



ISSN: 0976-3031

Available Online at <http://www.recentscientific.com>

International Journal of Recent Scientific Research  
Vol. 7, Issue, 9, pp. 13364-13370, September, 2016

**International Journal of  
Recent Scientific  
Research**

## Research Article

### CRIMINAL OFFENCE USE OF VIOLENCE DURING INVESTIGATION. TACKLE ACCORDING TO ALBANIAN CRIMINAL LEGISLATION

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#### ARTICLE INFO

##### Article History:

Received 10<sup>th</sup> June, 2016

Received in revised form 14<sup>th</sup> July, 2016

Accepted 08<sup>th</sup> August, 2016

Published online 28<sup>th</sup> September, 2016

##### Key Words:

The right to silence, ill-treatment, the exercise of violence, investigative bodies, etc.

#### ABSTRACT

The status of being accompanied, arrested, detained not legitimize police structures to exercise forms of pressure, psychological, physical, or torture against these persons. Respect for citizens' legal procedural guarantees in police custody implemented at the time of notification of the indictment and interrogation of persons in conflict with the law. To deal with people who has committed offenses does not mean that thou discriminate against or thou hate them, but they must be treated with humanity "According to constitutional law "No one shall be subjected to torture or to treatment cruel, inhuman or degrading". But in practice, the happens opposite , after person detained and arrested during the process of interrogation or during the course of the preliminary investigation, ill-treated through the use of violence, treating them to give evidence or admit guilt in connection with the crime committed. The right to not to incriminate himself during the investigation process, is an integral part of the right to a fair trial, provided for in Article 6 of the ECHR. Through this paper I want to analyze and treat the offense of violence during the preliminary investigation. Referring to case law, and cases of ill-treatment of persons detained, arrested or are in the capacity of the defendant, which are frequent, with the right question is, A respect for the right to silence or to not implicate himself in a criminal act by the authorities? what measures and legal provisions in connection with the respect of this right and the prevention of abuse and violence that these people?

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#### INTRODUCTION

##### *The right of silence and not to incriminate himself during the process of preliminary investigation*

The process of investigation must be exercised strictly while respecting the principles of fair proceedings, equal and legal, in order to protect the rights, freedoms and legitimate interests of man. The legality of this process should be carefully verified at any time, in order to avoid arbitrary actions. [1] The legality of this process should be carefully verified at any time, in order to avoid arbitrary actions. The use of violence in the stage of preliminary investigation is a serious violation of the Constitution and specifically Article 25 thereof, which states "No one shall be subjected to torture or to cruel, inhuman or degrading" As seen in the constitutional context, not subjected to torture, punishment or cruel, inhuman or degrading treatment is included as a constitutional guarantee on top of personal freedom and individual rights. His prediction is made in the Code of Criminal Procedure, where, according to which "No one shall be subjected to torture or to cruel, inhuman or degrading treatment and that prisoners are provided humane treatment and moral rehabilitation. [2]

The status of being accompanied, arrested, detained not legitimize police structures to exercise forms of pressure, psychological, physical, or torture against these persons. Respect for citizens' legal procedural guarantees in police custody implemented at the time of notification of the indictment and interrogation of persons in conflict with the law. To deal with people who has committed offenses does not mean that thou discriminate against or thou hate them, but they must be treated with humanity. Treatment with humanism accompanied persons, detained or arrested, stems from International Covenant on Civil and Political Rights of the United Nations, under which "All persons deprived of their liberty shall be treated with humanity and with respect for the human dignity " [3] Above all, torture and cruel or inhuman or degrading treatment are absolutely prohibited and can not be justified under any circumstances.

Detection and prevention of crime is closely related with the full collection of all evidence dealing with, especially the material evidence and evidence, the statements of persons who have knowledge about the circumstances of the event. The material evidence, as a rule, are where the crime occurred or where his mark. For this reason it is very important location of the crime scene and of all countries where traces are left. The

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collection and fixation of data for the reconstruction of fact criminal, receiving data from people who show useful circumstances for the purpose of investigation, etc., are actions that the stage of preliminary investigation carried out at the initiative of the judicial police services

The interrogation remains one of the key moments of the procedure, according to the criminal procedure code "*The defendant, even when isolated by precautionary measures or when deprived of liberty for any other cause, shall be examined free, except for the measures when needed to take to prevent escape or violence. can not be used, even with the consent of the defendant, methods or techniques to influence the freedom of the will or the ability to change the assessment of the memory of the facts. Before the interrogation starts the defendant is explained his right to silence and that even if they do not, the procedure will continue*".[2] Respect of the rules of procedure and the preservation of the core rights that the persons escorted, detained, arrested remains important for the normal continuation of this process.

The purpose of the questioning is to clarify the facts collected earlier, finding new facts related to the issue that is being investigated, and respect the right that any man, even suspected of a crime, to prove or not about what he knows or has done. During the escort, detention or arrest, the judicial police officer, during the interrogation of these persons have to explain to them all the procedural rights that they enjoy. It is important to note that the person escorted, detained or arrested, can not be compelled to testify against himself or to other family members. If during his question out data implicating the offense, then he was notified of a defense.

The right to not to incriminate himself during the investigation process, is an integral part of the right to a fair trial, provided for in Article 6 of the ECHR. The ECtHR, in connection with this right, stated that; [4]

*"Although not specifically mentioned in Article 6 of the Convention, the right to remain silent and the right not to incriminate oneself are generally recognized international standards which lie at the heart of the notion of due process provided for in Article 6 convention. Their goal is, among other things, to protect the accused against improper coercion by the authorities, contributing in this way to avoid miscarriages of justice and in compliance with the purposes of Article 6. The right to not to incriminate oneself in particular presupposes that the prosecution in a criminal case must prove the charges against the accused without resorting to evidence obtained through methods of coercion against the will of the accused. In this sense the right is closely linked to the presumption of innocence embodied in Article 6, paragraph 2 of the Convention. The right to not to blame themselves primarily has to do with respecting the will of an accused person to remain silent....."*

During the investigation process, attention should be paid to respecting the right of defense, especially if the detained person has been given the opportunity to challenge the authenticity of the evidence and use them, and whether statements made by, they are made voluntarily without any inducement or coercion to make such statements [5]. Also, we are aware of the quality of evidence, including whether the circumstances in which cast

doubt on the reliability or accuracy. To assess whether a procedure has violated the privilege against self-incrimination, the court must take all measures to validate the method of obtaining such evidence.[6]

So, the right to remain silent and not to incriminate himself, is an absolute right which must be respected by the judicial police officers, or by prosecutors during the investigation process. If we refer to respect this right in practice quite the opposite, as we encounter the phenomenon of violence, whether physical or psikologjike and mistreatment that you be escorted, detained or arrested, to declare or testify in about the facts that have been questioned or admit culpability by incriminate himself.

Accordingly, the rule of law must effectively create opportunities for citizens to put in place every right to override. In this context, the importance of putting forward specific responsibility and punishment of officials and public servants, who in the exercise of their functions break the law and violate the fundamental rights of citizens. Appreciating the value properly the facts show a violation of the right to protection from torture, treatment inhuman and degrading treatment, investigation incomplete whistle made from the prosecution, the bias of the investigation or trial, penalties not in accordance with the damage done to victims and the public interest, are attitudes that violate the principles of the rule of law, reduce citizen confidence in public administration and the judiciary and the democratic development of the country.

To prevent this phenomenon, by the legislators were drafted laws and regulations which are intended to respect the rights of the persons accompanied, detained, arrested during the investigation process.

#### ***Legal forecasts relating to the prevention of violence during the investigation process***

As was stated above, in moment that a person is accompanied, detained, arrested and placed in the grounds of interrogations at police stations, judicial police officer is obliged to respect all the procedural guarantees of the persons mentioned above, as the right to information about the reasons for the detention, arrest, the right to have a legal counsel, the right to notify family members, the right to remain silent or not to make statements which may incriminate himself them. Regarding the right to remain silent or not incriminated by the judicial police officers, it right, in most cases not respected, since the latter to achieve their purpose in connection with obtaining information or providing exhibit through which can be detected mechanism of the offense, violence against detained or arrested for taking these tests or in the worst case to force them to undertake commission of the offense, he is declared guilty. To prevent the exercise violence of physical, psychological, and acts of humiliation that affect the honor and dignity of man, are take some measures which are implemented in the law for the state police, the law on the organization and functioning of judicial police officers, in the staff regulations, and in different directions.

Concerning the usage and exercise of force by police officers in the police law of the state is sanctioned "*police officer uses force to accomplish the task only when it is necessary and only if all other measures have been unsuccessful or impossible.*"[7]

Under this provision, in the exercise of functional tasks, the police has to legitimize the use of proportionate force when it is necessary and only if all other measures are unsuccessful or impossible. Force used is in accordance with the principle of proportionality. The police officer selects the necessary level of force between options which, inter alia, include verbal persuasion, physical restraint, striking, but always must warn that it will use its strength before use. This warning can not be performed if circumstances do not allow, especially when immediate use of force is necessary to prevent a real and accidental danger.[8]

According to, the Manual of Rules and Procedures Standards for Treatment and Security of persons arrested and detained in police units, to the use of force by the judicial police officer, police specialist, holds a record stating the grounds of the use of force, the nature of the force used, police officers who used force, feedback actions of the arrested, detained, if arrested, detained caused injury or other physical damage, if police personnel are injured or medical staff, etc. The record of use of force signed by all attendees and copies of it are administered in the file of documents arrestees, detainees, that held in security rooms.

Law on State Police, under the prevention of violence during the interrogation of persons mentioned above, provides the right to have person detained or arrested for making demand-complaints. The right to run an application or an appeal is expressly provided in Article 115, where according to which *"Any person accompanied, detained or arrested in police premises, and every citizen next to which police conduct actions under the provisions of this law or that affected the course of these actions, has the right to submit a request / complaints orally or in writing heads of police or other state institutions ...."* the police, having record-appeal request, the documents in the appropriate register and is obliged to immediately send it to the institution for whom the is make complaint. To document the use of violence or not and to prevent both the abuse of the detained or arrested individuals who claim to them is violence, according to the Handbook of Rules and Procedures Standards for Treatment and Security of Persons Arrested and Forbidden police units, section 7 provides that: *"Before arranging / accommodation in the security rooms, a police officer first management level of service of the order ... and doctor, conduct interviews, verification and surveillance of the external arrested / detained if there are signs of violence, maltreatment, various diseases that need medical assistance or other complaints of this nature. Necessarily in this moment as soon as possible, but no later than 12 hours after detention / arrest be examined / medical visit by a doctor or physician assistant department / police station. If the person refuses, it should be documented. In the case of minors, this control / visit carried out with the consent of the parents or guardian of a minor. At the conclusion of this process, everything is found to be reflected in a record verification - determination, which is signed by all police officers involved in the verification / finding and placed in the file of the detained / arrested.*

This prediction, is made because medical examination, according to the ECHR, it is seen as an essential element for the protection against abuse and violence during the investigation process. In connection with this fact the ECHR in its decision stated:

*"A proper medical examination is one of the essential elements for protection against harassment in the investigator. Such an examination should be done by qualified physicians without the presence of an officer. The report given by the physician should include in detail not only the wounds incurred, but also the patient explanations of how they are caused, and the doctor's opinion whether the explanations are acceptable considering the nature of the damage caused.[9]*

According to CPT ; *"whenever a suspect for committing a criminal offense submitted to the judicial authorities and allegations of ill-treatment, those allegations should be recorded in writing, should be immediately ordered forensic examination (where including, if necessary, legal psychiatry) and have taken appropriate steps to ensure that allegations are investigated properly. This attitude should be whether or not, regardless the person has visible injuries. Moreover, even in cases where there is an express allegation of ill-treatment, the competent authorities should order a forensic examination whenever there reason to believe that the person may have been a victim of abuse."* Documentation careful and meticulous medical records would greatly facilitate the investigation of potential cases of abuse and bringing perpetrators before justice. If verification of violence, then we should start a criminal case, even if the injured party so requests.

The medical report is important because it is determined by the degree of shock, and through it determine whether such treatment inhuman and degrading character. The same attitude has kept the ECHR, which has stated that: [10]

*"Although the victim's injuries may seem relatively minor, they constitute external signs of violence, physical force against a person deprived of liberty is therefore able inferior. This inhuman treatment and degrading character... reports and medical certificates drawn up by doctors, in complete independence, proving density and multiple collisions, which account for two very important elements that give character to this inhuman and degrading treatment."*

Also, in the Penal Code sanctioning provisions which incriminates acts of violence exercised by employees exercising public functions which are classified as torture or violence during the investigation to force a citizen to make a statement to testify or to confess guilt his or another, as follows;

*Committing intentional acts by which a person has suffered severe suffering, whether physical or mental, of a person who performs public functions, or at the instigation or consent, tacit or open, in order:*

- 1. to obtain from him or another person information or a confession;*
- 2. punishing him for an act committed or suspected to have been committed by or another person;*
- 3. to intimidate or put pressure on it or another person;*
- 4. for any reason based on any form of discrimination;*
- 5. any other inhuman or degrading; punishable by four to ten years. "*

*"Torture, and any other inhuman act, when it has inflicted handicap, mutilation or any permanent health damage or death of a person is punishable by ten to twenty years."*[11]

*"Committing acts or giving arbitrary orders by the official holding a state function or public service while exercising his duty, which affect the freedom of citizens, shall be punished by a fine or imprisonment up to seven years."* [11]

*"The use of violence by the person in charge of an investigation to force a citizen to make a statement to testify or confess his guilt or another, shall be punished with imprisonment from three to ten years."*[11]

These offenses are sanctioned in the penal code, the fact that when a person raises a complaint of ill-treatment by the police or any other state organ, the state is obliged to provide any individual within its territory the rights and freedoms guaranteed, in acts national and international. So by the state should be an effective investigating which will make possible the identification and punishment of those responsible. If there were, the general prohibitions against torture, inhuman and degrading treatment would be ineffective in practice and will allow some state bodies issue of abusing the rights guaranteed to punish.[12] In this context it is intolerable silence of a prosecutor or judge when they appear, while on duty a person under investigation or trial in detention and that reflects violence physical, or psychological. This is a position that comes open conflict with the fulfillment of duties by these state officials.

#### ***The legal analysis of the offense of using violence during an investigation***

The use of violence by the person in charge of an investigation to force a citizen to make a statement to prove or confirm his guilt or another, constitutes a criminal offense which is punishable with imprisonment from three to ten years.

This provision is important for the fact that it is intended to be protected through regular activities of the bodies of the judicial police, and the prosecutor in the performance of criminal investigations, as respectful of the law and rules of procedure and not as guilty of it. Through the drafting of this provision, lawmakers emphasized that rules must be respected procedural aspects of the discovery, fixing and collecting evidence for a fact occurred, which serve to validate the performance or non-criminal offense, the consequences that derive from it, convicted or acquitted the defendant and his degree of responsibility. In connection with the discovery, fixing and taking of evidence, criminal procedure code has ruled that police officers, prosecutors, facts which serve as evidence should be obtained from the sources of evidence provided by law, because otherwise the facts deal unforeseen sources in the law and are suspicious, do not have the value of evidence. The procedure followed for the taking of evidence is important, because *no one can be declared guilty on the basis of data collected illegally* [13].

As above, taking statements, testimonies or statement of the offense by the person who is accompanied, detained or arrested, through the use of violence by police officers, prosecutors, can not be regarded as evidence, because it is contrary the legislation. The same attitude has kept the ECtHR

in its decisions. For use in the process of material evidence obtained directly by means of mistreatment, the ECHR has valued the *"material evidence obtained through acts of violence should never, whatever their value is compelling, taken as a reference to prove person's guilt. Article 3 of the Convention contains an absolute right, so it can not be weighed other interests against it, as the seriousness of the offense or the public interest in the effective prosecution offense, because to do so would undermine its nature absolute"* According stay ECHR, *"as the defense of human life, as criminal punishment security can not be achieved by compromising the protection of absolute right not to be subjected to ill-treatment provided by Article 3. the use of such evidence, obtained thanks violation of one of the absolute rights that form the core of the convention, always causes doubts about the regularity of the process, even if the admission of such evidence was not decisive for the conviction of suspects."*[14] As a consequence, the court appreciates that the admission of statements obtained through acts of torture or by other ill-treatment, making the process entirely irregular, regardless of the value of compelling statements and despite the admission of these statements is either not decisive the verdict of guilt.

It is also important to note that Article 413 of the penal code in which is enshrined the offense of using violence during an investigation, it intends to protect the rights and freedoms of citizens protected by the criminal laws by actions not legitimate of judicial police or the prosecutor.

**From the objective side**, the offense was committed by active illegal actions, such as the exercise of physical or psychological violence to take a statement or testimony, or, stated culpability of escorted, detained or arrested.

With the term violence, understand any behavior or attitude that undermines the welfare physical, emotional and sexual of one or several persons and that affects the normal development of the termination of the individual. As such, the violence is classified in physical, emotional, sexual and economic. The physical violence considered behaviors such as beating, torture, shaking or pushing strongly, burning, smashing (slap or kick), bite, claw, bite correction strict coercion to perform an action, the use of substances that cause pain or discomfort, breaking bones, pulling hair etc [15]. Physical behaviors that constitute violence can cause injuries such as bruises to serious injuries that can take the life of a person. Emotional or psychological violence consists of behavior and attitudes consisting of insults, contempt, labeling, contemptuously, under assessment, threat to the life of the victim.

If we refer to the report of AHC official, according to her, the surveys carried not be reported that Article 314 of the Criminal Code have been applied in the investigation and judicial practice so far. Whenever it reported for the use of violence during interrogation or detention facilities, by the prosecution is being investigated for those responsible for the criminal offense of tortures provided for in Article 86 or for the criminal offense of arbitrary action enshrined in Article 250 of the penal code. This is probably due to the fact that there may be uncertainty of investigation and trial related to the legal qualification of the offense, including torture, even more so when neither case law nor the doctrine of domestic criminal

law did not address in detail the elements distinguishing between these offenses. Respectively, "intent on committing acts or omissions in violation of the law ... by a person with a public function ... who have damaged the legitimate interests of citizens ...", or "commission of acts or award of ... arbitrary orders state employees or public function ... ", or " use of violence by the person in charge of an investigation ... force a citizen to make a statement, testimony or to confess his guilt or somebody else .", provided in the relevant acts may be elements of objective and subjective side of the criminal offense of torture, inhuman or degrading treatment. So, as seen an been an important element of the objective side of the criminal offense of violence during the investigation, it is to determine the intensity of the violence. By setting this inestetiti, investigative and judicial authorities, will be more precise legal qualification of the offense committed. It is precisely the strength and intensity of the violence inflicted by which a force exerted can be classified as torture or different as inhuman or degrading treatment, or simply violence. The intensity of the violence inflicted measured, taking the duration test, the victim's age, gender, health status and physical or mental effects sustained injuries and other circumstances specific to each situation.

In the decision "Dybeku against Albania", ECtHR held that:[16]

The nature, duration and severity of the ill-treatment to which the applicant was subjected to, and the effects have been entirely on his state of health, are sufficient to qualify as inhuman and degrading". According to the court, in respect of Article 3 of the Convention, "... the State must ensure that a person is detained in conditions which are compatible with human dignity, that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity level that transcends the inevitable suffering which is present in prison, and the practical demands of imprisonment provided in an appropriate way his health and welfare."

To make a legal setting as the right offense, once analyzed the constituent elements of the criminal offense must be taken into consideration to understand the terms torture, inhuman or degrading treatment. The Convention "Against torture, punishment or cruel, inhuman or degrading", the term "torture" means "any act by which the other person is intentionally inflicted pain or suffering, whether physical or mental, in order to provide him or by a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is caused by an official person or a third person acting ex officio or at the instigation or consent. It does not include pain or suffering arising only from legal sanctions, inherent in or incidental to their. This Convention , in Article 16 thereof, requires States parties to prevent "other acts that constitute penalties or cruel, inhuman or degrading, that does not amount to torture as defined by its Article 1, when such acts are committed by an officer or by any other person acting in an official capacity or at the instigation of or with his express consent or silent ... " So as the Convention does not provide definitions for actions that qualify as penalties or cruel treatment, inhuman or degrading implies that actions not

included in the meaning of torture belong to this category will be easier.

Inhuman treatment, willfully causing means of physical and mental suffering on the body and emotions of human beings, without necessarily having a specific purpose. While degrading treatment shall mean the individual deprivation of dignity, acts that lead to moral decadence and intellectual. [17]

As seen, distinction between torture and inhuman or degrading treatment lies in the intensity of the violence. The offense of torture provided for in Article 86 of the Criminal Code, performed active actions excruciating that appear in the wild brutal ways of the powerful Emissions bodily pain. Torture carried out by putting needles under fingernails, putting the body on fire or ice, or solid body blow, etc. Inhuman or degrading acts are the most diverse, leaving without food, use of chemicals in the human body, denial of medical care in the state of agony, leaving no sleep, no food, loss of sense of time, memories etc..

As regards the burden of proof to prove the use of violence during interrogation or during the preliminary investigation has state, which has the obligation to explain how they are causing these injuries the person to which it is violent, who the persons responsible, and determining the mechanism through which violence is exercised. The ECtHR has stated that;

.....When an individual is held in custody by the police and has been able to better health .... regards the State the burden of proof to give clear explanations on how to cause damage, failure of which constitutes a clear case set up under Article 3 of the ECHR .Also, the European Court of Human Rights in the case Jannatov against Azerbaijan she said that;

[...] The allegations of ill-treatment must be supported by evidence. In evaluating the evidence the Court adopts the position of proof "beyond reasonable doubt". Where the event is in the knowledge of the authorities, as in the case of persons under control and "storage" (Custody) their strong presumptions arise if there are injuries that occur during storage. In fact, the burden of proof belongs to the authorities to give a convincing answer. The Court notes that the domestic courts have relied on the statements made during the investigation by the applicant, in which he admitted his involvement in the crime. However, the applicant has denied his statements made during the investigation in court, claiming that they were obtained under torture. Although the court failed to determine whether the case was a fundamental breach of article 3 of the Convention about the alleged ill-treatment of the applicant while in police custody, she considered that her inability to reach any conclusions, essentially stems the failure of local authorities to carry out an effective investigation into the allegations of ill-treatment seekers. The Court stresses that where there are doubts about the reliability of a test source, the need to verify this evidence with other evidence is overwhelming. For the above reasons, the Court considers that these statements, which are based on internal courts acquittals, are evidence of dubious quality. Regarding "the factual circumstances of the case", the Court notes that the domestic court did not specify and did not explain on what "factual circumstances of the case" is based on the excluding statements of the applicant during the trial in favor of the statements made by during his investigation"

As above, we conclude that in any case where the violence is perpetrated by police officers, judicial police officers to the detriment of the escorted, detainees, arrestees, detainees and people serving prison sentences, the burden of proof was it belongs to state authorities, where the person is abused, to prove that he is not guilty of the violence and to document and notify the competent authorities to ascertain the violence.

**The Active subject** the criminal offense of violence during the investigation, is special, it is the responsibility squarely person to undertake investigation and function that uses its attributes, for committing this offense. Specifically they are, police officers, prosecutors and police officers. Judicial police officers are active subjects of this offense, because code of criminal procedure, preliminary investigations conducted by the prosecutor and judicial police officers. While passive subjects of the offense of using violence during an investigation, are escorted, detained or arrested. So as it is seen as an active subject and passive subject of this crime is special.

From **the subjective side**, the offense is committed intentionally directly by the judicial police officers and prosecutors, after the latter know that prohibited the use of force and violence during the interrogation, making a statement or testimony, as and to force the passive subject of this crime to assume guilt of the offense or blame someone else. Motives for which extended active subject of this crime are different but have no relevance to the setting of the offense.

The offense of using violence during an investigation consumed at the moment of the use of violence, regardless of whether or not the goal is achieved for which exercise this violence.

#### ***Practical implementation of Article 413 of the Criminal Code and its problems***

According to the monitoring and studies conducted by the Ombudsman and the AHC, it was concluded that the offense of using violence during the investigation provided for in Article 413 of the Criminal Code, the section of offenses against justice, has not been implemented in practice, what means that we have not a court decision final, in which the active entity be found guilty of this offense. This is because the investigation bodies and courts have encountered *vërshtirësi* terms of qualification and the legal qualification of the offense, where we had the use of violence by the aforementioned entities. K.sh.H-ja, in the study conducted on "The offenses of torture, inhuman and degrading treatment and practices of investigation and trial court in Tirana and Elbasan districts", 2015, addressed some cases, to showing what position is held by the legal qualification of the prosecution of these cases. The cases are as follows:

**Case No 1.** *A citizen was called to stop in the street by a police officer. The complainant, while complying with the order, was handcuffed and abused by some police officers present, who then escorted to the Police Station No. 2 of Tirana, where he allegedly continued his abuse. Strong shocks, he lost consciousness and fainted. It has just been mentioned, police have struck again, until he lost feeling and this scene is repeated several times. Later, he was taken to the District Police Directorate of Tirana and is isolated in the cells of the*

*body. In these environments it has been visited and treated by the police doctor. Forensic expert found obvious signs of violence on the head, face and other body parts. Also, the experts made the review of police documentation, which were reflected on medical visits were made to the complainant by the police doctor. At the conclusion of the investigation of the complaint and found that the evidence administered, the applicant's allegations of physical mistreatment by police, were true. Also they identified two of the police officers, A. Gj and K.B., who had committed illegal actions against the appellant. For this case, the Ombudsman recommended to the District Prosecutor's Office of Tirana to initiate criminal prosecution against the police officers for the offense of "torture" provided by Article 86 and 25 of the Criminal Code, as amended.*

**Case No. 2.** Four citizen, or BK, MK, JT and ET complained about 01:00, being at a local Internet Cafe, which was below their residential buildings were escorted unfairly by police patrols in Police Station no. 4, Tirana. Two of these citizens were mistreated by police and because of the injuries sustained were taken to hospital by police for examination and treatment and one of them, that was the hardest, was hospitalized. Complaining citizens claiming for false charges, made against them by the police, as they violently, threatened police insulted. As a result of this false charges nationals B. K. and J. T. were arrested, while citizens M. K. and E. T. prosecuted able to free. At the conclusion of the investigation of the complaint and the evidence administered by the staff of the Ombudsman, we reached the conclusion that there are indications of strong suspicions that the applicants' claims for physical abuse, to the accompaniment of illegal police and charges of Fake against them were based. The Ombudsman made a recommendation addressed Tirana District Prosecutor's Office, to initiate criminal prosecution against the four police officers, personnel of Police Station no. 4, Tirana, for the offenses of "torture" provided by Article 86 and 25 of the Criminal Code, the "arbitrary actions" as provided under Article 250 of the Criminal Code 25 and "false denunciation" provided Article 305 of the Criminal Code 25. At the time of completion and delivery of this recommendation resulted, on the basis of the report of the complainants, the Prosecutor's Office had started criminal proceedings on the matter. Occurred in these conditions, when the same case was a criminal case by a competent authority, the Ombudsman made available to the applicants all the evidence collected during the administrative investigation, that they could use during the criminal investigation.

In the above case it concluded that, due to heavy exercise violence during detention, two of citizens are coupled to specialized treatment in hospital where one of them is located hospitalization. On the other hand, the police officers who accompanied the criminal charges filed against these citizens for the crime, "the officer Contrary to public order" provided by article 236 of the Criminal Code. According to the complainants, the narration was done by the police, to protect themselves from the appeal that their relatives had made for their illegal actions and to justify violence and the consequences to the injured. In the above case, the conditions when they examined a criminal, state authorities have a legal obligation to verify all the circumstances of the event and after

the administration of the evidence (question eyewitnesses of the alleged perpetrators of violence, the scrutiny of documents Police Station in charge and in hospital were examined and treated citizens, and acts of forensic examination both injured), to begin prosecution against the officers responsible. State police had a duty to prove the absence of a causal link between the acts or omissions of their health consequences of mistreated citizens.

By analyzing the cases mentioned above, it is noted that in cases of physical and psychological violence against citizens, from public officials and employees, their qualifications under Article 250 of the Criminal Code, considered the legal right choice. This happens for many reasons, but the fact that the investigative bodies do not stop to investigate comprehensively and objectively cause, circumstances and why they use violence, its duration and the characteristics of the victim, his state of health, physical consequences and psychological suffered. According to the recommendations made by the Ombudsman, containing elements such cases of torture in the form of inhumane treatment or even contempt for the dignity of the Criminal Procedure Code, it does not force the defendant to speak or incriminated himself. The only difference that exists between the offense of torture and the criminal offense of violence during the investigation, is the objective for the second offense is not foreseen suffering severe physical or mental viktimiēs, as provided in article 86 of the penal code. So since the Convention does not provide definitions for actions that qualify as penalties or cruel, inhuman or degrading implies that actions not included in the meaning of torture belong to this category will be easier.

### **The Conclusions**

To avoid the confusion created in the practice of the judiciary as regards the legal qualification of the offense is necessary that the term violence is used in Article 413 of the Criminal Code, be specified more clearly, and to provide an assessment regarding intensity and force of violence. Perhaps it would be better that in Article 413 of the Criminal Code, were determined forms of violence and the consequences that would cause this violence on the health of the person who has the status of passive subject of this crime. For this reason, I recommend that Article 413 of the penal code to change as follows:

The use of violence by beating, striking,, shaking or pushing force, and any other act of violence, which has caused temporary incapacity to work for up to nine days, by the person in charge of an investigation to force a citizen to make a statement to testify or confess his guilt or another, shall be punished with imprisonment from three to ten years. "

Through this provision, the proceeding or court, will be easier to make the legal qualification of the offense, because violence used is closely related to the loss of the ability of temporary work the victim, which in my opinion is worth measuring the intensity and force of violence. To determine if the violence used is causing temporary inability to work, in any case, the court will rely on the report of the expert forensic, as this report will determine whether the violence of temporary disability for work is up to nine day or more. If as a result of violence by persons who are responsible for conducting investigations, inability shkatura is less than nine days, this act dealt with under Article 413 of the penal code, and if the temporary inability to work is the largest of nine days, and the injured person has suffered great pain she be treated under Article 86 or 87 of the penal code.

### **References**

1. Group of authors. "Police and Citizens", published by the AHRC, Tirana, 2004, p 120.
2. The Criminal Procedure Code of Albanian Republic, Article 5; 38;
3. The International Covenant on Civil and Political Rights the UN, Article 10.
4. The case Saunder v United Kingdom, dated 17/12/1996.
5. The case Allan v United Kingdom, date 11/05/2002.
6. The case Heaney and McGuinness v Ireland, no. 34720/97, ECHR 2000 XII and JB v Switzerland, no. 31827/96, ECHR 2001-III
7. The law no. 108/2014, for "The police of state", Article 133.
8. The committee Albania Helsinki "Report on the situation of human rights of persons deprived of their liberty in police stations of the state, in detention and penitentiary and psychiatric hospitals. The observations were conducted during the period July 2015 - January 2016 ", Tirana 2016, p 22.
9. The case Akoc v Turkey (22947/93 and 22948/93 Apss), dated 10 .10.2000.
10. The case Tomasi v France, dated 27 August 1992.
11. The Criminal Code of Albanian Republic, Art 86, 250, 413.
12. The case Sevtaç Vezendaroglu v Turkey. (App 32357/96) dated 11 April 2001
13. The Constitution of the Republic of Albania, Article 32/2.
14. The case Gäfgen v Germany, dated 01.06.2010.
15. The case Dybeku against Albania, datet 18.12.2007.
16. The Arben Rakipi lecture, held in the training of judges and prosecutors in December 2014 at the School of Magistrates, within the scope of the AHC, based on a project funded by the EU, on Torture

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#### **How to cite this article:**

Besiana Muka and Erjon Petanaj.2016, Criminal offence use of Violence during Investigation. Tackle According to Albanian Criminal Legislation. *Int J Recent Sci Res.* 7(9), pp. 13364-13370.