



PROSECUTION OF TORTURE AND ILL-TREATMENT IN MONTENEGRO

REPORT OF NGO MONITORING TEAM

**HUMAN RIGHTS ACTION
CENTRE FOR ANTIDISCRIMINATION "EQUISTA"
CENTRE FOR CIVIC EDUCATION
WOMEN'S SAFE HOUSE**



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The project is funded by the European Union through the Delegation of the European Union to Montenegro



Embassy of the
Federal Republic of Germany
Podgorica

Podgorica
March 2013

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TRANSLATION
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This publication has been produced with the financial assistance of the European Union and the Embassy of the Federal Republic of Germany in Podgorica. Contents of this document are the sole responsibility of Human Rights Action and in no way reflect the opinions of donors.

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I INTRODUCTION

I.1. On the project

This Report was created as part of the project “Monitoring Respect for Human Rights in Closed Institutions in Montenegro”, implemented by Human Rights Action, the project leader, and partner organizations: Centre for Civic Education, Centre for Anti-discrimination “EQUISTA”, Women’s Safe House (Shelter), Belgrade Centre for Human Rights and Latvian Centre for Human Rights from 1 March 2011 through March 2013.

The main goal of the project has been to improve the protection against torture, inhuman or degrading treatment or punishment in Montenegro and facilitate effective implementation of the recommendations given to Montenegro by international expert bodies: the Committee against Torture - CAT and the European Committee for the Prevention of Torture - CPT. The project also aimed at supporting the control function of the Protector of Human Rights and Freedoms (national mechanism for the prevention of torture) and of the Parliament of Montenegro in the general protection against torture and other ill-treatment, and particularly the respect for the rights of residents in closed institutions.

The project also included two publications for all state prosecutors and competent judges, i.e. state prosecutor’s offices and competent courts in Montenegro: “The prevention and punishment of torture and other ill-treatment - a manual for judges and prosecutors”, Radmila Dragičević-Dičić, Ivan Janković, Belgrade Centre for Human Rights, Belgrade, 2011, and “The prohibition of torture, inhuman or degrading treatment or punishment - a collection of judgments of the European Court of Human Rights”, ed. Žarko Marković, Human Rights Action, Podgorica, 2013.

This Report has been prepared by attorney Luka Stijepović, in cooperation with Tea-Gorjanc Prelević and Mirjana Radović of Human Rights Action. On behalf of Centre for anti-discrimination EQUISTA, attorney Daliborka Knežević prepared the analyses of cases of Nenad Ivezić, Miljan Despotović and Public Institution Komanski Most. Tea Gorjanc-Prelević, Executive Director of Human Rights Action, is the editor of the Report.

Our special thanks for the cooperation go to all the presidents of the basic courts in Montenegro, Slavica Stijović, Secretary of the Basic Court in Podgorica, Zorica Dabanović, Registry Office Administrator at the Basic Court in Bar, Zdravko Rajević, counsellor at the Basic Court in Berane, attorneys Dalibor Kavarić, Azra Jasavić, Borislav Vlaović and Vladimir Vuleković, as well as to Siniša Dabanović, Aleksandar Saša Zeković and Raško Dendić.

I.2. Research and analysis method

The Report reviews the cases of allegations of ill-treatment by public officials and their prosecution in accordance with international standards prohibiting torture and other ill-treatment in the form of cruel, inhuman and degrading treatment. Although the minimum European standard includes the obligation of states to prosecute and punish ill-treatment carried out by private individuals as well, this Report covers only the prosecution of public officials in accordance

with the definition of torture and ill-treatment of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations.

Emphasis on the prosecution of public officials is also important in order to assess the readiness of the judiciary to ensure the rule of law through effective prosecution and punishment of public officials. It should be borne in mind that in the previous undemocratic one-party system, such practice was almost non-existent.

This Report analyses 19 cases that have not resulted in the initiation of criminal proceedings or filing of an indictment, and are well-known to the public due to publications in the media or in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment - CPT on its visit to Montenegro from 15 to 22 September 2008)¹. There are 15 cases in which criminal proceedings have not been initiated and 4 cases in which there has been no indictment.

Report also includes the analysis of verdicts in relation to officials (employees at the Institution for the Execution of Criminal Sanctions and the Police Directorate) accused of criminal offenses with elements of ill-treatment, namely Ill-treatment in the performance of official duties², Ill-treatment³ and Torture⁴, Extortion of statement⁵, Serious bodily injury⁶, Light bodily injury⁷, adopted by the courts in Montenegro from 1 January 2007 to 2013 (except for the verdict of the Basic Court in Podgorica K.br.1755/03 of 6 May 2003, which has been included for its representativeness), 44 of which are final and 2 which have not become final, as well as a final decision on the suspension of criminal proceedings.⁸

In the analysis of the courts' procedures, for the purpose of statistical review, individual decisions of the courts have been examined in relation to each defendant, i.e. in relation to each charge, in those cases where a defendant was charged with multiple acts of ill-treatment. The decisions have been examined in relation to guilt (guilty or acquitted), criminal sanction (fine, imprisonment or a suspended sentence), finality, dismissal of charges or suspension of the procedure, and validity of the decision.

This method has been employed for the purpose of clarity, since the examined criminal cases in which indictments have been raised (59 cases in total, of which the first instance decision was adopted in as many as 57) often include two or more accomplices (34) in respect of which the court at times decides differently (in 7 of 34 cases). Also, in 5 examined cases, the first instance verdict contained a number of different decisions, because the same offender has been charged with multiple acts of ill-treatment in relation to which the court brought different decisions; and for this report, each decision has been considered as separate case when creating the statistics report. The said method was employed because two proceedings have been initiated in relation

1 Available at: <http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm>.

2 Previous Criminal Code RCG (*Sl. list RCG*, 42/93...90/02).

3 Art. 166a CC.

4 Art. 167 CC.

5 Art. 166 CC.

6 Art. 151 CC.

7 Art. 152 CC.

8 On the basis of requests for free access to information, 6 basic courts submitted their judgments to Human Rights Action (Podgorica, Bijelo Polje, Kolašin, Berane, Rožaje, Bar, Ulcinj and Herceg Novi). Websites of basic courts in Kotor, Danilovgrad, Žabljak and Podgorica were also used as sources of information. Judgments have also been submitted to Human Rights Action by injured parties.

to the case of beating of lateAleksandar Pejanović in a police station, against the accused for ill-treatment, statistically considered as separate cases.

The following sources of information were used in development of this report:

- Report of the Human Rights Action “Human Rights in Montenegro 2010-2011”⁹;
- information on the cases of ill-treatment published in the quarterly reports of NGO Youth Initiative for Human Rights – YIHR, from 2007 to the end of the second quarter of 2012¹⁰;
- Report on the work of the Council for Civil Oversight of the Police, 2005-2008;
- Report on the work of the Council for Civil Oversight of the Police, 2011;
- Report of the Civic Alliance “Human Rights in Montenegro - from the referendum to the beginning of negotiations with the EU, May 2006 - June 2012”;
- information about the cases of ill-treatment reported in the media in Montenegro from 1 January 2007 to March 2013;
- information received from the Supreme Public Prosecutor’s Office in response to Human-Rights Action’s requests for access to information related to the prosecution of specific cases of ill-treatment, namely: (i) of 12 March 2012 regarding the investigation of ill-treatment and disappearance of a resident of Komanski Most Institution¹¹; (ii) of 20 March 2012 regarding the prosecution of cases Pejanović and Kljajić, abuse of detainees in Institution for the Execution of Criminal Sanctions (hereinafter: IECS) in 2005 and ill-treatment in operation Eagle’s Flight¹²; (iii) of 25 June 2012 in relation to the prosecution of cases that Human Rights Action had learned about from the media or the report of Youth Initiative for Human Rights¹³;
- documentation or information the authors obtained directly from the injured parties or their attorneys.

I.3. Definition of torture and other ill-treatment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴, adopted by the United Nations in 1984, defines torture as:

“any act by which severe pain, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or 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 inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

9 Available at: http://www.hraccion.org/wp-content/uploads/Human_Rights_in_Montenegro_2010-2011.pdf.

10 Quarterly reports on the situation of human rights in Montenegro for the same period are available at: <http://www.yihr.me/>

11 The decision of the Supreme State Prosecutor’s Office: KTR. No. 500/10 available in the archives of Human Rights Action

12 The decision of the Supreme State Prosecutor’s Office: TU. No. 312/10 available in the archives of Human Rights Action

13 The decision of the Supreme State Prosecutor’s Office: TU. No. 210/12, available in the archives of Human Rights Action

14 This Convention was ratified by SFRY back in 1991, *Sl. list SFRJ - Međunarodni ugovori*, 9/91.

Prohibition of torture is also prescribed under Art. 3 of the European Convention on Human Rights¹⁵

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

In accordance with the above definition of torture, the Committee against Torture¹⁶ and the European Court of Human Rights have taken the position in their practice that torture is composed of three elements¹⁷:

(1) The infliction of severe mental or physical pain or suffering. Distinction between torture and other ill-treatment is made on the basis of a difference in the intensity of the suffering inflicted, depending on the circumstances of the case such as the duration of the treatment, its physical or mental effects, the sex, age and state of health of the victim, the manner and method of its execution, etc. The subjective elements of this criterion – the sex, age and state of health of a victim – are relevant to the assessment of the intensity of particular treatment. However, these subjective factors are to be assessed with caution, as acts which objectively inflict sufficient severity of pain will always be considered torture.¹⁸

(2) The intentional or deliberate infliction of the pain. It is important that there is a deliberate form of inhuman treatment.¹⁹

(3) the pursuit of a specific purpose, such as gaining information, punishment or intimidation.

Furthermore, under the UN Convention, ill-treatment must be inflicted by a public official or by other person at the instigation of or with the consent of a public official. On the other hand, the European Court of Human Rights has broadly interpreted Article 3 of the European Convention on Human Rights more broadly, to include the prohibition of torture and inhuman or degrading treatment or punishment in relation to private individuals as well. The Court has made it clear in several judgments that State is to take measures to ensure that people under its jurisdiction are not subjected to torture or to inhuman or degrading treatment by private individuals.²⁰

In addition to torture as the gravest form of ill-treatment, inhuman or degrading treatment that does not fall under torture, as it does not have sufficient degree of intensity or purpose, is also forbidden.²¹

15 Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG - Međunarodni ugovori*, 9/03.

16 The Committee Against Torture - CAT was established in order to monitor the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17 See „The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights“, Aisling Reidy, the Council of Europe, 2004, p. 18, and „The prevention and punishment of torture and other ill-treatment - a manual for judges and prosecutors“, Radmila Dragičević-Dičić, Ivan Janković, Belgrade Centre for Human Rights, Belgrade, 2011, p. 53-54.

18 *Selmouni v. France*, judgment of 28 July 1998.

19 See „The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights“, Aisling Reidy, the Council of Europe, 2004, p. 21.

20 „The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights“, Aisling Reidy, the Council of Europe, 2004, p. 37, referring to judgment *A v. the United Kingdom*, of 23 September 1998, p. 22.

21 *Ibid.*

Inhuman treatment implies infliction of serious physical or mental suffering, such as hitting, beating, hair pulling and hitting against the wall, threats to close family members, but also the threat of torture, unhygienic conditions and deprivation of food and water during detention²², as well as the destruction of one's property - home, under the circumstances that have caused great discomfort and pain²³. Degrading treatment is that which is said to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them.²⁴ Degrading treatment has also been described as involving treatment that would lead to breaking down the physical or moral resistance of the victim, or as driving the victim to act against his will or conscience.²⁵

I.4. Obligation to incriminate torture, conduct effective investigation and impose appropriate punishment

The Convention against Torture, the International Covenant on Civil and Political Rights²⁶ and the European Convention on Human Rights oblige Montenegro to criminalize acts of torture and provide for sanctions that correspond to the severity of these offenses. The state is obliged to immediately ("promptly") initiate impartial investigation *ex officio* whenever there are reasonable grounds to believe that an act of torture or inhuman or degrading treatment has been committed in any territory under its jurisdiction.²⁷

These standards and their application in Montenegro will be thoroughly discussed in the text below.

22 „The prevention and punishment of torture and other ill-treatment - a manual for judges and prosecutors”, Radmila Dragičević-Dičić, Ivan Janković, Belgrade Centre for Human Rights, Belgrade, 2011, p. 70.

23 *Selçuk and Asker v. Turkey*, 1998, p. 78; *Dulas v. Turkey*, 2001, p. 55.

24 „The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights”, Aisling Reidy, the Council of Europe, 2004, p. 16.

25 *Ibid.*

26 *Sl. list SFRJ*, 7/1971.

27 See in particular Art. 13 of the Convention against Torture.

II CONCLUSIONS

1. The definition of torture under the Criminal Code of Montenegro is for the most part aligned with the definition of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the recommendations of the Committee against Torture.

2. Prescribed sanctions in relation to public officials for the crimes of Torture, Ill-treatment, Extortion of a testimony, of 1 to 8 years maximum (for Torture), or 2 to 10 years (for crime Extortion of a testimony accompanied by severe violence), with the possibility of imposing a suspended sentence, are too lenient, given the practice of the UN Committee against Torture where sanctions of 6 to 20 years in prison are considered appropriate for torture. Period of limitation of these offenses is also not appropriate, given the low level of fines and recommendations in this regard by the Committee against Torture (CAT) and the Human Rights Committee (HRC).

3. The prosecution of torture and ill-treatment by police and prison officials was often ineffective and inefficient, followed by suspended sentences and mild punishments. Such practice promotes impunity, encourages torture and ill-treatment, violates international human rights standards and raises serious doubts about the capacity of the judiciary and the police to establish the rule of law.

- Of the 78 cases discussed in this Report, criminal proceedings have been initiated in 63 cases (80.7%), whereas in 4 cases there was no indictment.

- Out of 125 examined court decisions, more than a third are acquittals (53 or 42%), or a court adopted a decision dismissing the charges due to the abandonment of the prosecution by the State Prosecutor or time-bar of the criminal prosecution (19 or 15%).

- Inadequate sentences have been imposed in decisions determining the liability of perpetrators²⁸ (52 or 42%), most often a suspended sentence (41 or 78.8% of 52) or minimal or mitigated prison sentence (10 or 19%).

- With regard to analysed decisions, the harshest penalty that an officer has been sentenced to is 5 months in prison. This punishment was determined in two cases, in the judgment of the Basic Court in Podgorica K.br.1971/08 of 20 May 2011, sentencing police officer D.P. for two criminal offenses of Ill-treatment under Art. 166a, para 2 in connection with para 1 of the CC each in conjunction with the criminal offence Light bodily injury under Art. 152, para 2 in connection with para 1 CC, which was overturned by the decision of the High Court in Podgorica Kz.br.1654/11²⁹ and the judgment of the Basic Court in Podgorica K.br.976/10 of 28 February 2011 sentencing police officer D.D. for the criminal acts of torture and ill-treatment through aiding under Art.167, para 3 in connection with para 2 in connection with Art. 25 CC, but who was pardoned by the President of Montenegro.³⁰

4. The harshest punishment with regard to the examined decisions (although the judgment is not yet final) is a prison sentence for a term of 7 months that police officers Ivica Paunović, Milanko Leković and Milan Kljajević have been sentenced to by the first instance judgment of 11 February 2013 for the criminal offense Grave bodily injury through aiding in conjunction with the criminal offense Ill-treatment through aiding against Aleksandar Pejanović.³¹

28 On 29 April 2013, 101 of the examined decisions were final, or 83.5%.

29 See p. 86 of this Report.

30 See p. 86 of this Report.

31 See section 2.2.2.2.3. Beating of Aleksandar Pejanović in police detention facility in Podgorica.

5. In some of the most controversial cases (beating of detainees in IECS in 2005, ill-treatment of fans at sports incidents), the State Prosecutor's Office has been conducting inefficient investigations without any results for several years, or even abandoned the prosecution (in 7 examined cases).

6. In 15 of 78 cases (19%) the State Prosecutor's Office failed to prosecute allegations of ill-treatment by dismissing the criminal charges of abuse (4 out of 15) or not acting upon the reported case (3 out of 15 cases), or in cases when the injured party did not press criminal charges and the Prosecutor's Office failed to investigate allegations published in the media *ex officio* (8 out of 15 cases). Amongst others, the Prosecutor's Office failed to act in cases thoroughly covered by the media regarding ill-treatment of defendants in Eagle's Flight operation and of residents at the Public Institution Komanski Most (both cases commented in the CPT's Report on the visit to Montenegro in 2008), as well as the ill-treatment of fans at the basketball game between BC Budućnost and BC Partizan.

7. When pressing charges, in the majority of cases the Prosecutor's Office charged the perpetrators with a less grave offense, ill-treatment, despite the fact that in the particular case serious injuries had been inflicted and apparent physical and psychological suffering caused, which should have been characterized as torture in the light of international standards.

8. Sometimes the charges or the investigation do not include all persons implicated - all state officials reasonably suspected of being directly involved in the commission of a criminal act or helping the commission of a criminal act. Also, the charges and sometimes the investigation do not include all the crimes committed through the actions of officials - causing of light and serious bodily harm, despite medical reports and expert evidence. For example, the defendant was not charged with Light bodily injury in addition to ill-treatment, although the injury had been caused with a wooden stick, which is an "instrument suitable to cause serious harm", so according to the law this offence should be prosecuted *ex officio*.³²

9. Courts often ignore *prima facie* evidence of ill-treatment without explanation or with insufficient reasoning, such as physical injuries determined by forensic experts, and fail to present all the evidence, such as hearing all witnesses, necessary for the proper and complete determination of facts, particularly in terms of the cause of victim's injuries and all perpetrators of ill-treatment (hearing all the witnesses, identification...), contrary to the standard of practice of the European Court of Human Rights, which requires a thorough establishment of all relevant facts.³³ On the other hand, the judgments are based on an uncritical acceptance of the testimony of defendants or the testimony of defendants' colleagues as witnesses, clearly aiming at facilitating the defendants' position in court.³⁴ Defendants, as a rule, state that the abused persons had already been injured, that the injuries occurred accidentally while resisting an arrest or as a result of self-harm.

32 In the following examined judgments: judgment of the Basic Court in Kotor K.br.434/08 of 28 July 2010, judgments of the Basic Court in Danilovgrad K.br.272/08 of 16 September 2009, K.br.267/09 of 4 June 2010 and K.br.306/09 of 5 July 2010, judgment of the Basic Court in Kolašin 237/09 of 27 October 2009.

33 This is particularly evident in the examined judgments of the Basic Court in Bar K.br.221/08 of 5 February 2009 and K.br.5/10 of 9 February 2010 and the judgment of the Basic Court in Bijelo Polje K.br.181/08 of 19 May 2008 and K.br.767/09 of 10 December 2009.

34 See, for example, the judgment of the European Court of Human Rights in the case *V.D. v. Croatia from 2011*: "83. Likewise, in all further proceedings concerning the implicated officers, no comment was made in respect of the findings of the forensic expert in the criminal proceedings against the applicant. Instead, the national authorities uncritically accepted the statements by the officers that the applicant's injuries were self-inflicted. They made no further efforts to establish the exact manner in which the applicant sustained his injuries and to answer the question whether the force used by the officers had been excessive by ordering a fresh forensic report which would focus on these issues."

10. Investigations and trials last too long and in certain cases criminal prosecution becomes time-barred³⁵ (in two cases).³⁶ On the other hand, slow pace of prosecution in some cases may have already caused those cases to become time barred (for example, the case of mass ill-treatment of prisoners in IECS in 2005, the prosecution of which was criticized in detail in the CPT report on its visit Montenegro in 2008).

11. Despite the evidence of abuse such as the findings of medical and forensic experts determining that the injuries were caused by blows sustained on the day when the victim alleged that the abuse took place, or the testimony of witnesses who were present during the abuse or saw the injuries, the accused police officers and prison officials are nevertheless acquitted, or the State Prosecutor abandons the prosecution for the alleged lack of evidence (in 7 examined cases in which 17 such decisions have been adopted in relation to the defendants).

12. Even when found guilty, public officials are often imposed inadequately lenient sentences for the purpose of prevention of torture - a suspended sentence or minimum prison sentences, which are either further mitigated without reasonable justification or revoked in the appellate proceedings, and the defendants are acquitted in the retrial or imposed a suspended sentence, or the second instance court mitigates the first instance judgment. Moreover, the state president pardoned one out of two police officers who had been sentenced to the highest prison sentence of five months.³⁷

13. Of the 3 recommendations on the investigation of publicly known cases from the CPT's report on its visit to Montenegro in 2008 (abuse of detainees in IECS in 2005, ill-treatment of detainees in anti-terrorist action Eagle's Flight in 2006 and case of Vladana Kljajić), only the recommendation to ensure the prosecution of persons who ill-treated Vladana Kljajić in IECS detention facility has been partially fulfilled.³⁸ It is particularly surprising that despite a detailed critique of ineffective prosecution of Eagle's Flight case and case of abuse of detainees in IECS in 2005 by the CPT³⁹, no progress has been achieved in the said cases!

14. We also wish to draw attention to the fact previously noted by the Council for Civil Oversight of the Police that state officials prosecuted for the criminal offence of ill-treatment, i.e. for a crime committed in the discharge of official duties, are generally not suspended from duty⁴⁰, although this is contrary to international standards⁴¹ as well as to the Labour Law of Montenegro⁴²,

35 Time-bar for the prosecution of certain criminal offenses is determined in relation to the prescribed punishment, based on the criteria set forth in Art. 124 CC. Time-bar of criminal prosecution shall come in effect in any case ("absolute time-bar") upon expiration of twice the time required by law for time-barring of criminal prosecution (Art. 125 CC).

36 Judgment of the Basic Court in Podgorica K.br.520/09 in the case of Milovan Jovanović and K.br.1755/03 in the case of Miljan Despotović, as well as the case of the Basic Court in Ulcinj K.br.98/02.

37 See p. 86 of this Report – the case of police officer D. D.

38 For more detail on the prosecution of this case, which ended in a suspended sentence in relation to IECS officers, see p. 60 of this Report.

39 Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September, p. 45-50.

40 To serve and to protect - Report on the work of the Council for Civil Oversight of the Police for 2011, Zorana Bačović and Aleksandar Saša Zeković, Podgorica, 2012.

41 See specific recommendations in this regard of the Committee against Torture (CAT) and the European Committee for the Prevention of Torture (CPT) in section 2.1.

42 Art. 130, para 1, item 3 of the Labour Law (*Sl. list CG, 49/2008, 26/2009 and 59/2011*) provides that the employee shall be suspended from work if criminal proceedings had been instituted against him/her for a criminal offense committed while working or related to work.

and damaging to the credibility of the police.⁴³ The Council noted this problem in several sessions, but only the President of the Supreme Court of Montenegro, Vesna Medenica, acted in response and stated that all basic courts are obliged to notify the Judicial Council about the proceedings conducted against police officers *ex officio*, and that the Judicial Council shall then promptly inform the Council for Civil Oversight of the Police. Such notification is necessary in order to reduce the number of cases where public officials are not suspended from duty, since the Police Directorate justifies its actions with the lack of timely information⁴⁴. Initiation of criminal proceedings against a police officer for criminal offenses committed while working or related to work is envisaged under Art. 108 of the Law on Internal Affairs⁴⁵ (*Sl. list CG*, 44/2012 of 9 August 2012), regulating the duties and powers of police officers.

15. Although Art. 109 of the Law on Internal Affairs⁴⁶ (as well as the Law on Police, which was abolished upon the entry into force of the Law on Internal Affairs on 17 August 2012) stipulates that the employment of police officers shall be terminated by operation of law if they were convicted in a final judgement for committing a criminal offence prosecuted *ex officio*, except for criminal offences related to traffic safety, on 16 April 2013 Human Rights Action received a confirmation from the Police Directorate that police officers R.J., K.M., B.V., L.Z., K.Š., Đ.D., L.D.⁴⁷ and Đ.P.⁴⁸, legally sentenced by the judgment K.br. 319/10 for abuse of N.V. in Sutomore⁴⁹, were still employed in the Police Directorate. With regard to this information, on 23 April 2012 Human Rights Action submitted a letter to the Minister of Internal Affairs, Mr. Raško Konjević, and president of the Council for Civil Oversight of the Police, Mr. Jovan Poleksić, requesting thereby information on the actions of the Ministry in accordance with the above breach of law. On 3 June 2013 Human Rights Action received a response from the Ministry of Internal Affairs indicating that a decision on the termination of employment has been rendered in all cases pointed out in our letter, except in the case of officer L.D., whose conviction was in the meantime rehabilitated by the decision of the High Court.⁵⁰

43 To serve and to protect - Report on the work of the Council for Civil Oversight of the Police for 2011, p. 109-110. For example, police officer R.R., the defendant in the proceedings concerning torture against Aleksandar Pejanović, was not suspended, but has since been promoted.

44 *Ibid*, p. 109-110.

45 "A police officer shall be temporarily suspended from work:

- 1) if a disciplinary procedure has been instituted against him/her due to a severe breach of the duty, until completion of the disciplinary proceedings;
- 2) if caught while committing a severe breach of duty for which a measure of termination of employment was prescribed, until completion of the disciplinary procedure;
- 3) during detention period;
- 4) if criminal proceedings have been instituted against him/her for a criminal offence with elements of corruption or a criminal offence committed while working or related to work, until completion of the criminal proceedings."

46 "Apart from cases of termination of employment laid down by general legislation on state employees and civil servants and general labour legislation, employment shall be terminated to a police officer if:

- 1) during recruitment or employment it was established that he/she had given false data on fulfilment of conditions referred to in Article 85 of this law;
- 2) he/she was convicted by a final judgement for committing a criminal offence prosecuted *ex officio*, except for criminal offences related to traffic safety, on the day of submission of the final judgement;
- 3) he/she was imposed five disciplinary measures for minor breaches of duty within the period of two years, or two disciplinary measures for severe breaches of duty within the period of one year."

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49 See p. 75 of this report.

50 Letter of the Ministry of Internal Affairs available in HRA archives.

III REPORT

1. PROHIBITION OF ILL-TREATMENT IN MONTENEGRIN LEGISLATION

1.1. Ratified international treaties and international standards

Montenegro's obligation to prevent torture and ill-treatment is primarily based on international documents ratified by former SFRY, such as the International Covenant on Civil and Political Rights⁵¹ (Art. 7) and previously mentioned UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the Convention against Torture). The Committee against Torture (CAT) was established to monitor the application of the Convention and Montenegro has recognized the competence of the Committee also in relation to the receipt and consideration of inter-state and individual complaints against Montenegro.⁵² The Committee for Human Rights was established to monitor the implementation of the said International Covenant.⁵³ Optional Protocol to the Convention against Torture, which established a monitoring system of prison and detention by the Subcommittee on Prevention of Torture (Art. 2) and envisages the establishment of national mechanisms for the prevention of torture (Art. 3 and 17), also bounds Montenegro.⁵⁴ The Law on the Protector of Human Rights and Freedoms of Montenegro⁵⁵ stipulates the establishment of a national mechanism under the auspices of the Protector (the Ombudsman)⁵⁶.

Within the Council of Europe, Montenegro is obliged to prevent torture and ill-treatment by the European Convention for the Protection of Human Rights and Freedoms⁵⁷ (Art. 3) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁵⁸, which provides for an effective system of monitoring of the implementation of commitments in relation to persons deprived of liberty in the form of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), responsible for examining the treatment of persons deprived of their liberty by visiting them in order to, if necessary, increase the level of protection of such persons from torture and inhuman or degrading treatment or punishment.⁵⁹

In addition, Montenegro ratified the Statute of the International Criminal Court, which defines torture as a crime against humanity.⁶⁰ On the basis of these international laws, the prohibition of

51 *Sl. list SFRJ*, 7/71.

52 SFRY recognized the competence of the Committee when ratifying the Convention, and Montenegro confirmed it on 23 October 2006, after the declaration of independence.

53 On the basis of Art. 28 of the International Covenant on Civil and Political Rights, through the Optional Protocol to the Covenant, which also binds Montenegro, Montenegro has accepted the Committee's competence to receive complaints from individuals who fall within its jurisdiction who claim to be victims of violations of Covenant rights.

54 Law on ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SCG – Međunarodni ugovori*, 16/2005 and 2/2006.

55 *Sl. list CG*, 42/2011 of 15 August 2011.

56 Art. 25 of the Law on the Protector of Human Rights and Freedoms of Montenegro.

57 *Sl. list SCG- Međunarodni ugovori*, 9/03.

58 *Sl. list SCG - Međunarodni ugovori*, 9/03.

59 Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

60 *Sl. list SRJ- Međunarodni ugovori*, 5/01.

torture, inhuman or degrading treatment or punishment is an absolutely protected human right and it cannot be limited under any conditions, even during the war⁶¹.

Mentioned international treaties and their interpretation by the Human Rights Committee, the Committee against Torture (CAT), the European Court of Human Rights and the European Committee for the Prevention of Torture (CPT) establish the obligation of States parties to combat torture, starting from incrimination of torture and other ill-treatment in domestic law, prescribing of mechanisms and sanctions for detecting and punishing abuse, training of civil servants, through implementation of an impartial, comprehensive and timely *ex officio* investigation of allegations of committed ill-treatment,⁶² banning of the use of evidence obtained by torture or ill-treatment, to the protection and compensation of victims of abuse.⁶³

1.2. Compliance of national legislation with international standards

1.2.1. The Constitution

The Constitution of Montenegro⁶⁴ guarantees the inviolability of the physical and psychological integrity of the person (Art. 28, para 2), specifically states that no one shall be subjected to torture or inhuman or degrading treatment (Art. 28, para 3), and prohibits, as punishable, any violence, inhuman and degrading treatment of persons deprived of their liberty, or whose liberty has been restricted, as well as any extortion of a confession or statement (Art. 31, para 2).

Although the Constitution prohibits torture and inhuman and degrading treatment, contrary to the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Freedoms and the Convention against Torture, it omits the explicit prohibition of inhuman or degrading punishment, so this prohibition should certainly be implied by all mentioned constitutional provisions.

61 Art. 2, para 2 of the Convention against Torture, Art. 4, para 2 of the International Covenant on Civil and Political Rights and Art. 15, para 2 of the European Convention for the Protection of Human Rights and Freedoms.

62 For example, in judgment *Gladović against Croatia* from 2011, the European Court of Human Rights criticized the actions of the judge in paragraph 54: "However, as explained above, the national judge considering the case based her conclusions solely on the written reports produced by the officers involved. She did not hear them, and she did not hear the applicant. Furthermore, she made no serious effort to assess the most important aspect of the case – whether the force used by the prison guards was necessary in the given situation. In order to establish the facts relevant for that issue she took no steps to verify the version of the events given by the officers involved. No attempts were made to establish whether any of the applicant's cellmates were present at the scene and, if so, to hear their evidence. No forensic reports were ordered which could have established how the injuries were caused and brought clarification to the applicant's allegations that he had been hit while lying on the ground. Without any such assessment the Court is unable to see on what basis the domestic authorities satisfied themselves that the force used against the applicant had been necessary. Consequently, regard being had to the applicant's allegations of ill-treatment, corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished any convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected by the prison guards."

63 These standards are included in the CPT standards (CPT/Inf/E (2002) 1 - Rev. 2010). For more detailed review of these commitments see "Prevention and punishment of torture and other ill-treatment – a manual for judges and prosecutors," Radmila Dragičević-Dičić, Ivan Janković, Belgrade Centre for Human Rights, Belgrade, 2011, p. 60-67.

64 *Sl. list CG*, 1/2007 of 25 October 2007.

Also, in the formulation of the prohibition of medical and other experiments without the permission of the individual (Art. 27 para 3), the Constitution does not specifically require that this permission or consent be “free”, although it is the keyword prohibiting experiments in the second sentence of Art. 7 of the International Covenant on Civil and Political Rights. The lack of free will already points to degrading and inhuman treatment.⁶⁵

Based on these international agreements, the prohibition of torture, inhuman or degrading treatment or punishment is an absolute human right which cannot be restricted under any circumstances. Montenegrin Constitution envisages restrictions on human rights in extraordinary circumstances and provides for a list of rights from which there shall be no derogation even in such circumstances (Art. 25). Although the prohibition of torture is not expressly listed among prohibitions from which there is no derogation (Art. 25, para 3), it is forbidden to restrict the right to “respect of human dignity and personality”, which is the title of the Article prohibiting torture, so this provision should be interpreted in such manner, in accordance with Art. 4, para 2 of the International Covenant on Civil and Political Rights and Art. 15, para 2 of the European Convention for the Protection of Human Rights and Freedoms.

The Constitution does not explicitly guarantee the right to damages for suffered torture, inhumane and degrading treatment, as required under Art. 14 and 16 of the Convention against Torture.⁶⁶ This is especially important for Montenegro, since in 2002 in the case *Hajrizi and others v. Federal Republic of Yugoslavia* the Committee against Torture found that the Federal Republic of Yugoslavia (i.e. the Republic of Montenegro within it) violated the Convention because, among other things, it failed to provide effective legal remedy in the form of fair and adequate compensation to victims of cruel, inhuman and degrading actions of the Republic of Montenegro officials, in this case the destruction of Roma settlement in Danilovgrad by private individuals in 1995.⁶⁷

Neither the Constitution nor the law specifically stipulate the obligation to conduct prompt, effective and impartial investigation of the reports of torture, inhuman and degrading treatment and punishment, which is one of the most important segments of the prohibition of torture, on the basis of Art. 12 of the Convention against Torture.⁶⁸ In the Hajrizi case the Committee also criticized the fact that no criminal proceedings were initiated against any perpetrators of the attack on the Roma settlement, including police officers who did not prevent the attack.

On the basis of Art. 3 of the European Convention for the Protection of Human Rights and Freedoms, the European Court of Human Rights in its caselaw also found the state’s obligation to conduct an independent, efficient and effective investigation into reports of torture. The Court explained that this obligation implies that public authorities, independent of those suspected of

65 The Human Rights Committee has emphasized that special attention should be given to experiments on people who do not have legal capacity, particularly if they are deprived of their liberty (General Comment 7/16 and 20/44).

66 This is a failure, if one takes into account the commitment of the Constitution makers to guarantee the right to indemnification for the publication of false data or information (Art. 49, para 3 of the Constitution), although this obligation has not been provided for by international treaties and may lead to violations of freedom of expression.

67 Danilovgrad: Decision of the Committee against Torture in the case *Hajrizi Džemajl and others v. the Federal Republic of Yugoslavia*, Edition: *Dokumenta, Humanitarian Law Centre, Belgrade 2003*. Internet edition: <http://www.hlc-rdc.org/uploads/editor/Danilovgrad-srp.pdf>. This is the first case in the Committee practice which specifies that the state may be liable for violation of the Convention by failing to act, i.e. protect the victims of inhuman and degrading treatment.

68 “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

torture or other ill-treatment, take all reasonable steps that are available to provide evidence and thereby act promptly and expeditiously.⁶⁹

Finally, given that Art. 9 of the Constitution guarantees that “ratified and published international agreements and generally accepted rules of international law represent an integral part of the national legal system, have primacy over national legislation and are directly applied when different from national legislation”, international treaties that prescribe prohibition of torture and ill-treatment are part of Montenegrin legislation. The State Prosecutor’s Office and the courts are expected to apply these ratified agreements in accordance to their binding interpretation by international bodies responsible for the supervision of their application, in order to ensure compliance with minimum standards of human rights in this field.

1.2.2. The Criminal Code

Convention against Torture under Art. 4 stipulates the obligation of states to criminalize acts of torture and attempts to commit torture and any other act by any person which constitutes complicity in an act of torture, and to prescribe appropriate penalties which take into account the gravity of the act.

The previous Criminal Code of the Republic of Montenegro⁷⁰ in Art. 48 prescribed the offense Abuse of Office (“Who in the execution of their duties abuses other person, insults or generally treats him/her in a manner offensive to human dignity...”) that could have been committed only by a public official and which was punishable by imprisonment of three months to three years.

The Criminal Code of Montenegro (*Sl. list RCG*, 70/03), which replaced the Criminal Code of the Republic of Montenegro, in Art. 167 laid down the criminal act Ill-treatment and Torture, where the ill-treatment (“who abuses another person or treats him/her in a manner that is offensive to human dignity...”) was punishable by a fine or imprisonment of up to one year, or imprisonment of up to three years if this crime was committed by an officer on duty.⁷¹ The act of torture (“who inflicts great suffering on another person to obtain information or a confession from him/her or a third person or to intimidate him/her or a third person or to put pressure on them or does so for the reasons based on discrimination of any kind”) was punishable by imprisonment of up to three years, or from one to five years if committed by an officer on duty.

Amendments to the Criminal Code (*Sl. list RCG*, 47/2006 of 25 July 2006) renamed the former criminal act of Ill-treatment and Torture into Torture and Ill-treatment and expanded the definition of torture (“who inflicts severe pain or suffering on another person through the use force, threats or other illegal means to obtain a confession, statement, or other information from him/her or a third person or to intimidate or unlawfully punish him/her or a third person or does so for the reasons based on discrimination of any kind...”). Furthermore, these amendments laid down more severe penalties for this offense – the act of torture was punishable by prison sentence of six months to five years, or one to eight years if committed by an officer on duty, while the stricter punishment of three months to three years in prison was prescribed only for aggravated form of ill-treatment (if committed by an officer on duty).

⁶⁹ See, for example, the case *Šečić v. Croatia*, 2007.

⁷⁰ *Sl. list RCG*, 42/93.90/02.

⁷¹ Considering that police officers and prison guards are officials and that they usually commit the crimes of torture and ill-treatment during the performance of duties (when depriving suspects of their liberty and escorting persons deprived of liberty), this report will mostly deal with this, aggravated forms of crimes of torture.

Amendments to the Criminal Code published in *Sl. list CG*, 25/2010 of 5 May 2010 separated the offenses of ill-treatment in Art. 166a (“who abuses another person or treats him/her in a manner that is offensive to human dignity”), while the description of the offense and the penalty prescribed remained the same as before these amendments, and Torture in Art. 167 with the amended description of the offense (“who inflicts severe pain or suffering on another person, whether physical or mental⁷², to obtain a confession or other information from him/her or a third person or to intimidate or unlawfully punish him/her or a third person or to pressure him/her or to intimidate or pressure a third person, or for any other reason based on discrimination...”), but with the same prescribed penalties - imprisonment from six months to five years for the basic offense, or imprisonment of one to eight years if the act is committed by an officer on duty.

Torture is, therefore, determined consequently, and incriminates any behaviour that leads to the prohibited consequences, without distinction between permissible and impermissible manner of execution, which is closer to the definition of torture under Art. 1 of the Convention against Torture which uses the concept of each act.

In addition, legal provision contains a broader definition of torture than the Convention against Torture, because it prescribes that torture can also be committed by a private person. This is in line with Art. 3 of the European Convention on Human Rights, which establishes the obligation of states to protect from abuse committed by private individuals as well, not just government officials.

Art. 47 of the former Criminal Code of the Republic of Montenegro laid down the crime Extortion of Statement (which can be committed only by an official), which also exists in the Criminal Code, Art. 166, with the same description of the act as before⁷³ and with somewhat stricter punishment for aggravated form of this offense in paragraph 2 (minimum imprisonment is for a term of two years instead of one year, and the maximum penalty is ten years).

The basic form of this crime in practice usually implies inhuman or degrading treatment in which the intensity of force and seriousness of the threat are not such as to result in serious physical or mental suffering. If extortion of testimony is accompanied by severe violence (aggravated form referred to in paragraph 2), these would then qualify as acts of torture that correspond to the concept of torture in Art. 1 of the Convention against Torture. Prohibition of the extortion of statement “by other illicit means or illicit manner” under Art. 1 of the Convention relates primarily to the prohibition of subjecting a person to any medical or scientific experimentation.

Domestic criminal law also criminalizes other acts of abuse which involve activities by private entities through following criminal offenses: Incitement of National, Racial or Religious Hatred, Discord or Intolerance⁷⁴, Genocide⁷⁵, War Crimes⁷⁶, Cruel Treatment of the Wounded, Sick and

72 This fulfilled the recommendation of the Committee against Torture (CAT) to also sanction the infliction of mental suffering, see Committee’s Concluding Observations regarding the consideration of the report on Montenegro, 2009 (Concluding Observations, CAT/C/MNE/CO/1 19 January 2009).

73 Extortion of Statement: (1) An official who in the performance of his duties uses force or threats or other illegal means or unauthorized manner with the intent to extort a confession or a statement from the defendant, witness, expert or other person, shall be punished with imprisonment of three months to five years. (2) If the extortion of a confession or statement is accompanied by serious violence or if it resulted in particularly serious consequences for the accused in criminal proceedings, the offender shall be punished by imprisonment of two to ten years.

74 Art. 370 CC.

75 Art. 426 CC.

76 Art. 427–430 CC.

Prisoners of War⁷⁷, Serious Bodily Injury⁷⁸, Light Bodily Injury⁷⁹, Unlawful Deprivation of Liberty⁸⁰, Coercion⁸¹, Abduction⁸², Crimes against Human Dignity and Morality⁸³, Crimes against Sexual Freedom⁸⁴, Human Trafficking⁸⁵, etc.

Convention against Torture prohibits not only acts of torture committed by a public official or other person acting in an official capacity, but all forms of abuse committed at the explicit order or consent of an official.⁸⁶ In this regard, the CC stipulates that an official who has expressly or tacitly consented to the execution of torture⁸⁷ or incited another person to commit torture shall also be held liable for this offense (Art. 167, para 2). Explicit order by an official in domestic criminal law is punishable as a deliberate incitement⁸⁸, and grounds for liability of a public official who has agreed to carry out other criminal offenses prohibiting acts of torture or inhuman or degrading treatment and abuse can be found in one of the following criminal acts: Abuse of Office⁸⁹, Negligent Performance of Duty⁹⁰, Failure to Report Crime and Perpetrator⁹¹ - if such crime is punishable under law by five years or more.

In accordance with the obligation under Art. 4 of the Convention against Torture⁹², all forms of complicity in an act of torture are punishable in our criminal law, as well as an attempt to commit criminal offenses that can be described as torture in Article 1 of the Convention.

1.2.2.1. Range of the prescribed punishments

Given the seriousness of acts of torture, inhuman or degrading treatment or punishment, it appears that prescribed minimum penalties for officials who commit crimes of Extortion of Statement - three months, Ill-treatment - also three months, and Torture - a year, are not adequate, especially given the tolerant judicial sentencing policy, under which the courts usually impose a suspended sentence or mitigated punishment by imposing a sen-

77 Art. 437 CC.

78 Art. 151 CC.

79 Art. 152 CC.

80 Art. 162 CC.

81 Art. 165 CC.

82 Art. 164 CC.

83 Art. 204–208 CC.

84 Art. 204–212 CC.

85 Art. 444 CC.

86 In the case *Hajrizi and others against Yugoslavia*, in which the Committee against Torture in 2002 found a violation of the Convention against Torture, in 1995 Roma settlement in Danilovgrad was destroyed and displaced in retaliation for the rape of a non-Roma girl allegedly committed by a juvenile, while police officers watched the burning of the houses, failing to take any measures to protect residents of the Roma settlement. In this case, the Committee against Torture first established responsibility of the state for violation of the Convention by failing to act - failure to prevent inhuman and degrading treatment.

87 This fulfilled the recommendation of the Committee against Torture (CAT) to sanction passive attitude of civil servants in the form of consent to torture, failing to prevent torture, see Concluding Observations regarding the consideration of the report of the Committee on Montenegro, 2009 (Concluding Observations, CAT/C/MNE/CO/1 19 January 2009).

88 Art. 24 CC.

89 Art. 416 CC.

90 Art. 417 CC.

91 Art. 386 CC.

92 “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

tence below the limits prescribed by law,⁹³ which is not consistent with the obligations of the state under international treaties. Practice of the Committee against Torture suggests that the appropriate penalties for torture should be custodial sentences ranging from six to twenty years in prison.⁹⁴ The Committee has, for example, found the penalty of one year in prison for police officers who stripped, handcuffed, dragged to the ground and beat the suspect to be inadequate.⁹⁵

Also, in accordance with the prescribed light sentences and periods of limitation for criminal prosecution are too short, as the Human Rights Committee explained when examining the Criminal Code of the Republic of Serbia, which has the same range of penalties for these offenses as the Criminal Code of Montenegro.⁹⁶

1.2.3. Regulations governing the State obligation to an effective investigation

Convention against Torture under Art. 13 obliges the state to grant victims of abuse the right to file a criminal complaint, in order to initiate criminal proceedings, as well as to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation, while Art. 12 stipulates the obligation of the state to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Art. 3 of the European Convention for the Protection of Human Rights and Freedoms requires the state to conduct an effective investigation into reports of abuse. To be considered “effective” investigation must be expeditious, competent investigating authorities must be independent of those who are suspected of abuse, must act impartially and take all necessary and reasonable steps to protect evidence relating to the offense and its perpetrators.⁹⁷

Montenegrin legislation does not include regulations prescribing the traits of an effective investigation, nor does it stipulate a special right to an effective investigation. This right, i.e. obligation of the state to carry out such investigation into the allegations of torture or ill-treatment is derived from the mentioned international agreements, as well as general obligation of the state prosecutors to protect the rights and freedoms of citizens in accordance with these agreements, to ensure law enforcement and prosecute perpetrators of criminal acts or other offenses prosecuted *ex officio*.⁹⁸

93 See cases of prosecution of ill-treatment below.

94 “Prevention and punishment of torture and other ill-treatment – a manual for judges and prosecutors,” Radmila Dragičević-Dičić, Ivan Janković, Belgrade Centre for Human Rights, Belgrade, 2011, p. 61 and 182. Also, Chris Ingelse, “The UN Committee against Torture: An Assessment”, Kluwer Law International, 2001, p. 342.

95 *Ibid*, citing *Guridi v. Spain*, CAT/C/34/D/212/2001 (2005).

96 Final remarks of the Human Rights Committee in relation to the Report of the Republic of Serbia of 24 March 2011, para. 11.

97 See, for example, judgment *Matko v. Slovenia*, 2006, p. 90-93, where the Court found that the investigation that has not led to the indictment was ineffective because the state prosecutor relied solely on the statements of the police officers who were in the same hierarchical chain of command as officers in respect of whom there were grounds for suspicion that they have committed abuse of a person deprived of liberty, and did not undertake any independent investigative work. Also, see judgment *Šečić v. Croatia*, 2007, p. 53-54.

98 The Law on Public Prosecution, *Sl. list RCG*, 69/2003 and *Sl. list CG*, 40/2008, Art. 2, 6, 17 and 19 of the Law on Criminal Procedure, *Sl. list CG*, 57/2009 and 49/2010, Art. 44 (Rights and Duties of Public Prosecutor).

Under the Criminal Code, criminal proceedings for crimes Extortion of Statement, Ill-treatment and Torture shall be initiated *ex officio* by the state prosecutor (Art. 183), on the basis of criminal charges by the police, the injured party or based on information obtained in some other way, while criminal proceedings for the offense Light Bodily Injury shall be initiated upon private action (Art. 152, para 4), except in the case of aggravated form, “if such injuries were inflicted by weapons, dangerous tools or other means suitable to cause serious bodily injury or severe damage to health” (Art. 152, para 2).

Ex officio prosecution of crimes of torture, inhuman and degrading treatment is in accordance with the requirements of Art. 3 of the European Convention for the Protection of Human Rights and Freedoms.

Injured party will be denied the right to initiate criminal proceedings only in the event of time-bar of criminal prosecution of the offense that is the subject of criminal charges. However, even in cases when the criminal prosecution has not yet become time-barred, the victim may be denied the right to an effective remedy if s/he would *de facto* be unable to take over the prosecution from public prosecutor. This situation will arise when the state prosecutor does not at all issue a decision on filed criminal charges or dismisses the charges, but does not inform the victim about that, who then after the expiry of three months (6 months under CPC, Art. 59, para 5) from the date of dismissal of charges loses the right to take over the prosecution. The same consequences occur when the court fails to inform the victim that the investigation has been suspended due to the withdrawal of the state prosecutor from prosecution or fails to deliver verdict to the victim who was not summoned to the main trial on which a judgment was passed dismissing the charges because of the withdrawal of the state prosecutor from prosecution.

1.2.3.1. Public scrutiny of investigations

It is particularly required that there be a sufficient element of public scrutiny of the investigation and its results, including the involvement of victims in the proceedings and informing the public about the status of investigations in progress “to ensure accountability in practice as in theory”.⁹⁹ However, in the case of access to information about the status of investigations into cases of ill-treatment initiated by Human Rights Action, Supreme State Prosecutor Ranka Čarapić persisted in her decision not to provide access to even most basic information on whether investigation is at all led in the cases that have caused reasonable attention of international public as well, until the Administrative Court protected the public’s right to be informed after the initiation of an administrative dispute¹⁰⁰. Also, in relation to the obligation of the State to ensure involvement of victims in the proceedings, the close family of late Aleksandar Pejanović after his death was omitted as the damaged party from Podgorica Basic State Prosecutor’s indictment against police officers Raičević and Rondović accused of participating in ill-treatment of Pejanović.

99 See Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit to Montenegro from 15 to 22 September 2008, published in March 2010.

100 However, despite the ruling, the Supreme State Prosecutor’s Office provided only partial answers a year after the verdict was issued. More information available at: <http://www.hraccion.org/?p=1940>.

1.2.4. Regulations governing the protection of the defendant in criminal proceedings

Provisions on respect for the personality of the suspect and the accused are contained in the Criminal Procedure Code (CPC)¹⁰¹. Special rules apply to minors.¹⁰² In criminal proceedings it is prohibited to “threaten or do violence to a suspect, accused or other person participating in the proceedings, as well as to extort confession or other statements from such persons.”¹⁰³ Defendant shall be heard with full respect for his person;¹⁰⁴ it is prohibited to use force, threat, deception, coercion, extortion, medical treatment or medication against the defendant that may affect his consciousness and will, in order to obtain a statement, confession or acts that could be used against him as evidence.¹⁰⁵ Search of a person is conducted by a person of the same sex, and a witness who should normally be present during the search is an adult of the same sex.¹⁰⁶

CPC prohibits the use of medical interventions or such means against a suspect, accused or witness to influence their consciousness and will in giving testimony.¹⁰⁷ However, it is allowed to carry out physical examination of a suspect or accused person even without their consent, if necessary to establish facts relevant for criminal proceedings. Physical examination of other persons may be performed without their consent only if necessary to determine whether or not their body has a certain trace or consequence of the criminal offense.¹⁰⁸ Such legal solution does not raise concerns from the point of view of the prohibition of torture, inhuman or degrading treatment, as it entails only the physical examination performed by a doctor in accordance with the rules of medical science and which does not in itself constitute the lowest level of abuse. Blood and DNA sampling and “other medical procedures that are necessary by the rules of medical science for the analysis and establishment of other facts relevant to the criminal procedure” can be conducted without the consent of a person under examination, unless these procedures would pose any harm to his/her health.¹⁰⁹ New paragraph 3, Art. 154 has been added, relating to the taking of saliva sample for DNA analysis, which emphasizes that this action is not considered hazardous to health. Blood sampling has been envisaged primarily to determine blood alcohol levels in drivers and as a diagnostic measure does not represent an experiment in terms of Art. 7 of the International Covenant on Civil and Political Rights. However, an extremely vague term “other medical actions” may lead to problems in practice. In any case, if the defendant objects to blood sampling and “other medical actions”, they can be carried out only upon the order of a competent court (Art. 154, para 4).

According to CPC, court decisions cannot be based on evidence obtained in violation of human rights or evidence obtained in violation of the provisions of criminal procedure, or other evidence obtained therefrom, nor may such evidence be used in the proceedings.¹¹⁰

101 The Criminal Procedure Code, *Sl. list CG*, 57/2009 and 49/2010.

102 The Law on the Treatment of Juveniles in Criminal Proceedings, *Sl. list CG*, 64/11.

103 Art. 11, para 1 CPC.

104 Art. 100, para 7 CPC.

105 Art. 100, para 8 CPC.

106 Art. 81, para 3 CPC.

107 Art. 154, para 5 CPC.

108 Art. 154, para 1 CPC (Physical Examination and Other Actions).

109 Art. 154, para 2 CPC.

110 Art. 17, para 2 CPC.

1.2.5. Regulations governing the treatment of persons deprived of liberty

Art. 10 of the International Covenant on Civil and Political Rights¹¹¹ complements Art. 7, which prohibits torture and other cruel, inhuman or degrading treatment or punishment.

The first paragraph applies to all persons deprived of their liberty in any way, the second paragraph refers to persons in custody and the third to prisoners. Treatment of persons deprived of their liberty shall be humane; the conditions in which they reside must respect dignity of the human person and must be equal for all, without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, poverty, birth or other status.¹¹² Freedom of persons in detention and prison is limited, but, as a rule, their other human rights cannot be limited because of that.¹¹³ The Constitution guarantees the respect of human person and dignity “in criminal or any other proceedings, in the case of deprivation or limitation of liberty and during the execution of the sentence” (Art. 31, para 1).

According to Art. 268 of the Criminal Procedure Code, when a person deprived of liberty is brought before the state prosecutor, that person, his attorney, family member or partner in a customary marriage may request from the state prosecutor to require his medical examination. The decision on appointing a medical doctor to carry out medical examination and the record on detainee’s hearing shall be enclosed in criminal case file by the state prosecutor.

1.2.5.1. Rights of detainees

CPC contains specific provisions regarding the treatment of detainees.¹¹⁴ Personality and dignity of the detainee shall not be offended in the course of detention and the only restrictions that may be imposed against detainees shall be those needed to prevent their escape and ensure smooth conduct of the criminal proceedings.¹¹⁵ Special rules apply to stay in juvenile detention.¹¹⁶ The court which ordered detention shall be responsible for the conditions of detention and supervision of the execution of custody.¹¹⁷ Director of the Institution for Execution of Criminal Sanctions shall notify the president of the court on the use of force in relation to detainees.¹¹⁸

111 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as non-convicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

112 The UN Committee for Human Rights, General Comment no. 21.

113 *Ibid*, paragraph 4: “Persons deprived of their liberty enjoy all the rights of the Covenant, except when it comes to the limitations inherent in a given environment.”

114 Art. 181-186 CPC.

115 Art. 181 CPC, Art. 57 para 5 of the Rules on the performance of security service, weapons and equipment of security officers at the Institution for Execution of Criminal Sanctions.

116 Law on the Treatment of Juveniles in Criminal Proceedings, *Sl. list*, 64/11, Art. 62 and 63.

117 Art. 181-185 CPC.

118 Rules on the performance of security service, weapons and equipment of security officers at the Institution for Execution of Criminal Sanctions, *Sl. list RCG*, 68/06, Art. 57, para 5.

1.2.5.2. Rights of persons serving a prison sentence

Status of convicts is regulated by the Law on the Execution of Criminal Sanctions of Montenegro (LECS)¹¹⁹, which stipulates that the sanction shall be enforced in a manner that ensures respect for the dignity of the prisoner in question¹²⁰ and prohibits and punishes actions which subject the prisoner to torture, abuse, humiliation or experiments. LECS envisages the prohibition of discrimination of prisoners¹²¹ and their right to the protection of fundamental rights guaranteed by the Constitution, ratified international treaties, generally accepted rules of international law and the said Law¹²².

Amendments to LECS¹²³ completed a guarantee that a prisoner may be denied or restricted certain rights only to the extent that corresponds to the nature and content of the sanction imposed and in a way that ensures respect for the personality of the perpetrator and his human dignity.¹²⁴

It is prohibited and punishable to subject sentenced persons to any form of torture, abuse and humiliation, medical or scientific experimentation.¹²⁵ LECS describes such actions as “disproportionate to the maintenance of order and discipline in the organization or organizational unit, or illegal and can result in suffering or undue restriction of the fundamental rights of the convicted person.”¹²⁶ Similar provision exists in relation to juveniles serving a corrective measure, whereas the Law also emphasizes that they should be treated “in a manner appropriate to their psychological and physical development.”¹²⁷

LECS and the Rules on the performance of security service, weapons and equipment of security officers at the Institution for Execution of Criminal Sanctions (*Sl. list RCG*, 68/06) stipulate that the security officer shall prepare a report on the use of force to be submitted together with the opinion of the head of the security service and opinion of the prison head to the Director of the Institution. Within three days of receiving the report the Director shall notify the Ministry of Justice on the use of truncheons, firearms, chemicals, water hoses, specially trained dogs, with the established facts and evaluation of the regularity of the use of force. Director notifies the Ministry of the use of physical force only in case of serious bodily injury to person against whom physical force was used (Art. 57 of the Rules). However, LECS and the Rules do not envisage the obligation of IECS Director to notify the state prosecutor of the application of force, who, in the case of suspected unlawful coercion, should initiate an investigation, i.e. criminal prosecution. In the case of suspected abuse, IECS Director is obliged to report it, in accordance with the general obligation to report a crime applying to all civil servants on the basis of Art. 254 of the Criminal Procedure Code.

119 *Sl. list RCG*, 71/2003, 7/2004 and 47/2006.

120 Art. 14a LECS.

121 Art. 14v LECS.

122 Art. 64a LECS.

123 *Sl. list RCG*, 25/94, 69/03 and 65/04.

124 Art. 14, para 2 LECS.

125 Art. 14b, para 1 LECS.

126 Art. 14b, para 1 and 2 LECS.

127 Art. 107, para 2 LECS.

1.2.5.3. Rights of the mentally ill

Art. 4 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons (*Sl. list RCG*, 32/2005) stipulates that mentally ill persons are entitled to protection from all forms of ill-treatment, humiliation and other treatment violating the dignity of the person and creating uncomfortable, aggressive, humiliating or offensive conditions. Persons with mental illness have the right to protection from abuse by other patients.¹²⁸

Psychiatrists and other health care workers are required to carry out the treatment of the mentally ill in the manner that restricts their freedoms and rights to the minimum and does not cause physical and psychological discomfort that offend their personality and human dignity.¹²⁹ In order to care for the protection of the rights of the mentally ill in a psychiatric institution, an independent multidisciplinary body shall be established¹³⁰ to monitor the observance of human rights and freedoms and dignity of patients.¹³¹ When placing a mentally ill person in a psychiatric institution, the right to the protection of human dignity, physical and mental integrity with respect to his/her person, privacy, moral and other beliefs must be granted.¹³² For details, see the report “Respect for Human Rights of Patients of the Specialised Psychiatric Hospitals” - Specialized Hospital in Kotor, Department of Psychiatry of the General Hospital in Nikšić and Department of Psychiatry of the Clinical Centre in Podgorica, Human Rights Action, Centre for Anti-discrimination EQUISTA, Centre for Civic Education, and Women’s Safe House, Podgorica, 2013.

1.2.5.4. Use of coercive measures by the police

1.2.5.4.1. Coercion means

Status of the police and the use of force by the police were regulated by the Law on Police (*Sl. list CG*, 88/2009) until August 2012, which was abolished upon the entry into force of the Law on Internal Affairs (*Sl. list CG*, 44/2012). As for the most significant change, in accordance with the new Law the police is placed under the jurisdiction of the Ministry of Internal Affairs and is no longer a special administrative body.¹³³ Minister of Internal Affairs is directly responsible for actions of the police.

The Law on Police of Montenegro envisaged the following means of coercion: physical force, truncheon, means of fixation, devices for emergency stopping of vehicles, police dogs, chemical means for temporary incapacitation, special vehicles, special types of weapons, explosives and firearms.¹³⁴ Law on Internal Affairs, in addition to the above means of coercion, further stipulates that police horses and water hose can be used as means of coercion.¹³⁵ Law on Police envisaged that coercion may be used to: 1) prevent the escape of a person deprived of liberty or caught committing a criminal offense prosecuted *ex officio*, 2) overcome the resistance of a person violating public order or deprive him/

128 Art. 12 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

129 Art. 5 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

130 Art. 49 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

131 Art. 50, para 2 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

132 Art. 45 of the Law on Non-Contentious Proceedings, *Sl. list RCG*, 27/2006.

133 Art. 3 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

134 Art. 30, para 1 of the Law on Police, *Sl. list CG*, 88/2009.

135 Art. 57 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

her of liberty in cases determined by law, and 3) repulse an attack against oneself, another person or secured property. It was also stipulated that an officer must use means of force so as to perform an official act in proportion to the danger to be averted and with minimal adverse effects.¹³⁶ On the other hand, the Law on Internal Affairs does not precisely define situations in which force may be used; it stipulates that the police officer shall use coercive measures if a task cannot be executed otherwise, in proportion to the danger threatening the legally protected assets and values, i.e. in proportion to the gravity of the offense which is prevented or suppressed and in a restrained manner, and that the police officer shall always use the mildest measure of coercion ensuring success, proportional to the reason for its use and in the manner in which the official task is performed without undue harm¹³⁷. Also, under both laws, the police officer shall give a warning about the use of coercion prior to resorting to its use, unless this would jeopardize the execution of official duties. Major limitation in the application of force, required under the Law on Police but not under the Law on Internal Affairs, was contained in the request that these measures could be used only on orders of an officer in charge of the execution of official duty.¹³⁸ Law on Internal Affairs retained this provision only in case of the use of force against a group of persons who have assembled unlawfully or act unlawfully and can cause violence, in which case the means of coercion (except firearms) can be applied only on orders of a superior police officer.¹³⁹ Pursuant to the Law on Police, police officer who used or ordered the use of firearms and other means of coercion was required to immediately notify the Chief of Police, who was then obliged to within 3 days take measures to establish accountability if s/he finds that coercion was used unlawfully.¹⁴⁰ On the other hand, according to the Law on Internal Affairs, police officer shall submit a written report to superior police officer within 24 hours of the use of force, while the Minister of Internal Affairs is responsible for the assessment of unlawful use of restraint and for taking measures to determine the responsibility of the police officer.¹⁴¹

1.2.5.4.2. Mandatory free legal aid for officers accused of ill-treatment

Both the Law on Internal Affairs and the Law on Police envisage an obligation of the police, i.e. the Ministry of Internal Affairs to provide free legal assistance to a police officer against whom a prosecution has been initiated for exceeding police powers to use force.¹⁴² Worryingly, this is a legal solution that has survived in the new law and that provides for a mandatory solidarity of the state with an official reasonably suspected of having violated the law, and all at the expense of taxpayers. This solution can also be perceived as an encouragement for the “freer” use of power.

1.2.5.4.3. Parliamentary, civil and internal oversight of the police

In addition to internal control, the Law on Police for the first time provided for parliamentary and civil control of the police, and these solutions are also provided under the Law on Internal Affairs. The civil control is conducted by the Council for Civil Oversight of the Police, which consists of five members appointed by: Bar Association, Medical Association, Lawyers Association, the University and non-governmental organizations dealing with human rights.¹⁴³ Council can be

¹³⁶ Art. 30, para 2 of the Law on Police, *Sl. list CG*, 88/2009.

¹³⁷ Art. 57, para 2 and 3 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

¹³⁸ Art. 47 of the Law on Police, *Sl. list CG*, 88/2009.

¹³⁹ Art. 58 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

¹⁴⁰ Art. 48 of the Law on Police, *Sl. list CG*, 88/2009.

¹⁴¹ Art. 59 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

¹⁴² Art. 30 of the Law on Police, *Sl. list CG*, 88/2009.

¹⁴³ Art. 93 of the Law on Police and Art. 112 of the Law on Internal Affairs, as above.

addressed by citizens and police officers to assess the application of police powers in relation to the protection of human rights and freedoms, while the police shall, at the request of the Council, provide the information needed.¹⁴⁴ The Council provides assessments and recommendations submitted to the Chief of Police and the Minister of Internal Affairs, who is obliged to inform the Council of the measures taken.

The Law on Police stipulates the parliamentary control shall be exercised by the Parliament through its working body¹⁴⁵, and the Law on Internal Affairs stipulates that parliamentary control of the police shall be regulated by a special law¹⁴⁶.

The Ministry of Internal Affairs carries out internal control of the police.¹⁴⁷ Internal control includes: control of the legality of the performance of police duties, especially in regard to the respect and protection of human rights while carrying out police duties and exercising police powers; implementation of the procedure of the counter-intelligence protection and other controls that are important for the efficient and lawful operation. In accordance with Art. 116 of the Law on Internal Affairs, internal control is carried out by the police officer who is authorized to do so and who, in addition to the powers of a police officer has the right to: 1) gain an insight into the records, documents and databases gathered, compiled or issued by the police in accordance with its responsibilities, 2) take the statements from police officers, injured persons and citizens, 3) require of the police and other police officials to submit data and information within their jurisdiction necessary for the conduct of internal control, 4) inspect official premises used by the police in its work, 5) require certificates and technical and other information on technical devices used by the police, as well as evidence of the competence of police officers to use technical and other resources used in their work.¹⁴⁸ In this way, powers of an officer who conducts internal control have been extended in relation to the Law on Police¹⁴⁹

The Minister shall promptly be notified in writing about all cases of actions or omissions of the police determined to be contrary to the law in the process of internal control.¹⁵⁰ Police officer shall allow the authorized official to carry out the supervision and thereby provide necessary expert assistance.¹⁵¹

Authorized officer shall take the necessary actions, establish facts and collect evidence and shall make a written report (findings), which includes a proposal to eliminate established irregularities, as well as a proposal to initiate appropriate procedures in order to establish liability.¹⁵² A written report is submitted to the Minister and the Government at least once a year.¹⁵³ It is necessary to specify the scope of work of the Internal controls by appropriate by-law in order to prevent, for example, that the police officer that the complaint relates to be in charge of verifying the allegations, which clearly calls into question the objectivity of the control.¹⁵⁴

144 Complaints are submitted to the Council through the archive of the Parliament.

145 Art. 89 of the Law on Police, *Sl. list CG*, 88/2009.

146 Art. 111 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

147 Art. 3 of the Law on Amendments to the Law on Police, *Sl. list CG*, 88/2009 and Art. 114 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

148 Art. 118 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

149 Art. 95b of the Law on Police, *Sl. list CG*, 88/2009.

150 Art. 96 of the Law on Police, *Sl. list CG*, 88/2009 and Art. 119 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

151 Art. 96a of the Law on Police, *Sl. list CG*, 88/2009 and Art. 118 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

152 Art. 96b of the Law on Police, *Sl. list CG*, 88/2009 and Art. 119 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

153 Art. 119 of the Law on Internal Affairs, *Sl. list CG*, 44/2012.

154 Such case from the practice was described by a researcher of human rights violations in Montenegro, Aleksandar Zeković, in the initiative filed to the Council for Civil Oversight of the Police on 11 February 2011.

1.2.5.5. Disciplinary responsibility of the police and prison officers, suspension and termination of employment

1.2.5.5.1. Disciplinary responsibility

Disciplinary responsibility of police and prison officers is set forth in Art. 57-68 of the Law on Civil Servants and Employees,¹⁵⁵ which stipulates that civil servants and employees may be liable for minor disciplinary violations¹⁵⁶ such as failure to comply with working hours, unjustified one-day absence from work, failure to wear the uniform or official insignia with a personal name, etc., or serious disciplinary violations¹⁵⁷ such as failure to perform or negligent, unduly or untimely performance of official duties, refusal to carry out an order or assignment, improper use and disposal of entrusted funds, abuse of authority or power in the service, etc. If disciplinary proceedings are initiated against police or prison officer for torture or ill-treatment, as a rule they are charged with abuse of authority or power in the service.¹⁵⁸

Law on Police (Art. 80 and 81) regulated and the Law on Internal Affairs additionally regulates disciplinary offenses (misconduct) that police officers may be responsible for. However, none of the prescribed offenses directly sanctions the ill-treatment of prisoners. Only the offense “Conduct in service or off-duty contrary to the Code of Police Ethics”¹⁵⁹ can be applied in the case of abuse, as the Code of Police Ethics¹⁶⁰ stipulates that a police officer is obliged to “respect fundamental human rights and freedoms of all citizens, regardless of nationality, race, colour, religious belief, gender, education, social status or any other personal characteristic and distinctive feature” (Art. 2 of the Code), to exercise the rule of law while performing official duties of protecting fundamental human rights, freedoms and values (Art. 5), to “resort to the use of force, in particular the use of weapons... only in cases and under the conditions provided for by law and other regulations only when necessary and to the extent that causes the least harm to life, body and safety of citizens” (Art. 9) and that police officer shall be “... responsible for the safety of all persons deprived of their liberty and protect them” (Art. 10). On the other hand, the fact that the Law on Internal Affairs prescribes a serious offense “failure to undertake or insufficient undertaking of measures and actions by the immediate superior or responsible police officer in order to determine the facts relating to the filed complaint or objection of a citizen to the treatment of a police officer” represents an improvement.¹⁶¹ This provision sanctions the inert conduct of police officers in examining the reports of ill-treatment by police officers. Disciplinary Committee conducts disciplinary proceedings and proposes the measure.¹⁶²

In accordance with the Law on Civil Servants and Employees, disciplinary measure provided for minor disciplinary offenses is a fine in the amount of 15% of salary for the month in which the violation occurred, while disciplinary measures for serious misconduct include fines in the amount of 20% to 30% of salary for the month in which the offense was committed, and termination of employment.¹⁶³

155 *Sl. list CG*, 50/2008....49/2010.

156 Art. 58 of the Law on Civil Servants and Employees.

157 Art. 59 of the Law on Civil Servants and Employees.

158 Conclusion drawn from the examined cases referred to later in this report.

159 Art. 81, para 1, item 4 of the Law on Police and Art. 106 of the Law on Internal Affairs.

160 *Sl. list RCG*, 1/2006.

161 Art. 106, para 1, item 12 of the Law on Internal Affairs.

162 Art. 62 of the Law on Civil Servants and Employees.

163 Art. 84 of the Law on Civil Servants and Employees.

However, the Law on Internal Affairs stipulates that written reprimand and a fine in the amount of 10% of salary for the month in which the breach of duty occurred may be imposed for a minor breach of duty¹⁶⁴, while a fine in the amount of 30% of salary for the month in which the violation of duty was committed, for a period of one to six months, inability to acquire title for a period of two to four years and termination of employment may be imposed for serious breach of duty.¹⁶⁵

1.2.5.5.2. Suspension

Art/ 130, paragraph 1 of the Labour Law¹⁶⁶ provides that the employee shall be suspended from work:

- 1) if caught in the act of a breach of duty, which implies the imposition of a measure of termination of employment or termination of the contract of employment;
- 2) if the employee is taken into custody, from the first day of custody, for the duration of custody;
- 3) if criminal proceedings has been instituted against him for a criminal offense committed in or related to work;
- 4) if the employee is charged with the crime of corruption.

On the other hand, Art. 69 of the Law on Civil Servants and Employees provides that a civil servant or employee against whom disciplinary proceedings have been initiated for a serious disciplinary offense may be suspended from work, pending disciplinary proceedings, if his presence is detrimental to the interests of public authority or would impede the course of disciplinary proceedings.

The Law on Police did not provide for the suspension from work, the Labour Law applied *mutatis mutandis* to police officers,¹⁶⁷ and each police officer subject to criminal or disciplinary proceedings because of ill-treatment had to be suspended. However, this was often not the case in practice.¹⁶⁸

Law on Internal Affairs in Art. 108 summarizes the reasons for suspension under the Labour Law and the Law on Civil Servants and Employees.¹⁶⁹

¹⁶⁴ Art. 105 of the Law on Internal Affairs.

¹⁶⁵ Art. 106 of the Law on Internal Affairs. It is obvious that the Law on Internal Affairs is in conformity with the provisions of the new Law on Civil Servants and Employees (*Sl. list CG, 39/2011 and 50/2011*), which is to be applied from 1 January 2013. New Law on Civil Servants and Employees provides for a written reprimand and a fine to be imposed for one month, amounting to 20% of salary for the month in which a breach of official duty was committed, as disciplinary measures for minor misconduct, or a fine for the duration of two to six months in the amount of 20% to 40% of salary for the month in which a violation of official duties was committed and termination of employment as discipline measures for serious misconduct (Art. 84 of the new Law on Civil Servants and Employees).

¹⁶⁶ *Sl. list CG, 49/2008, 26/2009 and 59/2011.*

¹⁶⁷ Civil servants and employees shall be subject to general labor legislation concerning the rights, obligations and responsibilities that were not regulated otherwise under this law or other regulation (Art. 4 of the Law on Civil Servants and Employees).

¹⁶⁸ See conclusions of the Council for Civil Oversight of the Police, p. 11 of this report.

¹⁶⁹ "Police officer shall be suspended:

- 1) if disciplinary proceedings for serious misconduct were initiated against him, pending disciplinary proceedings;
- 2) if caught in the act of committing a serious breach of duty, which implies the imposition of a measure of termination of employment, pending disciplinary proceedings;
- 3) for the duration of custody;

See explicit recommendations of international committees to Montenegro regarding suspension from service of persons accused of torture and ill-treatment, section 2.1 below.

1.2.5.5.3. Termination of employment by operation of law

Pursuant to Art. 139, para 1, item 4 of the Labour Law, employment shall be terminated if the employee has been sentenced to imprisonment of 6 months or longer due to which he must be absent from work. Employment will be terminated as of the day of imprisonment. Under Art. 104 of the Law on Civil Servants and Employees, employment of a public servant or employee shall be terminated under the terms of the general labour legislation (Labour Law). However, employment of a police officer shall also terminate when a final judgment is imposed against him for a criminal offense prosecuted *ex officio*, except for offenses related to traffic safety, on the date of enforcement of the judgment (Art. 85, para 2 of the Law on Police) or the date of receipt of the final judgment (Art. 109 of the Law on Internal Affairs). This means that final suspended sentence against a police officer for ill-treatment will cause the termination of employment.

4) if criminal proceedings were instituted against him for the criminal acts of corruption or crime committed at work or work related, pending disciplinary proceedings (Art. 108 of the Law on Internal Affairs).

2. INVESTIGATION, PROSECUTION AND PUNISHMENT OF ILL-TREATMENT IN PRACTICE

2.1. Recommendations to Montenegro from international bodies responsible for supervising the implementation of international treaties against torture and other ill-treatment

The UN Committee against Torture (CAT) in its report of 21 November 2008¹⁷⁰ and the Committee for the Prevention of Torture of the Council of Europe (CPT) in its report of 22 September 2008¹⁷¹ gave Montenegro recommendations it needs to apply in order to effectively prevent the ill-treatment in its territory in accordance with international standards.

Recommendations of both committees are essentially the same and comprise the following:

1. align the definition of torture under domestic criminal law with the definition of torture under Article 1 of the Convention against Torture;¹⁷²
2. send a clear and strong message of “zero tolerance for ill-treatment” from the highest level as well as through ongoing training to all police officers, implying that all types of ill-treatment (including during the arrest and interrogation), as well as the threats of resorting to such treatment, are absolutely prohibited and that the perpetrators of these acts and those turning a blind eye will be subject to severe sanctions;
3. police officers should receive further training on the respect for human rights and professional ethics and the authorities should adopt appropriate measures to ensure that police officers are familiar with the principles of the Code of Police Ethics and promote a culture in which the police officers themselves will unequivocally eliminate the occurrence of abuse;
4. pay attention to the advanced methods of investigation in the training of police officers (so that the investigation does not only entail obtaining of a confession, which leads to abuse of a suspect), and, in this respect, provide modern criminal and laboratory equipment;
5. adopt detailed guidelines for the interrogation of suspects by operatives;
6. provide appropriate training to officials involved in the deprivation of liberty (police, prison physicians) on how to recognize the signs of abuse and report them to the competent authorities;
7. the state should ensure that all allegations of torture and ill-treatment by the police be promptly and fully investigated, by an independent authority, not the police. Prosecutors, judges, prison lawyers and other competent authorities should be instructed on a more proactive approach to the investigation of cases of torture, so that no case of abuse goes unnoticed and unpunished. In obvious cases of abuse, the suspects must be suspended or referred to other tasks, especially if there is a risk of influencing the investigation. The state must prosecute the perpetrators and impose appropriate penalties to prevent the impunity of police officers for acts prohibited by the Convention against Torture;

170 Concluding remarks of the Committee Against Torture on the report to Montenegro of 21 November 2008, available at: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MNE.CO.1.pdf>

171 Report to the Government of Montenegro of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment developed from 15 to 22 September 2008, available in English and Montenegrin at: <http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm>.

172 Definition of torture under the Criminal Code of Montenegro (Article 167) has been aligned to a large extent, following the amendments to the Criminal Code published in *Sl. list CG*, 25/2010, with the definition under the UN Convention against Torture, as we noted in the previous section.

8. take immediate steps to ensure that all investigations into the cases involving allegations of ill-treatment fully meet the criteria of an “effective” investigation set forth by the European Court of Human Rights. First, investigations do not meet the criteria of thoroughness and comprehensiveness¹⁷³, as evidenced by the failure to carry out the identification of individuals involved, to examine all the victims of abuse and witnesses, and to give due weight to medical findings that are consistent with the allegations of abuse. Second, investigations were not initiated promptly and lack efficiency. Third, current rules of investigation of possible ill-treatment by the police at the behest of the prosecutor do not always ensure an adequate level of impartiality (both institutional and practical)¹⁷⁴. Fourth, the level of engagement of the alleged victims and their lawyers raise concerns about meeting the requirement of public oversight over investigations and procedural actions;

9. allow persons deprived of their liberty, in practice, the basic rights to contact with a lawyer, independent doctor, preferably of their own choice, and relatives for the purpose of informing them about the deprivation of liberty. Additionally, persons deprived of liberty should be granted a confidential conversation with a lawyer.

10. whenever a criminal suspect is brought before an investigating judge¹⁷⁵ or public prosecutor after the police custody, claiming that he was tortured by the police, the judge or prosecutor should record these allegations in written form, order immediate medical examination by the forensic expert and take necessary steps to ensure that the allegations be properly investigated. Such an approach should be followed regardless of whether that person has visible external injuries. Furthermore, even in the absence of express allegations of ill-treatment, the judge or prosecutor should order medical examination by forensic experts whenever there are other grounds (e.g. visible injuries) to believe that a person brought before them may be a victim of abuse;

11. the report drawn up following medical examination of newly arrived prisoners includes: (i) a full account of statements made by the prisoner in question relevant to the examination (including his description of his state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) doctor’s conclusions in the light of (i) and (ii) with the conclusion on the degree of consistency between any allegations made and objective medical findings;

12. whenever a medical doctor records injuries consistent with the allegations of ill-treatment of an inmate, the record should always be brought to attention of the competent prosecutor;

13. anyone who claims to have been a victim of either torture or ill-treatment must be provided with the possibility to notify competent authorities without any interference. Also, the state must ensure that all persons deprived of liberty have free access to their medical records, i.e. that the access does not depend on the decision of the investigating judge.

14. detainees or persons who were detained have the right to directly request medical examination/certificate from a doctor with recognized training in forensic medicine;

15. prison staff should be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than necessary and that once prisoners have been brought under control, there can be no justification for their being struck;

173 CPT reached these conclusions after the analysis of two cases described in its report on its visit to Montenegro: abuse of detainees in the case “Eagle’s Flight” and mass beating of detainees in Remand Prison in Podgorica on 1 September 2005.

174 The Committee welcomes the adoption of various measures to prevent and combat police brutality, including the adoption of the Code of Police Ethics, however, the Committee remains particularly concerned at the number of allegations of torture and ill-treatment by the police and the lack of prompt and impartial investigations into such cases (<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MNE.CO.1.pdf>, p. 7).

175 In accordance with the Criminal Procedure Code (*Sl. list CG*, 57/09 and 29/2010) currently in effect, the investigating judge is called “judge for investigation”.

16. if it is considered necessary for prison officers to carry truncheons, the truncheons should be hidden from view (in the interests of promoting a positive relationship between prisoners and prison officers);

17. as regards the use of force by prison officials to control violent and/or recalcitrant prisoners, Montenegrin authorities should take steps to adopt special protective measures since these are obviously high-risk situations regarding the possible abuse of prisoners. In particular, it is necessary to record every instance of resorting to means of restraint against a prisoner, with an indication of the exact time and duration of their use. Prisoner against whom any of the means of restraint was applied should have the right to be immediately examined and, if necessary, receive medical treatment. Results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner, who in addition should have the right, if he wishes, to be examined by a medical expert. Furthermore, means of restraint should never be applied as a punishment. In this context, it is important to ensure that prosecutors are systematically notified of any use of means of force by prison staff, and that they are particularly vigilant when examining such cases.

18. competent authorities should inform the public about the outcome of investigations into complaints of ill-treatment by the police in order to avoid any perception of impunity.

2.2. Processing of reports on ill-treatment by public officials

Considering the examined sample¹⁷⁶ of 75 cases of ill-treatment by state officials in Montenegro (police and prison officers) and decisions the courts have taken in criminal cases, these cases can be classified into the following categories:

2.2.1. Cases in which criminal proceedings were not initiated

2.2.1.1. Ill-treatment in the anti-terrorist operation Eagle's Flight in 2006

An important example of impunity for police officers for acts of torture is a case of "anti-terrorist" police action "Eagle's Flight" conducted in September 2006, during which 17 people suspected of planning terrorist acts were arrested, most of whom were later convicted of an armed rebellion in Montenegro.

Suspects and detainees in the "Eagle's Flight" claimed to have been slapped, punched and beaten with truncheons and held in a painful position in detention premises of the High Court in Podgorica as well as during the transportation for investigation from 11 to 15 September 2006, of which there is medical documentation.¹⁷⁷ From 11 to 15 September 2006 they filed criminal

¹⁷⁶ In preparing this report, as noted above, Human Rights Action has used data on cases of torture from the media, its earlier reports and own archives, as well as information received from basic courts (first instance judgments in cases of torture and ill-treatment committed by public officials) and the Supreme State Prosecutor of Montenegro.

¹⁷⁷ In the record of interrogation of suspect A.S. of 11 September 2006, record of interrogation of suspect N.Lj. of 11 September 2006, record of interrogation of suspect V.S. of 15 September 2006 and record of interrogation of suspect R.D. of 12 September 2006, the investigating judge of the High Court in Podgorica Miroslav Bašović included their statements that they had been tortured in the police and Remand Prison and also noted injuries in N.Lj. and R.D. including bruises and abrasions suffered as a result of the beating by Montenegrin police officers. For details about the medical records and established injuries see the report of the Committee for the Prevention of Torture of the Council of Europe (CPT) on 2008 visit to Montenegro, p. 24 and especially FN 16.

complaints on the record of the High Court in Podgorica against authorized officers of the Montenegrin police unknown to them, who took part in the operation “Eagle’s Flight” for the criminal acts of Extortion of Statement under Art. 166 of Criminal Code and Ill-treatment and Torture under Art. 167 of the Criminal Code. After the initial filing of criminal charges, victims amended the charges four times and thus continuously urged the state prosecutor’s office to take action on the initial charges.¹⁷⁸

According to the CPT’s report on the visit to Montenegro in 2008, which paid special attention to this case, the state prosecutor requested in writing that the police identify involved police officers only 9 months later, but the police ignored the request. Also, no action was taken on the letter of the President of the High Court in Podgorica of 23 November 2006 regarding the witness of abuse of detainees by police and prison officials in charge of an escort in the courthouse from 11 to 15 September 2006. Despite this, the prosecution failed to apply the remedies that exist in the law for such cases, such as informing the Government about the failure of the police to act upon their request (Art. 44, para 4 of the CPC) or consideration of issues of criminal responsibility to help the offenders (Art. 387 of the CC).

Although it seems that the state prosecutor failed to take further action to prosecute the complaint, the complainants were never informed about the rejection of the complaint by the prosecutor. Due to ineffective investigations and violation of Art. 3 of the European Convention, four victims filed an application with the European Court of Human Rights. The procedure has been carried out and the verdict is expected.

In its report the CPT concluded that the investigation did not meet the necessary criteria of effectiveness. It was noted that it lacked thoroughness and comprehensiveness, which was apparently due to the failure to carry out the identification of the individuals involved, to question all the victims of the alleged abuse and witnesses, and to give due weight to medical findings that were consistent with allegations of ill-treatment. What is striking is that despite the CPT report nothing has been done in this case afterward, nor have the complainants who filed criminal charges to this day (1 March 2013) received a decision of the competent state prosecutor on dismissing their complaint from 2006.

2.2.1.2. Inhuman and degrading treatment of residents at the Public Institution Komanski Most in 2008

No proceedings have been initiated by 1 April 2013 to determine the liability of public officials for abuse of residents at the Public Institution for People with Intellectual Disabilities “Komanski most” and the disappearance of two juvenile residents of the institution in 2000 and 2002.

¹⁷⁸ On 13 October 2006 persons suspected of planning terrorist acts amended the criminal complaint by filing it on behalf of K.D. too, who was also charged in the case, and extending it to officers who brought the complainants A.S. and V.S. to questioning, for physically abusing, beating and insulting them on 11 September 2006 and on 15 September 2006 while bringing them in for questioning before an investigating judge and in the court room where they were waiting to be heard. The complaint was amended on 30 October 2007, 14 January 2008 and 16 June 2008 by extending it to unidentified uniformed IECS officers who physically abused and insulted V.S. on 15 September 2006 while bringing him in for questioning in the High Court in Podgorica and by specifying the names of police officers and IECS officials that abused V.S.

The delegation of the Committee for the Prevention of Torture of the Council of Europe (CPT) visited Montenegro and Komanski Most Institution in September 2008 and found there “appalling” living conditions¹⁷⁹ and the treatment of residents, especially in terms of fixation using chains and punishment by “isolation”, assessed by the CPT delegation as inhuman and degrading.¹⁸⁰ Report on CPT’s visit was published in March 2010 in English, and translation into Montenegrin in September 2010.¹⁸¹ Since 2008 living conditions have improved, though not to the extent one might have expected, given that at the end of its visit in September 2008 the CPT immediately drew attention of the authorities to difficult conditions in the institution. Even after the report was published in 2010, the sanitary conditions were still not at a satisfactory level, men were not separated from women and staff levels were low, as noted, in addition to the CPT, by the Protector of Human Rights and Freedoms too, in its recommendations to the administration of the institution.¹⁸² Reconstruction of the facility began in the first half of 2011.¹⁸³

CPT has advised a comprehensive review of the situation in the institution, which would strategically address all aspects of the problem. Recommendations were adopted to a certain extent only in 2010, but even in November 2011 the conditions at the institution were such that it could not have been said that its residents enjoy human rights to the full extent.¹⁸⁴

In a letter dated 14 November 2008, Montenegrin authorities informed the CPT that all chains and padlocks had been removed and replaced by leather restraints. Reconstructed ward A was officially opened on 12 November 2010, marking the anniversary of the Public Institution “Komanski most”.¹⁸⁵ A special ward was built to accommodate minors, who resided in the same area with adults until 2010. In order to comply with international standards and taking into account the recommendations of international organizations and experts, it has been decided to discontinue the admission of residents under the age of 18 to the institution.¹⁸⁶

Director of the institution, Vuk Mirković, who held that position for the last twenty years, including during the disappearance of two children from the institution in 2000 and 2002 and in 2008, when the CPT found “appalling” conditions in the institution, in January 2011 was transferred to the post of Deputy Director of the Centre for Social Welfare in Podgorica.¹⁸⁷ In April 2010 non-governmental organizations demanded his removal from office and prosecution for many years of neglect in the management of the institution, culminating in the CPT’s assessments of inhuman and degrading treatment of residents.¹⁸⁸

In its response submitted to Human Rights Action¹⁸⁹ the state prosecutor informed the public that criminal proceedings have not been instituted against Mirković or any other official of the

179 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the visit to Montenegro from 15 to 22 September 2008, p. 114.

180 *Ibid*, p. 127.

181 Human Rights Action requests for the release of these reports to competent authorities available at: www.hraction.org.

182 Press release of the Human Rights Action, Centre for Anti-discrimination EQUISTA and Shelter on the occasion of 6 May 2010 available at: <http://www.hraction.org/?p=349>.

183 “Seeking refuge for committing criminal acts”, *Dan*, 12 February 2011.

184 See Report on the respect for human rights of residents of the Public Institution “Komanski most”, Human Rights Action, Centre for Anti-discrimination EQUISTA, Centre for Civic Education, Shelter, 2011.

185 “Better conditions at the institution”, *Vijesti*, 13 November 2010.

186 “No place for children at Komanski Most”, *Dan*, 21 January 2011.

187 “Mirković got the promotion instead of punishment”, *Vijesti*, 26 January 2011.

188 Letters to the Minister of Labour and Social Welfare Suad Numanović and the Supreme State Prosecutor Ranka Čarapić are available on the website of the Human Rights Action and in its archives.

189 Letter – decision of the Supreme State Prosecutor KTR. no. 500/10 of 12 March 2012 in response to Human Rights Action’s request for access to information of 2 June 2010. In order to receive this response two years later, Human Rights Action initiated an administrative action against the decision of the Supreme State Prosecutor not to allow access to this information. Response was received almost one year after the Administrative Court passed the judgment ordering the Supreme State Prosecutor to provide access to information sought.

Komanski Most Institution, and that the “information provided by public institutions (Komanski Most Institution, Podgorica Centre for Social Welfare and Ministry of Health, Labour and Social Welfare) was not sufficient to initiate criminal proceedings against those responsible for the abuse, nor did the parents, caregivers, nurses, teachers or police report acts that pointed to the unlawful conduct of officials in “Komanski most”.

The response also stated that the state prosecution found out about the disappearance of two children from the institution (in 2000 and 2002) only in 2010 and that the Ministry of Health, Labour and Social Welfare on that occasion did not establish any failure in the treatment of staff of Komanski Most Institution in relation to its residents. In addition, the Supreme State Prosecutor (SSP) in the letter stated that, as the police meanwhile did not determine whether the missing children were alive or not, the prosecution had no basis for legal action against those responsible for the crime of aggravated forms of reckless endangerment under Art. 155, para 3 in connection with para 1 CC (if the death of a person occurred), and if the children were alive (exposure to danger under Art. 155, para 1 CC) the prosecution certainly became time-barred for that (basic) form of the offense.

The above letter proves that the prosecution is not only uninformed (because the media wrote about the disappearance of children back in 2004, and the CPT in 2009 submitted its report on abuse from 2008 to the Government) but also inert and ineffective in dealing with serious violations of human rights (neglect and abuse of persons under custody) and that the initiation of proceedings against those responsible depends on the information provided by potential perpetrators of crimes (Komanski Most Institution), and not the data obtained by the prosecution through an effective investigation within its legal powers.

For the above reasons, on 13 March 2012 NGOs Human Rights Action, Centre for Anti-discrimination EQUISTA and Shelter issued a statement strongly criticizing such actions of the prosecution.¹⁹⁰

On the other hand, former police officer informed the authors of the report that the police acted professionally in relation to this case and did all that was asked of it, took specific actions and questioned certain persons, submitting timely the collected material to the prosecution.¹⁹¹

2.2.1.3. Incident at the football match between FC Berane and FC Budućnost in 2008

At the football match between FC Berane and FC Budućnost, which took place on 2 April 2008, there was an incident between the police and FC Budućnost fans. According to the police version of events, at the end of the first half about 30 supporters of FC Berane attempted to cross the stands to reach the supporters of FC Budućnost, but were prevented by the police, after which FC Budućnost supporters threw stones and other objects at the police and then physically attacked and injured five policemen.¹⁹² However, according to football supporters - in addition to the incident at the stadium where police attacked them, they were later tied up and beaten by police at the police station in Berane.¹⁹³

190 Available at: http://www.hraccion.org/wp-content/uploads/Saopštenje_13.mart_2.pdf.

191 Interview with a former police officer, April 2012.

192 “Five policemen injured,” *Dan*, 3 April 2008.

193 “We are not hooligans,” *Dan*, 4. April 2008.

In one of the videos available on YouTube website a police officer, later identified as Vlajko Babović, repeatedly hits one of the supporters on the head with a gun.¹⁹⁴ After disciplinary proceedings Babović was punished for serious disciplinary offense with a 30% decrease of salary for the month of the violation.¹⁹⁵

Criminal complaint was lodged on 13 June 2008 with the Basic State Prosecutor in Berane against several police officers (including Babović) for crimes of Ill-treatment and Torture and Light Bodily Injury.¹⁹⁶ Basic State Prosecutor in Berane rejected the charges because, according to the assessment of the prosecution in Berane, actions of the reported police officers had no elements of the reported crime nor of any other criminal offense prosecuted *ex officio*.¹⁹⁷ FC Budućnost supporters filed a request for investigation to the Basic Court in Berane¹⁹⁸, but the court rejected this request as unfounded, which was confirmed by the High Court in Bijelo Polje.¹⁹⁹ According to the data of the Civic Alliance, the prosecution failed to press charges against the police officers despite the video recording of the incident and despite reasonable doubt that the police authority had been exceeded; the court later rejected the request for an investigation, so it could be considered that in this case the state failed to provide an effective remedy in the investigation of serious allegations of abuse.²⁰⁰

2.2.1.4. Ill-treatment of fans at the basketball match between BC Budućnost and BC Partizan in October 2012

At the basketball game between BC Budućnost and BC Partizan at Morača Sports Centre on 22 October 2012 there was a conflict between fans of the two teams, who rushed onto the court delaying the start of the match. Police officers reacted by forcing the crowd to vacate the Sports Centre building. Video recording created during the intervention of the police officers published on *Vijesti* website²⁰¹ shows, among other things, several members of the police hitting a fan, surrounding him on all sides, who was obviously not in a position to show resistance and did not pose a threat that needs to be prevented in such manner, a policeman hitting a fan lying on the ground twice with a truncheon, who also did not seem to show any resistance, several members of the police surrounding another fan and hitting him and a policeman hitting one female supporter. After the game ended, members of the police continued the conflict in the street. Media reported that several people had been injured during the riot.

Davor Dragojević addressed Human Rights Action on 25 October 2012, who filed a criminal complaint²⁰² against unknown police officers for beating of his underage son Lazar in the street outside Morača Sports Centre building after the game. Medical record about the sustained injuries

194 Plainclothes officer who appears in the video was later identified as Vlajko Babović. Video available at: <http://www.youtube.com/watch?v=ryBfuaKyCtU>.

195 "On the head with a gun - only got reduced pay", *Dan*, 24 January 2009.

196 "Police officers use force and keep their jobs", *Vijesti*, 18 April 2010.

197 Report of the Civic Alliance "Human Rights in Montenegro - from the referendum to the beginning of the negotiations with the EU, May 2006 - June 2012", p. 50.

198 "Fans visiting the judge today", *Vijesti*, 4 April 2008.

199 Report of the Civic Alliance "Human Rights in Montenegro - from the referendum to the beginning of the negotiations with the EU, May 2006 - June 2012", p. 50.

200 *Ibid.*

201 Video recording available at: <http://www.vijesti.me/vijesti/varvari-nasrnuli-fotoreportere-vijesti-dnevnih-novina-clanak-97946>

202 Complaint of 23 October 2012 registered under number: 13/086-12-40808.

has been attached to the complaint.²⁰³ Lazar Dragojević claims that he did not show any resistance to the police at the time of the beating, as well as before or after the beating.

Human Rights Action informed in detail the Minister of Interior, Mr. Ivan Brajović, of the aforementioned²⁰⁴ and submitted a request for free access to information to the Ministry of Interior²⁰⁵ seeking information on measures taken in order to establish liability for the actions of members of the Ministry of Interior on that occasion as well as information on measures taken in connection with the allegations of Davor Dragojević regarding the beating of Lazar Dragojević. However, the Ministry denied Human Rights Action access to this information stating that the Department for Internal Control of the Police is taking measures in the control procedure of the police officers on this occasion and that it will promptly notify the Minister of Internal Affairs on the established facts and the measures taken.²⁰⁶ On the other hand, six supporters of BC Budućnost were sentenced to imprisonment for inciting riots in early November 2012.²⁰⁷

Response of the newly elected Minister of Internal Affairs, Mr. Raško Konjević, to Human Rights Action states that the internal control procedures have been implemented and that all established facts and circumstances in the case of police officers securing the basketball game between BC Budućnost and BC Partizan imply the existence of hierarchical liability of a senior officers of Special Police Unit Željko Pavićević, who was in charge of security, and that the case has been referred to the Police Directorate Ethics Committee to investigate the ethics of the police officer in question, in order to initiate disciplinary procedure. Regarding the case of juvenile Lazar Dragojević, the response states that the case was referred to the Basic State Prosecutor in Podgorica for further processing and evaluation of the existence of the elements of criminal responsibility, bearing in mind that the Department for Internal Control of the Police was unable to establish facts that would indisputably indicate the specific responsibility of a police officer in Podgorica Regional Unit.

In its response on the occasion of the same event to *Vijesti* journalist Jelena Jovanović, the Department for Internal Control of the Police stated that it was noted that certain officers of the Special Unit, following the order to empty the stands with supporters groups, illegally used their truncheons in several instances as a means of coercion against BC Budućnost and BC Partizan supporters, but that it was not possible to determine the identity of these police officers, as they had protective gear and did not mention the use truncheons in their statements. Also, according to the response, senior officers of the Special Police Unit in charge of the security did not specify in their statements the identities of police officers who illegally used their truncheons as a means of coercion, although the footage²⁰⁸ shows that in some cases they tried to prevent the excessive use of truncheons as a means of coercion.

Considering that the previously described actions of police officers during the basketball game and their concealment raise suspicion that a number of criminal offenses prosecuted *ex officio* have

203 Medical records show that Lazar Dragojević on this occasion sustained an injury to the nose caused by a punch.

204 Letter to Minister Brajović available at: <http://www.hraction.org/?p=2470>.

205 Request no. 01-051/12-23578/1 of 15 November 2012.

206 Decision of the Ministry of Internal Affairs no. 051/12-23578/1 of 22 November 2012.

207 "Budućnost supporters sentenced to 150 days in jail", *Vijesti*, 6 November 2012.

208 Video recording posted on *Vijesti portal*, available at: <http://www.vijesti.me/vijesti/varvari-nasrnulifotore-portere-vijesti-dnevnih-novina-clanak-97946>

been committed (Ill-treatment²⁰⁹, Violent Behaviour²¹⁰, Failure to Report Crime and Perpetrator²¹¹, Helping the Perpetrator after the Commission of a Crime²¹², Abuse of Office²¹³ and others), Human Rights Action addressed the Supreme State Prosecutor with a request for access to information about the actions taken by the competent public prosecutor's office in this case.²¹⁴

Supreme State Prosecutor forwarded the request to the Basic State Prosecutor in Podgorica, as competent, which passed a decision²¹⁵ on 5 February 2013 allowing access to requested information and informing Human Rights Action that the Basic State Prosecutor has "formed the case file on the specified event and that the data and information are collected in order to reach a legal decision". Until the completion of the report, 10 March 2013, the public was not informed whether any police officers have been prosecuted.

2.2.1.5. Allegations of ill-treatment reported in the media

In addition to the cases above, the table below lists cases of abuse reported by the media and non-governmental organizations since 2007 to date, which were not prosecuted, or the public prosecutor failed to act on filed criminal charges or dismissed criminal charges or criminal complaint was not filed. Third column includes answers of the Supreme State Prosecutor's Office of 25 June 2012 to Human Rights Action's question whether cases in question have been prosecuted.

No. and date	Description of incident	Source of information	Reply received from the SSP on 25 June 2012 and 25 April 2013
1. 10 March 2007	Attorney Borislav Vlaović stated that the officials of Podgorica Security Centre in the night of 10 March beat Milan Radičković with fists on the head and then with wooden sticks on the soles and palms, in order to obtain confession.	"Using sticks to obtain confession", <i>Dan</i> , 14 March, 2007, "Confession by beating", <i>Vijesti</i> , 14 March 2007.	The media announced filing of criminal charges. According to the response of SSP, after checking the registers and electronic database it has been established that the Basic State Prosecutor in Podgorica did not form the case on the occasion of the events of 10 March 2007. <u>Although the media announced filing of a criminal complaint, according to the response of the Basic State Prosecutor the complaint was not filed, as also confirmed by attorney Vlaović in an interview of 9 March 2013.</u>

209 Art. 166a CC (*Sl. list CG*, 40/2008, 25/2010 and 32/2011).

210 Art. 399 CC.

211 Art. 386 CC.

212 Art. 387 CC.

213 Art. 416 CC.

214 Request to the Supreme State Prosecutor of 28 January 2013.

215 Decision of the Basic State Prosecutor in Podgorica Tu.br.38/13 of 5 February 2013.

2. 19 March 2007	According to allegations in the media, Saša Šćekić from Bijelo Polje was at a coffee shop in Bar with a friend when seven or eight police officers entered the shop and started beating him and then handcuffed him. He claims to have been put into a car when the beatings continued, as well as in the police station later. At the Clinical Center the doctors noted a number of injuries on the body of Sasa Šćekić.	"Special forces gave him concussion", <i>Dan</i> , 25 March, 2007.	The Police Directorate - Regional Unit in Bar filed a criminal complaint against Saša Šćekić for criminal act Assault of an Official in the Performance of Official Duties. After the indictment, Basic Court in Bar adopted a suspended sentence in relation to Šćekić for criminal act Assault of an Official in the Performance of Official Duties. Appeal of the Basic State Prosecutor from Bar to the said judgment was dismissed. <u>Thus, it can be concluded that the officials from the Regional Unit in Bar responsible for injuring Saša Šćekić, as concluded by doctors, have not been prosecuted.</u>
4. 24 July 2007	According to media reports, four policemen of the intervention squad of Bar Security Centre brutally beat Predrag Đukić and Ivan Abramović. According to them, they confronted with the person in civilian clothes who later turned out to be a police officer. Soon after the conflict intervention squad arrived, tied Đukić and Abramović, pushed them into a jeep and drove in the direction of the Railway Station where, as they claim, they were beaten, tortured and abused for more than an hour. After the beating they were taken to the Security Centre parking lot and further abused. They claim to have fainted from blows, after which they were sprayed with water and taken to the hospital only at the insistence of duty officers. Due to the severity of injuries, Đukić and Abramović were referred to Clinical Centre of Montenegro for treatment.	"Police beat tied up young men", <i>Dan</i> , 30 July 2007, "Zeković: they won't leave them alone," <i>Vijesti</i> , 1 September 2007.	Response of the SSP: "The Police Directorate - Regional Unit in Bar filed criminal charges against Predrag Đukić and Ivan Abramović for crimes Violent Behaviour and Assault on an Official in the Performance of Official Duties. The trial on charges of alleged crimes against Đukić and Abramović is still ongoing. <u>In this case criminal charges have not been filed against persons who allegedly beat up Abramović and Đukić. Also, the Council for Civil Oversight of the Police concluded that in this case Abramović and Đukić's human rights and freedoms had been violated through abuse of authority by officials of the Police Directorate.</u>

5. 14 September 2007	Igor Šćepanović and Luka Bešić filed a criminal complaint against Mirko Banović, officer of the Police Directorate of Montenegro, for threatening to kill them. As owners of a private company dealing with renovations of housing units, Bešić and Šćepanović were engaged in the renovation of the house of Mirko Banović's sister. When it was time to pay for the work done, Banović's sister reportedly said that she did not have the money, when Banović got involved in the conversation, armed with a gun, and threatened Šćepanović to shoot him and Bešić, telling them that they will never get the money.	"He threatened to shoot them," <i>Vijesti</i> , 14 September 2007.	Although the quoted article published the following: "Podgorica - Igor Šćepanović and Luka Bešić filed a criminal complaint against Mirko Banović, officer of the Police Directorate of Montenegro, for threatening to kill them, as <i>Vijesti</i> found out", <u>in its response the SSP stated that after checking the registers and electronic database, the Basic State Prosecutor's Office in Podgorica established that this office did not receive a criminal complaint against Mirko Banović.</u>
6. 5 November 2007	Bar police detained an officer of the Border Police in that city D.B. on suspicion of having committed the criminal act of Violent Behaviour against A.Z. from Prijepolje, residing in Bar. As suspected, D.B. physically attacked A.Z. hitting her several times, and the doctor's report stated that A.Z. was slightly injured and had a hematoma of her right eye.	"Police officer punches a woman," <i>Vijesti</i> , 7 November 2007.	Although the cited article states: "A.Z. was slightly injured and had a hematoma of her right eye, as stated in the report of duty emergency doctor at the Bar Hospital. Together with the criminal complaint, D.B. was yesterday handed over to the investigating judge of the Basic Court in Bar - said the Police Directorate", <u>in its response the SSP stated that after checking the registers and electronic database, the Basic State Prosecutor's Office in Bar established that this office did not receive a criminal complaint against officer of the Police Directorate regarding the events of 5 November 2007.</u>
7. 25 November 2007	Goran Bulatović from Bijelo Polje says that the local police physically abused him following his arrest for committing a misdemeanour. According to him, as he got into their car, one police officer pushed him hard. At the police station he fell ill, after which he unsuccessfully demanded medical help. One of the officers addressed him with inappropriate words and another officer repeatedly struck him in the chest, and then placed him in a cell.	"They beat me at the police station," <i>Vijesti</i> , 1 December 2007, "Asked for a doctor, got beating," <i>Dan</i> , 1 December 2007.	The victim announced the filing of criminal charges, but the answer of the SSP shows that "the Basic State Prosecutor in Bijelo Polje did not receive a criminal complaint for the criminal offense Ill-treatment and Torture" committed against Goran Bulatović. We find the following to be a particularly important part of the answer: <u>"Prosecutor's Office has no information that the above person was tortured during detention in Bijelo Polje Security Centre", although two daily newspapers reported about this event.</u>

8. 6 January 2008	Aleksandar Rakočević from Bar reported an incident that occurred during the celebration of Christmas Eve. Rakočević was celebrating with friends in a bar where the incident occurred with another group of young men. A police patrol intervened, detained all the participants of the incident and took them to the police station. At the police station Rakočević allegedly received a blow to the head and was verbally abused.	"Internal control in Bar Police", <i>Dan</i> , 10 January 2008.	After Aleksandar Rakočević filed a criminal complaint against officers Amel Grbović and Miloš Magdelinić Milos, the Basic State Prosecutor from Bar - after collecting the necessary information - filed a motion to the Basic Court in Bar to undertake investigative actions. <u>After reviewing the collected documentation the Basic State Prosecutor dismissed the charges and informed Rakočević about that.</u> After checking with the Basic Court in Bar, we found out that Rakočević did not assume the prosecution before the Basic Court in Bar.
10. 30 May 2009	After the inspection, Internal Control established a number of omissions, abuse of office and abuse of power by two chiefs of Berane Police, Marijan Račić and Vlajko Babović related to events prior to the football match between FC Jezera and FC Budućnost in Plav on 30 May 2009. The Police Directorate announced that there is a reasonable suspicion that Marijan Račić, Deputy Head of Berane Police Regional Unit, overstepped his authority and acted unprofessionally towards FC Budućnost supporter Andrija Radunović. The actions of this police officer acquired the characteristics of the following serious disciplinary violations: abuse of authority or power in the service and violent, improper or offensive behaviour or expression of any form of intolerance. The procedure of assessment of actions of Vlajko Babović, Head of Berane Police Regional Unit, has also been initiated. Head of Berane Police was ordered to, on the basis of earlier consultations with the Basic State Prosecutor in Plav, submit to this prosecutor the case file for the assessment and decision on the existence of elements of criminal liability of Babović or other police officers who had been on duty and participated in this event.	"Red card for two police chiefs," <i>Dan</i> , 19 June 2009, "Barbarians are not barbarians," <i>Dan</i> , 20 June 2009.	The Police Directorate - Regional Unit in Berane submitted to the Basic State Prosecutor in Plav the report of the Internal Control Department in Podgorica with the enclosed documentation for evaluation and opinion whether this case includes elements of criminal liability of officers Vlajko Babović and Marijan Račić from Berane (report submitted by Aleksandar Zeković, researcher of human rights violations). <u>Following the assessment of allegations from the report and accompanying documents it was established that the actions of Babović and Račić had no elements of offenses prosecuted <i>ex officio</i>, so the Basic State Prosecutor in Plav dismissed the charges against these persons for the criminal act Violation of the Freedom of Movement and Residence.</u>

11. 25 February 2010	Elvis Đurović from Novi Pazar filed criminal charges against Šekib Džogović who, according to him, abused him mentally and physically at the entrance to Rožaje. As stated by Đurović, after making a joke with the officer saying “You are really bored tonight,” Džogović started yelling at him: “You act that way in Novi Pazar, you’ll sing another song when I get you”, insulting him and threatening, and hit him in the back with his elbow. He claims that it did not help that his wife, heavily pregnant, got out of the car and asked Džogović to let Đurović go. Colleagues also tried to calm officer Džogović down, but unsuccessfully, as well as Đurović’s father-in-law who was called to the scene by the daughter.	“Beaten up because of a joke”, <i>Dan</i> , 1 April 2010, “Beaten up because of a joke”, <i>Vijesti</i> , 2 April 2010.	Elvis Durović and Mihrija Nurković filed criminal charges to the Basic State Prosecutor in Plav against Šekib Džogović, officer of the Police Directorate - Regional Unit in Rožaje, for the crime Torture and Ill-treatment. Basic State Prosecutor in Rožaje dismissed the charges against Šekib Džogović because the actions of the suspect had no elements of the reported offense or another offense that is prosecuted <i>ex officio</i> .
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In accordance with the above, below is the table of cases of ill-treatment in which criminal proceedings were not initiated:

Total cases of ill-treatment by public officials in which criminal proceedings were not or not yet initiated or we have no knowledge of initiated criminal proceedings	15
Cases in which we have knowledge of filed criminal charges	7
Cases in which criminal charges were not filed or we have no knowledge of filed criminal charges	8
Cases in which (after being filed) criminal charges were dismissed	4

2.2.2. Cases in which criminal proceedings were initiated²¹⁶ - total of 63, including:

1. Cases in which the state prosecutor ordered an investigation or the injured party assumed prosecution²¹⁷ but has not yet raised an indictment (charges or indictment proposal²¹⁸) on the basis of which the main hearing may be conducted at the court in criminal proceedings against the accused (4 cases).

2. Cases in which the indictment was raised (59 cases), which can be further divided into cases where the first instance judgment was issued (57 cases) and 2 cases in which the judgment has not yet been adopted;

3. Decisions adopted by courts in criminal cases can be divided into:

(i) Final decisions (101),

(ii) Decisions which did not become final (24).

Final decisions can be divided into:

a. Suspended sentences (36);

b. Sentences of imprisonment (5);

c. Decisions to impose a fine (1);

d. Acquittals (39);

e. Decisions to dismiss the charges²¹⁹ (19) and decisions to discontinue the criminal proceedings (1).

Decisions that have not become final can be divided similarly as follows:

- Suspended sentences (5),

- Sentences of imprisonment (5),

- Acquittals (14), whereas the examined sample does not include decisions to dismiss the charges, which have not become final.

The rarest are those cases in which the abusers were sentenced to imprisonment - only five such decisions, with the longest sentence of five months in prison: in the judgment of the Basic Court in Podgorica K.br. 1971/08 of 20 May 2011 (5 months), judgment of the Basic Court in Podgorica, K.br. 976/10 of 28 February 2011 (5 months), judgment of the Basic Court in Bar K.br. 459/05 of 26 March 2009 (4 months), judgment of the Basic Court in Danilovgrad K.br. 267/09 of 4 June 2010 (3 months) and judgement K.br. 701/10 of 19 April 2011 (3 months).

216 Considering that, in accordance with Art. 18 and 59 CPC the injured party can, if the state prosecutor finds no grounds for prosecution *ex officio*, assume the prosecution within eight days after receiving notification from the state prosecutor about it, this report considered them as cases in which the prosecution was initiated and examined cases where the injured party assumed prosecution.

217 According to the former Criminal Procedure Code (*Sl. list RCG*, 71/2003... 47/2006) investigating judge was responsible for conducting an investigation, i.e. for adopting a decision to conduct an investigation, and the state prosecutor was responsible for raising of the indictment.

218 Indictment proposal is an indictment in summary proceedings (Art. 446 CPC) conducted for the criminal offenses punishable by fine or imprisonment of up to five years.

219 Under Art. 362 CPC, The Court shall render a verdict rejecting the charges:

1) if the Prosecutor withdrew the charges in the course of the trial;

2) if for the same offence the accused has already been convicted or acquitted by a final verdict, or the charge was dismissed by a final verdict or if the proceedings against him was discontinued by a final ruling;

3) if the accused has been exempted from prosecution by an amnesty or pardon, or if the statute of limitation for the institution of prosecution applies, or if there are other circumstances that permanently bar the prosecution.

2.2.2.1. Cases in which there was no indictment

2.2.2.1.1. Mass ill-treatment of detainees in IECS, 1 September 2005

Up to 1 March 2013 no one has been charged for beatings of 18 detainees at the Institution for Execution of Criminal Sanctions (IECS) in Spuž on 1 September 2005, and only one person has been under investigation for criminal offense Negligent Performance of Duty.²²⁰ The Supreme State Prosecutor's Office initially refused to inform the public at the request of Human Rights Action about actions taken to prosecute and punish all responsible members of the special police unit, i.e. Police Directorate, who had ordered and carried out this action.²²¹ Appropriate investigation has not been conducted despite the explicit interest of the EU for its effective implementation.²²²

According to the Director of the Remand Prison in Spuž and existing documentation, officers of the special police unit, acting on a search warrant of the High Court in Podgorica, entered the dormitories of the Remand Prison in Spuž at dawn of 1 September 2005 and beat about thirty inmates. The report on the event, including detainees' medical reports of injuries sustained on that occasion, have been submitted to the Ministry of Justice and State Prosecutor, and complete documentation has also been submitted to the investigating judge and the President of the High Court. Special Commission of the Ministry of Health, established at the initiative of the Prime Minister of Montenegro Milo Đukanović, on 5 September 2005 confirmed that 18 prisoners had sustained serious injuries including hematomas etc.²²³

This case has also been observed by the CPT, which, examining the case, did not come across a report of resistance by prisoners that would justify the use of force by police officers.²²⁴ Although the incident had been immediately reported to the Prosecutor's Office, it was only on 27 October 2005 (almost two months after the intervention) that the Prosecutor's Office requested the police authorities to indicate who had been in charge of the organisation and execution of the intervention and to submit relevant documentation. On 18 December 2006 (more than a year after the incident), the Prosecutor's Office applied to the investigating judge to initiate proceedings against the Head of Podgorica Police Directorate on the basis of the fact that he was responsible

220 According to the Supreme State Prosecutor's information of 17 December 2007 (Tu.br. 654/07), as of December 2005 the case file had been at the Basic Prosecutor, who has since filed a motion to the investigating judge to undertake investigation against (only) one responsible person in the Police Directorate of Montenegro for committing crime Negligent Performance of Duty, under Art. 417, para 1 CC, and the investigation is still ongoing.

221 Human Rights Action has twice requested the Supreme State Prosecutor to provide access to information against whom and at what stage is the process of prosecuting the responsible members of the special police unit for physical abuse of detainees in IECS on 1 September 2005. HRA requests of 12 May 2010 and 30 July 2010 are available at: <http://www.hraction.org/wp-content/uploads/zahtjev-3007.pdf> and <http://www.hraction.org/wp-content/uploads/zahtjev-1205.pdf>. In both cases the SSP issued a decision denying access to this information to Human Rights Action: <http://www.hraction.org/wp-content/uploads/rjesenje-vdt-0110.pdf> and <http://www.hraction.org/wp-content/uploads/rjesenje-vdt2-0110.pdf>. On the appeal filed by HRA the Ministry of Justice originally issued a decision which vacated SSP's decision and returned the case for reconsideration, however, the Ministry confirmed the subsequently issued decision of the Supreme State Prosecutor to withhold information. On that occasion Human Rights Action initiated a dispute before the Administrative Court, which ordered the submission of requested information.

222 In its annual report on Montenegro for 2005 the European Commission emphasized that "police ill-treatment in the prison in Spuž (September 2005) needs to be fully and transparently investigated" (Serbia and Montenegro 2005 Progress Report, November 2005, p. 18).

223 See, for example, *Monitor*, 9 September 2007, p. 12.

224 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit to Montenegro from 15 to 22 September 2008, p. 23.

for the conduct of the intervention. The investigative activities subsequently performed involved a forensic assessment of the medical findings concerning injuries sustained by the prisoners, and the questioning of the Head of Podgorica Police Directorate and several police officers involved in the intervention.²²⁵

CPT found that the investigative activities have omitted to question the penitentiary authorities, staff working at the remand prison and all prisoners (both those who were injured and those who had witnessed the intervention), neither have the necessary steps been taken to seize the internal orders related to the organisation of the intervention and to question senior officials from the Ministry of Internal Affairs who had been involved in its planning, as well as the police officers who drew up the minutes of the search and subsequent reconstruction of events; as a result, the investigation has failed to identify the officials responsible for the organisation and execution of the operation.²²⁶

In March 2012 Human Rights Action received information from the Supreme State Prosecutor's Office²²⁷ that the "Basic State Prosecutor in Podgorica formed case Kt.br. 2777/06, according to the criminal complaint - information from IECS, no. 0102-3137/1 of 1 September 2005, filed against Milan Vujanović, then head of the Security Centre Podgorica for a criminal offense Negligent Performance of Duty under Art. 417, para 1 CC, which was rejected by the decision of the Basic State Prosecutor in Podgorica Kt.br. 2777/06 of 23 June 2010, as the actions of the reported persons had no elements of the crime he had been accused of. Thereafter, the Basic State Prosecutor in Podgorica entered the case in the register kept for unknown offenders and requested the police to continue the process of identifying the perpetrators of this crime." The Prosecution, presumably, subsequently agreed to investigate the responsibility of all of its employees, from the direct perpetrators of abuse to those giving orders.

There is a danger that the prosecution of the perpetrators of this act has become time-barred, since the abuse took place more than 7 years ago and no procedural action has been taken to identify the perpetrators.²²⁸ In order to establish the rule of law it is necessary to determine the identities and prosecute those responsible in the police and state prosecutor's office who abused their office by taking part in the concealment of the offense, or who helped the perpetrators of this crime.

2.2.2.1.2. Case of detainees Igor Milić and Dalibor Nikezić

In February 2010 the state prosecutor's office dismissed the criminal charges filed against IECS officers for beating of detainees Igor Milić and Dalibor Nikezić, because it found that the state officials had used force against detainees "to the necessary extent".²²⁹ Protector of Human Rights and Freedoms of Montenegro opposed to this position of the state prosecutor, but this did not affect the change in the decision.

²²⁵ *Ibid.*

²²⁶ Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit to Montenegro from 15 to 22 September 2008, p. 23.

²²⁷ TU.br. 312/10.

²²⁸ The crime of Ill-treatment becomes time-barred within 3 years from the date of the offense, and in any case after 6 years from the date of the criminal offense: the same applies to the criminal offense Light Bodily Injury.

²²⁹ "Detainees were beaten legally", *Vijesti*, 13 February 2010.

Nikezić and Milić were beaten in IECS on 27 October 2009 by the prison security officers, after which Igor Milić's mother filed criminal charges against IECS officers. After the competent state prosecutor withdrew from prosecution, injured party assumed the prosecution. Podgorica High Court dismissed the appeal filed by Milić and Nikezić against the decision of the Basic Court in Danilovgrad to reject their request for an investigation of the prison officers.²³⁰

IECS Management argues that the two young men attacked five members of the security, which is why these applied force in accordance with the law, however, in the opinion of the Protector of Human Rights and Freedoms, based on the medical records of injuries and video footage, unnecessary excessive force has been used.²³¹ The Protector recommended that IECS Administration conduct disciplinary proceedings against all the guards who took part in this event, but it was concluded that, despite the recommendation, the conducted procedure did not include all persons.²³² Video footage of this event is available to public, provided by the Youth Initiative for Human Rights, whose representatives explained that "the footage includes only a small part of what happened that day."²³³

Constitutional appeal was filed in this case, as well as the application to the European Court of Human Rights because of the lack of effective legal remedy and ineffective investigation of the report of abuse.²³⁴ The court proceedings ended and the verdict is expected.²³⁵

Igor Milić and Dalibor Nikezić reported new ill-treatment in January 2011 on which occasion criminal charges have been filed against the guards in IECS.²³⁶

2.2.2.1.3. Case of detainee Marko Đurković

On 3 May 2012 detainee Marko Đurković was beaten in the room in the Remand Prison in Podgorica (Podgorica Prison) for reportedly being late for the count.²³⁷ He was beaten in front of other detainees by security sector officers. Doctors have recorded injuries and, according to media reports, Basic State Prosecutor ordered an investigation into the case.²³⁸

However, when a representative of the Human Rights Action visited Đurković on 9 May 2012, six days after the assault, he claimed that he had not been heard by a police officer or state prosecutor. Also, during the next visit to Đurković on 4 July 2012, when he was already transferred to the Institution for sentenced prisoners, Đurković argued that even to this date, two months after the event, he has not been questioned by the police or state prosecutor about the circumstances

230 Information provided by attorney Azra Jasavić representing Milić and Nikezić.

231 Report of the Protector of Human Rights and Freedoms for 2010, Podgorica, March 2011, p. 54-55.

232 *Ibid*, p. 55.

233 "Radović defending guards", *Vijesti*, 14 November 2009; "Session of the Committee for Human Rights and Freedoms", *Vijesti*, 31 April 2010. Footage of the incident of 27 October 2010 available at: <http://www.youtube.com/watch?v=qcdJjed1aAc>, visited on 25 May 2011.

234 Information provided by attorney Azra Jasavić representing Milić and Nikezić.

235 Information provided by attorney Azra Jasavić in March 2013.

236 From YIHR first quarterly report for 2011, available at: <http://www.yihr.me/wp-content/uploads/2010/03/YIHR-I-kvartalni-izvjestaj-05.04.-ffinal.pdf>.

237 The report "Respect for human rights of detainees and persons serving a sentence at the Institution for Execution of Criminal Sanctions," Human Rights Action, Centre for Anti-discrimination EQUISTA, Centre for Civic Education, Shelter, Podgorica, 15 June 2012.

238 Daily newspaper *Dan* of 7 May 2012.

of ill-treatment. Only on 26 December 2012, eight months after the incident, Đurković, suspects - IECS officials and two detainees as witnesses gave their statements to the Deputy Basic State Prosecutor in Podgorica. According to information provided by IECS Administration representative obtained at the meeting of 7 March 2013, the State Prosecutor's Office initiated criminal proceedings against two IECS officers.

IECS Administration confirmed that their officer "used coercion against Đurković, who did not comply with the house rules" and stated that due to the abuse of authority the officer and chief of shift have been suspended from work.²³⁹ However, Đurković claims that at least four IECS officers were actively involved in his ill-treatment and that other officers watched.

Case of M. Đurković, as well as case of I. Milić and D. Nikezić, proves that even when faced with undisputed evidence of abuse, Administration of the Institution for Execution of Criminal Sanctions is reluctant to punish all responsible and thus take an uncompromising stance on the issue of prohibition of ill-treatment, which would be in accordance with the international obligations of Montenegro.

On the other hand, the fact that the state Prosecutor hesitated for almost 8 months to question the injured party and take action, does not meet the international standard of emergency investigation.

2.2.2.1.4. Case of Miroslav Šoškić

According to the police version of events, Miroslav Šoškić was killed in the night between 16 and 17 December 2008 by drowning in Lim river while fleeing from the police station, while his father, Vladimir Šoškić accused the police of being responsible for the death of his son.²⁴⁰ After Vladimir Šoškić filed a request to the High State Prosecutor in Bijelo Polje in January 2009 to institute proceedings to determine the circumstances under which Miroslav lost his life, the Prosecutor informed him in February 2009 that the examined documentation included no facts or circumstances that would lead to a conclusion that somebody is under reasonable suspicion of having committed a criminal offense prosecuted *ex officio* on the occasion of the death of his son.²⁴¹ Vladimir Šoškić believed that his son had been fatally injured during the escape and called the authorities to conduct an investigation.²⁴² According to the first autopsy report, conducted at the order of the Prosecutor's Office, Miroslav Šoškić's death was due to drowning, however, the second expert report, conducted on a private initiative of Vladimir Šoškić, challenged this finding as contradictory.²⁴³ After the second autopsy, at the insistence of Šoškić family, at the proposal of High State Prosecutor and at the request of the High Court, third autopsy has been conducted.

239 Daily newspaper *Vijesti* of 7 May 2012.

240 "Murdered and thrown into the river," *Monitor*, 30 November 2012.

241 Report of the Civic Alliance "Human Rights in Montenegro - from the referendum to the beginning of the negotiations with the EU, May 2006 - June 2012".

242 "Drowned while running away from the police," *Dan*, 21 December 2008; "Police killed my son," *Vijesti*, 21 December 2008; "I am desperate, but I doubt the police version," *Vijesti*, 2 March 2009; "Mystery of three years," *Dan*, 18 December 2011; "Family accusing the police," *Dan*, 24 March 2012, "Knocked him out and then threw in the river," *Vijesti*, 11 May 2012.

243 "Tragedy and controversy," *Vijesti*, 25 May 2012.

It is unknown why the High State Prosecutor failed to insist on the third expert opinion.²⁴⁴

According to the third expert opinion, in April 2012 “Miroslav suffered at least two strokes with a blunt, heavy and swung mechanical tool. One stroke was sustained in the area of his left eye, and the other in the right parietal area. After a blow to the eye he was able to walk and perform other movement. However, after a blow to the parietal region he suffered a fracture of the skull, causing loss of consciousness and inability to perform any movement. Skull fracture and injuries to the left eye area could not have been caused by a fall or in the water or during floating or “rolling” in the water, or by any other action, as a result of two separate blows with a blunt part of a swung mechanical instrument”.²⁴⁵

The original findings of the Prosecution of February 2009 were also refuted, stating that the river levels were high and that Miroslav died hitting his head on the rocks in the water, since the report of the Hydro-meteorological Institute shows that the river was calm and shallow that day.²⁴⁶

After receiving the third autopsy report, the results were first sent for interpretation to the Forensic Committee in Podgorica (which could not specifically say which expertise results were valid), and then in Belgrade. Results of the expertise conducted in Belgrade confirmed the findings of the third expertise – that the death did not occur due to drowning.²⁴⁷ Following these events, in November 2012, four years after the death of Miroslav Šoškić, the High State Prosecutor launched an investigation against two police officers Ž.B. and A.K. suspected of being responsible for his death.²⁴⁸

2.2.2.2. Cases in which an indictment was raised²⁴⁹

2.2.2.2.1. Case of Petar Siništaj

In the police operation “Eagle’s Flight”, during a search of Siništaj family home, five members of the Special Anti-Terrorist Unit have been accused of abuse of authority and inflicting minor injuries to Petar Siništaj, father of two brothers suspected of terrorism. On 14 May 2008 the Basic State Prosecutor’s Office filed an indictment Kt.br. 732/08 against police officers K.M., Š.D., Š.N., R.B. and M.M. for the criminal act Ill-treatment and Torture under Art. 167, para 3 in relation to para 2 of the Criminal Code, for beating and otherwise torturing and abusing Petar Siništaj on 9 September 2006 during his arrest in the above-mentioned operation “Eagle’s Flight”.

The defendants were sentenced to three months in prison by the first instance judgment of the Basic Court in Podgorica. The Court rejected allegations of the Prosecutor’s Office that the defendants had hit Siništaj with gunstocks “causing him great suffering”. In the explanation of the verdict the judge stated that the defendants “did not require information or a confession” from the injured party²⁵⁰. Following the decision of the Basic Court, the defendants filed an appeal and

244 “It is necessary to determine the responsibility of the prosecutor”, *Vijesti*, 12 May 2012.

245 “Two policemen arrested for the murder of a young man”, *Dan*, 20 November 2012.

246 “Prosecutor seeks exhumation”, *Dan*, 6 March 2012.

247 “All evidence point to the fact that my son was killed”, *Vijesti*, 5 January 2013.

248 “Policemen arrested, investigation of the death of Miroslav Šoškić open”, *Pobjeda*, 20 November 2012.

249 Both by the state prosecutor and by the injured party.

250 Which is a part of the criminal act of Torture laid down in Art. 167 of the Criminal Code of Montenegro.

were acquitted in a retrial on 21 October 2010 by verdict K.br. 09/1416²⁵¹. The verdict stated that it was not proven that the defendants had committed the criminal offense they were charged with, although the findings and opinion of medical expert Dr Š.M. of 31 January 2008 indicate that on 9 September 2006 Siništaj was examined by Emergency Room physicians and physicians at the Clinical Centre of Montenegro, who noted numerous injuries, undoubtedly indicating that the injured party had been beaten and tortured. The victim sustained abrasions in the right side of the face, right shoulder, right upper arm, right elbow and over the left shoulder blade.

These injuries are due to the effect of repeated blows with a blunt, heavy and swung mechanical object to the corresponding body areas. Abrasions of the elbow and shoulder blade areas could have occurred by falling and hitting a hard, rough surface. These injuries both individually and jointly constitute light bodily injury. A medical expert questioned at the trial confirmed the main findings and opinion and explained that the abrasions in the region of the elbow and left shoulder blade could have occurred by falling and hitting a hard, rough surface, which does not exclude the possibility that the injuries could have been caused by direct force, i.e. impact of a blunt, heavy and swung mechanical object on the elbow and shoulder blade. Siništaj also suffered abrasions of the right side of the face, right shoulder and right arm. These abrasions are due to at least three blows to the corresponding areas of the body.

Several witnesses were heard, including the son of the victim, who stated that he “did not see who struck his father, but he could hear the blunt strokes and his moans and screams of the children”.

Legal representative of the victim, the late Petar Siništaj, appealed the acquittal.

On 24 November 2010 the Prosecutor’s Office too appealed against this judgment. The High Court in Podgorica in second instance procedure issued judgment Kž.br. 616/11 of 18 May 2011, which confirmed the first instance judgment of acquittal.²⁵²

2.2.2.2.2. Illegal punishment in IECS Remand Prison – case of Vladana Kljajić

Vladana Kljajić was brutally beaten in solitary confinement cell of the Remand Prison in Podgorica by two female prison officers (Sandra Brajović and Vukica Vukićević) on 5 September 2008. Prior to this event they had a verbal conflict and Vladana was allegedly slapped, when she responded by hitting one of the officers. According to Kljajić, the officers took her to solitary confinement cell, handcuffed her hands behind the back and then beat her with fists and sticks, covering her body with bruises.²⁵³ She spent five days in solitary confinement. Having finally learned about the event and managed to see her daughter, on 13 September the mother of the prisoner filed a criminal complaint with the Basic State Prosecutor’s Office in Podgorica.²⁵⁴ Vladana spent five days in solitary confinement, and her mother claims that during that time she was not allowed to visit the prison hospital for examination and that a doctor examined her only seven days

251 Original judgment of the Basic Court in Podgorica was submitted to Human Rights Action in September 2012 at their request.

252 Letter (decision) of the Supreme State Prosecutor to Human Rights Action TU.br. 312/10 of 20 March 2012.

253 Director of NGO Shelter Ljiljana Raičević visited IECS and saw that Kljajić’s body was covered in bruises, that she had difficulties speaking due to kidney pain and urinated blood. This case is also described in the Report of the Committee for the Prevention of Torture (CPT) on its visit to Montenegro in September 2008, given that the members of the Committee had the opportunity to talk with Vladana and examine her (see p. 46 of the Report).

254 “Vladana must go to hospital”, *Vijesti*, 18 September 2008; “IECS officers beat her up”, *Dan*, 18 September 2008.

after the incident. According to CPT report, prison medical record contained a detailed description of the injuries recorded by the prison doctor, who examined the prisoner on 5 September 2008; however, inmate's statement on the cause of the injuries was not included.²⁵⁵ Subsequently appointed director of IECS, Milan Radović, informed the representatives of Human Rights Action at the meeting held in February 2010 that Vladana Kljajić's documentation did not contain the said medical report.

Based on the criminal charges filed by the prisoner's mother, on 13 September 2008 a preliminary investigation was opened before the Basic Court in Danilovgrad initiated by the State Prosecutor for the crime Light Bodily Injury, and not the crime Ill-treatment and Torture.²⁵⁶ Only after the CPT showed the Government interest in this case, its qualification was changed and the state prosecutor has taken prosecution for the crime Ill-treatment and Torture,²⁵⁷ with the behaviour of prison officials towards Kljajić being qualified as a milder form - "ill-treatment", not "torture", which implies "severe pain" and "great suffering", which undoubtedly seems to have happened to Kljajić, given the descriptions of her injuries. Additionally, criminal procedure was initiated against the prisoner for assaulting prison officer, in which she was sentenced to seven months in prison. In the first instance judgment of the Basic Court in Danilovgrad K.br. 13/09 of 31 January 2011 prison officers were each sentenced to 4 months' imprisonment suspended for two years, and they appealed against the verdict.²⁵⁸ Basic State Prosecutor's Office filed an appeal against the same judgment on 25 March 2011 and the High Court in Podgorica dismissed the appeal in its decision Kž.br. 806/11 of 26 May 2011 and upheld the first instance judgment.²⁵⁹

Human Rights Action urged the Supreme State Prosecutor to ensure the prosecution of this case and other cases of torture and other inhuman and degrading treatment in accordance with European standards.²⁶⁰ However, despite the recommendations of the CPT and appeals of non-governmental organizations the authorities have done nothing to ensure proper punishment of IECS officials responsible for ill-treatment of Vladana Kljajić for the committed offense. In this way, the competent authorities of Montenegro sent a message that ill-treatment and torture may go unpunished or imply only minimal sanctions.

255 The record states: "5 September 2008: Examined with injuries. Left forearm - redness in the form of a strip, slantwise, near the ankle 6x2.5cm. Left forearm - 2 red stripes, shaped 8-10x3cm. Right upper arm - red line, slantwise, about 10x3cm. Back of the rib cage - 3 red stripes, one near the shoulder blade, one below the left shoulder blade, one above the left thigh, 6-12x3cm, all lengthwise. Outer right thigh, visible bruises, hematomas, unclear edges, dark blue, triangular 15x10cm. Outer left thigh, left glutei, 3 red stripes, slantwise, 6-10x3cm. Diagnosis: erythema mechanicum, antebrachia, multiple bruises, hematomas."

256 Kt.br.1542/08, response of the Basic State Prosecutor Đurđina Nina Ivanović to Youth Initiative for Human Rights of 13 November 2008, stating the description of the offense as Light Bodily Injury.

257 Only on 6 April 2009 the Basic State Prosecutor in Podgorica filed an indictment proposal to the Basic Court in Danilovgrad against the authorized officials of IECS, Spuž for criminal offense Ill-treatment and Torture under Art. 167, para 3 in connection with para 2 of the Criminal Code, in conjunction with the criminal offense Light Bodily Injury under Art. 152, para 2 in connection with para 1 of the Criminal Code committed against a detainee (Response of the Government of Montenegro to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on a visit to Montenegro from 15 to 22 September 2008).

258 Information HRA received from Danilovgrad Basic Court referring to the Law on Free Access to Information (decision Su 35/11 of 16 February 2010, upon the request for access to information of 14 February 2011).

259 Letter (decision) of the Supreme State Prosecutor to Human Rights Action TU.br. 312/10 of 20 March 2012.

260 On 12 November 2009 Tea Gorjanc Prelević, on behalf of Human Rights Action, and Ljiljana Raičević, on behalf of Women's Safe House, sent a letter to Milan Radović, Director of the Institution for Execution of Criminal Sanctions in Podgorica (Spuž) and to Ranka Čarapić, Supreme State Prosecutor, urging them to ensure that effective investigation be conducted and appropriate sanctions imposed in cases of abuse of detainees in IECS Spuž (available at: <http://www.hraccion.org/?p=284>).

It is important to remember that following the abuse of Vladana Kljajić, IECS management publicly alleged through the spokesperson that the event had been invented.²⁶¹ The two IECS officers were never suspended and are still employed in the same state agency.

2.2.2.2.3. Case of Aleksandar Pejanović

On the occasion of beating of Aleksandar Pejanović in the detention room of the Regional Unit of Podgorica Police, the so-called “Concrete cell”, from 31 October until 2 November 2008 and until the end of work on this report in March 2013 the investigation was not extended to the police officers who had carried out the beating or to senior police officers who had apparently ordered the beating or participated in covering up the crime.²⁶²

Pejanović has been abused on several occasions while in police custody in Podgorica, where he was detained on suspicion of “violent behaviour” and “assaulting an officer” at the opposition protest meeting on 13 October 2008 regarding the Government’s decision to recognize the independence of Kosovo. The beating began 31 October at 10 a.m. and continued for 48 hours. Numerous injuries on Pejanović’s body were qualified by the court expert witness as serious bodily injury.²⁶³

Almost one year after the beating of Pejanović, on 14 September 2009 the Basic State Prosecutor in Podgorica issued an indictment against six police officers for aiding in the commission of criminal act Ill-treatment and Torture (Art. 167, para 3 in connection with para 2 in connection with Art. 25 CC). On 15 December 2009, during the trial, one of the accused police officers Goran Stanković stated that several of his colleagues, mostly of higher rank and responsible for supervision, had committed a series of violations of law related to ordering, allowing and covering up the torture of Pejanović, including the falsification of official documents. Stanković’s statement fully coincided with Pejanović’s allegations, including the claim that masked men in uniforms of the police intervention squad had repeatedly beaten him in police custody. Stanković said that the beating of Pejanović has been “ordered from the top”, as he had been told by shift commander R.R. and commander D.R. On 8 June 2010 police officer Goran Stanković was acquitted in the first instance judgment of the Basic Court in Podgorica, since previously both the state prosecutor and Pejanović had abandoned the prosecution against him.²⁶⁴

261 “There was no torture - IECS spokesperson on allegation that detainee Vladana Kljajić was beaten at that institution,” *Dan*, 19 September 2008; “There was no torture,” *Vijesti*, 19 September 2008. A spokeswoman at the time was Marija Jovović and Božidar Vuksanović was IECS director.

262 Human Rights Action wrote twice to the Supreme State Prosecutor’s Office citing the Law on Free Access to Information, requesting information on whether something has been done to expand the investigation to include senior police officials, first time on 12 May 2010 and then on 30 July 2010. In both cases SSP issued a decision denying Human Rights Action access to this information. Decisions are available at the following links: <http://www.hraction.org/wp-content/uploads/rjesenje-vdt-0110.pdf> and <http://www.hraction.org/wp-content/uploads/rjesenje-vdt2-0110.pdf>. Human Rights Action, together with Centre for Civic Education, Alternativa Institute and researcher of human rights violations Aleksandar Zeković, appealed to the Supreme Public Prosecutor’s Office to extend the investigation, however, this has not been done. (18 December 2009, Joint statement on the occasion of the public testimony of Goran Stanković, one of the police officers accused of abusing Aleksandar Pejanović, available at: <http://www.hraction.org/?p=313>). Only on 20 March 2012, almost one year after the Administrative Court issued its judgment accepting HRA’s claim and ordering delivery of information, SPP submitted the information presented later in the report.

263 The findings and opinion of the forensic expert Prof. Dr. Dragana Čukić of 5 April 2010 and from the record K.br. 172/09 of 13 May 2010.

264 Judgment, Podgorica Basic Court, K.br. 09/1172, in Podgorica, 8 June 2010.

All police officers suspected of the criminal offense Ill-treatment and Torture had to be suspended from office as of the beginning of the investigation, and especially after the raising of the indictment, but that did not happen.²⁶⁵

Of a total of six accused, the first instance verdict²⁶⁶ dismissed the indictment in respect of three of them (including Goran Stanković²⁶⁷), because the prosecutor abandoned the prosecution in respect of them, and Pejanović too abandoned the prosecution against Stanković; I.P. was sentenced to imprisonment for three months²⁶⁸ and M.L. and M.K. to imprisonment of five months for aiding in the torture and ill-treatment. The imposed punishments are minimal, given that the crime of Ill-treatment and Torture, when committed by an officer, as well as assisting the crime is punishable by a prison sentence of three months to three years.

The High Court overturned the first instance judgment and ordered a retrial in December 2010. On 28 March 2011 the Basic State Prosecutor (BSP) raised an indictment against three police officers who were convicted by the revoked first instance verdict.²⁶⁹ Basic State Prosecutor originally charged the accused with lighter offenses – Light Bodily Injury, although the medical findings ascertained Severe Bodily Injury, and in accordance with the instructions of the High Court issued a new indictment.

Meanwhile Pejanović raised the indictment and assumed the prosecution against the two acquitted officers, B.R. and D.Đ.²⁷⁰

The state prosecutor has not extended the investigation in this case to include the direct perpetrators of the crime of police interventions squad or police superior officers, who had apparently ordered and enabled the ill-treatment of Pejanović and denied him the right to medical treatment.

Also, no investigation has been initiated with regard to the falsification of documentation on Pejanović's detention that Stanković testified about. Therefore, in early March 2011 Aleksandar Pejanović's attorney Dalibor Kavarić filed a criminal complaint against the Basic State Prosecutor in Podgorica for failing to carry out an effective investigation, i.e. the offenses Negligent Performance of Duty under Art. 417 of the Criminal Code in conjunction with the criminal act Helping the Offender after the Commission of a Crime under Art. 387 of the Criminal Code. The criminal charges were dismissed as the grounds for prosecution were not found.

Attorney Kavarić filed a criminal complaint on the same grounds against shift leader D.R. and Commander R.R. This criminal complaint was processed, the two police officers were charged and

265 According to the Law on Police (*Sl. list RCG, 28/2005 and Sl. list CG, 88/2009*), a police officer prosecuted for a crime *ex officio* is unworthy of serving in office (Art. 63, para 3).

266 Judgment, the Basic Court in Podgorica, K.br. 09/1172, in Podgorica, 8 June 2010.

267 However, although he was not included in the indictment, Goran Stanković was again summoned to appear as a defendant at the trial of 20 October 2011, which caused strong reactions with the public prosecutor (who stated that Stanković could only be summoned as a witness at the said trial) and in the media and the public, where this action was interpreted as pressuring the witnesses and obstructing proceedings against police officers who had committed torture ("Stanković tried although not indicted," *Dan*, 21 October 2011).

268 The judgment (see previous footnote) states that three police officers were accused of the crime Ill-treatment and Torture through Aiding under Art. 167 para 3 in connection with para 2 in connection with Art. 25 of the Criminal Code, *Sl. list RCG, 70/2003*.

269 Indictment of the Basic State Prosecutor in Podgorica Kt.br. 829/09 of 28 March 2011.

270 Indictment of injured party Aleksandar Pejanović K.br. 11/17 of 18 March 2011.

the procedure is in the trial phase.²⁷¹ However, despite this, R.R. was not suspended, but has been promoted to Head of the Branch for Law and Order in Podgorica Police Regional Unit.

Supreme State Prosecutor refused to provide information to Human Rights Action about whether the investigation has been extended to include any person in this case, apparently because it was not. On 20 March 2012 the Supreme State Prosecutor submitted a response to Human Rights Action to its request for free access to information of 12 May 2010 stating that the repeated criminal proceedings against I.P., M.K. and M.L. are “in progress”.²⁷²

An important aspect of this case is the fact that the Internal Control of Police Directorate failed to establish that any officer of the Police Directorate had overstepped their authority in this case, while relying solely on the statements of fellow police officers and official documentation in the adoption of this conclusion.²⁷³

Aleksandar Pejanović was murdered in late May 2011. He was shot from an official gun by his neighbour Zoran Bulatović, a police officer, who was allegedly quarrelling with Pejanović.²⁷⁴ The hearing of witnesses on the charges filed by Pejanović against R.R. and D.R. continued.²⁷⁵ Witness Goran Stanković said that he felt particularly vulnerable after the killing of Pejanović.²⁷⁶

Meanwhile, the proceedings initiated by the state prosecutor and the proceedings initiated by Pejanović under his indictment have been merged and are now in the trial phase.²⁷⁷ At the hearing on 23 October 2012 former police officer Oliver Bošković, who was examined as a witness, said that it was true that Pejanović had been beaten by masked and armed men in detention premises of Podgorica Security Centre “on orders from the top”, adding that the defendants knew about that but were powerless to prevent it, and that he was threatened with losing his job if he spoke about it.²⁷⁸ Bošković decided to speak out because he has lost his job due to a previously imposed suspended sentence.²⁷⁹

According to Bošković’s statement, before the previous trial R.R. told him that he would keep the job if he said that he had not changed the lock in detention premises during the night of the beating.²⁸⁰

Pronouncement of the first-instance verdict took place on 11 February 2013. The three accused were sentenced to 7 months in prison each for the crime Severe Bodily Injury through Aiding in conjunction with the crime of Ill-treatment through Aiding, while the two accused were acquitted

271 Information obtained in an interview with attorney Dalibor Kavarić. It is interesting that the Basic State Prosecutor failed to include the family of late Aleksandar Pejanović in criminal proceedings against Raičević and Rondović, so they are now informed about the proceedings as much as all the Montenegrin public.

272 Letter of the SSP TU.br. 312/10 dated 20 March 2012.

273 A representative of the Internal Control of the Police Directorate has publicly admitted that during the examination of the case the Department of Internal Control failed to question Aleksandar Pejanović or inspect his medical records, relying solely on the police sources, Radio Antena M, show “Hot chairs”, March 2009.

274 “Aleksandar Saša Pejanović murdered, camera captured the murder”, *Vijesti*, 30 May 2011.

275 “Rondović and Raičević knew about the beating of late Pejanović”, *Vijesti*, 16 June 2011.

276 Information of Human Rights Action.

277 Information obtained in an interview with attorney Dalibor Kavarić on 5 October 2012.

278 “Guys with masks sent from the top of the police”, *Vijesti*, 24 October 2012.

279 *Ibid.* See p. 81 of this report for the analysis of the final judgment K.br.237/09, by which police officer O.B. was sentenced to three months imprisonment suspended for one year for the torture of A.L.

280 *Ibid.*

of charges for the two mentioned crimes as well as for crimes Failure to Report a Crime²⁸¹ and Negligent Performance of Duty.²⁸²

2.2.2.2.4. Case of Milovan Jovanović

According to the indictment issued by Podgorica Basic State Prosecutor, in late June 2003 police officers D.D., D.K., D.K., V.R. and S.M., acting together as members of the Intervention Squad of Podgorica Regional Unit, during the performance of official duties tortured, insulted Milovan Jovanović and caused him light bodily injury by repeatedly hitting him in the head and body, arms, legs, also with a truncheon.²⁸³ Jovanović suffered light bodily injury, including contusions, hematomas and other injuries described in detail, on the basis of which it is possible to conclude that he was indeed abused.²⁸⁴

However, the Basic State Prosecutor accused the defendants on 28 February 2009, six years after the events and only two months before the onset of absolute time-bar of criminal prosecution! The Basic Court in Podgorica then adopted the decision K.br. 520/09 of 14 September 2009²⁸⁵ dismissing the charges for the criminal offense Ill-treatment in the Performance of Duty under Art. 48 CC in conjunction with criminal offense Light Bodily Injury under Art. 37, para 2 in connection with para 1 CC in respect of all the accused due to the onset of absolute time-bar of criminal prosecution. The judgment became final on 1 October 2009.

This is contrary to the international standards and recommendations of CAT and CPT related to the timely and prompt investigation, as the competent state authorities delayed the issuing of an indictment to the point of absolute time-bar and let the perpetrators go unpunished.

2.2.2.2.5. Case of Miljan Despotović

On 26 June 1995 police officers performing security service assaulted Miljan Despotović (who was 15 at the time) at the stadium of FC “Budućnost”, causing him light bodily injury by hitting him with truncheons and kicking him, because they felt that Miljan violated public order by throwing objects on the field. One of the policemen then twisted his arm and hit him on the neck, when he fell on the ground and the beating with truncheons and kicking continued. Even after being taken to the official premises of the police at the stadium, police officers continued to beat him on the head and stomach, when the victim suffered several severe blows, some of which were visible - multiple bruises, abrasions and redness.

Criminal proceedings were launched against police officers S.Š. (who twisted Despotović’s arm and threw him to the ground) and Dejan Knežević for the crimes Ill-treatment in the Performance of Duty under Art. 48 CC and Light Bodily Injury under Art. 37, para 2 in connection with para 1 CC. The defendants were found guilty in the decision of the Basic Court in Podgorica K.br. 2000/4363 of 19 February 2001 of the said criminal offenses and sentenced to 4 months imprisonment sus-

281 Art. 386 CC.

282 Art. 417 CC.

283 Indictment proposal Kt.br. 1547–03.

284 “Basic State Prosecutor on the line”, *Dan*, 10 May 2010.

285 Submitted to Human Rights Action by the Basic Court in Podgorica on 12 March 2013.

pended for one year. The sentence was upheld by Podgorica High Court,²⁸⁶ when the judgment became final. However, the then Federal Court of the Federal Republic of Yugoslavia in Belgrade, acting on the request for the protection of legality of the Federal State Prosecutor, abolished the said decision in its judgment Kzs.br. 23/2002 of 18 September 2002 and returned the case to the first instance court for retrial, although at the time of making that judgment, 18 September 2002, the criminal case had already reached an absolute time-bar of criminal prosecution,²⁸⁷ so the Basic Court in Podgorica issued decision K.br. 1755/03 of 6 May 2003 dismissing the charges due to the absolute time-bar of criminal prosecution, which became final on 26 May 2003.²⁸⁸

Meanwhile, on 19 June 1998, Despotović filed a claim for non-pecuniary damages (for suffered physical pain and fear, impairment of activities of daily living and changes in aesthetic appearance) to the Basic Court in Podgorica, which ended after exactly twelve years in judgment on the appeal on points of law of the Supreme Court of Montenegro Rv.br. 945/10 of 1 July 2010.

After seven years of litigation, having apparently been prevented by the court's failure to act from exercising his right to receive fair compensation for suffered abuse, during the court procedure the injured party addressed the European Court of Human Rights in Strasbourg in an application of 26 May 2005²⁸⁹ with the proposal to oblige the then State Union of Serbia and Montenegro to end the litigation in question as soon as possible, within a reasonable time.

Given the fact that the litigation before the Basic Court in Podgorica in the meantime continued, the European Court concluded that the Convention had not been violated in this respect.

The Protector of Human Rights and Freedoms of Montenegro also intervened and stated in his final opinion²⁹⁰ of 28 July 2007 that Despotović's right to a fair trial had been violated due to unjustified delay in the proceedings. After the intervention of the Ombudsman, the Basic Court in Podgorica on 12 June 2007 rendered the judgment²⁹¹, rejected the plaintiff's claim as unfounded, although the expert panel determined that the victim had suffered a number of injuries on the head and body in the form of bruises and abrasions as well as pain and fear of high intensity, while the fear lasted for as many as three years. The said first instance decision was confirmed by Podgorica High Court, dismissing Despotović's appeal as unfounded²⁹² and confirming the verdict.

The injured party filed an appeal on points of law against the above judgments to the Supreme Court of Montenegro, which adopted the appeal, reversed the judgments and ordered a retrial with the instruction "... that the trial court is bound by the final judgment only with respect to the existence of a criminal offense and criminal liability, and that this obligation does not relate to the scope and level of liability in terms of civil law... and therefore it remains unclear whether the sued police officers have caused the damage for which the defendant is responsible...".

286 The judgment of the High Court in Podgorica Kž.br. 257/2001 of 28 May 2001.

287 Art. 95 and 96 of the Basic Criminal Law of the Federal Republic of Yugoslavia (*Sl. list SFRJ*, 44/76... 54/90, *Sl. list SRJ*, 35/92... 61/2001).

288 The verdict was submitted to Human Rights Action by the Basic Court in Podgorica on 12 March 2013.

289 Application to the European Court of Human Rights in Strasbourg of 26 May 2005, case no. 27215/05, *Despotović v. Montenegro*.

290 Protector of Human Rights and Freedoms of Montenegro – opinion no. 01-465/05-5 of 28 July 2007.

291 Judgment of the Basic Court in Podgorica, P.br. 12356/01 of 12 June 2007.

292 Judgment of the High Court in Podgorica, Gž.br. 1788/07 of 25 November 2008.

However, Podgorica Basic Court again rejected the claim in the retrial, High Court in Podgorica confirmed this decision, and Montenegrin Supreme Court changed its previous decision dismissing this time an appeal on points of law as unfounded²⁹³ and thus ending this legal situation. Following the ruling of the Supreme Court, Despotović lodged a constitutional complaint on 24 September 2010 before Montenegrin Constitutional Court for the violation of constitutional rights and freedoms guaranteed by the Constitution of Montenegro, i.e. violation of provisions of Art. 28 of the Constitution of Montenegro (dignity and inviolability of the person), Art. 31 of the Constitution of Montenegro (respect for the person), Art. 32 of the Constitution of Montenegro (fair and public trial) and Art. 38 of the Constitution of Montenegro (damages for unlawful conduct).

However, in its decision UŽ-III br. 400/10 of 25 February 2011 the Constitutional Court dismissed the constitutional appeal.

2.2.2.2.6. Case of Nenad Ivezić

On 12 April 2008, outside the cafe “Ko to zna” in Podgorica, Nenad Ivezić was assaulted by police officers in the performance of official duty Aleksandar Fuštić and Rajko Lazović and sustained grievous bodily injury.

Officers took Ivezić out of the said cafe, handcuffed him, put him into the police car and repeatedly hit him with an open hand and fist over his head, then took him out of the vehicle and again inflicted several blows and kicks to his head and body. Ivezić fell from the blows, when the officers continued to beat him, and then put him back into the police car. Upon arriving to Podgorica Security Center, one of the officers hit Ivezić with both fists in the head area from which he sustained a concussion, as observed in the report of the specialist doctor and confirmed by two forensic medical experts.

All of the above happened in the presence of other police officers of the intervention squad, that Fuštić and Lazović were also members of. Although other officers were not directly involved in the ill-treatment of Ivezić, only one of them asked his colleagues to stop their actions.

Pursuant to the indictment of the Basic State Prosecutor in Podgorica²⁹⁴ of 17 August 2009, police officers Fuštić and Lazović were charged with criminal offense Ill-treatment and Torture under Art. 167, para 3 in connection with para 2 CC in conjunction with criminal offense Serious Bodily Injury under Art. 151, para 1 CC.

Fuštić and Lazović were found guilty of the crime Serious Bodily Injury in the judgment of Podgorica Basic Court K.br. 09/1141 of 23 July 2010 and sentenced to six months in prison suspended for two years.

However, Fuštić and Lazović were acquitted on charges of ill-treatment and torture, since it has not been proven that they had committed this offense. Both the injured party and the defendants appealed against the first instance ruling - injured party²⁹⁵ and the prosecution against the acquittal of police officers and the defendants against the conviction. Podgorica High Court overturned

293 Judgment of the Supreme Court of Montenegro, Rev.945/10 of 1 July 2010.

294 The indictment of the Basic State Prosecutor Kt.br.738/08 of 17 August 2009.

295 The injured party filed an appeal to the High Court in Podgorica on 17 September 2010.

the verdict and ordered a retrial, in which Fuštić and Lazović again received a suspended sentence in the decision K.br. 695/11 of 17 April 2012. Defendants appealed against this judgment to Podgorica High Court, which revised the first-instance judgment in its final ruling Kž.br. 1325/12 of 13 November 2012²⁹⁶ and sentenced the defendants each to 6 months imprisonment suspended for 2 years, but only for causing serious bodily injury to Ivezić, while acquitting them of the crime Ill-treatment and Torture because it has (inexplicably) found that their actions had no elements of the said offense.

2.2.2.2.7. Case of Siniša Dabanović, Ivan Nišavić and Vladimir Maraš

On 29 January 2012 in Blok VI in Podgorica several police officers, according to Siniša Dabanović, detained and then beat and assaulted him and his friends Ivan Nišavić and Vladimir Maraš. After Dabanović and Nišavić had a quarrel with a third person because Dabanović had almost hit him with the car door, that person phoned his brother, a police officer, who immediately, along with two colleagues, blocked the road with the patrol car to Dabanović, Nišavić and Maraš, and after Dabanović stepped out of the car, he hit him with a gun in the eye area tearing his eyelid and injuring his eye lens (as noted in the medical report of 29 January 2012), while others officers punched him from behind. The police officers then detained the three men, whereby police officer M.K. repeatedly hit Maraš with an open hand across the face and punched Nišavić in the face and head while Nišavić was already in the police car.²⁹⁷

The police filed charges against M.K. for committing the crime of Ill-treatment in conjunction with the crime Light Bodily Injury.²⁹⁸ However, although the victims alleged that other officers had been involved in the assault next to M.K., criminal charges were filed against M.K. only. Based on these charges, criminal proceedings were initiated against M.K. before Podgorica Basic Court. The first instance proceedings ended on 18 October 2012 in the verdict sentencing M.K. to 4 months in prison.²⁹⁹

However, the first instance verdict was quashed and the case remanded.³⁰⁰

2.2.2.2.8. Case of Radovan Labović

Darko Hajduković, an attorney from Bar, presented information via media³⁰¹ that on 25 February 2007 members of Budva police had forcibly detained his client Radovan Labović, i.e. that members of the Intervention Squad literally kicked him out of the discotheque, threw him to the floor, handcuffed him, forced him into the police car and took to police premises, where eight members of the police beat him unconscious with truncheons, fists, feet, and stepped on him as

296 Podgorica Basic Court submitted both verdicts to Human Rights Action on 12 March 2013.

297 Incident description taken from the Record of examination of witness Siniša Dabanović, made before the Basic State Prosecutor's Office in Podgorica on 6 February 2012.

298 "Instead of us keeping us safe, the police give bad example: complaint against police officer Kuč for brutal violence", *Pobjeda*, 3 February 2012.

299 Information obtained in an interview with injured party Siniša Dabanović.

300 Information obtained in an interview with injured party Siniša Dabanović, who did not receive a copy of the first instance verdict or the second instance verdict from the court by the date of conclusion of this report - 9 March 2013.

301 "Hajduković: policemen beat Labović", *Dan*, 2 March 2007; "Labović sued eight policemen", *Vijesti*, 28 February 2007.

he lay. These claims are allegedly supported by medical reports and numerous haematomas on Labović's body and head, and especially an eye injury impairing his vision.

In its reply of 25 June 2012 the Supreme State Prosecutor confirmed to Human Rights Action that attorney Hajduković had filed a criminal complaint with the Basic State Prosecutor's Office in Kotor against police officers V.P., D.P., D.B., D.Đ. and B.T. for the criminal act Ill-treatment and Torture under Art. 167, para 3 CC and against M.M. for the criminal act Abuse of Office under Art. 416, para 1 CC. Indictment was raised against the five men, while the complaint against M.M. was dismissed. In the judgment of the Basic Court in Kotor K.br. 97/07 of 2 November 2009³⁰² all the accused were found guilty and sentenced each to 1 year and 6 months imprisonment suspended for 1 year and 6 months. In the verdict of 26 May 2010 the High Court dismissed the appeal of defense attorney, so the judgment became final.

The judgment states that the accused police officers, after Labović insulted them and assaulted police officer (wherefore Labović in the same judgment was sentenced to 6 months imprisonment suspended for two and a half years on charges of assault on an officer in the performance of duties under Art. 376, para 3, in conjunction with para 1 CC), detained the injured party and beat him with fists, boots and truncheons, causing him light bodily injury including "contusions of the left eye socket, hematoma in the region of the right ear and head, abrasions of both sides of the face, chin, both hands, left thigh and back, and swelling in the left thigh area". The accused police officers in their defence claimed that they had not beaten Labović but that the injuries had been caused by self-harm, because Labović had allegedly repeatedly hit his head against the wall of the hallway of the police station when he was detained (as confirmed by three fellow defendants), but the medical expert in his report found that the injury could not have been caused by self-harm, but only by "swung blunt instrument, such as a hand, foot, etc."

This judgment is an obvious example of tolerant penal policy towards ill-treatment, which is clearly contrary to international standards.

2.2.2.2.9. Case of Dušan Mugoša

On 8 February 2008, in front of "Titeks" hall in Podgorica, Dušan Mugoša was allegedly beat by plainclothes inspector and two other uniformed police officers. After that, in a critical state of health, Mugoša was transferred from his family home by a hospital vehicle to Podgorica Clinical Center, where doctors observed serious bodily injury - fracture of the nasal bone and bruising of the back region.³⁰³ In response of the SSP of 25 June 2012 to Human Rights Action it is stated that on the occasion of the said event a case has been formed against I.S., R.P., Z.F., V.V. and D.R., officers of the Police Directorate- Podgorica Regional Unit for the crime Ill-treatment and Torture committed against Mugoša. After the issuance of the indictment against these persons, the Basic Court in Podgorica on 11 June 2012 acquitted the accused police officers. The Council for Civil Oversight of the Police concluded that on 8 February 2008 these officials exceeded their authority in relation to citizen Dušan Mugoša.

³⁰² After receiving information from the SSP, the judgment was taken off the website of the Basic Court in Kotor.

³⁰³ "Brutally beaten and begged not to report them", *Vijesti*, 13 February 2008.

2.2.2.2.10. Case of Miljan Šćepanović, Miljan Nedović and Stojan Rubežić

Miljan Nedović and Miljan Šćepanović publicly stated³⁰⁴ that on 10 October 2008 they and their friend Stojan Rubežić had been beaten by police officers after a fight at a bar in Kotor, in which, they alleged, they had not participated. When the intervention police squad arrived at the bar, the young men were taken out. All four men then tried to escape, but only Todosijević succeeded, while the remaining three were caught. They were beaten with truncheons, boots and hands; the beating continued in the station. On this occasion the three young men sustained injuries. According to the SSP's report of 25 June 2012, following the filing of a criminal complaint by attorney Vladimir Vuleković, an indictment was raised against I.A., M.F., D.V., D.B. and B.C., officers of the intervention squad of the Police Directorate - Regional Unit in Herceg Novi, for the criminal act Ill-treatment and Torture. A final suspended sentence has been pronounced in relation to the accused officers for the said crime.³⁰⁵

2.2.2.2.11. Case of Žarko Boričić

Žarko Boričić, residing in Podgorica, accused several members of the police of beating him on 30 December 2008 for no reason. He claims³⁰⁶ to have suffered physical abuse two days before the New Year around 8 p.m. on the main road Ribarevine - Berane. He then went to Berane Security Centre to report the assault against him by two young drivers that illegally passed him earlier on the road. He also reported the identity of persons who attacked him, one of which, according to him, was a police officer from Bijelo Polje intervention squad V.Š. Boričić claims that of the inspectors from Bijelo Polje suggested him to withdraw charges against Šćekić, insisting that he was a good and honest policeman supporting his family of his work, who behaved in the said manner because of the influence of alcohol. According to the SSP, the Police Directorate filed a criminal complaint against G.N., member of the Police Directorate - Bijelo Polje Regional Unit for the criminal act Ill-treatment and Torture. The Basic State Prosecutor in Bijelo Polje dismissed the charges because there was no reasonable doubt that the reported offense had been committed. The injured party assumed the criminal prosecution, but the Basic Court in Bijelo Polje acquitted G.N. and the acquittal was confirmed by the judgment of the High Court in Bijelo Polje in April 2010.

2.2.2.2.12. Case of Dejan Dendić

Dejan Dendić claims to have been attacked on 10 October 2011 by a plainclothes police officer Ž.V. in his family home in the village Kličevo, Nikšić. He further claims that, after reporting the assault, police patrol took him to the police station where he was beaten by five police officers causing him thereby serious bodily injury.³⁰⁷ Injuries observed in Dendić by medical doctors include broken arm, head hematoma and bruising on the chest and back, while Dendić stated that three days after the incident he had had abdominal discomfort and severe stomach pain. On this occasion the Police Directorate issued a press release stating that police officers of Nikšić Regional Unit Ž.V., R.S., Lj.V., M.N. and N.J. have been suspended, that a disciplinary action shall be initiated against them and that the competent public prosecutor shall be informed.³⁰⁸

304 "Šćepanović: they hit with truncheons, trample with boots", *Dan*, 12 October 2008.

305 Information obtained from attorney Vladimir Vuleković in March 2013.

306 "Charged police officers with beating," *Dan*, 6 January 2009.

307 "Beaten by the police in Nikšić?", *Večernje Novosti*, 12 October 2011.

308 "Instead of pressing charges, he was beaten," *Vijesti*, 13 October 2011.

The Basic State Prosecutor in Nikšić was informed about the said ill-treatment by Dendić himself. Criminal proceedings were instituted against Ž.V. due to this event, but he was acquitted of all charges.³⁰⁹

2.2.2.2.13. Case of Dragan Tomić

On 16 December 2011 Dragan Tomić from Podgorica was allegedly assaulted in Budva by police officer D.D., who demeaned him during the search of his vehicle, stood right in his face and then took him to the police station where he kicked him in the right leg and punched him twice in the ribs, of which Tomić fell to the floor, causing him light bodily injury including skin redness with swelling in the right lower leg area. Criminal proceedings were instituted against Drljević before the Basic Court in Kotor for criminal offense Ill-treatment under Art. 166a, para 2 in connection with para 1 CC, but he was acquitted in the first instance verdict K.br. 176/12/12 of 28 June 2012. The court based its decision on the defence of the defendant, findings of a medical expert stating that Tomić had no injuries on other body parts (ribs), only on the leg and around the wrists, and on the testimonies of four police officers examined as witnesses, who claimed that they had not seen anyone beat Tomić or him fall to the floor. The court reasoned its decision by the lack of evidence proving that Tomić had been hit in the ribs by anyone, stating also that his leg injury could be the result of a regular official duty of the search of persons, same as the injury to the wrists (due to handcuffs, as confirmed by the injured party) and that the behaviour of the defendant could not be characterized as the intent to harm and insult injured party's dignity, especially taking into consideration that the victim had protested and belittled the police, which is why misdemeanour proceedings have been instituted against him. The Basic State Prosecutor's Office in Kotor appealed against the first instance verdict, but the High Court in Podgorica in its judgment Kž.br. 1353/2012 of 17 December 2012 dismissed the appeal and upheld the verdict.

2.2.2.2.14. Case of Slavko Perović

Former police officer of the intervention squad from Herceg Novi, B.J., was sentenced to 4 months in prison for committing the crime of ill-treatment on 5 June 2012 against former leader of the political party Liberal Alliance of Montenegro, Slavko Perović.³¹⁰ After D.V. reported to officer N.J. that Perović verbally assaulted her and her husband, he invited Perović to come out of "Do Do" café to Herceg Novi square, and after Perović hit him with the back of his hand to the chest, Jauković hit Perović so that he fell and hit his head on the stone ground.³¹¹ Perović stated that he would not appeal the verdict, although, according to him, it was an attempted murder, not just ill-treatment.

B.J. was at the same time imposed aggregate sentence of imprisonment of 18 months, since previously he had received suspended prison sentence of eight months, also due to ill-treatment, and prison sentence of nine months for causing serious and minor bodily injuries.³¹² B.J.'s employment at the Police Administration was terminated only after the incident with Perović, although

309 Interview with Dejan Dendić's father in March 2013.

310 "Božidar Jauković, former police officer of the intervention squad, convicted", *Dan*, 5 March 2013.

311 "Jauković claims he did not attack Perović", *Vijesti*, 19 September 2012 (<http://www.vijesti.me/vijesti/jaukovic-tvrdi-da-nije-napao-perovica-clanak-92240>).

312 "Year and a half for Jauković, earlier crimes added to sentence", *Pobjeda*, 5 March 2013.

the legal conditions for his dismissal had been met earlier, at the time of his first conviction of a crime of abuse.³¹³

2.2.2.2.15. Case of Ljajići and Murići

According to the Council for Civil Oversight of the Police³¹⁴, Kosovo citizens Saliha Murići and Ismeta Ljajići from Trebović village accused officers of the Police Regional Unit in Berane of torture and ill-treatment for an incident that occurred while the said Kosovo citizens had been cutting trees in the forests. The Council found that the police officers had abused their authority in this case. On 5 April 2008, Basic State Prosecutor in Berane filed a request for investigation against police officers of Berane Regional Unit – Ž.D., I.B. and N.V. on suspicion of having committed as accomplices the crime of Torture and Ill-treatment in conjunction with the crime Light Bodily Injury against victims Murići and Ljajići. After the investigation, the prosecutor's office withdrew from further prosecution against Bojović, while indicting N.V. and Ž.D. Pursuant to a judgment of the Basic Court in Berane of 25 July 2011 Ž.D. and N.V. were acquitted of charges because, in the Court's opinion, it was not proven that they had committed the alleged crime. The prosecutor's office filed an appeal to the High Court in Bijelo Polje against the decision of the Basic Court in Berane, which was adopted and a new trial ordered. Hearing in the retrial was scheduled several times, because the victims failed to respond to summons for the trial, which were duly delivered. The next trial has been scheduled for 10 May 2013.

2.2.2.2.16. Case of Bujišić

Ranko Bujišić and Dalibor Bujišić addressed the Council for Civil Oversight of the Police with the complaint against several unidentified police officers from Podgorica Regional Unit, who in the night between 24 and 25 June 2008 in Podgorica, on the motorway near Zlatica and then in the premises of Podgorica Regional Unit, used force against the victims causing them grave bodily injury³¹⁵. Council concluded that the police officers had exceeded their official powers in this case. On the occasion of the incident, an indictment was raised against M.Ć. and S.P. on 25 May 2010. Acting on the indictment, the Basic Court in Podgorica adopted a judgment K.br. 1283/12 of 4 February 2013, imposing suspended sentences against both defendants – the first defendant was sentenced for the crime of Ill-treatment in conjunction with the crime of Serious Bodily Injury, and the other, for the crime of Ill-treatment. The state prosecutor appealed against the decision on punishment. Proceedings on that appeal before the High Court in Podgorica is in progress.

2.2.2.2.17. Case of Brnović

Aleksandar Brnović addressed the Council for Civil Oversight of the Police complaining of having been slapped and insulted by officers of the police department in Kotor³¹⁶. During the proceedings conducted against Brnović for assault on an officer, Brnović filed criminal charges on 10 September 2010 against unknown persons for the criminal offense Ill-treatment. On this

313 "Police officer overstepped his authority", *Pobjeda*, 21 June 2012.

314 Report on the work of the Council for Civil Oversight of the Police 2005-2008, p. 83.

315 Report on the work of the Council for Civil Oversight of the Police 2005-2008, p. 144.

316 Report on the work of the Council for Civil Oversight of the Police 2011, p. 26.

occasion, the prosecutor's office formed the case and found that the officers of the Police Department in question were A.P., M.Š. and I.M. On 4 August 2011, Basic State Prosecutor in Kotor indicted A.P. for the crime Serious Bodily Injury and M.Š. for the crime of Ill-treatment (Mijatović passed away). Proceedings before the Basic Court in Kotor is pending.

2.2.2.3. First instance verdicts in the prosecuted cases of police ill-treatment

In addition to these cases, at the request submitted by Human Rights Action in accordance with the Law on Free Access to Information of Montenegro (*Sl. list RCG*, 68/2005) to all basic courts in Montenegro, the courts in Podgorica, Ulcinj, Bar, Herceg Novi, Bijelo Polje, Kolašin, Berane and Rožaje³¹⁷ delivered 32 first instance verdicts, mainly anonymised, in the proceedings held or still pending against the police and prison officers for criminal offenses of Ill-treatment and Torture, often in conjunction with the crime of Light Bodily Injury (Art. 152 CC), and sometimes in conjunction with the crime of Serious Bodily Injury (Art. 151 CC). In addition, there are cases when the accused officers were charged with the criminal offense Extortion of Statement (Art. 166 CC) or even just for the offense Serious Bodily Injury. In addition to the 32 judgments, analysed decisions also include three judgments of the Basic Court in Podgorica, seven of the Basic Court in Kotor (including judgments in the case of ill-treatment of Radovan Labović and in the case of Dragan Tomić), four judgments of the Basic Court in Danilovgrad and one judgment of the Basic Court in Žabljak, which have been posted on the websites of these courts³¹⁸, making a total of 44 judgments.

In addition, we also received judgments in the cases of Petar Siništaj, Milovan Jovanović, Miljan Despotović and Nenad Ivezić of the Basic Court in Podgorica, which have already been analysed in the description of the case above.

2.2.2.3.1. Basic Court in Bar

Judgment K.no. 117/09 of 8 June 2010 for a criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 in connection with Art. 23 CC, sentencing the accused B.M. to three months in prison and accused K.N., D.V. and R.J. to one year in prison suspended for three years.

On 21 August 2005 during the traffic control in Sutomore, the defendants, as members of the intervention squad of Montenegrin Police Directorate, stopped the vehicle operated by injured party B.M., ordered him to step out and then beat him with fists and kicked him on four occasions: during the arrest and entry into the police vehicle, in the police vehicle while driving and in the parking lot next to the FC "Mornar" stadium in Bar, where they stopped only to beat the victim and threatened to kill and bury him, and finally, in detention premises in Bar Security Centre, where the victim was ordered to strip to the waist and sit on the floor with legs under the table, when they beat and kicked him. Due to blows the victim sustained multiple bruises and contusions on the body, face and head (bruising to both eyes, swollen nose, bruises on his shoulder and seating area).

³¹⁷ Basic courts in Nikšić, Pljevlja and Plav informed Human Rights Action that no judgment has been issued for these criminal acts, Cetinje Basic Court submitted two judgments that are not related to crimes of abuse by public officials, and Podgorica Basic Court submitted one verdict, K.br. 1416/09 in the case against the perpetrators of abuse of Petar Siništaj.

³¹⁸ Basic Court in Kotor and Basic Court in Danilovgrad notified HRA that all requested judgment have been posted on the websites of the courts.

The accused denied commitment of the offense, claiming that they had used permitted force in the form of “armlock”³¹⁹ and only because the injured party had previously allegedly assaulted the accused D.V. during the search of the vehicle hitting him to his head, and cursed and insulted the police impeding thus officials in the performance of their duties. Defendants denied that they had stopped on the way to Bar Security Centre to beat the victim and that they had hit him in the police premises. However, commitment of the offense has been confirmed by injured party’s testimony in the investigation process, by findings of an expert witness determining light bodily injuries in the victim caused by blows, and by testimonies of witnesses Š.N. and V.D., who were in the car with the victim and who witnessed the police officers beating victim B.M. during the apprehension and also saw the police vehicle turn into the parking lot near FC “Mornar” stadium. In relation to the statement given during pre-trial proceedings, when he alleged that he had been tortured, the victim changed his testimony in the trial, denying that he had been beaten by the defendants; however, the court did not take into account the changed testimony as it was obviously aimed at facilitating the defendants’ position, with whom in the meantime the victim has reached some kind of an agreement.

In the present case it is obvious that the investigation took an unreasonably long time, almost four years, given that the relevant event occurred in August 2005, while the charges against the defendants was raised only on 9 April 2009 (indictment Kt.br. 1164/05).

Second, the court sentenced the defendants to the mildest punishment possible. Although the accused were charged with a severe form of the offence - Torture in the Performance of Official Duties (providing for a sentence of one to eight years in prison), and not Ill-treatment, the court imposed K.N., D.V. and R.J. suspended sentences for that offense, while B.M. was the only one sentenced to imprisonment and only due to the fact that he had earlier received suspended sentences for the same offense (judgment of the Basic Court in Kotor K.br. 149/02 of 20 January 2003 for the crime Ill-treatment in the Performance of Duty under Article 48 of the then CC), but even then his sentence has been maximally reduced to three months in prison³²⁰, although the presented evidence did not constitute factual basis to reduce B.M.’s sentence (i.e. “especially mitigating circumstances”).

This verdict was quashed on appeal and in a retrial the Basic Court in Bar adopted the decision K.br. 516/10 of 19 May 2011 imposing a prison term of one year suspended for two years against all the defendants. Thus, based on the same factual situation as that established in the previous procedure, the sentence imposed against defendant B.M. (albeit a special returnee) was commuted to a suspended sentence and other defendants’ sentences were also commuted - their probation period has been reduced from three to two years. This verdict did not become enforceable until 10 March 2013.

• Judgment K.br. 5/10 of 9 February 2010 for the criminal act Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 and in connection with Art. 23 CC, acquitting the accused. The judgment has become enforceable.

319 Accused police officers in their defense often claim to have used permissible force when overpowering arrested persons (armlock or jointlock), although such use of force almost never causes injuries in victims determined in medical findings.

320 In accordance with Art. 46, para 1, item 4 CC, if imprisonment of one year is a minimum punishment for the offense, the penalty may be reduced to three months in prison.

The accused officer D.A. from Bar was charged with hitting M.M., person with severe motor disabilities, two times with an open hand over the face while he was sitting in his car, on which occasion the victim sustained bruises – light injury to the left ear, during an incident that took place on 26 October 2008 near Sozina tunnel during the apprehension of suspects Š.A. and M.M. – the injured party (for alleged drug possession and trafficking). Commitment of the offense in the above described manner has been confirmed by the injured party's testimony and witnesses Š.A. and his girlfriend D.A., who on this occasion was in the car with the victim M.M. (although during the trial D.A. changed her testimony and stated that the defendant had not hit, but only pushed the victim), and also by the findings of medical experts based on the report of the Bar Health Centre doctors of the day when the abuse occurred, undoubtedly determining that the injured party sustained these injuries on that day. However, the court inexplicably found the lack of evidence proving that the defendant had committed the offense, basing its decision on defendant's testimony, who denied that he had beat M.M. and testimonies of defendant's colleagues, who claimed that they had not seen the defendant beat the victim or victim's injuries.

The court has clearly failed to adequately investigate the case and properly establish the facts in the procedure, because it ignored the testimonies provided by witnesses Š.A. and D.A. as well as the expert opinion, basing its decision on the testimony of the defendant, which is in its very nature subjective and aimed at easing own position, and on testimonies of defendant's fellow officers, who, both in international practice, indicated by the CPT standards, as well as in Montenegro, most often testify to ease the position of their colleagues, and not to achieve justice.

- Judgment K.br. 459/05 of 26 March 2009 for the criminal act Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 1 CC in connection with the crime Serious Bodily Injury under Art. 151, para 1 CC, sentencing the defendant to a term of imprisonment of 4 months. The judgment has become enforceable.

Policeman P.P. has been convicted for an incident which took place on 9 July 2004 in Sutomore near "Nikšić" hotel, when the injured party I.D. passed and hit the police vehicle with his car, after which P.P. stopped him, told him to step out of the car and knocked him to the ground, and while I.D. was lying on the ground he continued to kick him, breaking his nose and left cheekbone, tearing skin off his face and causing him numerous injuries such as contusions and bruises on the face and body, due to which I.D. had to spend 10 days in hospital. The accused defended himself stating that he had used only permissible force against I.D. in the form of armlock, and only after the injured party attacked him and his colleague R.Z., hit R.Z. in the nose and ripped defendant's uniform, and that the victim's injuries were probably sustained from hitting the police vehicle with his car. P.P.'s defence has been fully refuted by I.D.'s testimony, expert opinion on victim's injuries and eyewitness testimony provided by B.G., who witnessed the incident and confirmed the testimony of the victim.

However, defendant's colleague R.Z. was not heard in the first instance proceedings, although according to the defendant and B.G.'s testimony he had been present during the event in question. Also, State Prosecutor's Office failed to initiate proceedings against R.Z. at the same time, although witness B.G., whose testimony the trial court accepted as credible, stated that the second officer had also hit I.D.

In this case too the accused police officer was imposed a minimum sentence, even below the minimum. At the time of the offense, minimum sentence for ill-treatment was thirty days in

prison and maximum - one year in prison, and the court imposed a sentence of two months in prison, finding as a mitigating circumstance that the defendant was “relatively” young at the time of the crime, even if he was over 30 at that time³²¹. On the other hand, for the offence Serious Bodily Injury the court reduced the sentence imposed against P.P. to 3 months in prison (where the minimum sentence for this offense is 6 months in prison), and in accordance with the provisions on the imposition of a concurrent sentence³²², the defendant has been sentenced to 4 months imprisonment. As explained above, such light sentences for aggravated form of ill-treatment are not in line with international standards.

- Judgment K.br. 135/07 of 17 June 2009 for the criminal act Extortion of Statement under Art. 166, para 2 in conjunction with para 1 CC in connection with Art. 23 CC, acquitting the defendants. This judgment was revoked and a new one adopted, which has become enforceable. More detail below.

Police officers of Sutomore Police Department R. J., K. M., B. V., L. Z. and K. Š. were accused for an incident that took place on 12 July 2006, when they arrested the injured party N.V. in Čanj near Bar, beat him with hands, feet and truncheons (causing him numerous injuries including abrasions, bruises and contusions all over his body, neck, head and face) in the police premises in Sutomore in order to force him to confess that he had been illegally posing as a police officer. Only after two hours of keeping the victim in custody in Sutomore, during which period the beating occurred, he was taken to Bar Security Centre. However, it has not been proven during the proceedings that the defendants committed this crime, and they were therefore acquitted of charges. Specifically, as one could conclude from the first instance verdict, the court approached this case very seriously, since in addition to the accused and the victim 17 more witnesses were questioned, among them victim’s father and two uncles, police officers from Sutomore and Bar (defendants’ colleagues), as well as victim’s friends present during his arrest. Also, the court heard two medical experts and compared their opinions. In addition to defendants denying the commission of the crime, their testimony was confirmed by all police officers from Sutomore Police Department, who stated that no one had beaten the injured party in the police premises and that the victim had only had injury above his right eye before being taken to police custody, as well as by police inspectors from Bar, who had not noticed any injuries to the victim, except for the mentioned injury above his right eye. Also, according to the testimony of witnesses D.I. and S.G., who were staying at victim’s house on summer vacation, the victim had no visible injuries after he came back from the police, even though he was wearing shorts and a T-shirt. The victim in his testimony stated that the said injury had been inflicted by police officers by throwing him against the wall, but the expert witness determined that such injury could not occur in this manner.

Furthermore, the victim testified that defendant R.J. had slapped him during the arrest, which was not confirmed either by witness R.D., defendant’s friend, or witnesses D.I. and S.G., present during the victim’s arrest. In addition, the court found that the day after his arrest the victim had visited a doctor three times, finding new injuries each time, so the court recognized these medical records as unreliable.

Court’s decision has been particularly influenced by the testimonies of independent witnesses

321 Since the judgment implies that he served in the Army in 1991, when he had to be at least 18 years of age.

322 Art.48, para 2, item 2 of the Criminal Code of Montenegro stipulates that “if the (court) has determined imprisonment for criminal offences in concurrence, it shall increase the most severe punishment determined provided that the cumulative punishment does not reach the sum of determined punishments nor exceed twenty years of imprisonment”.

D.I. and S.G. (because defendants' fellow police officers most often testify so as to ease the position of their colleagues in criminal proceedings), who stated that they had not noticed injuries to the victim the day after his detention by the police. However, the court dismissed medical findings as unreliable too easily, although they had established injuries to the victim, and failed to further investigate the case in this direction.

In the appeal procedure the verdict K.br. 135/07 was revoked and the case returned to first instance court. In the retrial the court adopted ruling K.br. 319/10³²³ of 16 November 2011 imposing a sentence of six months in prison suspended for two years against all defendants. Specifically, in the retrial, based on the same evidence presented in the previous proceedings (the court again interrogated only the victim and the defendants and read earlier testimonies, documentary evidence and experts' opinions), the court righteously decided to give credence to the testimony of injured party, which was accurate and compelling, and to medical findings confirming that the injuries could have been caused in the manner described by the victim and during the police detention. Judgment K.br. 319/10 has become enforceable on 6 April 2012.

- Judgment K.br. 221/08 of 5 February 2009 for the crime Torture and Ill-treatment under Art. 167, para 3 in conjunction with para 1 in connection with Art. 23 CC, acquitting the defendants. This verdict was abolished and a new judgment of acquittal adopted (no. 465/10), which again was abolished and the trial is in progress (most recent case no. 383/12).

Police officers of Bar intervention squad V.M., K.Š., M.D. and E.G. were accused for an incident that occurred on 11 July 2007, when they abused victim M.B by first arresting him and then hitting him on his head and body while the victim was in an official police vehicle immediately after the arrest, and afterward at the police station in Bar, telling him "junky, this is not Rožaje". On this occasion the victim sustained multiple light bodily injuries to the head and body, large bruises, contusions and abrasions of cheekbones, neck, armpits, forearms and thighs. Defendants denied the beating of the victim asserting that they had used permitted physical force ("armlock") and that during the arrest the injured party had hit his head on the open door of the police vehicle (most probably trying in this way to justify the injuries to the victim). The court acquitted the defendants in trial. Based on the first-instance judgment, it is clear that not enough effort has been invested to conduct thorough investigation and shed light on this case. Specifically, the accused were acquitted because at the trial the court could not hear the victim and witness S.Š. since they were abroad, and without victim's identification of the accused it is not possible to reach the substantial truth in the case, so the court decided not to hear them, completely ignoring the principle of effective investigation of crime and identification of offenders. Furthermore, the crime of Torture and Ill-treatment under Art. 167, para 3 in conjunction with para 1 in connection with Art. 23 CC has been deliberately misinterpreted by stating that there is no evidence that the defendants undertook actions against the victim in order to "obtain a confession, statement or other information," although the said offense exists even when it is not aimed at obtaining a confession (intimidation and illegal punishment). In addition, the first instance verdict does not explain other evidence (other than the charges and defence of the accused) from which one could infer what the court found during the presentation of evidence (especially medical findings, which have only been listed as evidence, however, the verdict does not include the description of injuries and it is not possible to conclude what kind of injuries the victim sustained).

323 Originally submitted to Human Rights Action by Aleksandar Saša Zekovića, of the Council for Civil Oversight of the Police.

2.2.2.3.2. Basic Court in Rožaje

Verdict K.br. 29/09 of 5 March 2009 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 in connection with Art. 23 CC, dismissing the charges. Basic State Prosecutor's Office in Rožaje filed an indictment against defendant D.B.³²⁴ because on 16 December 2008, while acting in the official capacity of a police officer, the defendant allegedly abused H.M. in the premises of the Police Directorate - Regional Unit in Rožaje by pushing him into the room and then hitting him repeatedly in the head and face with an open hand and in the stomach with a fist, thereby committing the said offense. However, in trial the State Prosecutor withdrew from further prosecution of M.B. - the judgment does not indicate the reason – and on 5 March 2009 the court dismissed the charges against him.

The judgment became enforceable on 4 May 2009.

2.2.2.3.3. Basic Court in Ulcinj

Judgment K.br. 98/02 of 4 February 2009 for the crime Ill-treatment in the Performance of Duty under Art. 48 CC, dismissing the charges.

The accused police officer from Ulcinj S.D. was charged for an incident that took place in the restaurant "K" in Ulcinj on 18 October 2001, when S.D. for no reason kicked the injured party B.Š., which resulted in a quarrel between the defendant and the other injured party B.S., when the defendant identified B.S., placed him in a police vehicle and took him to the police station in Ulcinj, hitting him thereby several times with a truncheon and open hand to the head.

The Basic State Prosecutor in Ulcinj withdrew from further prosecution of the defendant (first-instance judgment does not indicate the reason), although the Ministry of Internal Affairs imposed a disciplinary sanction against the defendant for the incident and although this decision determined that the defendant had been under the influence of alcohol and had hit the victim with a truncheon, so the court issued a judgment dismissing the charges. On the other, in the same judgment the second defendant B.S. was acquitted on charges of assaulting an official in the performance of security duties³²⁵ due to the lack of evidence. Specifically, B.S. had been charged with punching S.D. on the same occasion in the head and back.

In this case, the trial lasted for as many as 9 years (indictment Kt.br. 145/01 was issued on 6 November 2001), causing an onset of an absolute time-bar of criminal prosecution because the crime of Ill-treatment in the Performance of Duty provides for a maximum sentence of 3 years, which is why the court would have to issue a judgment dismissing the charges even if the Basic State Prosecutor from Ulcinj did not withdraw from the prosecution. Such actions clearly violate the international standard of proactive and efficient actions of state authorities (in this case the court) aimed at punishing ill-treatment.

324 The case was also covered by the media, and the article "Both claim to have been beaten", *Vijesti*, 20 December 2008, implies that the fifteen-year-old H.M. from Rožaje told media that after his arrest the police officer D.B. had brutally beaten him at the police station. The police have denied these allegations and stated that the fifteen-year-old had beaten the police officer!

325 Art. 190 CC.

- Judgment K.br. 136/10 of 17 November 2010 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC in connection with the crime Serious Bodily Injury under Art. 151, para 1 CC, acquitting the first defendant E.E., police officer from Ulcinj, of charges for the said offenses, while sentencing the second defendant D.B., also a police officer from Ulcinj, to eight months in prison suspended for two years. This judgment became enforceable.

Police officers were accused of punching and kicking the victims on 15 October 2007, after the owner of “S” bar from Ulcinj informed them that victims S.I. and Đ.M. had been breaking bar inventory and harassing guests at his bar, causing severe injury to S.I. such as ruptured eardrum and two broken ribs, while Đ.M. suffered bruises and contusions of the chest and the eyeball. Because of these injuries the victims spent six (Đ.M.), i.e. seven (S.I.) days at the General Hospital in Bar, as determined in the submitted documentation. Defendants denied committing of the offense, stating that they had only applied “armlock” against inebriated and aggressive victims (Đ.M. allegedly punched D.B. and S.I. tore E.E.’s uniform, which cannot be concluded from the testimony of victims) taking them afterwards to the police station to sober up. However, while defendant E.E. was acquitted of charges because the testimonies of victims do not indicate that he had hit them at any time, defendant D.B. received minimum punishment - suspended sentence, although causing serious bodily injury to victims.

The court has inexplicably failed to hear other witnesses in the course of the proceedings (although it rightly gave credence to the victims), given that the incident took place at 4:30 p.m. at a bar, especially the bar owner who called the defendants, in order to shed light on the case and in particular to determine the responsibility of E.E. in the entire event.

Also, the investigation lasted too long, almost two years (indictment Kt.br. 30/08 was issued on 8 June 2009).

- Judgment K.br. 47/09 of 14 April 2010 for the criminal offense of Ill-treatment and Torture sentencing the accused to imprisonment for 3 months suspended for one year. The judgment became enforceable.

On 9 January 2008, during the exercise of ordinary traffic control in Pinješ in Ulcinj, accused policemen from Ulcinj D.B. and K.E. took the injured party D.V. into police custody for alleged assault (blow with an open hand) against defendant D.B. On that occasion, both in the police vehicle and in detention room of the police station in Ulcinj, defendants allegedly hit the victim with open hands, fists, elbows and knees and kicked him in the head and body (eye, cheekbone, earlobe and seating area), causing him light bodily injury (swellings and bruises). Although the defendants denied the offense, claiming that the victim, after hitting the accused police officer D.B., had been overpowered by “armlock” and arrested in line with the regulations, and although these allegations were confirmed by their colleagues (witnesses M.B., P.N. and E.E.), the court rightly concluded that the testimonies of defendants’ colleagues have been aimed at helping the accused and easing their position (in accordance with the CPT standards). Also, testimony of the injured party has been fully consistent with the findings of medical experts who examined his injuries and determined their presence as well as the fact that they had been sustained in the manner described by the victim.

Although the above represents a clear example of police ill-treatment, in this case too the court imposed a minimum sentence, i.e. suspended sentence, stating defendants’ young age and clean criminal record as mitigating circumstances.

2.2.2.3.4. Basic Court in Kolašin

Judgment K.br. 72/10 of 30 May 2011 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, dismissing the charges.

Accused police officers P.R. and B.M. were charged with placing a jacket over the victim's head and beating him with fists and kicking him on his head and body while preventing disturbance of public peace and order on 21 November 2009, on which occasion victim M.B. had sustained light bodily injury - bruises and contusions on his face, head and back. However, the Basic State Prosecutor withdrew from further prosecution, because, according to him, there was no proof that the defendants had committed the crime they have been charged with. Specifically, injuries to victim's face and head have not been proven by findings of two medical experts, while the bruising on his back resulted from blows with a truncheon, and, first of all, it is not possible to identify a person who caused the victim's injury while the police was preventing disturbance of public peace, and second - the police were certainly authorized to use rubber truncheons on this occasion. The Basic State Prosecutor did not insist on further clarifying the events, for example, hearing of witnesses who had been present on this occasion. Therefore, the court issued a judgment dismissing the charges, which become enforceable.

- Judgment K.br. 45/07 of 9 March 2007 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, acquitting the accused. The ruling became enforceable.

Accused M.R., police officer from Kolašin, has been charged with an incident that occurred on 30 October 2006 while the defendant was regulating the traffic in Kolašin, when he ordered the injured party Č.I. to move his vehicle saying "move that piece of junk or I will break your bones" and when Č.I. entered his car in order to move it M.R. grabbed him by the neck and swung a truncheon to hit him. During the proceedings it has been proven, based on victim and defendant's testimonies as well as the testimonies of witnesses (other police officers and passers-by), that the defendant and the injured party were pulling each other's arms ("plucking", as stated in the judgment), and that the defendant swung his truncheon to hit the injured party but did not do it, while it has not been proven that the defendant said "move that piece of junk or I will break your bones", because the injured party asserted this but later changed his statement and said that he did not remember the exact words of the defendant. Based on the above the court concluded that there is no evidence that the defendant committed ill-treatment because:

a) the defendant had not jeopardized or injured the victim, and the so-called "plucking" had been a part of physical force used to overpower the resistance that police officers are entitled to apply in compliance with the law;

b) it has not been proven that the defendant had addressed the victim with words "move that piece of junk or I will break your bones" and hence the existence of any physical and verbal abuse has not been proven;

c) the victim changed his testimony during the proceedings stating that he was ill and that the nature of his disease causes sudden nervous reactions and that he himself was not even sure what had happened exactly, and that in fact the defendant had treated him fairly.

For general and special prevention of torture, the less harmful practice is to acquit accused officers in the cases that include no bodily injury or beating, i.e. where the intensity of the conflict between the police and injured parties is so low that they reconcile soon after the relevant event,

compared to the practice of imposing non-custodial sentences for infliction of serious bodily injury and beating such as probation, or the practice of state prosecutors withdrawing from the prosecution despite indisputable evidence of guilt.

- Judgment K.br. 7/09 of 17 March 2009 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, dismissing the charges. The ruling became enforceable.

Police officers Š.R. and V.R. were accused of punching the injured party Ž.M. in the head and abdomen while collecting information from citizens on 3 September 2008, causing him light bodily injury such as contusions and bruises. Since the Basic State Prosecutor withdrew from further prosecution on the grounds that during the proceedings it has not been proven that the accused had committed the offense, the court issued a judgment rejecting the charges. It is not possible to draw conclusions based on this first-instance judgment as to the validity of evidence in this case and the reasons that led the state prosecutor to conclude that it has not been proven that the defendants had committed the criminal offense they were charged with.

- Judgment K.br. 237/09 of 27 October 2009 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, sentencing the defendant to imprisonment of 3 months suspended for one year. The ruling became enforceable.

On 26 October 2008 in Kolašin injured party Andrija Lalević was pulled over for illegally passing another car on a solid line and due to the presence of alcohol in the blood taken into police custody for six hours to sober up. In the police premises Lalević was brutally beaten, hit and kicked with boots (means that can cause severe injury or severe damage to health) by the accused officer Oliver Bošković, causing him thereby numerous injuries to the face, head and body in the form of abrasions, bruises, contusions and cuts (haematomas in the right frontal area, left cheek, left knee and left ear, redness on the back, lower jaw contusion, lacerations of the upper lip.) in the presence of other police officers of Kolašin Regional Unit who did not try to prevent this beating. In his testimony the defendant denied that he had beaten the victim, asserting that he had only physically disabled him using “armlock” and pushed him off the chair in the detention room, which could not cause injury to the victim. According to his testimony, the defendant has allegedly been provoked by victim’s attack, who tore his shirt, and his improper and abusive verbal behaviour towards the police (the victim did not deny the insults at any point in the proceedings, given that on the present occasion he had undoubtedly been under the influence of alcohol). Despite the fact that witness D.D., defendant’s colleague, stated that the defendant had not hit the victim, and that witness D.B., investigating judge the victim had been taken to after being held in the police custody, stated that she had not noticed injuries to the victim, the court has correctly concluded that, taking into account the expert medical opinion establishing injuries suffered by the aggrieved party on that day, these statements were aimed at easing the position of the defendant and declared the defendant guilty of ill-treatment. However, the defendant was inadequately imposed the mildest possible criminal sanction in this case - suspended sentence. In addition, the defendant has not been charged with a criminal offense of Light Bodily Injury, although in this case, when inflicted using dangerous means, it is prosecuted *exofficio*.³²⁶ This judgment became enforceable.³²⁷

326 Art. 152, para 2 CC.

327 This information and the names of participants have been obtained in the response of SSP of 25 June 2012.

- Judgment K.br. 36/09 of 9 June 2009 for the crime of Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 1 CC, discontinuing the proceedings.

Private prosecutor³²⁸ R.N. filed an indictment proposal on 20 February 2009 against the accused police officer Ž.D. for the said criminal offenses. However, the plaintiff failed to attend the trial in this case scheduled for 9 June 2009 without justification, although he had been duly notified, and the procedure was discontinued pursuant to Art. 57, para 1 of the Criminal Procedure Code.³²⁹

2.2.2.3.5. Basic Court in Herceg Novi

Judgment K.br. 179/08 of 16 October 2009 for the crime of Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, sentencing the accused police officers from Herceg Novi P. and R. to three months in prison suspended for one year. This judgment became enforceable.

On 19 July 2008, after a brief argument with victims L.S. and O.N. about their right to enter the ferry Kamenari - Lepetani, the accused officers abused the victims by hitting them with fists and knees on the head and body, twisting and pulling their arms. The victims thereby sustained light bodily injuries in the form of contusions, abrasions and bruises. The accused have denied any physical or verbal abuse of victims on this occasion, but the medical findings confirmed that victims' injuries had been sustained in the manner convincingly described by them in the court. In addition, on 15 October 2008 the defendants were fined in disciplinary proceedings by the employer due to excess use of power on this occasion, so the disciplinary decision served as further proof of their guilt in court.

However, the court imposed a suspended sentence against the defendants, taking into account mitigating circumstances (parents of minor children, no criminal history), where the court expressed the view that this sentence prevents the offenders from committing such crimes again.

2.2.2.3.6. Basic Court in Podgorica

Judgment K.br. 1004/09 of 28 September 2009 for the crime of Ill-treatment and Torture under Art. 167, para 3 in conjunction with para 2 CC, acquitting the accused. The judgment became enforceable.

Defendant O.S., police officer from Podgorica, has been accused of punching victim M.I. under his eye on 2 August 2007 at 1:30 a.m. at the premises of the Emergency Ward in Podgorica, committing thus the said offence. Specifically, the victim came to the Emergency Ward with the injured friend, and, given that he was under the influence of alcohol (as later confirmed by blood alcohol

³²⁸ This is an unusually disorderly decision in which the damaged party has been referred to as a private prosecutor. Specifically, the crime of Ill-treatment and Torture is prosecuted not by private action, but *ex officio* (private prosecution applies only to crimes expressly stipulated by the Criminal Code to be prosecuted by private action). In this case the injured party has probably assumed the prosecution after the state prosecutor dismissed the charges because the injured party, in accordance with Art. 59 CPC, filed an indictment proposal and not a private action.

³²⁹ If a private prosecutor fails to appear at the trial although he was duly summoned, or if the summons could not have been served to him due to his failure to report to the Court changes of address or residence, it shall be assumed that he has withdrawn the private complaint, unless otherwise prescribed by Art. 453 of the present Code.

test) and breaking hospital inventory and threatening, the staff had to call the police to intervene. However, in the first instance procedure no evidence has been presented to link the accused O.S. with the execution of the said act. According to the statement of colleagues of the accused, who were with him on patrol and present during the incident, it was actually a police officer V.V., and not the accused officer, who overpowered the victim using armlock, as also confirmed by an official note of the police. Nurse I.M., who was heard as a witness, confirmed that no one had hit the victim; also, there is no medical report confirming victim's injuries because he had not visited a doctor after the event, as he himself stated. In revoking the first instance verdict in this case by its judgment K.ž.br. 984/09 of 6 April 2009 (decision adopted in the retrial) the High Court took a position that a blow by the defendant, even if proven, cannot be considered as ill-treatment, since it does not include behaviour which is offensive to human dignity, which, according to the High Court in Podgorica, is the essential element of this criminal offense. Therefore, the defendant has been acquitted.

- Judgment K.br. 701/10 of 19 April 2011 for the crime of Ill-treatment under Art. 166a, para 2 in conjunction with para 1 CC, sentencing the accused to imprisonment for 3 months. The judgment became enforceable.

Police officer from Podgorica J.M. was accused of abusing the victim V.F. on 17 November 2009 in Podgorica by hitting him in the arm and lower leg, twisting his arms, handcuffing him with unnecessary roughness, when the injured party suffered bruises to wrists, arms and legs. Specifically, while the defendant was performing his regular official duties, victim's friends J.A., V.V. and R.Đ. violated the public peace and order by shouting from a nearby building window, and the defendant stopped the victim, who was on his way to visit his friends and asked him to call his friends to come down, as the victim did, however, when his friends refused to do so, the defendant - even though V.F. did not disturb the public order and peace and even though he acted at the request of the defendant - ill-treated V.F. by handcuffing and hitting him. In addition, J.M.'s actions further violated human dignity of the victim, as he was forced to stand handcuffed in a public place where the professors and friends of the victim passed, causing V.F. to feel shame and embarrassment. The defendant in his testimony denied to have hit and gripped V.F. stating that his injuries were caused by the victim twitching his hands during handcuffing, however, his defence was refuted by the testimony of witnesses (victim's friends) S.F., B.A. and M.P., as well as by expert witness findings who established that the injuries to the victim could have occurred in the way described by the injured party in his testimony.

Defendant J.M. was sentenced to a rather short prison term, especially bearing in mind that the victim had not been involved in the disturbance of public peace and order and obeyed defendant's order to call his friends.

- Judgment K.br. 1971/08 of 20 May 2011 for two criminal acts of Ill-treatment under Art. 166a, para 2 in connection with para 1 CC, each in conjunction with the criminal act of Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, sentencing the accused to a term of imprisonment of 10 months. The judgment has been reversed, details below.

On 15 July 2007, during regular traffic control in Podgorica, defendant D.P. abused victims B.D. and G.Z. after they came out of a bar at 2 a.m. and talked a bit louder on the street with some girls, when D.P. came up to B.D. and for no reason asked him "what are you doing" and then punched him and hit him with a truncheon in the head and back. When the second victim G.Z. approached

them to protect B.D., defendant beat him too in the same manner, then arrested both of them and put them in a police car. On this occasion the victims sustained bruises on the neck and collarbone. Consistent statements of victims, testimony of witnesses M.B. and D.P. as well as findings of medical experts, confirming that on that day the victims sustained injuries that may have arisen from blows with fists or truncheons - confirmed the above description of the incident. Accused police officer defended himself by claiming to have overpowered the victims by the use of permissible force – armlock, denied the beating while also stating that B.D. had previously grabbed him around the neck as if to attack him. Defendant's testimony was confirmed by his colleague M.P., however, the court did not believe the defendant and described M.P.'s testimony as "a failed attempt to follow the accused's defence," especially given that testimonies of the defendant and M.P. differed significantly in the description of the event.

This sentence was commuted by a final decision of the Podgorica High Court Kž.br. 1654/11 to a prison term of 5 months, continuing the trend of moderate punishment of the perpetrators of abuse.

- Judgment K.br. 976/10 of 28 February 2011 for the crime of Torture and Ill-treatment through Aiding under Art. 167, para 3 in conjunction with para 2 CC in connection with Art. 25 CC, sentencing the defendant to 5 months imprisonment. The judgment became final and enforceable.

The accused police officer from Podgorica Dejan Damjanović was convicted for an incident that took place on 29 October 2008 at around 11.30 a.m. in the premises of the Police Directorate - Regional Unit in Podgorica, where he was responsible for security of detainees, for intentionally helping unidentified persons, police officers of the Regional Unit in Podgorica, to abuse another person in the performance of official duties by taking victim R.S., who was placed in these premises as a person deprived of liberty on the basis of the decision on detention, to a detention room, the so-called "concrete cell" and then unlocking the front door of the detention room and turning off the light, allowing thus several unidentified persons to enter the room and inflict multiple kicks and blows with fists and truncheons to the victim's head and body. On that occasion the victim sustained light bodily injuries including bruises and contusions on the body as well as a fracture of the ninth rib on the right side with no dislocation and no effusion into the chest cavity. The accused denied the offense or that he had spoken to anyone about the victim other than to his colleague B.O., who was on duty with the defendant. Furthermore, according to defendant's testimony, no person entered the detention room during his shift except for himself, B.O. and head of shift M.Đ., the victim was not transferred to any other room during his shift and did not suffer or complain of any injury. Although the statement of the defendant has been confirmed by B.O. (who was not constantly present in detention premises during the shift), defendant's colleagues Đ.D. and R.B. (who took over B.O. and defendant's shift) and a police officer M.B., who escorted the victim to the investigating judge and doctor, affirming that the injured party did not suffer or complain of any injury, the court rightly disregarded these testimonies as biased and based its decision on a clear and precise statement of the victim, findings of a forensic expert, who confirmed that the injury had been sustained during the victim's detention, and testimony of witnesses M.Đ. and R.R., senior police officers who confirmed that only B.O. and the defendant had keys to the detention room at the time of the offense.

Human Rights Action received this judgment upon request from the Basic Court in Podgorica, after the daily press³³⁰ released information that the President of Montenegro had pardoned the accused Damjanović on 10 July 2012, commuting his prison sentence to suspended sentence.

330 "Marković proposes, Vujanović secretly pardons", *Vijesti*, 3 December 2012.

2.2.2.3.7. Basic Court in Bijelo Polje³³¹

Judgment K.br. 181/08 of 19 May 2008 for the criminal act Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC in conjunction with the criminal act Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, acquitting the accused because it has not been proven that he had committed the criminal offense he was charged with. The judgment has become enforceable.

Defendant M.D. has been accused for an incident that took place on 29 November 2007 when he ill-treated underage victim S.A. while acting in an official capacity as a school police officer at the Schooling Centre in Bijelo Polje, after the victim provoked school janitor D.J., by dragging him by the jacket to the school police premises within the Schooling Centre, and while the victim was sitting in a chair, M.D. kicked him in the loins and then repeatedly hit him on face with an open hand and thus caused him light bodily injury (contusions) on the face and loins. The court acquitted the accused of charges, basing its decision on the defence of the accused, who denied that he had hit the victim, which was also confirmed by the testimony of school janitor D.J., witnesses K.J., defendant's colleague, and student P.V., who had watched the incident through an open door, all of whom confirmed that the defendant had not hit the victim.

However, the court failed to properly consider the fact that victim's injuries have been established in a medical report, which was presented as evidence in the proceedings, discrediting the report as unreliable because of the alleged formal shortcomings (because it was based, among others, on a radiological report that did not contain the protocol number and date) and because it stated that the injuries could have been caused by kicking with rigid shoes (which, in the opinion of the court, is not precise enough because the victim did not see what kind of shoes defendant was wearing). Furthermore, as the reasoning behind this decision the Court also indicated that the victim's father stated that it was possible that the injury had occurred as a result of dragging and not kicking, ignoring the fact that the father was not competent (not a medical expert) to declare the nature of injuries and the fact that victim's father said that he has reconciled with the accused, rendering his testimony unreliable (where the reconciliation between defendant and victim should in no way present an obstacle to the prosecution of torture and ill-treatment, since it is a criminal offense prosecuted *ex officio*, and reconciliation can only be considered as a mitigating factor when imposing criminal sanction). It is evident that the court has not shown the will to shed light on the case and punish the offender.

- Judgment K.br. 329/10 of 30 August 2010 for the criminal offence Torture and Ill-treatment under Art. 167, para 2 CC, sentencing the accused to 2 months imprisonment suspended for one year. The judgment became enforceable.

Following a verbal conflict between the accused police officer from Bijelo Polje M.D. and victim O.Š. in the night of 27 September 2008 in "City" café in Bijelo Polje, M.D. hit the victim in the face with an open hand multiple times (slapping) and kicked him in the arm on that same night at the police station in Bijelo Polje, when the injured party came to report the defendant for prior verbal conflict. At the time ill-treatment of the victim, the accused was off duty. Colleagues of the accused (V.D., K.D. and I.Dž.), who were examined as witnesses at trial, argued that M.D. did not abuse the victim (as well as the defendant), but the court rightly found that their statements

331 All analyzed judgments of the Basic Court in Bijelo Polje are final and enforceable, as Human Rights Action has been notified by the Court.

have been aimed at relieving the defendant's position and based its judgment on the testimony of the victim and his friend B.E., present at the police station during the ill-treatment of O.Š. Since the injured party did not sustain even minor injuries from the blows (as noted in the findings of a medical expert), the court has properly qualified this offense as ill-treatment (infliction of pain of lesser intensity), but this time too imposed only a suspended sentence as a cautionary measure. Nevertheless, it should be noted that the accused has already been punished over this incident in disciplinary proceedings by the decision of the Podgorica Police Directorate no. 151-151/2008-1 of 30 December 2008 with a fine in the amount of 25% of salary for the month in which the offense occurred.

- Judgment K.br. 204/2007 of 11 March 2008 for the criminal act of Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, imposing a fine of € 1,200 against the accused. The judgment became enforceable.

Police officer from Bijelo Polje B.L. has been accused of ill-treating victim K.B. on 31 July 2006 by dragging him out of restaurant "Petica" at Bijelo Polje Railway Station to the police station at Bijelo Polje Railway Station, punching him with the fist under his left eye, cursing, insulting and threatening him. The defendant denied committing the crime, stating that he had not insulted, dragged or kicked the victim, but only held by hand during the arrest and that the injured party had been visibly intoxicated on that occasion. Defence of the accused was confirmed by his colleague E.M., but the court rejected the defence of the accused and the testimony of E.M. as intended to avoid criminal liability, i.e. to ease the position of the defendant, and rightly based its decision on the testimony of four witnesses (B.M., B.S., Đ.M. and M.B.), who confirmed that the defendant hit and insulted the victim. However, the court has imposed a fairly light sentence for this offense, applying the provisions of the Criminal Code on the mitigation of the punishment³³² because the defendant reconciled with the victim, because he was a family man and had no prior convictions³³³.

On the other hand, in the same judgment the injured party K.B. was found guilty of an attack on the official in the performance of duties under Art. 376, para 3 in connection with para 1 CC, because during the arrest he threatened B.L. that he would "run him over with his car after he leaves the police station", but, in accordance with Art. 47 and 376, para 5 CC, he was rightly exempt from the punishment because he had been provoked by rude behaviour of an officer – the accused B.L.

- Judgment K.br. 81/07 of 2 November 2007 for the criminal act of Torture and Ill-treatment under Art. 167, para 3 in connection with para 1 CC in conjunction with the criminal act Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, sentencing the defendant to imprisonment for a period of 4 months suspended for 2 years. The judgment became enforceable.

Defendant K.E., guard at the Institution for Execution of Criminal Sanctions in Bijelo Polje, was charged for an incident that took place on 1 November 2006 in the evening, in the room within the prison where inmates receive therapy. Specifically, after previous verbal conflict, defendant beat up prisoner L.R. with a truncheon on the head, arms (upper arms) and body, causing him light bodily injury such as bruises and abrasions. In his defence the accused did not deny he hit the victim with a truncheon on the body, however, he stated that he did not hit the victim in the face and that

³³² In line with Art. 46, para 1, item 6 CC, if the prescribed punishment for the criminal offence does not specify the minimum sentence, the prison sentence can be replaced by a fine.

³³³ These circumstances are ordinary mitigating circumstances that are always taken into account when imposing sanctions in criminal proceedings and cannot be considered as special mitigating circumstances, which, in accordance with the Criminal Code, must exist in order to mitigate the sanction below the legal minimum.

he thought that the victim would attack him, since he was shouting and waving his hands in his direction, and that the victim was trying to escape from prison as he was moving toward the door that was unlocked that evening. This defence of the accused, which the court treated as a partial confession, has been refuted by victim's testimony, findings of a medical expert who determined injuries to the victim both on his face and body, and, which is otherwise uncommon³³⁴, by the testimony of witness Š.P., defendant's colleague, who stated that the victim made no attempt to flee and that the defendant hit him with a truncheon in the ear. What is characteristic about this judgment is that the defendant has been charged with an aggravated form of the crime (torture) rather than ill-treatment³³⁵, however, in this case too the defendant was imposed a suspended sentence, which was further mitigated, although the judgment does not indicate what are those "special mitigating circumstances".

- Judgment K.br. 426/08 of 10 February 2009 for the criminal act of Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, acquitting the accused of charges. The judgment became enforceable.

Defendant B.S., police officer from Mojkovac, was accused of an incident that took place on 4 March 2004, when he arrested the injured party J.S. at "Montenegro" restaurant in Mojkovac because he had entered into conflict with K.D. (police officer who was at that moment off duty), assaulting thereby the victim by handcuffing him first and, while taking him to police custody with colleague T.D., punching him in the stomach and causing thus injury in the form of redness. The defendant denied committing the crime by stating that during the incident the victim, under the influence of alcohol, threw himself on the ground and banged his head against the wall in the police station, which caused the alleged injury. B.S.'s defence was confirmed by police officers T.D. and K.D., and the court has based its judgment solely on their (likely biased) testimonies, ignoring the testimony of the injured party as contradictory (since at first he stated that he had been assaulted by officer T.D. as well, but later changed his statement asserting that he had been ill-treated only by B.S.) and ignoring the findings of a medical expert who found that victim's injuries could have been sustained from punching, but also only from falling to the ground (scratches), arguing that the origin of injuries proves that "the testimony of the injured party has no basis in the evidence", although falling to the ground does not exclude punching. In addition, it is necessary to emphasize that this is a judgment adopted in the retrial on defendant's appeal, and that the first (revoked) first-instance verdict in this case imposed a suspended sentence against the defendant.

- Judgment K.br. 68/11 of 18 May 2011 for the crime of Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC in conjunction with the crime Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, acquitting the accused of charges. The judgment became enforceable.

Accused police officers from Bijelo Polje Š.M. and Ć.A. were charged with having committed the above offenses during the traffic control in Bijelo Polje, when they stopped the vehicle of injured party Š.I., who had previously refused to stop at a signal of another police patrol, pulled him out of the car, where the defendant Š.M. grabbed him by the hair and hit his head three times on the car windshield and defendant Ć.A. kicked him in the left shin, causing thereby injuries including a broken front teeth, torn lip and bruises on the left shin. The court acquitted the

334 Analyzed judgments clearly indicate that the testimonies of defendant's colleagues are almost always aimed at facilitating his position in criminal proceedings.

335 Analyzed judgments indicate that, regardless of the intensity of blows and pain inflicted to victims by policemen, those officers are most often charged with less severe form of the offense – ill-treatment, rather than torture.

defendants over lack of evidence, basing its judgment, in addition to the defence of the accused who denied the offense, primarily on the findings of a medical expert, confirmed by the findings of forensic medicine expert, establishing that victim's injuries sustained on that occasion could not have been caused by hitting a head against the windshield, as described by the victim, but probably by hitting the car's interior during a sudden stop, same as the bruising of the shin. The court did not accept the testimony of witnesses Š.M. and Š.D., although both stated that the defendant Š.M. had hit the victim's head on the car windshield several times, because the findings of medical experts determined otherwise. In addition, it is necessary to emphasize that this is a judgment adopted in the retrial, and that the first (revoked) first-instance verdict in this case also acquitted the accused.

- Judgment K.br. 767/09 of 10 December 2009 for the crime of Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, acquitting the accused of charges. The judgment became enforceable.

The accused officer from Bijelo Polje Š.E. was charged with ill-treating victim Ž.P. on 7 March 2007 in Bijelo Polje during the control and search in the town parking lot behind a department store in Bijelo Polje (because the victim was allegedly intoxicated and endangering traffic) by punching him in the chest, back and ribs, due to which Ž.P. sustained a fracture of the eleventh rib and bruising on the chest. This judgment was rendered in the retrial, because the previous first-instance judgment (also acquittal) had been overturned by the High Court on the appeal filed by the victim and prosecutor.

In the present case both the prosecution and the court acted absolutely contrary to international standards and recommendations on the effective investigation and appropriate punishment for ill-treatment. First, the prosecution has not laid charges in the proper way because the indictment proposal charged the defendant with only a minor form of the offence (ill-treatment), although the injured party sustained a bone fracture, which cannot be considered as suffering of "lower intensity", and also because the defendant was not charged with the criminal offense of causing bodily injury (due to a rib fracture, serious bodily injury). Second, the court based its decision solely on the defense of the accused and testimonies of his colleagues (G.S., S.M., M.M., Š.V. and K.R.), who claimed that during the incident in question the accused had had no physical contact with the victim and that no one had hit the victim, although in its closing argument the Basic State Prosecutor emphasized that the testimonies of these witnesses have clearly been aimed at facilitating the accused's position, since they were colleagues. The court inexplicably devalued victim's testimony as allegedly unacceptable, because he was unable to accurately identify the officer that hit him (although the incident took place at 1 a.m.) and because his statements differed in the investigation and the trial, while, on the other hand, the court noted differences in the statements of policemen - witnesses in the judgment, but did not take them into consideration when assessing the credibility of their testimony. In addition, the court - again inexplicably - failed to take into account the findings of two medical experts stating that the victim sustained the described injuries (fractures and bruises), independently evaluating medical evidence the findings have been based on as flawed, although the court does not have the necessary expertise and knowledge for independent assessment of the evidence such as medical records!!!

- Judgment K.br. 475/07 of 9 April 2008 for the criminal act Ill-treatment and Torture under Art. 167, para 3 in connection with para 2 CC, acquitting the accused of charges. The judgment became enforceable.

Police officers from Mojkovac K.S., K.V., M.M. and B.I. have been accused of an incident that occurred on 31 October 2003 in Mojkovac during the arrest of victim R.V. (because he refused to move his vehicle immediately on the defendants' orders), when defendant K.S. hit the victim in the chest with his head, defendant M.M. pulled him by the hair and nose, defendant K.V. also pulled him by the hair and nose and punched him in the face, and defendant B.I. kicked him twice in the legs. The court based its decision solely on the testimonies of the defendants and their colleague V.A., all of whom claimed to have used only the allowed physical force and had never hit the victim, completely disregarding the testimony of witnesses S.V., V.V. and S.D., who stated that the defendants had struck the victim, as contradictory (e.g. during the investigation witness S.D. said that the corpulent and bald policeman had hit the victim in the chest, while at the trial he identified the defendant K.S., who is not bald) and aimed at making the defendants' position difficult. However, report of a medical expert (confirmed by the report of forensic medicine expert) also helped the court adopt such decision, since it states that victim's injuries identified in the medical report have been established based on the victim's statement and not on clinical findings.

- Judgment K.br. 87/10 of 11 June 2010 for the crime Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC in conjunction with the crime Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, committed against aggrieved party M.M., sentencing defendant P.M. to eight months imprisonment suspended for 3 years, while acquitting defendant S.D. of charges for the same offenses committed against the victim M.M. The same verdict dismissed charges against the two defendants for the crime Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC in conjunction with the crime Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, committed against aggrieved party M.S. The judgment became enforceable.

In the night between 21 and 22 May 2006, when the referendum on Montenegrin independence was held, policemen P.M. and S.D. were charged with ill-treatment of victim M.M. at Ljubomira Bakoča square in Mojkovac, as he passed by a group of police officers, when they knocked him down and hit and kicked him in the head and body, on which occasion the victim sustained minor bodily injuries such as contusions and bruises on the face, chest, back, arms and legs. At the same time, the defendants were accused of having abused victim M.S. by pushing him to the ground and kicking him after he approached them with a request not to beat M.M., his son. Defendant P.M. was found guilty of assault against injured party M.M. since both the victim M.M. and the witness I.I. confirmed that they have recognized P.M. among the policemen who had beat M.M., while witness V.R. confirmed to have noticed bloody injuries in M.M. in the police station where they had both been detained on the same night for disturbing the public peace and order. Also, injuries as those described by M.M. have been established in a medical report and in medical expert's findings. On the other hand, defendant S.D. was acquitted of charges of having abused M.M. because, as he himself stated in his defence and according to the statements of witnesses B.S., the police commander, and defendant P.M., that evening he had been on patrol in a completely different part of town, which has also been confirmed by the letter of the Police Directorate - Mojkovac Regional Unit. At the same time, the state prosecutor withdrew from further prosecution (and the court consequently rejected the charges) of the accused for abuse of M.S., because M.S. could not say who of the present policemen had ill-treated him, and witness V.M., who had spent the night in custody with M.S., had not noticed any injuries on the victim, which were not established by medical examination either.

Firstly, investigation in this case has lasted too long, given that the event took place on 21 May 2006, while the indictment Kt.br. 731/07 was raised only on 15 December 2009. Also, the competent authorities have not attempted to shed light on the present case in order to determine who else of the present policemen had ill-treated the injured party.

2.2.2.3.8. Basic Court in Žabljak

Judgment K.br. 42/08 of 2 October 2008 for the crime of Torture and Ill-treatment under Art. 167, para 3 in connection with para 1 CC, sentencing the accused L.D. to 90 days in prison suspended for 2 years. At the same time, this ruling acquitted the defendant of charges on committing the offense Light Bodily Injury under Art. 152, para 2 CC due to the lack of evidence. The judgment became enforceable.

Defendant L.D., policeman from Šavnik, was accused of an incident which took place in the night of 22 June 2008 in front of a café in Šavnik municipality, when he abused victim P.M. by grabbing him with both hands around the neck and shaking him, and after the victim sat in his brother's car to go to the hospital because he felt sick, the accused approached the vehicle and punched the injured party repeatedly in the head, grabbed him by the head and neck and shook him, slapped him and pulled his hair, all because the victim allegedly obstructed the police officer in the performance of duties and cursed at him.

Given that several of the witnesses (witnesses P.M., J.D., M.Z. and P.M.) who had been present on that occasion confirmed that the defendant had abused the victim as described, the court issued a suspended sentence against the accused for the said crime.

On the other hand, the defendant was acquitted of charges of causing light bodily injury to the victim in a hospital, where the defendant took the victim after he had fallen ill, by pushing him hard from the back to the floor when the victim suffered light injuries including abrasions above the left eye, on the right elbow and right knee. Specifically, prior to the arrival of the defendant, the victim had participated in a brawl at the local café, on which occasion he had sustained the eye injury (as confirmed by several witnesses). Also, the hospital nurse K., who had examined the victim on this occasion, said that he had not noticed the defendant pushing the victim, while the victim's brother, who was examined as a witness, and the defendant testified that the victim had stumbled and fell in front of the hospital upon arrival for examination, where he could have sustained abrasions on the elbow and knee. The defendant has been rightly acquitted of causing bodily harm for the actual lack of evidence, as can be concluded from this judgment, however, he was inadequately imposed a suspended sentence for the ill-treatment.

2.2.2.3.9. Basic Court in Berane³³⁶

Judgment K.br. 513/07 of 18 February 2008 for the crime Ill-treatment in the Performance of Duty under Art. 48 CC in conjunction with the criminal offense Light Bodily Injury under Art. 37, para 2 in connection with para 1 CC, acquitting the defendants of charges. The judgment became enforceable.

³³⁶ All analyzed judgments of the Basic Court in Berane are final and enforceable.

Police officers from Berane D.R., D.D. and G.T., K.V., M.M. and B.I., were accused of an incident that took place on the night of 27 February 2002 in the police station in Berane during the questioning about the circumstances of a crime of robbery, when D.R. first slapped, punched and hit victim J.D. with a rubber cord in the chest and put his hand in the table drawer and then rapidly closed it. In addition, defendant D.D. slapped and pushed the victim against a cabinet, while G.T. slapped him. On this occasion the victim sustained light injuries including abrasions to the face and chest, contusions of the chest, right hand and right lower leg, as well as bruises between the right hand fingers. The court based its decision solely on the testimonies of the defendants (who denied abuse of the victim) and eight of their colleagues from Berane Security Centre, who argued that the injured party had not been ill-treated during the questioning, and on the fact that medical experts could not determine the time of the infliction of victim's injuries from the medical report. Specifically, as the victim himself indicated in his statement, the police officers had told him not to go to the doctor immediately as he would be kept longer, and the victim was examined only on 4 March 2002, while the medical report included no information on the time of the infliction of injuries. Thus, the policemen failed to immediately refer the injured party to a doctor (contrary to CAT and CPT recommendations), and the court found a reason to acquit the accused through the inability to determine the time of the infliction of victim's injuries and the testimony of witnesses. The court issued this decision despite the fact that the testimony of witnesses, as the accused's colleagues, were obviously biased and aimed at facilitating the position of the accused, and the fact that during that time the victim had apparently suffered injuries inflicted in the manner described by the injured party and as stated in the indictment.

- Judgment K.br. 58/11 of 23 December 2011 for the criminal offense Serious Bodily Injury under Art. 151, para 1 CC, acquitting the accused. The judgment became enforceable.

B.Z. and R.Š, police officers from Berane, were accused of an incident that occurred on 18 June 2007 in Berane, during the arrest of victim N.I., when the defendants first punched N.I. in the head, and then threw him down on asphalt and kicked him in the head and body, on which occasion the injured party suffered serious bodily injury including fracture of the right elbow bone and abrasions of the right forearm. However, the victim had failed to immediately undergo an X-ray examination of the injured hand (he was only examined on 19 June 2007), and did this only three months after the incident, after feeling pain for a long time. Therefore, based on medical records, three medical experts could not state the time of infliction of the fracture, i.e. whether it had been sustained during the incident in question (although they agreed that it had been sustained during this period). In addition, all three experts pointed out that during the first medical examination the victim must have had swelling on his arm as a result of the fracture, which was not noted in the first report of the doctor.

Basing its decision primarily on the expert findings, the court acquitted the accused although it has been clearly determined that during that time period the victim had suffered a broken elbow and although both defendants in their statements confirmed that defendant R.Š. had fell to the asphalt together with the victim during the arrest.

The court attributed minor injuries on the victim's forearm to his resistance during the arrest. In addition, the court failed to thoroughly investigate allegations of the victim and witnesses (his brother and his wife) that the accused had punched and kicked the victim because the victim had no injuries (contrary to CPT recommendations that abuse does not have to be accompanied by injury). Also, the state prosecutor failed to conduct an investigation or alter the indictment in this direction.

- Judgment K.br. 360/11 of 29 February 2012 for the crime Extortion of Statement under Art. 166, para 1 in connection with Art. 23 CC, sentencing defendants H.R. and H.S. to imprisonment for a term of 3 months suspended for one year. At the same time, the verdict acquitted accused H.R. of charges of committing a criminal offense Ill-treatment under Art. 166, para 2 in connection with para 1 CC, for lack of evidence. The judgment became enforceable.

H.R. and H.S., officers from Berane were primarily accused of using force and threats to extort confession of dealing drugs and mediate sale of drugs from injured party Š.R. on 7 June 2011. They also insisted he should reveal names of other drug dealers by threatening him that, should he not confess, he would be sent to serve jail sentence and forced to leave school. The accused also beat him. Namely, defendant H.R. hit him with open hand strikes on the head and used truncheon and computer cable on the back and soles of the feet (after making the injured party take off his shoes). At the same time, H.S. beat the injured party on the head and chest using upper part of the truncheon, causing head haematoma of approximate dimensions 1.5x1.5 cm.

The court rightly found the accused guilty, basing its decision upon the findings of medical experts in court, whose findings confirmed that the injury in question (described in medical records dated 8 June 2011) could have been caused by a truncheon top. Also, the court justly disregarded statements of five witnesses, colleagues of the defendant, deeming they were aimed at facilitating the defendant's position. However, the defendants were convicted to a mild sentence (suspended sentence) for this offense (contrary to the recommendations of the CPT). It is indicative that even the state prosecutor suggested suspended sentence, that is to say, suggested the court to mildly punish such a grave offense³³⁷. On the other hand, the accused H.R. was freed of charge that he ill-treated the injured party on 4 July 2011 by approaching him from the back, around noon in Berane, near bookmakers "M", and grabbed him by the arms. After asking him where had he intended to run, he took away his cell phone, hit him with an open hand on the lips, and, together with his colleague, M.D., pulled him to nearby bakery, where he struck him to the ground and kept punching and kicking him, causing scratches on the left cheek and nose, lip bleeding and a dozen of bruises and scratches all over the torso; then he took the aggravated to police station, where he continued to beat him.

The court based its decision entirely on the defence of the accused and testimonies of his colleagues, who claimed that the injured party obtained injuries while resisting arrest (shoving with the defendants and rolling on street asphalt), their official records, and a written statement signed by the injured party stating that he resisted arrest, which himself claimed to have given under extortion, that is the statement was signed to stop the beating. Therefore the court has not properly investigated the claims of ill-treatment and injuries of the aggravated party, neither has it quoted findings of the medical expert, which allegedly indicated that the injuries were caused by overcoming the resistance of the injured party to arrest.

- Judgment K.br. 360/11 dated 29 February 2012 for the criminal offense Extortion of Statement under Art. 166, para 1 in connection with Art. 23 CC, sentenced defendants H.R. and H.S. to 3 months in prison, suspended for one year. At the same time, defendant H.R. was acquitted of a criminal offense of ill-treatment as per Art. 166, para 2 in connection with para 1 CC, for lack of evidence. The judgment was revoked and the retrial rendered the final judgment as given further below.

³³⁷ In common practice, the state prosecutor should suggest that court decides on a sentence "according to law".

H.R. and H.S., officers from Berane, were accused of using force and threats to extort confession Š.R. of dealing drugs and mediating sale of drugs from the injured party, on 7 June 2011. They also insisted he should reveal names of other drug dealers by threatening him that, should he not confess, he would be sent to serve jail sentence and forced to leave school. The accused also beat him. Namely, the defendant H.R. hit him with open hand strikes on the head and used truncheon and computer cable on the back and soles of the feet (after making the injured party take off his shoes). At the same time, H.S. beat the injured party on the head and chest using upper part of the truncheon, causing head hematoma of approximate dimensions 1.5x1.5 cm.

The court rightly found the accused guilty, basing its decision upon the findings of medical experts in court, whose findings confirmed that the injury in question (described in medical records dated 8 June 2011) could have been caused by a truncheon top. Also, the court justly disregarded statements of five witnesses, colleagues of the defendant, deeming they were aimed at facilitating the defendant's position. However, the defendants were convicted to a mild sentence (suspended sentence) for this offense (contrary to the recommendations of the CPT). It is indicative that even the state prosecutor suggested suspended sentence, that is to say, suggested the court to mildly punish such a grave offense. On the other hand, the accused H.R. was freed of charge that he ill-treated the injured party on 4 July 2011 by approaching him from the back, around noon in Berane, near bookmakers "M", and grabbed him by the arms. After asking him where had he intended to run, he took away his cell phone, hit him with an open hand on the lips, and, together with his colleague, M.D., pulled him to nearby bakery, where he struck him to the ground and kept punching and kicking him, causing scratches on the left cheek and nose, lip bleeding and a dozen of bruises and scratches all over the torso; then he took the aggravated to police station, where he continued to beat him.

On the other hand, the accused H.R. was freed of charge that he ill-treated the injured party on 4 July 2011 by approaching him from the back, around noon in Berane, near bookmakers "M", and grabbed him by the arms. After asking him where had he intended to run, he took away his cell phone, hit him with an open hand on the lips, and, together with his colleague, M.D., pulled him to nearby bakery, where he struck him to the ground and kept punching and kicking him, causing scratches on the left cheek and nose, lip bleeding and a dozen of bruises and scratches all over the torso; then he took the aggravated to police station, where he continued to beat him.

The court based its decision entirely on the defence of the accused and testimonies of his colleagues, who claimed that the injured party obtained injuries while resisting arrest (shoving with the defendants and rolling on street asphalt), their official records, and a written statement signed by the injured party stating that he resisted arrest, which himself claimed to have given under extortion, that is the statement was signed to stop the beating. Therefore the court has not properly investigated the claims of ill-treatment and injuries of the aggravated party, neither has it quoted findings of the medical expert, which allegedly indicated that the injuries were caused by overcoming the resistance of the injured party to arrest.

This verdict was revoked by decision of the High Court in Bijelo Polje, Kž.br. 595/12 of 12 September 2012, in the part convicting the defendants of extortion of statement and the case was returned for a retrial. During the retrial, the court presented the evidence from the previous trial once again, but found that the medical expertise result does not indicate when the injuries have been afflicted, meaning that they have not necessarily been afflicted on the occasion in question (albeit the medical examination was performed on the day following the incident in question),

that the aggravated party's statement is inconvincible and aims to aggravate the position of the defendants, and that the defence of the defendants is logical and consistent with statements of the witnesses. Therefore, the judgment K.br. 62/2 of 19 November 2012 acquitted the defendants. Pursuant to decision of the High Court of Bijelo Polje (Kž.br. 85/13) of 15 February 2013, the judgement became enforceable.

2.2.2.3.10. Basic Court in Danilovgrad³³⁸

Judgment K.br. 306/09 of 5 July 2010 for the crime of Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, sentencing the accused to 3 months in prison, suspended for one year. The judgment is enforceable.

Police inspector M.M. was convinced for ill-treating the injured party B.D. in police station in Danilovgrad on 9 January 2008. The injured party came to the police station to report burglary of his workshop and theft of welding machine. M.M. responded by slapping him, pulling him by the hair and hitting him with truncheon on fingers of left hand and on the head. Before he started hitting him, the defendant allegedly said: "Let's hear the whole truth now", as he suspected it was a scam, meaning that the aggravated party faked the theft with the help of certain persons from Nikšić (M.B., M.D. and M.V.), to which he owed money, and arranged for them to keep the machine until he can repay his debt. The defendant denied having beaten and ill-treated the aggravated party. His statement was confirmed by testimonies of three of his co-workers. Their statements have, however, been refuted by statements of the three persons from Nikšić, who were interrogated by the police at the time because of suspected participation in burglary of the aggravated person's workshop. As witnesses, they testified that during that night they noticed that the injured party had swollen arms and felt bumps on his head. The medical expert findings confirmed presence of injuries of head and arm of the aggravated person, which could have been inflicted by a truncheon. Also, the injured person and the persons from Nikšić stated that the defendant ill-treated the aggravated party by making him face the wall and "stay in the corner" while he interrogated the parties from Nikšić.

It is not clear why the prosecutor did not charge the defendant with the offense of light bodily harm, since the injuries had been inflicted with a truncheon ("weapon, dangerous instrument or other means capable of inflicting grievous bodily injuries or severe damage to health³³⁹"). Consequently, this offense is prosecuted *ex officio*.

- Judgment K.br. 271/08 of 14 April 2009 for the criminal offense Ill-treatment and Torture under Art. 167, para 3 in connection with para 1 CC in conjunction with the criminal offense Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, sentencing accused L.D. and M.D. to prison sentence of 6 months suspended for two years. The same ruling acquitted the third defendant K.A. of charges of committing the criminal offense of Ill-treatment and Torture under Art. 167, para 3 in connection with para 1 CC. The judgment became enforceable.

³³⁸ All judgments of the Basic Court in Danilovgrad (except in the case of abuse of Vladana Kljajić) were downloaded from the website of the Court, and, according to the information that the Human Rights Action received from the Court, became enforceable.

³³⁹ Art. 152, para 2 CC.

Defendants L.D., K.A. and M.D., police officers of the Danilovgrad Police Department, were charged with ill-treatment committed against victims V.Š. and B.B., a minor, on the night of 31 January 2004 during the traffic control in Danilovgrad, because the victims refused to stop the vehicle on their order, and the defendants had to catch up and stop them. Specifically, after stopping the vehicle operated by injured party V.Š., defendant L.D. first punched the victim in the face through the open car window, then forced him out of the car and hit him with a truncheon on the body and, lastly, punched V.Š. in the face while he was handcuffed in front of the police station in Danilovgrad. Defendant L.D. also abused victim B.B. by punching him twice in the jaw while on the way to the police station. On the other hand, defendant M.D. was charged with repeatedly punching V.Š. in the stomach and chest the same night at the police station while taking his statement, on which occasion the injured party fell to the floor and M.D. continued to kick him on the arms, as he was protecting his body, and legs. In addition, M.D. was accused of slapping victim B.B. while taking his statement. K.A. was charged with hitting B.B. twice with a truncheon in the back during the arrest, after having him handcuffed. The victims thereby sustained light bodily injury including bruises and abrasions on the chest, lower legs, buttocks, cheeks, lips and head (V.Š.) and contusions to the face and both mandibular joints (B.B.). The defendants denied committing the offence, asserting that they had only overpowered the victims and put them in the police vehicle with the help of reinforcements, since V.Š. had allegedly assaulted defendant L.D., pulled him by the lapels and had even hit him (which V.Š. admitted in his statement, but only after L.D. had punched him through the open window) and B.B. had pulled K.A. by the sleeves to prevent him from helping fellow officer L.D. in overpowering injured party V.Š. Defendant M.D. stated that he had not applied any force against the victims while taking their statements. However, the defence of the accused was refuted by victims' statements, medical report of injuries and testimony of witness J.M., present in the car with the victims during the incident, who stated that he had seen L.D. ill-treat V.Š. during the arrest, and testimony of witness R.M., senior police officer who had been on duty on that occasion and had seen defendant M.D. hit V.Š. at the police station. However, L.D. and M.D. received mild sentences given the length of ill-treatment they were charged with and the number of injuries inflicted on the victims. On the other hand, defendant K.A. was acquitted of charges of hitting B.B. on the back with a truncheon, because medical findings did not determine injuries from a truncheon in B.B. nor did injured party V.Š., and witness J.M. confirm that K.A. had hit B.B.

- Judgment K.br. 267/09 of 4 June 2010 for the criminal act Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, sentencing the accused to imprisonment for 3 months. The judgment became enforceable.

Đ.D, an officer of the Police Directorate - Regional Unit Podgorica was accused of ill-treating victim Đ.P. during the questioning in the premises of the police station in Konik, Podgorica, on 31 August 2008 at around 9.30 p.m. by punching Đ.P. in the stomach and left ear, grabbing him by the neck and hitting him in the head with a wooden pole. The victim thereby suffered injuries including contusions of the head, redness of the neck and temple, split eardrums without hearing impairment. The accused denied committing the offence, stating that he had only pushed the victim with an open hand to the chin as he was outraged because Đ.P. had previously phoned V.S., defendant's neighbour who at the time had been in the defendant's company (although in his testimony the victim asserted that he had not called V.S., but probably one of his friends who had borrowed his phone), making lewd comments and serious threats. After V.S. had given her phone to the defendant, the victim, according to the defendant, threatened him as well, which is why the defendant called duty police officer who took the victim to the police station and called in the defendant and V.S. to make a statement regarding the incident when the alleged pushing occurred.

Although witnesses V.S. (who received the phone call) confirmed the testimony of the defendant, as well as her brother V.R. and police officers O.M. and V.Ž. present on that occasion, all of whom claimed that the defendant had only pushed the victim with an open hand, the court rightly established that these testimonies were biased and aimed at facilitating the defendant's position. The fact that the defendant had abused the victim in the described manner was confirmed by the testimony of both the victim and witness D.Š. (victim's mother) and by findings of a forensic expert, who determined the described injuries that could have arisen from several blows with the fist, truncheon or other blunt object. Also, the accused in his defence stated that in this case he had not acted in an official capacity, as he had been called to the police station just to make a statement regarding the incident, but the court properly concluded that the defendant had actually acted in an official capacity on the said occasion, especially given the fact that the letter of the Police Directorate (presented as evidence in trial) states that due to the incident the defendant was imposed disciplinary measure of salary reduction of 30% for the month in which the offense had occurred due to the more serious offense of abuse of authority or power in the service.³⁴⁰

In this case, again, it is not clear why the prosecutor failed to indict the defendant for the offense of Light Bodily Injury too, because the injury had been inflicted with a wooden stick ("means suitable to cause severe injury"), and this offense is prosecuted *ex officio*.

- Judgment K.br. 272/08 of 16 September 2009 for the crime Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, acquitting the accused. The judgment became enforceable.

Accused police officer L.D. was charged with an incident of 21 December 2006 when he abused victim P.N. in the bar "Bohemian" in Danilovgrad by physically attacking him and hitting him several times with a truncheon in the face, causing the injured party light bodily injuries in the form of facial contusions to the left side. According to the accused's statement, he went to the above bar on the notification of duty police service for the protection of public peace and order and found the injured party, who had already physically abused M.V. in past, trying to assault him again, and when he failed to prevent P.V. to continue attacking M.V., the defendant hit him with a truncheon on the back (twice, according to medical evidence and witnesses' statements, which is in line with the regulations because he could not prevent the victim's attacks). The court acquitted the defendant on the grounds that he had applied force in accordance with the law³⁴¹, which was allegedly also confirmed by examining the official note of the Commander of the Police Station of Danilovgrad, indicating that the chief of defendant's department concluded that the defendant had used means of coercion in accordance with the regulations.

However, besides the fact that the indictment did not include charges for Light Bodily Injury (although in this case prosecuted *ex officio*³⁴²), it is unclear how the court assessed that brutal beating of the victim in the face with a truncheon represents the use of force in accordance with the law, particularly bearing in mind that in this case any use of force against the victim was sufficient to prevent the attack. Moreover, both the injured party and witness R.S. confirmed that

340 Art. 59, para 1, item 4 of the Law on Civil Servants and Employees.

341 Art. 32 of the Law on Police (which was in force at the time of the crime) provides that "the use of a truncheon implies... blow with a truncheon applied in order to overcome the resistance of a person that hinders a police officer in the exercise of police duties and to eliminate attack against oneself or persons or objects secured by the police officer. Use of a truncheon is permitted if the use of physical force is unsuccessful or does not guarantee success, and lasts until the resistance is overcome".

342 Art. 152, para 2 in connection with para 1 CC.

the injured party had recently had a serious hand surgery causing him pain, and that the accused squeezed his hand why the victim screamed.

2.2.2.3.11. Basic Court in Kotor³⁴³

- Judgment K.br. 292/10/07 of 30 December 2010 for the criminal act Ill-treatment and Torture under Art. 167, para 3 in connection with para 2 CC in conjunction with the criminal act Light Bodily Injury under Art. 152, para 2 in connection with para 1 CC, acquitting the accused of charges. The judgment became enforceable.

Police officer from Budva M.L. was accused of ill-treating victim A.M. on 28 December 2005 during the questioning in the premises of Budva Security Centre, when he threatened the victim to “set him up to go to jail” stating that he would “look for him even at home”, and then punched him a dozen times on the head and body while other unidentified police officer held his hands. Once the injured party fainted, the defendant poured water over him and when he regained consciousness, the defendant continued to beat him with a truncheon on the palms and soles. On that occasion the victim suffered light bodily injury in the form of contusions of the left eyeball, both hands and feet. In addition, after having filed a criminal complaint against the defendant, defendant threatened the victim to take him to a stadium, stating that he was on his and his colleagues’ blacklist and then spat in his face. The accused in his defence denied abusing the victim, which was confirmed by 13 police officers who were examined as witnesses in the trial and had been present at the Security Centre during the incident in question. The accused also emphasized that no disciplinary proceedings had been initiated against him for the said events insisting that this was proof that he had not committed the offense. Although a medical expert indisputably established that the victim had suffered injuries as described resulting from a blow with a blunt object, the court acquitted the defendant basing its decision solely on the testimony of witnesses - police officers, despite the fact that, as colleagues of the accused, as a rule, they were biased.

- Judgment K.br. 434/08 of 28 July 2010 for the crime of Ill-treatment under Art. 166, para 2 in connection with para 1 CC, sentencing the accused to imprisonment for 6 months, suspended for 2 years. The judgment became enforceable.

Accused police officers from Budva R.M., M.S. and J.Z. were charged with abuse of a minor, victim M.R., on the night of 29 July 2007 in Budva, after the injured party without permission left the parking lot where he had been dropped off by a special towing vehicle, the so-called “Spider” (after previously improperly parking his car), when police patrol officers stopped him and told him to get out of the car, on which occasion R.M. beat him on the head and body and M.S. hit him with a rubber truncheon on the body. After putting the victim back in his car and heading back to the parking lot from which the injured party had illegally taken his car, M.S. hit the victim in the head and body several times. Upon arriving at the parking lot, defendant J.Z. got out of the “Spider” and started hitting the victim with the hands on his head and body along with two other defendants, until a senior unidentified police officer told them to stop. The victim thereby sustained light bodily injuries including head contusions, swelling in the hairy part of the head, fracture of the nasal bones without dislocation of the bone epiphyses and swelling in the region of the nose root. The defendants denied that they had assaulted the victim, while one policeman and four staff in the

343 All judgments of the Basic Court in Kotor were downloaded from the website of the Court, and, according to the information that the Human Rights Action received from the Court, have become enforceable.

parking lot, who were examined as witnesses, testified that no one had abused the injured party or that they had not seen anything since they had been in another part of the parking lot.

However, the court based its decision on the testimony of victim's friends K.M., I.F. and B.V., who witnessed the incident from their car, according to whom R.M. and M.S. beat the victim by the side of the road, although he did not defend himself, threw him in the car and returned to the parking lot, where (witnesses followed the police officers who apprehended the victim) all three defendants beat the injured party, and the victim had injuries all over the body and face and his shirt was torn. Also, findings of a medical expert confirmed that on that day the injured party sustained described injuries "inflicted with a blunt instrument", so it should be noted that in this case as well the indictment did not include charges for Light Bodily Injury, prosecuted *ex officio*.

- Judgment K.br. 281/07 of 6 July 2007 for the criminal act Ill-treatment and Torture under Art. 167, para 3 in connection with para 1 CC, acquitting the accused. The judgment became enforceable.

Police officer from Kotor P.M. was accused of ill-treating victim P.D. on 12 July 2001 during the traffic control on the Budva - Kotor road, when he stopped the victim for speeding in order to suspend his driver's license, and when P.D. protested against the license suspension because he needed it for his job, P.M. approached him and slapped him, and then put him into the police vehicle, where he repeatedly slapped him, and then moved the victim into another vehicle where he continued to hit him. Also, after the injured party asked to see the defendant's badge number, he cursed at him and refused to give him his badge number. The judgment became enforceable.

The court acquitted P.M. basing its decision primarily on the defence of the accused, who denied that he had abused the victim, the testimony of police officers Š.M. and D.Lj. who controlled the traffic on this occasion together with the defendant and who claimed that the victim had not been abused, and the fact that the medical report established no injuries, only redness (which is a symptom, not injury), and that such redness may occur as a result of a slap but also of any other irritation.

The court in this judgment concluded that victim's testimony was unreliable because the abused person could not be able to ask for a badge number, the redness was from the heat and not slapping and because the defendant would never abuse the victim next to a public road where others could see, and that the victim in this way tried to get his driver's license back. However, the court ignored the fact that the defendant had hit the victim while in a car and that the redness, according to the findings of an expert, may be caused by a slap, and in this way avoided to thoroughly investigate allegations of abuse.

- Judgment K.br. 289/08 of 10 December 2009 for the crime Torture and Ill-treatment under Art. 167, para 3 in connection with para 2 CC, dismissing the charges. The judgment became enforceable.

Police officers T.A., B.S. and L.M. were accused of abusing victim M.D. in the police station in Budva from 10 p.m. on 26 August 2006 until 2 p.m. on 27 August 2006 during the questioning, when T.A. and B.S. punched the victim on the body several times, and defendant B.S., when the injured party complained of a headache, slapped him and said "do you have a headache now". The accused were then joined by L.M., who repeatedly struck the victim, while handcuffed, in the chest and abdomen and with the knee in the back. Since the injured party began to lose consciousness,

defendants took him to a medical centre, and on the way back to the police station they struck him again several times, when the victim suffered light bodily injuries including bruises on the right thigh and right side of the chest.

However, the state prosecutor (contrary to the recommendation of effective investigations into cases of abuse) withdrew from the prosecution of the accused, because a medical expert in his report stated that the victim might have sustained his injuries from a fall during the arrest, the witnesses had not seen anything, the defendants did not admit to committing the offence and the victim changed his statement stating that the defendants had not ill-treated him, so the court issued the judgment cited above.

- Judgment K.br. 12/10/04 of 17 March 2010 for the crime Serious Bodily Injury under Art. 151, para 1 CC in conjunction with the crime Ill-treatment and Torture under Art. 167, para 3 in connection with para 1 CC, sentencing defendant N.B. to imprisonment for 11 months suspended for 4 years, and defendant N.B. to 8 months in prison suspended for 3 years. The judgment became enforceable.

Defendants were charged with ill-treatment of victim K.D. in the nightclub “M” in Budva on 11 August 2004 at around 3 a.m., after being informed by the club owner that the victim and his companions had been acting disorderly in the club, when the accused police officers approached victim’s table and L.G. grabbed his hands while defendant N.B. punched him in the stomach, and then twisted his arms and began pushing him towards the exit causing the injured party to fall to the ground. When the injured party fell, both defendants kicked him while on the ground, breaking thereby his humerus (grievous bodily injury) and inflicting light bodily injury including abrasions and bruising of the left flank. Defendants denied that they had assaulted or hit the victim while on the ground, asserting that the victim tripped and fell while he was escorted, on which occasion the defendants twisted his arms using “armlock” (which they were forced to do, because the victim provided active resistance). Defendant N.B. also stated that, although duly summoned several times, the injured party had failed to show up in the disciplinary proceedings conducted in the Police Directorate against N.B., which was a proof of innocence of the accused because the aggrieved party became aware that the defendants were not guilty of the injury he had suffered. In his testimony the victim did not indicate that the defendants had kicked him (although he confirmed that N.B. had punched him in the stomach), but that his injury had probably been due to the fall. On the other hand, according to the testimony of witness S.A. who was in the club with the victim that night, accused police officers twisted the victim’s arm and kicked him as he lay on the floor, while findings of a medical expert indicated that fractured humerus in the victim could not have been caused by falling on a hard, uneven surface, but only by direct force or shock. Therefore, the court properly found that the defendants were guilty of the crime they were charged with. In accordance with the negative practices of Montenegrin courts, defendants received suspended sentences, with N.B.’s being harsher only due to the fact that the same verdict sentenced him for the criminal offense Serious Bodily Injury committed in 2002, which did not have the elements of ill-treatment (injury inflicted in a group fight).

In accordance with the aforesaid, below is the table of cases of alleged ill-treatment in which criminal proceedings have been initiated:

Total number of cases of alleged ill-treatment by state officials in which criminal proceedings have been initiated	63
Cases in which indictment has not yet been raised	4
Cases in which indictment was raised	59
Cases in which indictment was raised, but verdict has not yet been passed	2
Cases in which indictment was raised and verdict passed	57
Number of decisions in cases of ill-treatment	125
Decisions that have not become enforceable	24
Enforceable decisions	101
Enforceable decisions on suspended sentence	36
Enforceable decisions on imprisonment	5
Enforceable fines	1
Enforceable decisions on the termination of criminal proceedings	1
Enforceable decisions of acquittal	39
Enforceable decisions dismissing the charges	19
Decision on suspended sentence (decision has not become enforceable)	5
Decisions on imprisonment (decision has not become enforceable)	5
Decision dismissing the charges (decision has not become enforceable)	-
Decisions of acquittal (decision has not become enforceable)	14