovisual transmission (Article 188 (7)).

[5] Commission General of the Lithuanian Police, Įsakymas Dėl Lietuvos policijos darbuotojų etikos ir antikorupcinio elgesio kodekso patvirtinimo (Order Regarding the approval of the Code of Ethics and Anti-corruption Behaviour of Lithuanian Police Employees, No. 5-V-411, TAR, 2023-05-16, Nr. 9181).

[6] Prosecutor General of the Republic of Lithuania, Įsakymas Dėl Lietuvos Respublikos prokurorų etikos kodekso patvirtinimo (Order Regarding the approval of the Code of Ethics for Prosecutors of the Republic of Lithuania, No. I-192, TAR, 2023-09-18, Nr. 18257).

Article 183 (2) of CCP discusses procedural aspects of questioning a witness or victim of a crime. The law indicates that at the beginning of questioning, the pre-trial investigation officer or prosecutor must ask the witness or victim to tell everything they know about the circumstances relevant to the case. Following the free explanation, the interviewer can ask the interviewee questions to clarify the details of the statements. The law prohibits asking suggestive questions. Article 185 (2) foresees special protection measures for victims of crimes and misdemeanours related to the infringement of victims' freedom of sexual self-determination and inviolability, domestic violence, trafficking, profiting from victim's prostitution and involvement in prostitution or cases related to discrimination or hatred based on sex. Such victims may request that a person of the same sex conduct the questioning. However, the pre-trial investigation officer may refuse to grant this request if this could restrict the pre-trial investigation.

Articles 179 and 183 of CCP show that the law does not require video and audio recordings during the interrogations and interviews of adult suspects, victims, and witnesses. The law only requires recording testimonies in the written protocol. Video and audio recordings can be made at the discretion of the pre-trial investigation officer or prosecutor.

Although victims, witnesses, and accused persons are re-interviewed or re-interrogated during the court trial (Article 272), their testimony during the pre-trial investigation, although obtained in violation of their procedural rights, is not required to be inadmissible under the CCP. Article 276 (4) indicates that the testimony given by an accused person, a victim and a witness to a pre-trial investigation officer or a prosecutor may be read as well as audio and video recordings of such questioning may be listened to and viewed to verify the evidence existing in the case. The officer who conducted the questioning during the pre-trial investigation may be questioned as a witness in court.

Right to complain and complaint proceedings

Article 30 of the Constitution of the Republic of Lithuania provides the general notion that any person whose constitutional rights or freedoms are violated has the right to appeal to the court.

Article 62 of the CCP indicates that participants in a criminal proceeding and persons subject to procedural coercive measures may complain to a prosecutor who organises and leads a pre-trial investigation against a pre-trial investigation officer's procedural actions and decisions. The complaint can be submitted to the prosecutor directly or via the pre-trial investigation officer whose procedural actions or decisions are being complained about. The complaint can be submitted in writing or orally. The oral complaint must be recorded in the protocol and signed by the complainant and the person receiving

the complaint. When the pre-trial investigation officer receives the complaint, he/she must, within one day from the receipt, transmit the complaint to the prosecutor. Together with the complaint, the pre-trial investigation officer must submit his/her written explanation.

If the prosecutor decides there are no grounds for concluding infringement, the decision may be appealed to a senior prosecutor. The appeal can be submitted directly to the senior prosecutor or via a prosecutor whose actions or decisions are being appealed against. Appeals may be either written or oral. The oral appeal must be recorded in the protocol and signed by the appellant and the prosecutor who has received the appeal. If the senior prosecutor refuses to satisfy the complaint, this decision may be appealed to the judge of the pre-trial investigation following Article 63 of CCP. The decision of a pre-trial investigation judge is final and not subject to appeal (Article 64 (6)).

Article 64 (1) of CCP indicates that complaints against procedural actions and decisions of a pre-trial investigation officer or a prosecutor may be filed until the pre-trial investigation is ended. Article 45 requires a pre--trial investigation officer and a prosecutor to instruct parties about their procedural rights and provide conditions for exercising them. However, it should be noted that filing a complaint does not affect the pre-trial proceeding unless the pre-trial investigation officer or prosecutor decides otherwise. Until the final resolution of the complaint, the pre-trial investigation officer and prosecutor have the discretion to stop the actions (Articles 62 (4) and 63 (3)).

Compatibility with the Mendez Principles

Considering legal requirements regarding the execution of interrogation or interweaving and the requirement for complaint proceedings in Lithuania, the following remarks can be made regarding the compatibility of complaint proceedings with the Mendez principle.

Firstly, the Mendez principles require an impartial investigative body to process all complaints about possible mistreatment in criminal proceedings. In Lithuania, such a requirement is fulfilled in the later complaint investigation stage. As already presented, the complaint must first be reviewed by the prosecutor supervising and coordinating the actions of the pre-trial investigation officer. It cannot be ruled out that the prosecutor's demand to establish certain facts, especially in public sensitive cases, may lead to inappropriate actions by the pre-trial investigation officer. Therefore, the investigation of the complaint by the prosecutor could not always be considered impartial. However, later appeals to the senior prosecutor and judge of the pre-trial investigation remedy investigation and ensure impartiality in the complaint process.

Secondly, the Mendez principles require clear guidance on a complaint process, appeals mechanisms, and possible outcomes available to all interviewees. Regarding this principle, it should be said that CCP provides clear guidance on the complaint proceeding in Lithuania. As discussed above, the law specifies when, how, and to whom a complaint should be submitted and appealed if needed. The law requires the pre-trial investigation officer or prosecutor to inform the suspect, victim, and witness about their rights to complain and how to proceed with the complaint. In addition, Article 64 (2) of CCP provides clear requirements on how long the complaint can be processed and what information must be included in the decision examining the complaint. A prosecutor and a pre-trial investigation judge must decide whether the complaint is grounded within ten days of receiving a complaint and the relevant material. If the complaint is grounded, the decision must indicate the violations committed by a pre-trial investigation officer or the prosecutor and the requirements for remedying them; if the complaint is not satisfied, the decision must provide reasons showing why the complaint is considered unfounded and dismissed. Article 64 (5) also indicates that the complainant must receive the decision resolving the complaint.

Thirdly, the Medez principles require that inquiries into possible mistreatment be conducted, ensuring appropriate confidentiality for all interested parties. Unfortunately, this principle is not followed at all when complaints of suspects, victims, or witnesses are dealt with. As indicated above, the pre-trial investigation officer gets all the information about the complaint against him/her, and he/she submits the related documents and records to the prosecutor or judge investigating the complaint. The situation is particularly worrisome because the law allows the pre-trial investigation officer to proceed with the case and take procedural actions against the complainant until the final decision is made in the complaint investigation. Considering that, it also could be concluded that another Mendez principle requiring ensuring the complainant's protection from repercussions and reprisals following the complaint is also not guaranteed.

Fourthly, the Medez principles require ensuring the complainant's access to a lawyer, including in the complaint proceeding. The analysis of Lithuanian legal acts shows that this principle is obeyed regarding suspects.

Article 31 of the Lithuanian Constitution and Article 10 (1) of CCP stress that persons suspected of a crime are guaranteed access to defence and legal counsel from the moment of arrest (detention) or first interrogation. This guarantee applies to the whole pre-trial investigation process, including writing complaints and participating in the complaint investigation procedure. Those who do not have enough funds to contract a lawyer have the right to legal aid (Article 44 (8) of CCP). The law prohibits any control of communication between the suspect and his lawyer (Article 44 (8) of CCP). The lawyer can submit

a complaint against the actions and decisions of a pre-trial investigation officer and a prosecutor and represent the suspect's rights in hearings investigating the complaint (Article 48 (1)(10)).

Article 50 (1) of CCP provides the general rule that every suspect can select and call in any lawyer. However, this rule does not work when the suspect has the right to have a duty lawyer (Article 51 of CCP). The duty lawyer is nominated irrespective of the wishes of the suspect to have a particular lawyer. If the suspect does not have the right to the duty lawyer, he/she may make a private contract with any lawyer or, if meets the conditions, request a legal aid lawyer to represent his/her interest in the complaint proceeding.

However, the situation is different regarding persons who are not yet held suspects or who are victims or witnesses. The law does not ensure their access to a lawyer. In their interviews and interrogations, the lawyer cannot participate. They can have private lawyers to write the complaint and represent their interests in the complaint proceedings. For this, they may request a legal aid layer if they meet the conditions for legal aid established by the Law on State-guaranteed legal aid[7].

Additional remarks regarding complainants' access to lawyers should be made because the CCP allows the processing of the complaint regardless of whether the claimant's lawyer can participate in the complaint hearing. The prosecutor or judge examining the complaint is not obligated to agree on the time of performance of the actions with the lawyer. Article 37 (3) of CCP indicates that, as a rule, a lawyer's engagement in another case is not considered a compelling reason for non-participation in criminal proceedings. Such regulation shows that, although in theory, the right to a lawyer is guaranteed, at least for suspects, such a right may not be ensured in practice.

The Mendes principles also require ensuring access to translation and interpretation during the complaint proceeding. Article 8 of CCP shows that this principle is ensured in the complaint proceeding in Lithuania. Suspects, victims, and witnesses who do not speak Lithuanian can file motions, give testimony and present clarifications, submit requests, and file complaints in their native language or another language that they speak. They also have the right to access the services of a translator/interpreter. These conditions must also be fulfilled when communicating with a lawyer. The decision on the complaint must be translated into their native language or another language they speak.

Finally, the Mendez principles require that authorities dealing with a complaint have access to comprehensive and objective evidential material,

[7] Seimas of the Republic of Lithuania, Lietuvos Respublikos valstybės garantuojamos teisinės pagalbos įstatymas (Law of the Republic of Lithuania on State-Guaranteed Legal Aid, No. VIII-1591, Žin. 2000, Nr. 30-827, i.k. 1001010ISTAIII-1591).

including audio or video recordings of all interviews and interrogations, to ensure the effectiveness of fact-finding and fact-checking.

This principle is not fully ensured when dealing with complaints. Although Article 64 of CCP states that when investigating the complaint, a prosecutor and a pre-trial investigation judge have the right to access the documents of a pre-trial investigation and to request clarifications from a pre-trial investigation officer or the prosecutor, and the pre-trial investigation judge can hold a hearing inviting a prosecutor, and a complainant, the obligation to make only the written protocol for recording the testimonies (Article 179 (1)) makes impossible to check whether during the interview or interrogation the actions of the pre-trial investigation officer was following the law and international standards. Article 81 (3) indicates that a victim or witness can request audio and video recordings of his testimony. However, this request does not mean an obligation to the pre-trial investigation officer or prosecutor. The pre-trial investigation officer or prosecutor has discretion on its initiative or at the request of the victim or witness to make audio and video recordings of the interview or interrogation (Article 179). When the audio and video recordings are made, they just become annexes to the written protocol. This means that a written protocol is made in all cases, regardless of whether the audio and video recording is made. The law requires only the statements of the interviewed persons to be indicated in the protocol. Thus, the actions of the pre-trial investigation officer or prosecutor are not reflected in any form.

Audio and video recordings of all interviews and interrogations should be obligatory in every criminal case to ensure the availability of comprehensive and objective evidential material.

Serbia

Legal framework

The Constitution of the Republic of Serbia[8] provides basic conditions on this issue, in Article 16 point 2, where it is stated that "all widely accepted rules of international law and ratified international treaties (which must be following the Constitution) represent the integrative part of the internal system of rule of law and therefore are enforced directly". Throughout this article, all mentioned international sources of law became integral parts of the constitutional and law system of the Republic of Serbia. One could, also, elaborate on this in the line of specific process of becoming a candidate country to the EU (Stabilisation and Association Agreement), from 2004 and 2013, respectfully and all following acts that the Republic of Serbia should adopt

[8] Official Herald of the Republic of Serbia (98/2006, 115/2021).

and integrate all EC and EU regulations, and as such government has already integrated some of those, but not all. In internal regulations when discussing this area, we need to note Article 3. Code of Police Ethics adopted by the Government of Serbia, where "police service is protecting and enforcing human rights and minorities freedoms and rights (…) assisting and serving the citizen and community following the Constitution, laws and international standards".

The Constitution proclaims in Article 25 that "the inviolability of physical and psychological integrity, that no one can be subjected to torture, inhuman or degrading treatment or punishment" as well as "that it is forbidden to force confessions" (Article 28 par. 3). That received criminal law guarantees through two incriminations of the Criminal Code (hereinafter referred to as CC), entitled *Abuse and torture* (Article 137 CC) and *Extortion of statements* (Article 136 CC).

The Serbian Code of Criminal Procedure, here and after referred to as CCP, also provides grounds for this area in Serbia, by declaring the prohibition of:

– torture, inhuman and degradable action,
– the use of force, threats and coercion,
– deception,
– medical procedures and other means that affect the freedom of will or force a confession or any other statement or action from the defendant or another participant in the procedure (Article 9 CCP).

According to Article 84 CCP, illegally obtained evidence cannot be used in criminal proceedings.

Sound and video recording of information gathering (and hearings) is easy to achieve, and the advantages of combining it with documentation through an official note or minutes are multiple, but it is not mandatory.

The legislator states that the procedural agency can determine that the enforcement of evidentiary or other actions be recorded using sound or optical recording devices (Article 236 CCP), and then the hearing of the defendant (which is a generic term for suspect, indicted, accused and sentenced subject) and the examination of witnesses and experts in the proceedings for criminal offences from Article 162 point 1 CCP (in the jurisdiction of special prosecutors – organised crime, terrorism, bribery and war crimes) must be sound recorded. This rule would also have to be observed in the case of questioning a suspect for criminal offences under Article 162 point 1 CCP who agreed to testify in the presence of a lawyer.

About the recording, the authority of the procedure will inform the person participating in the specific action in advance. The recording must contain data from Article 233 point 1 CCP, the data required for the identification of the person whose statement is being recorded and the information in which capacity it is being heard or examined, as well as data on the duration of the recording. When the statements of several persons are recorded, it must be ensured that they can be discerned from the recording who made the statement.

At the request of the interrogated or interrogated person, the recording will be played immediately, and the corrections or explanations of that person will be recorded. In the record of evidentiary or other action, it shall be entered that the recording was made, who made the recording, that the person being heard, i.e. questioned, was previously informed about the recording, that the recording was reproduced and where the recording is kept if it is not attached to the case files.

Unprofessional relations of police officers and public prosecutors towards citizens during service (gathering of information, interviewing, police questioning, interrogation, witness hearing) have been declared as easy or minor violations of official duties (Article 206 para 1 point 3 of the Serbian law on police (LOP)[9].

As a major violation of police powers, abuse of the police powers and abuse of the status of a police officer, illegal, unscrupulous, negligent work or omission of an action, for which the employee is authorised, which caused or could have caused damage or illegality in the work, are also considered serious violations of official duty (Article 207 paras 1 and 16 LOP). This is in correlation with Article 36 of the European Code of Police Ethics, which states that the police will not commit, cause or tolerate any act of torture or inhuman and degrading treatment or punishment under any circumstances.

Following the previous is also Article 56 of the Constitution of the Republic of Serbia which states: „Everyone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers, bodies of the autonomous province and local self-government units and to receive reply from them if they so request. No person may suffer detrimental consequences for putting forward a petition or proposal. No person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offence". Specific jurisdiction in the Ministry of Interior of the Republic of Serbia is reserved for the Internal Affairs Sector of MOI, which is of importance when discussing this area within the article.

Also, in this area is of interest to mention the law on whistleblowers (LoW)[10] which provides procedures and protection for whistleblowers.

Compliance with the Mendez Principles

From the start, it should be stated that the Principles directly aren't implemented, but there are some procedures that respond to the Principles' spirit in a way that provides some inferring about possible implementation.

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[9] Official Herald of the Republic of Serbia (106/2015, 106/2016, 113/2017, 54/2019, 9/2020, 10/2023).

[10] Official Messinger of the Republic of Serbia (128/2014).

Internal Affairs Sector is an independent organisational unit of the Ministry of Interior of the Republic of Serbia, (but it is a unit of MoI of RS, and therefore no entirely independent) which according to provisions of the Police Law (November 2005), monitors the legality of work performed by Ministry of Interior (MoI) law enforcement officers, especially when they conduct police tasks and use police authority to safeguard and protect human rights. The Head of the Sector, who is also under-secretary to the Minister of the Interior, manages the Internal Affairs Sector and is appointed by the elected Government of the Republic of Serbia, according to the Law on Public Servants and previously conducted public competition, for five years. The Head of the Sector answers for his or her own performance and the overall performance of the Service to the Minister of the Interior and submits regular and periodical reports of the performance of the Internal Affairs Sector.

The Sector pays special attention to observance of international conventions ratified by our country which refer to the area of human rights (European Convention for the Protection of Human Rights and Fundamental Freedoms, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Codes of Police Ethics and other international acts referring to the police), domestic laws and sub-legal acts (Police Law, etc.), but also Code of Police Ethics adopted by the Government of Serbia and other adopted standards of professional conduct for police officers. These norms provide some legal grounds for the independence of those agencies, but there are no real guarantees of their independence, which should be more thoroughly addressed.

Rules on the complaint procedure in the Ministry of Interior MoI – Rules[11] are developed with the Public prosecutors' office to provide conditions for the implementation of the international standards for inquiries into alleged mistreatment and according to the Principles. The condition concerning an impartial investigative body is stipulated by Rules in Article 5 regarding criminal activity in the complaint – the senior manager of the police unit has the obligation to inform (in written act) the public prosecutor (and to transfer the jurisdiction in deciding and acting upon the complaint) and Internal affairs of the MoI without delay and within max 24 h after the filing of the complaint. If the complaint is consisting alleged torture, inhumane and humiliating actions, physical injuries or threats of torture, the head of the organizational unit, without delay, informs the Department of Internal Affairs Sector (IA) and assigns the entire case files to them for processing, and informs the Director of the police and the body responsible for implementing standards of police behaviour in prevention and torture about the submitted complaint (hereafter

[11] Official Herald of the Republic of Serbia (90/2019).

referred to as the Body). So, jurisdiction lies in three different agencies: IA, Acting Public Prosecutor, and the Body, and in that way, independence is guaranteed. The independence of the latter is very vague.

Clear guidance is proscribed and stipulated in the Rules, where there are two procedures (for the complaints without alleged criminal act) predicted – short and regular, depending on the matter and delay in submitting Article 7. The jurisdiction and procedure rules about those complaint procedures with police authorities engaged in them are determined in Article 8-34. Other procedures are related to the criminal justice system and are led by a Public prosecutor with the engagement of the Body and IA according to the rules provided by CCP.

The inquiries in p. 3. that should provide confidentiality are tackled by CCP and various articles provide norms about the confidentiality and obligation of the police, public prosecutor and other parties involved in the investigation to not disclose information about the investigation (like Articles 103–105 CCP about a particularly sensitive witness, Article 111 CCP about the obligation to inform possible witnesses about special measures of protection of the witness, Articles 286–288 CCP about acting in the pre-trial procedure or Article 304 CCP on evidentiary actions). This is also covered by LOP through Articles 34 and 34a in the regulation concerning the police intelligence model and possible sanctions for disclosing that information (Article 172 LOP). In that regard should also see the confidentiality of the inquiry into the complaint and protection of the data on the complaint and her or his whereabouts in Article 10 LoW.

Audio and video recording (point 7 of the abovementioned list of conditions) is stipulated by Article 236 CCP as a discreet power of the agency in charge of the procedure (pre-trial and investigation, but also the main procedure), but there is a mandatory recording of questioning (of the suspect, witness and expert witness) stipulated for the criminal acts from the Article 162 point 1 CCP (criminal acts from the jurisdiction of the special prosecutors). Anyway, although facilities were provided and the technical equipment for at least the last case, there is no actual recording related to that, which can be concluded from the CPT report from 2017, 2021 and 2023 visits to Serbia.

Protection of the complainants (point 8 of the list of the conditions) is not specifically tackled by law, but it is covered by the protection of criminal complaints and witnesses, so in a sense, it is not covered adequately concerning the Mendez Principles.

Periodical evaluation has been predicted through a national mechanism for torture prevention, but it is at this moment only dependent on visits of the CPT scheduled visits which are predicted as an obligation to be suffered by authorities in Serbia. This is very sad since the results are devastating for the whole period of 7 years from 2017. And very little has been done by the Serbian government.

Regarding the implementation of the rules of the Council of Europe, CPT has done multiple visits and the results of the compliance with the Conventions and treatment of the suspects and detained persons are very disappointing.

In the report from the 2023 visit to Serbia[12], it is stated the following, and that can be the leading comment on the status of things: "As regards the effectiveness of prosecutorial investigations, the CPT found that there was a lack of promptness and thoroughness in investigating cases of alleged ill--treatment by law enforcement officials, and a failure to apply appropriate investigative techniques. The CPT advocates for the work of the prosecutors to be reorganised with the appointment of specialised prosecutors, and for adapted investigative techniques".

Also, there have been mentioned points in the report: "As mentioned in paragraph 7, the findings of the 2023 ad hoc visit to Serbia indicate that the treatment of persons deprived of their liberty by the police, particularly in the Belgrade area, has not improved since the visits in 2017 and 2021". Regrettably, the strategy to eradicate ill-treatment by the police, including most of the elements recommended by the CPT in its report on the 2021 visit, has not been drawn up by the Serbian authorities, and the Committee considers that the efforts made by the Serbian authorities to combat this phenomenon have so far been partial, fragmentary and lacking conviction.

It was said that a firm message of zero tolerance from the highest political level on the unacceptability of ill-treatment by the police is very much needed. "The training activities on issues such as professional interviewing skills and on the theoretical and practical aspects of preventing ill-treatment need to be more targeted and less dispersed, as their impact cannot be measured solely by the number of police officers who have attended induction or refresher courses. Moreover, the measures to strengthen the legal safeguards of persons deprived of their liberty have only been partially implemented, and the failure to set up the mandatory audio-video recording rooms, which remain unused, along with the clear abuse of interview practices only serve to demonstrate the police's unwillingness to abandon certain working methods from the past, in the sense of so-called information-gathering techniques geared towards obtaining a confession".

Nevertheless, all of that has not been done especially when analyzing the reports in 2017, 2021 and 2023 visits. Moreover, there are comments in the report in 2023 that confirm very small to no change – directly in the biggest area of Belgrade in this area of LEA enforcement. The report of 2023 CPT "concludes that the treatment of persons deprived of their liberty by the police, particularly in the Belgrade area, has not improved since the 2017 and 2021

[12] Council of Europe anti-torture Committee report on its 2023 ad hoc visit to Serbia, https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-publishes-report-on-its-2023-ad-hoc-visit-to-serbia (accessed: 3.10.2024).

visits. Regrettably, the Committee considers that the efforts made by the Serbian authorities to combat this phenomenon and to implement its previous recommendations have so far been partial and fragmentary. In the CPT's view, the Serbian authorities must adopt and implement a coherent strategy to eradicate ill-treatment". In non-moving activities which are very often elaborated and defended by authorities of Serbia through listing some very non-existing education and training like those of 27 000 police officers from MOI finished training in 2 years since the 2021 report, are not helping in any way. There needs to be a thorough and very elaborate change in the approach of the whole system, including judges and prosecutors, and it must stop the transferring of the accountability and jurisdiction on the police questioning and interrogation and acting of the Internal control MOI officers and other, especially without listing *Catalogue of Designations and Descriptions of Jobs of Police Officers in the MOI* and responsibilities of their appointed persons in the chain of command. This is not productive. To elaborate on some aspects of the previously said for Serbia's lack of some points related to the Mendez Principles – there is no present clear guidance established on a complaint process, appeals mechanisms and possible outcomes available to all interviewees, but only to those suffering some kind of mistreatment. Next, inquiries into possible mistreatment do not ensure an appropriate level of confidentiality for all interested parties, authorities dealing with a complaint do have access to evidential material to ensure the effectiveness of fact-finding and fact-checking, but its comprehensiveness and objectiveness are very low. Also, the external independent agency which should periodically evaluate complaints addressing policies and existing practices is determined in the Serbian law system here referred to as Body, but the independence is murky there.

Poland

Legal requirements for interviews and interrogations

In Poland, there are legal requirements for interviews and interrogations, which specify prohibited tactics, interviewing methods, and legal consequences of interviewers' misconduct. Most of these norms can be found in the Polish Code of Criminal Procedure of 6 June 1997[13], here and after referred to as CCP.

First, it is worth mentioning that in Polish criminal proceedings, the terms "interview" and "interrogation" refer to procedural activities conducted by the state officials who handle the case. In the Polish doctrine, there is an ongoing discussion over the legality of informal police talks (informal questioning)

[13] Law of 6 June 1997 Code of Criminal Procedure [ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego] (amended text published in the Journal of Law, 2024, position 37).

conducted before official interviews and interrogations. The Mendez Principles explicitly forbid such practices as informal police questioning might circumvent official interviews, applicable safeguards, and contaminate the interviewee's memory (Sections 66, 83, 134 of the Principles). This view is well-grounded in international law on human rights and case law of international courts. In *Lalik v. Poland*, the European Court of Human Rights stated that "any conversation between a detained criminal suspect and the police must be treated as formal contact and cannot be characterised as informal questioning or as an informal interview, thus allowing for a circumvention of basic procedural rights enshrined in Article 6 § 3 of the Convention"[14]. Informal talks are, nevertheless, allowed by Polish courts for use as evidence in criminal proceedings[15].

Considering current legal requirements, Article 171 of the CCP, which is entirely dedicated to interviews and interrogations, provides that interviewees should be allowed to express themselves freely within the boundaries defined by the purpose of the evidentiary procedure. Only after the interviewee has given their testimony may questions be asked to supplement, clarify, or verify their statements (§ 1). It is prohibited to ask questions that suggest the content of the answer (§ 4).

Recently, Article 171 CCP was amended by § 4a, which prohibits questions regarding a witness's "sexual life" unless such questions are relevant to the nature of the criminal case. This rule, however, does not apply to suspects or individuals accused of criminal offences. According to the government's justification of the amendment, "the existing regulations do not adequately protect the witness's and victim's right to privacy, as they do not provide a clear legal basis for allowing the court to dismiss questions regarding their sexual life when such questions are not essential for resolving the case and are motivated by purposes other than seeking the objective truth. Meanwhile, a witness who is asked such questions experiences additional stress and embarrassment, which negatively impact their mental state and might affect the course and outcome of the proceedings". The amendment is expected to fulfil the state's obligations under Article 54 of the Istanbul Convention[16] and Article 8 of the European Convention on Human Rights in terms of the protection of personal information[17].

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[14] Case of *Lalik v. Poland* (Application No. 47834/19), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224575%22]} (accessed: 3.10.2024).

[15] Decision of the Supreme Court of 18 February 2003, Case No. WA 3/03, Lex No. 184211; Decision of the Court of Applean in Łódź of 18 June 2015, Case No. II AKa 84/15, Lex No. 2050486; Decision the Court of Appeal in Wrocław of 30 September 2021, Case No. II AKa 136/21, Lex No. 3304863.

[16] Convention on preventing and combating violence against women and domestic violence of 1 August 2020, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210 (accessed: 3.10.2024).

[17] Print No. 2615, Government proposed draft law to amend the legal act Code of Civil Procedure and certain other acts of 19 September 2022, https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2615 (accessed: 3.10.2024).

Under Article 171 § 5 CCP, it is prohibited to influence the statements of the interviewee through coercion or unlawful threats as well as use hypnosis, chemical or technical means that might affect the psychological processes of the interviewee or aim to control the unconscious reactions of the interviewee's body in connection with the interview or the interrogation (this rule refers to polygraph examinations). Under Article 171 § 7 CCP, testimonies obtained in violation of the abovementioned restrictions or given under the conditions that exclude the interviewee's freedom of will, "cannot constitute evidence". The law does not, however, prohibit the use of such testimony in establishing the circumstances of the interviewers' misconduct. Also, evidence derived from inadmissible testimonies is not recognised as inadmissible following the idea of "the fruits of a poisonous tree".

Article 168a CCP provides that "evidence cannot be deemed inadmissible solely because it was obtained in violation of procedural regulations or through a criminal act unless the evidence was obtained in connection with the performance of official duties by a public official as a result of murder, intentional infliction of bodily harm, or deprivation of liberty". This rule further increases the uncertainty surrounding the interviewers' procedural responsibility. In the case law, it is presumed that "the decision to deem evidence inadmissible due to its acquisition in violation of the law must result from a meticulous balancing of conflicting values. On one hand, there is the material truth and the need to implement the principle of an accurate criminal response. On the other hand, there is the necessity to uphold the constitutional principle of legality, i.e., the requirement that procedural authorities act based on and within the boundaries of the law, as well as other rules of a fair trial, which are essential to achieving procedural justice"[18]. This view might contradict the position of the European Court of Human Rights. In the case of *Ćwik v. Poland*, the Court found that "Article 3 of the Convention enshrines an absolute right. Being absolute, there can be no weighing of other interests against it, such as the seriousness of the offence under investigation or the public interest in effective criminal prosecution, for to do so would undermine its absolute nature. Neither the protection of human life nor the securing of a criminal conviction may be obtained at the cost of compromising the protection of the absolute right not to be subjected to ill-treatment proscribed by Article 3, as this would sacrifice those values and discredit the administration of justice"[19].

It is worth noting that in legal doctrine and case law, there is an ongoing discussion over the meaning of the terms "free will", and "coercion", as well as

[18] Decision of the Supreme Court of 3 November 2021, Case No. III KK 373/20, http://www.sn.pl/sites/orzecznictwo/ Orzeczenia3/III%20KK%20373-20.pdf (accessed: 3.10.2024).

[19] Case of *Ćwik v. Poland*, Application No. 31454/10, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-205536%22]} (accessed: 3.10.2024).

the admissibility of deception and provocation[20]. The lack of official guidance regarding these issues can be recognized as contributing to legal uncertainty and inconsistent interpretations. This ambiguity can complicate judicial decision-making, potentially leading to varied rulings across similar cases. As a result, there is a growing call for clearer definitions to ensure uniformity and fairness in the application of the law.

Procedures for addressing complaints are grounded in essential legal statutes. Under Article 63 of the Polish Constitution[21], "everyone has the right to submit petitions, applications, and complaints in the public interest, on their behalf, or behalf of another person with their consent, to public authorities as well as to social organizations and institutions in connection with the tasks assigned to them in the field of public administration. The procedure for considering petitions, applications, and complaints is specified by law".

The legal act which specifically addresses complaints about mistreatment during interviews or interrogations is the Polish Code of Criminal Procedure, which provides for two types of complaint-related inquiries – institutional and judicial. Institutional control is exerted over preliminary investigations conducted by police or other governmental agencies with investigative powers and is under the competence of the police officers' superiors and the procurator (Article 326 CCP). In the first case, the complaints are handled within a common administrative procedure. In the case of the procurator, a complaint can be filed by the interviewees or, on their behalf, by their legal representative. The general task of the procurator is to ensure that the police investigation is conducted effectively and appropriately (Article 302 CCP).

Judicial control is exercised by the court and is limited to situations where a formal decision pertinent to specific investigative activities, such as a search, seizure, handling of physical evidence and other related actions) allegedly violates the person's rights (Articles 236, 467 CCP). In addition, allegations of mistreatment during interviews and interrogations might be part of the appeal on the court sentence later.

If the alleged mistreatment involves physical torture, the procurator initiates a preliminary investigation into the complaint's allegations, which might result in criminal prosecution and such cases are known[22].

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[20] J. Gurgul, *Jeszcze o dowodzie z zeznań i wyjaśnień nietrzeźwego*, „Prokuratura i Prawo" 2018, No. 11, pp. 94–122; R. Koper, *Problem dopuszczalności stosowania podstępu wobec świadka w procesie karnym*, „Prokuratura i Prawo" 2018, No. 7–8, pp. 24–47; Decision of the Supreme Court of 5 February 2020, Case No. IV KK 698/19, Lex No. 3178892.

[21] Constitution of the Republic of Poland of 2 April 1997 (Journal of Law 1997, No. 78, item 483).

[22] Case of *Kudła v. Poland*, Application No. 30210/96, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58920%22]} (accessed: 3.10.2024); Case of *Kanczał v. Poland* (Application No. 37023/13), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193080%22]} (accessed: 3.10.2024).

Compatibility with the Mendez Principles

Looking into the national legal framework considering the recommendations concerning complaint handling, a general conclusion can be made that, overall, the existing procedure does not meet the standards set by the Mendez Principles. This conclusion arises from the fact that these standards are only partially followed. While some recommendations are endorsed, others are not, or their implementation depends on the discretion of the investigative authorities.

The existing complaint-handling procedures generally meet the requirement concerning the impartiality of complaint-handling bodies, since the law guarantees the right to be heard by the court. Even when the investigation is conducted by non-procurator bodies such as the police, it is possible, after filing the complaint to the procurator, to appeal the eventual rejection to the court. The same can be said about clear guidance on the complaint process, appeal mechanisms, and possible outcomes (second standard), hence, the subject regulations are mostly straightforward. Also, the confidentiality of information about complainants and the content of their complaints is guaranteed by the general prohibition of unauthorised disclosure of all the information on active criminal investigations without the explicit permission of investigative authorities. It is more complicated in the case of whistleblowers in criminal proceedings, since there is no unified legal framework for whistleblowers in Poland, and there are known practical issues hindering their effective protection, especially in the case of interinstitutional whistleblowing[23].

Regarding access to a lawyer, it can be characterized as unequal. First, in Poland, there is no legal aid system that guarantees every detainee free access to a lawyer immediately after detention. A request for a court-appointed defence attorney can only be made after the first interrogation as a suspect. Until the court-appointed attorney is assigned and contacts the client, law enforcement officers may carry out official procedures with the detainee (e.g., interrogations, questioning). This, combined with the lack of other safeguards, such as mandatory medical examinations and audio or video recording of interviews, creates conditions conducive to mistreatment and abuse of power. The situation is particularly difficult for less affluent individuals who cannot afford to hire a defence attorney. These individuals are effectively deprived of legal assistance during the critical initial stages of criminal proceedings[24].

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[23] P. Czarnecki, A. Kluczewska, *Ochrona procesowa i pozaprocesowa sygnalisty w postępowaniu karnym*, [in:] B. Baran, M. Ożóg (eds.), *Ochrona sygnalistów. Regulacje dotyczące osób zgłaszających nieprawidłowości. Zagadnienia prawne*, Warsaw 2021, pp. 65–78; J. Karaźniewicz, *Instytucja sygnalizacji w polskim procesie karnym*, Toruń 2015.

[24] Biuro Rzecznika Praw Obywatelskich. Krajowy Mechanizm Prewencji, Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Pomieszczenia dla Osób Zatrzymanych lub doprowadzonych w celu wytrzeźwienia Komendy Powiatowej Policji w Rawiczu, https://bip.brpo.gov.pl/sites/default/files/2024-05/Raport%20-%20KPP%20 Pabianice%202023.pdf (accessed: 3.10.2024).

It is important for the interviewees who do not speak a national language to have access to a qualified interpreter. In Poland, the law on criminal proceedings provides for the obligatory participation of an interpreter (Article 204 CCP). One of the practical issues is that the translation of case files might be done selectively based on their importance, which can be an obstacle in composing and filing complaints with detailed argumentation.

Considering the recommendation for audio or video recording of all interviews and interrogations, it should be noted that the existing regulations do not mandate such a requirement. Whether an interview is recorded depends on the decision of the investigators. There are only a few situations where recording is considered obligatory. These include cases where there is a risk that the victim or witness will not be able to provide testimony in future proceedings, where the victim or witness is interviewed remotely as specified in Article 396 of the CCP, or in the first interview of an underage victim in cases of sexual assault, which is conducted by the court following a special procedure outlined in Articles 185a, 185b, and 185c of the CCP. Additionally, recordings are mandatory in court proceedings in a first-tier tribunal, provided there are no technical obstacles to making the recording (Article 147 of the CCP). The lack of mandatory recording deprives investigators of an objective source of information that could be used in the event of a complaint.

In the case of formal procedural decisions, the law allows for the termination of procedural activities mentioned in the complaint (Article 462 CCP). However, in the context of interviews and interrogations during criminal proceedings, it is unlikely that filing a complaint would result in the immediate termination of the activity until the complaint is resolved. Typically, complaints are filed after the fact, forcing investigators to address events that have already occurred.

The final recommendation involves the establishment of an external, independent body that periodically evaluates existing policies and practices. In Poland, this function is fulfilled by the national ombudsmen's office, as well as prominent human rights organizations such as the Helsinki Foundation.

Discussion

The ability to file a complaint about mistreatment during interviews and interrogations in criminal proceedings is an essential safeguard against the misuse of coercive techniques and the abuse of power by law enforcement authorities. It not only provides individuals with a formal mechanism to report misconduct but also serves as a deterrent to the use of unethical practices. However, the effectiveness of these complaint mechanisms is contingent on several key factors, including the clarity of legal frameworks, the independence

of oversight bodies, access to legal aid, and the protection of complainants from retaliation.

Our analysis reveals that Lithuania, Serbia, and Poland have all recognized the right to file complaints about mistreatment in their respective legal systems. Each country provides constitutional and legislative frameworks that allow individuals to report misconduct without fear of retribution. These mechanisms contribute to protecting procedural rights during criminal proceedings, particularly during interviews and interrogations. However, when measured against the higher standards set by the Mendez Principles, significant gaps remain in all three countries.

One critical shortfall is the inconsistent use of video and audio recordings during interviews and interrogations. The Mendez Principles emphasize the importance of recording all interviews to ensure transparency and accountability, yet this practice is not uniformly implemented. For example, while Lithuania and Serbia provide some scope for audio or video recording, it is not mandated in all cases. Similarly, in Poland, recording is discretionary, with mandatory recording required only in limited situations. This inconsistency weakens the protection of interviewees, as it limits the availability of objective evidence that could substantiate claims of mistreatment.

Another area of concern is access to legal assistance. While Lithuania and Serbia ensure that suspects have access to legal representation, Poland's legal framework is more restrictive. In Poland, a suspect may be interrogated before a court-appointed lawyer is assigned, which can result in a lack of legal support during the crucial early stages of criminal proceedings. This gap in access to timely legal assistance undermines the right to a fair defence and increases the vulnerability of individuals to coercive practices.

The protection of whistleblowers also emerged as a critical issue. Internal reporting mechanisms for whistleblowers could play a pivotal role in exposing systemic abuses, yet the current frameworks in all three countries lack robust protections. Without adequate legal safeguards and a supportive institutional culture, potential whistleblowers may hesitate to come forward, fearing retaliation. This gap allows abusive practices to persist unchecked, eroding trust in the complaint systems.

In summary, while Lithuania, Serbia, and Poland have made progress in establishing complaint mechanisms for mistreatment during interviews and interrogations, much remains to be done to meet the elevated standards of the Mendez Principles. The absence of mandatory recording, unequal access to legal representation, and insufficient protections for whistleblowers highlight the need for further reform.

Conclusions

1. The right to file a complaint against coercive questioning techniques and other forms of mistreatment during interviews and interrogations is a critical safeguard against the abuse of power by investigators. A well-functioning complaint mechanism not only deters misconduct but also reinforces ethical standards in criminal proceedings. However, for such mechanisms to be truly effective, they must be supported by clear legal frameworks, independent oversight, comprehensive internal investigations, and meaningful sanctions for those responsible for misconduct.

2. The Mendez Principles set significantly higher standards for the protection of interviewees by focusing on transparency, accountability, and the dignity of individuals involved in criminal investigations. These standards, which are grounded in practical experience and scientific research, provide a robust framework for minimizing the risk of mistreatment during interrogations.

3. The analysis of Lithuania, Serbia, and Poland reveals that while these countries have established some mechanisms to address complaints of mistreatment, there is a need for further alignment with the Mendez Principles. The most pressing areas for reform include the consistent use of audio and video recordings during all interviews, ensuring equitable access to legal assistance, and enhancing the protection of whistleblowers. These reforms are essential to safeguarding the rights of interviewees and ensuring that interrogation practices in these countries align with international best practices in human rights protection.

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Summary

The right to complain about mistreatment during criminal interviews and interrogations – Lithuanian, Polish, and Serbian law and practice

Keywords: criminal procedure law, Mendez Principles on Effective Interviewing, mistreatment, complaint, institutional accountability, comparative analysis.

The UN's 2021 Principles on Effective Interviewing for Investigations and Information Gathering, also known as the Mendez Principles, promote an alternative approach to interviews, interrogations, and information acquisition by public officials. The document emphasizes the need to avoid coercion, psychological manipulation, and other forms of mistreatment that violate commonly recognized human rights and procedural guarantees. Research shows that coercive tactics can result in false confessions, unreliable information, unfair trials, and ultimately undermine the administration of justice. Principle 5 of the Mendez Principles addresses institutional accountability as a safeguard against improper interviewing methods, such as coercive, manipulative, or confession-focused tactics. It underscores the importance of transparent, confidential, and effective complaint mechanisms. The authors examine the procedures for addressing complaints in Lithuania, Serbia, and Poland, specifically concerning allegations of mistreatment during interviews and interrogations of adults in criminal proceedings. The study aims to assess how effectively these three countries handle complaints of mistreatment during interviews and interrogations, using the Mendez Principles as a benchmark. By comparing the complaint-handling procedures in Lithuania, Serbia, and Poland, the study seeks to identify commonalities and discrepancies in their approaches. It also highlights the legal and practical challenges these nations face in aligning their practices with the higher standards of protection outlined by the Mendez Principles. Ultimately, the study offers insights and recommenda-

tions for enhancing institutional accountability and improving complaint mechanisms to better safeguard human rights during the investigative process.

Streszczenie

Prawo do składania skarg na złe traktowanie podczas przesłuchania w postępowaniu karnym – prawo i praktyka na Litwie, w Serbii i Polsce

Słowa kluczowe: postępowanie karne, zasady skutecznego przeprowadzania przesłuchań Mendeza, złe traktowanie, skarga, odpowiedzialność instytucjonalna, analiza prawnoporównawcza.

Opracowane pod auspicjami ONZ zasady skutecznego przeprowadzania przesłuchań i wywiadów na potrzeby śledztw z 2021 r., znane również jako zasady Mendeza, promują alternatywne podejście do przesłuchań i ogólnie wywiadów przeprowadzanych przez funkcjonariuszy publicznych. Zasady Mendeza podkreślają konieczność unikania stosowania przymusu, manipulacji psychologicznej oraz wszelkich innych form traktowania, które nie są zgodne z powszechnie uznawanymi prawami człowieka i gwarancjami procesowymi. Badania pokazują, że stosowanie przymusu lub manipulacji podczas przesłuchań w postępowaniu karnym może prowadzić do fałszywego przyznania się do winy, podważa wiarygodność ustaleń faktycznych i w konsekwencji może prowadzić do pomyłek wymiaru sprawiedliwości. Zasada 5 odnosi się do odpowiedzialności instytucjonalnej jako zabezpieczenia przed stosowaniem niewłaściwych metod przesłuchania, takich jak przymusowe, manipulacyjne lub skierowane na uzyskanie przyznania się do winy taktyki. Zasada ta podkreśla znaczenie przejrzystych, poufnych i skutecznych mechanizmów składania i rozpatrywania skarg na złe traktowanie podczas przesłuchania. Autorzy analizują procedury rozpatrywania skarg funkcjonujące w postępowaniu karnym Litwy, Serbii i Polski i dotyczące nadużyć podczas przesłuchań osób pełnoletnich. Celem artykułu jest ocena, na ile skuteczne są istniejące mechanizmy prawne oraz na ile są one zgodne z wymogami i standardami zasad Mendeza. Porównując procedury rozpatrywania skarg w tych trzech krajach, autorzy identyfikują zarówno cechy wspólne, jak i rozbieżności, proponują zmiany, które mają wzmocnić odpowiedzialność instytucjonalną w poszczególnych krajach oraz dostosować mechanizm rozpatrzenia skarg do wymogów zawartych w zasadach Mendeza.