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SHADOW REPORT TO THE COMMITTEE AGAINST TORTURE IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF MONTENEGRO

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Montenegro

Introduction

Distinguished members of the Committee against Torture,

Regarding the Third periodic report of Montenegro, which will be discussed at the Committee against Torture (CAT)'s 73rd Session in Geneva from 19 April 2022 to 13 May 2022, please consider this alternative report prepared by the NGO Human Rights Action (*Akcija za ljudska prava*).

This report of 30 pages includes reasoned conclusions and recommendations of HRA on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Montenegro (hereinafter: the Convention). It follows the methodology of the 2014 Committee's concluding observations to Montenegro.

HRA is a Montenegro-based NGO founded in 2004, advocating for the implementation of international standards of human rights in Montenegro and promoting the culture of human rights. We also litigate cases and act as a reliable source of information on human rights and rule of law in Montenegro. The European Anti-Torture Committee (CPT) met with us on every occasion of its visits to Montenegro in 2008, 2013 and 2017.

HRA is a grantee of the United Nations Voluntary Fund for Victims of Torture. We have received their emergency assistance in 2021 to provide victims of alleged police torture in the case of "bombing attacks" forensic examination and medical expenses, and have been supported to provide legal assistance to alleged torture victims in the police and prison settings in 2022.

We have earlier submitted the following reports to several UN committees:

- In September 2014 the [alternative report](#) to the Human Rights Committee;
- In April 2014 the [alternative report](#) to the Committee against Torture;
- In October 2014 the [alternative report](#) to the Committee on Economic, Social and Cultural Rights together with 14 Montenegrin NGOs;
- In July 2017 the [alternative report](#) to the Committee on the Rights of Persons with Disabilities together with the Centre for Women's and Peace Education (ANIMA) and the Mental Disability Advocacy Center (MDAC).

HRA published the following publications on the prohibition of torture and war crimes:

- [Expert opinion: Review of Interview Training in the Montenegrin Police](#), HRA, 2021;
- [Manual: Prohibition of Torture and other Ill-Treatment](#), HRA, 2021;
- [Against Oblivion – Witnesses Testimonies in War Crimes Trials](#), HRA, 2021;
- [Implementation of the War Crimes Investigation Strategy of the State Prosecutors Office of Montenegro 2015-2021](#), HRA, 2021;
- [Prohibition of torture and ill-treatment - Protection of mental and physical integrity](#), HRA, Police Administration and Council for the Civil Control of Police, 2020;
- [Effectiveness of investigations in cases of ill-treatment in Montenegro](#), HRA, 2018;
- [Respect for human rights of patients placed in psychiatric institutions](#), HRA, Center for Women and Peace Education ANIMA and Mental Disability Advocacy Center (MDAC), 2017;
- [War Crimes Trials in Montenegro \(2009-2015\)](#), HRA, 2016;
- [Compensation of damages to the war crimes victims in Montenegro](#), HRA, 2016;
- [The right to physical integrity and human dignity: October protests and exercise of police authorities](#), HRA, Council for Civil Control of Police, Ministry of Internal Affairs, Protector of human rights and freedoms, Supreme State Prosecutor's Office and Civic Alliance, 2016;
- [Monitoring respect of human rights of detained and sentenced persons in the Institute for the Execution of Criminal Sanctions in Montenegro 2014-2015](#), HRA and Juventas, 2015;
- [Prosecution of torture and ill-treatment in Montenegro](#), HRA, 2013;
- [Respect for human rights of detained and sentenced person in the Administration for execution of criminal sanctions](#), HRA, Center for Civic Education, Ekvista and Women Safe House, 2013;
- [Prohibition of torture, inhuman and degrading treatment and punishment – selected judgments of the European Court of Human Rights](#), HRA, Center for Civic Education, Ekvista and Women Safe House, Podgorica, 2013.

HRA executive director, Ms. Gorjanc Prelevic, co-authored the [analysis of the penal policy in Montenegro for the criminal offenses of ill-treatment and torture](#) and the [Manual on Conducting Effective Investigations in the Cases of Ill-treatment](#) with Boštjan Škrlec, State Prosecutor of the Republic of Slovenia, member in EUROJUST and CPT member, published by the Council of Europe in 2019.

Thank you very much for your attention.

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Definition of torture, prescribed penalties, and statute of limitation (arts. 1 and 4)

1. Montenegro has failed to amend Article 167 (Torture) of the Criminal Code¹ and in line with previous recommendations² of the Committee against Torture³ which implies that the crime of torture is still not defined in a manner prescribed in Article 1 of the Convention against torture and other cruel, inhumane or degrading treatment or punishment.⁴ The only change in the previous period is that the attempted offense of ill-treatment (Article 166a) is now subject to punishment, which is a positive step.

2. The existing deficiencies are the following:

1. The definition of the crime of torture (Article 167) is still too wide regarding perpetrators. This crime can be committed by both state and non-state actors.

2. The prescribed penalties are still not commensurate to the gravity of the torture offense and should be increased to encompass the forms of torture that, for instance, imply severe bodily injuries or fatal outcomes.

3. Imprisonment sentences are still so low for torture and ill-treatment that suspended sentences can be imposed.⁵

4. The acts amounting to torture are still subject to a statute of limitation.⁶ In relation, please note the case presented in para. 57.

5. Amnesties and pardons for accused and convicted state officers for offences amounting to torture, even if committed with intent, are still permitted.

6. There is no obligation for the court to impose a measure prohibiting the performance of vocations, activities, and duties with regard to these criminal offences, and such a measure has never been imposed in practice. All prison officers and police officers sentenced for less than 6 months for ill-treatment and torture remained in the same positions.

The State party should revise the Criminal Code in order to:

a) Adopt a definition of torture that includes all elements contained in article 1 of the Convention;

¹ Official Gazette of the Republic Montenegro no. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017 and 49/2018, 003/20, 026/21, 144/21, 145/21.

Hereinafter CC.

² Concluding observations on the second periodic report of Montenegro, CAT/C/MNE/CO/2, 17.6.2014.

³ Hereinafter: CAT.

⁴ Hereinafter: Convention.

⁵ Criminal Code, Article 54 para. 2: A suspended sentence may not be imposed for criminal offences punishable by a prison sentence of up to ten years or a more severe penalty.

⁶ Report on Montenegro for 2021, European Commission, October 2021, p. 29.

- b) Increase penalties for torture to reflect the gravity of the crime and prevent the practice of suspended penalties for torture;
- c) Provide that acts amounting to torture are not subject to any statute of limitations;
- d) Abolish the possibility of imposing warning measures (suspended sentences) for intentional criminal acts of torture, inhuman and ill-treatment, and punishment committed by public officials;
- e) Prescribe obligatory imposition of a security measure prohibiting the performance of vocations, activities, and duties of officials punished for intentional criminal acts of torture, inhuman and ill-treatment and punishment;
- f) Exclude the possibility of granting amnesty and pardon to public officials accused and convicted of torture, inhuman and ill-treatment, or punishment committed with intent⁷.

Fundamental legal safeguards (arts. 2, para. 1 and 11)

3. In practice, persons deprived of their liberty are not always afforded all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to have access to an independent lawyer and an independent doctor of their choice, and to contact a relative. The persons apprehended by the police face a significant risk of ill-treatment as established by the CPT in its report on Montenegro in 2017.⁸ Under the Criminal Procedure Code (CCP) Art. 264, a person may be arrested by the police and held up to 24 hours before being brought to the state prosecutor. Most of the ill-treatment takes place in this time period. Although the CCP states that the police will take the person to the state prosecutor „without delay“ in paragraph one of the same article, there is no sanction for police officers for delaying and they do abuse this window of opportunity.

HRA is aware of many cases where police inspectors threatened people and persuaded them not to contact their lawyers. Provision of medical assistance in police detention is also problematic. Furthermore, there has been a case (see „torture in the ‘bombing attacks’ case) where the Police requested from the Special Psychiatric Hospital to assist their business by depriving medication to a psychiatric patient Jovan Grujicic, without consulting him, in order to increase his anxiety level before interrogation, which turned out as an extortion of a self-incriminating statement.

The Criminal Procedure Code was amended in 2015 to not require an order by the public prosecutor allowing medical examinations of arrested and detained persons being carried out, under article 268 of the Criminal Procedure Code, as recommended by CAT.

⁷ „Kaznena politika u oblasti zabrane zlostavljanja u Crnoj Gori“ (Sentencing Policy with Respect to Ill-Treatment in Montenegro), V. Ilić, A. Trešnjević, T. Gorjanc Prelević, Belgrade Centre for Human Rights and Council of Europe, 2019.

⁸ CPT Report on the visit to Montenegro in 2017, page 4, Strasbourg, 7 February 2019: <https://rm.coe.int/1680925987>

Although the Article 257, paragraph 2 of CPC provides that police interviews may be recorded, in practice none are recorded.

The State party should amend its Criminal Procedure Code to ensure that:

- all persons have the right of access to an independent lawyer and to an independent doctor, preferably of their own choice, without conditioning such access on the permission or request of state prosecutor, and the right to contact a relative;
- explicitly prohibit depriving persons of their medication while in police custody;
- provide that the police should „immediately“ bring the person to the state prosecutor upon arrest, ensure for a strict account of the apprehended person’s whereabouts before being brought to the prosecutor for questioning;
- provide for obligatory audio and video recording of all interviews the Police and state prosecutors conduct with the citizens regardless of whether they are being questioned in their capacity of suspects, witnesses or else.

Legal aid

4. On the positive side, Montenegro amended the Law on Free Legal Aid in 2015 (*Official Gazette of Montenegro*, No. 020/15 from 24 April 2015) to increase the income census allowing more people to receive free legal aid and introduced the category of victims of domestic violence as beneficiaries regardless of their income situation. However, Montenegro has not amended the Law on Free Legal Aid to include administrative proceedings, as recommended by the CAT and also HRA.

Furthermore, HRA has been advocating for years that victims of torture and other ill-treatment by state officers should also be included as beneficiaries of free legal aid, regardless of their income, especially as the Law on Internal Affairs explicitly provides for free legal aid to police officers in relation “to the use of coercive means or undertaking other actions in the performance of police work” (Art. 97 of the Law on Internal Affairs, *Official Gazette of Montenegro*, No. 070/21 and 123/21 from 26 November 2021).

Finally, contrary to what HRA and other NGOs proposed, it is still not allowed for NGOs, unions, political parties, university legal clinics and other competent authorities or subjects already providing free legal advice to provide government sponsored free legal aid.

The State party should amend the Law on Free Legal Aid to:

- Include administrative proceedings;
- Include victims alleging ill-treatment by state officers as beneficiaries of the law;

- Allow NGOs, labor unions, political parties, university legal clinics and other competent authorities or subjects to provide government sponsored free legal aid.

National institutions – Ombudsman

5. The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is still accredited a B status by the Global Alliance of National Human Rights Institutions (GANHRI) in accordance with the Paris principles on the Status of National Human Rights Institutions due to shortcomings in the conditions of election and the manner of election.

The Constitution provides that ombudsman is elected by the parliament with the simple majority vote of the total number of MPs, which negatively reflects its autonomy and independence. A qualified majority should have been provided instead.

The Ombudsman regularly publishes their decisions and opinions on their website and thus makes their work transparent. The Office of the Ombudsman issued a significant number of opinions identifying ill-treatment by state officers. Only in the last two years, 37 opinions were published, and violation of Art. 3 of the European Convention on Human Rights was found in 23 cases. In the remaining 14 cases, the violation was not found due to a lack of evidence or poor medical documentation, which made it difficult to establish ill-treatment. Unfortunately, the implementation of the ombudsman's recommendations by the authorities remains a concern.

In cases considering ill-treatment the ombudsman takes approximately six months to give an opinion, which is only then, usually, sent to the state prosecutor for examination.

The State party should take measures to further strengthen the independence of the institution of the Protector of Human Rights and Freedoms (Ombudsman) in accordance with the Paris Principles (General Assembly resolution 48/134, annex).

The Ombudsman should monitor implementation of their recommendations more stringently, and react when they are not followed, also publicly. In case of receipt of *prima facie* evidence of torture, the Ombudsman should immediately inform the state prosecutor about it and not wait for six months to first complete their opinion.

The performance of the Ombudsman should be evaluated by a foreign expert, as has been done in some other countries, for the benefit of progress.

Effective investigation of crimes of torture and impunity (arts. 12 and 13)

6. Criminal investigations of torture and ill-treatment in Montenegro are too often not effectively conducted, either because they are not urgently executed, or do not meet the standards of independence and impartiality or are not conducted thoroughly. The responsibility of superior

officers (“at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”) for torture or other form of ill-treatment has never been determined in Montenegro. In the cases involving 2015 October protests, when the commanding officer should have been prosecuted as a co-perpetrator, he was prosecuted and sentenced to a minimal sentence for assisting perpetrators following execution of a criminal act (see below, para. 16). Even when the cases end up being prosecuted, and result in determination of individual criminal responsibility, suspended sentences or imprisonment sentences close to the legal minimum prevail, which are not sanctions corresponding with the seriousness of the acts committed.⁹ This creates the impression of practical impunity for perpetrators of abuse, and does not deter both defendants and potential perpetrators, nor does it provide for adequate satisfaction to victims. Such a situation undermines public confidence in the justice system and the police.

Lack of independence and impartiality

7. The lack of independence of the Montenegrin authorities participating in the investigation against police officers proves to be a systemic problem.¹⁰ The acts of police torture or other ill-treatment, where the police officers are suspects, are being investigated in the same manner as other crimes where potential perpetrators are not police officers.¹¹ State prosecutors regularly seek help from the police, especially regarding identification of suspected police officers, including from officers who belong to the same organizational unit as those whose actions are being investigated. In the CPT’s view, which HRA fully supports, an independent authority responsible for the investigation of complaints against the police can make a significant contribution to preventing ill-treatment, provided it is genuinely independent and adequately resourced in order to conduct effective investigations. CPT recommended to Montenegrin authorities to establish such an independent police complaints body, and in the meantime reinforce the capabilities of the Department for the Internal Control of the Police, within the Ministry of Interior. A special body has not been established to date, while the state prosecutors continue to rely on the same police for identification of police officers who abuse people.¹²

Masks and lack of ID numbers or nametags obstructs identification

8. Most acts of torture in Montenegro have been executed by masked police officers. CPT has recommended in its reports on the 2008, 2013, and 2017 visits to Montenegro that the special

⁹ CPT Standards, CPT / Inf / E (2002) 1, p. 89, para. 41.

¹⁰ Siništaj and others v. Montenegro, Application no. 1451/10, 7260/10 and 7382/10, paragraphs 8-26, 146-147; Decisions of the Constitutional Court of Montenegro of 25 July 2017, case U-III no. 354/17; of 21 June 2017, case U-III no. 49/17 and Decision of 21 June 2017, case U-III no. 50/17.

¹¹ Comments on the Draft Report on the [Effectiveness of Investigations in Cases of Ill-treatment in Montenegro](#), Prosecutor’s Office representatives, February 2018.

¹² Paragraph 19 od CPT/inf (2019)2

intervention forces should wear a nametag/identification number when conducting operations.¹³ The lack of markings in October 2015 allowed the mass police torture of citizens on the streets of Podgorica to go unpunished, and CPT concluded in a report on its visit to Montenegro in 2017 that it was a "deliberate attempt to frustrate the investigation and to guarantee the impunity of those who are willing to physically abuse citizens".¹⁴ Despite that, police officers continue to act in disguise and without visible individual markings. In one case in 2020, the Ombudsman noted that representatives of special units (16 of them), during the search of the apartment with automatic weapons and lit lasers, did not bear identification marks.¹⁵ In the case of torture of three persons in the investigation of "bombing attacks" (see para. 15), a dozen police officers involved in acts of torture also wore *balaclavas*, dressed in civilian clothing with no name tags. One more case was noted in 2021 at Cetinje when a masked police officer intervened without visible markings kicked and trampled on a person lying on the floor and not providing any resistance.¹⁶

State prosecutors must try to independently deal with the identification of perpetrators and the gathering of evidence.¹⁷ The State party should urgently supply an independent investigatory body to assist state prosecutors investigating the Police.

The Ministry of the Interior/ the Police should urgently stop the practice of allowing masked police officers execute whatever interventions without nametags or ID numbers. In addition, all police officers should be made clear that any violation of the marking rules will be strictly sanctioned.

Use of photographs and audiovisual recordings as evidence in criminal proceedings

9. Criminal Procedure Code¹⁸ in Art. 156 determines when photographs or audio or audiovisual recordings may be used as evidence in criminal trial, but in such a restrictive way that it does not allow the use of recordings made in public places, by the media or other witnesses to the event without the tacit or explicit consent of the recorded suspect or accused, unless the recording does not include another person who consented to the recording (paras. 2-3).

This can lead to paradoxical results - it is possible that thanks to media footage or other witnesses, the entire public can see whether someone has committed a crime or not while the judicial bodies responsible for determining this should not use it as evidence.¹⁹

¹³ See paragraph 27 of CPT/Inf (2010)3 , paragraph 21 of CPT/inf (2014) 16 and paragraph 22 od CPT/inf (2019) 2

¹⁴ 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 from 2017, page 18, available at: <https://rm.coe.int/1680925987> .

¹⁵ Ombudsman opinion no: 01-187/20-4 from July 28, 2020.

¹⁶ Press release „Urgently provide identification of police officers with visible markings”, HRA, July 2021 : available at: <https://www.hracion.org/2021/07/30/urgently-provide-identification-of-police-officers-with-visible-markings/?lang=en> .

¹⁷ Decision of Constitutional Court of Montenegro from 30.9.2020, no. U – III br. 442/18, p. 26.

¹⁸ Official Gazette of the Republic Montenegro, no. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15, 028/18, 116/20 and 145/21. Hereinafter: CPC

¹⁹ Decision of Basic Court in Nikšić, no. K 179/19 from October 7, 2019

The State Party should amend Article 156 of the CPC, which regulates the use of audio and video recordings as evidence, to remove existing obstacles to the use of recordings made by witnesses or the media without the tacit or explicit consent of the suspect or accused. Such videos should be legitimate evidence whenever they are credible and relevant.

Suspension of police officers

10. A police officer will be temporarily removed from work if he is remanded in custody or criminal proceedings *are instituted* against him for a criminal offence committed at work or in connection with work.²⁰ This wording covers only situations in which an order to conduct an investigation is in place or there is a direct charge (without investigation in terms of CPC), meaning that there is no basis for mandatory suspension in the pre-investigation phase, which is the phase where the reported cases of even *prima facie* ill-treatment spend most of their time. The state prosecutors often undertake significant evidentiary actions in the pre-investigation phase, often taking an inappropriately long time, without issuing an order to conduct an investigation, and then resorting to direct charges, which leads to the fact that the police officers suspected of torture or ill-treatment continue to work long after the disputed event.

During 2020 and 2021, a total of 12 police officers (54.5%) were suspended for disciplinary or criminal proceedings of acts amounting to torture, out of 22 accused in the same period. Therefore, even the above-mentioned rule under the Law on Internal Affairs, requiring suspension when the criminal proceeding is initiated for a criminal offence at work or in connection with work, is not applied consistently.

The State party should provide that in all cases of *prima facie* evidence of ill-treatment all suspected officers are suspended.

Relevant data on prosecutions and sentencing

11. In the last two years (2020-2021), at least 45 criminal complaints were filed with the State Prosecutor's Office, against 60 known officials and many unknown for the criminal offenses of Ill-treatment, Torture, Extorting a Testimony, Serious Bodily Injury, Minor Bodily Injury, Violent Behavior, and Assisting an Offender after the Crime. However, please note that this data is not exact, as the State prosecutors office in Podgorica rejected our request for information by informing us that they do not collect such data (see para. 56).

²⁰ Law on Internal Affairs, Official Gazette of the Republic Montenegro, no. 44/12, 36/13, 1/15, 87/18, 070/21 and 123/21, Article 176.

12. In the last eight years in Montenegro, 2014 to 2022²¹, in 44 criminal proceedings concluded by a final judgment, the defendants – police and prison officers -were charged with committing some of the criminal offences that can be classified as internationally recognised forms of torture and other forms of ill-treatment.

In these proceedings, 94 officers were charged and 60 were convicted (approximately 64%).

Although in most cases the courts found them guilty of torture or other ill-treatment only six persons were sentenced to effective imprisonment, which is only 10%. That indicates that the penal policy continues to lead to *de facto* impunity.

The most severe sanction imposed in the past 8 years on officers for any type of ill-treatment (torture, extortion of testimony, ill-treatment, light and grievous bodily harm) has been one year and five months in prison for torture in conjunction with serious bodily injury for two officers in the case of beating of Milorad Martinović in 2015 (see para. 14). He had been beaten by approximately 20 police officers of the Special Anti-Terrorist Unit, recorded by a video published on the internet, but only two were “identified” after deciding to confess.

A total of 51 sentenced state officials received suspended sentences, that is, 85% of the total number of convictions, in violation of the standard established in the jurisprudence of the European Court of Human Rights prohibiting suspended sentences for torture committed with intent.²²

Three persons were sentenced to community service.

In the observed eight-year period, no second instance court ever increased the sentence imposed by a first instance court; instead, they either reduced the sentence or upheld them.

13. The Constitutional Court from 2017-2022 issued six decisions finding violation of the procedural aspect of the prohibition of torture, that is lack of effective investigation.²³

Three reported cases of police torture in the investigation of “bombing attacks”

14. The CPT concluded in 2017 that persons deprived of their liberty in Montenegro still run an appreciable risk of being ill-treated by the police and that there is the need for the police senior management to enforce a multi-faceted strategy to tackle this phenomenon.²⁴ Unfortunately, this

²¹ Statistics does not include 2019.

²² See: “Criminal Policy in the Field of Prohibition of Abuse in Montenegro”, V. Ilić, A. Trešnjev, T. Gorjanc Prelević, Belgrade Center for Human Rights and Council of Europe, 2019, p. 30 and 66, citing judgments of the European Court of Human Rights *Ateşoğlu v. Turkey*, § 28; *Cestaro v. Italy*, § 208; *Ali and Ayşe Duran v. Turkey*, § 69; *Valeriu and Nicolae Rosca v. Moldova*, § 76.

²³ Decision of Constitutional Court of Montenegro, U – III no. 6/16, from November 29, 2017. (Tufik Softić)
Decision of Constitutional Court of Montenegro, U – III no. 354/17, from July 25, 2017. (Milorad Martinović)
Decision of Constitutional Court of Montenegro, U – III no. 50/17, from June 21, 2017. (Momčilo Baranin)
Decision of Constitutional Court of Montenegro, U – III no. 49/17, from June 21, 2017. (Branimir Vukčević)
Decision of Constitutional Court of Montenegro, U – III no. 1760/18, from June 23, 2021. (Nikola Bajčetić)
Decision of Constitutional Court of Montenegro, U – III no. 1760/18, from June 23, 2021 (Braslav Borozan)

²⁴ CPT Report on the visit to Montenegro in 2017, p. 4.

appreciable risk still exists, judging by our analysis of reported cases,²⁵ some of which were also considered by the Ombudsman. The case of reports of torture in the investigation of “bombing attacks” presented below is a characteristic example.

Before reading about the case, one should note that CPT warned in its two previous reports on Montenegro that “the use of ill-treatment is an accepted practice among crime inspectors”²⁶ as well as of complaints of unacceptable use of “electro-shocks” by police officers. The CPT also pointed to “non-standard items” (including baseball bats and electrical cables) observed by its delegation in the Podgorica Security Center.

15. Two persons involved as suspects and one alleged witness in the investigation of planting of explosives on the house and a bar owned by a police official (the case of “bomb attacks”), Jovan Grujičić, Marko Boljević and Benjamin Mugosa, reported in May and June 2020 that crime inspectors in the Police Headquarters Podgorica extorted testimonies from them by using cruel torture techniques. They described identical details of police torture including application of electro-shocks to genitals and thighs, hitting with boxing gloves and baseball bats, threats and playing loud music to drown out screams. Grujicic was, moreover, apprehended by the masked police officers from the Psychiatric hospital where he had been treated for drug addiction and psychosis, denied medication since the day before to increase his anxiety level and then tortured. Grujicic and Boljevic provided false incriminating statements under torture, and Mugosa did not.

Mugosa was the first to be released of suspicion, as it was soon proven that he had been in prison both times the explosives were planted. Boljevic reported torture the day after being released from police custody and explained that he had been forced to falsely implicate Boljevic and Mugosa. By the decision of the High court in Podgorica from November 11, 2021 Jovan Grujičić was also acquitted of the charge that he had been responsible for bombing attacks, and the court assessed that his allegations of ill-treatment were confirmed by forensic experts, and that his false testimony before the state prosecutor was not substantiated by any other evidence.²⁷

Following the initial HRA press release in July 2020²⁸, this case triggered interest of the domestic and international public, so the representatives of the UN, the [European Union](#), the [British Embassy](#) and the [US Embassy](#) demanded from the Montenegrin authorities to conduct an urgent and thorough investigation and ensure administration of justice. The UN Special Rapporteur on Torture Mr. Nils Melzer and Ms. Elina Steinerte, Vice-Chair of the Working Group on Arbitrary Detention

²⁵ HRA prepared a report regarding Effectiveness of Investigations in Cases of Ill-treatment in Montenegro 2020-2021, which contains 11 case studies, and we will deliver it to you as soon as it is translated on English, to provide more informations and details about those cases.

²⁶ “The Montenegrin authorities must recognise that the existence of ill-treatment by police officers is a fact, that it is not the result of a few rogue officers but appears to be an accepted practice within the current police culture, notably among crime inspectors.” CPT Report on the visit to Montenegro in 2017, para. 14, published in Strasbourg on 7 February 2019 (<https://rm.coe.int/1680925987>).

²⁷ Judgment of the High Court in Podgorica no. Kž 189/21 from November 23, 2021.

²⁸ EFFECTIVE INVESTIGATION NEEDED: REPORTS OF TORTURE BEING USED TO EXTRACT CONFESSION IN CASE OF ATTACKS ON “GRAND” AND GOLUBOVIĆ’S HOUSE, HRA, July 14, 2020, available at: <https://www.hracion.org/2020/07/14/effective-investigation-needed-reports-of-torture-being-used-to-extract-confession-in-case-of-attacks-on-grand-and-golubovics-house-2/?lang=en>

expressed “serious concern about the alleged arbitrary arrest and detention, violations of their rights to liberty and security, use of coercive methods of questioning and interrogation with intimidation, coercion, and mistreatment which may amount to cruel, inhuman or degrading treatment or punishment.”²⁹ The International Rehabilitation Council for Torture Victims (IRCT) [in August 2021](#) found that “The State investigation and medico-legal evaluations conducted into the alleged torture of Jovan Grujicic and Marko Boljevic are incompatible with the obligation to carry out an effective investigation into acts of torture under Article 12 of the Convention Against Torture, as defined by the Istanbul Protocol”.³⁰

HRA provided forensic reports on the injuries of J. G.³¹ and M. B.³² in collaboration with the IRCT and the Independent Forensic Expert Group (IFEG) with the financial support of the United Nations Voluntary Fund for Victims of Torture.³³ The specialists observed traces of torture in the form of “physical and psychological symptoms” during the examination of [Grujičić](#) and [Boljević](#) and said that they were “highly consistent” with the allegations that they had been tortured by the police with beatings, electric shocks, humiliation and intimidation.

Despite all that, to date, almost two years after the incidents, the five perpetrators have been recently indicted only in the case of Boljevic, but in the cases of Grujičić and Mugosa there is still no progress in spite of *prima facie* evidence that they had been tortured in the central Police building in Podgorica by masked police officers. The state prosecutor in Podgorica Maja Knezevic rejected the criminal complaint filed by Grujicic’s father against 11 identified officers who confirmed having apprehended and interviewed Grujicic, but did not confirm of having tortured him, in spite of clear medical proof that he had been ill-treated while in police custody. The prosecutor said that as Grujicic had not been able to identify them, as they all wore masks, and they said they did not, it was “obvious” that they were not the ones who committed torture and she discontinued pursuing criminal investigation against them.³⁴ The list of officers included the superior officers, who were informed and in charge of apprehension of all three persons tortured in the offices of the central Police building.

²⁹ “UN SPECIAL RAPPORTEUR WROTE TO MONTENEGRIN GOVERNMENT ON POLICE TORTURE” HRA, October 20, 2020: <https://www.hracion.org/2020/10/20/un-special-rapporteur-on-torture-wrote-to-montenegrin-government-on-police-torture/?lang=en>

³⁰ “Montenegro: State Authorities Must Address Failure to Investigate Torture”, IRCT, August 13 2021, available at: <https://www.irct.org/media-and-resources/latest-news/article/1106>

³¹ Report on the injuries of Jovan Grujicic: <https://www.hracion.org/wp-content/uploads/2021/07/lovan-eng.pdf>

³² Report on the injuries of Marko Boljevic: <https://www.hracion.org/wp-content/uploads/2021/07/Marko-eng.pdf>

³³ Press release “FOREIGN FORENSIC SPECIALISTS CONFIRM ALLEGATIONS OF VICTIMS OF POLICE TORTURE IN THE INVESTIGATION OF “BOMB ATTACKS” – HRA EXPECTS URGENT REACTION FROM POLICE AND STATE PROSECUTOR’S OFFICE”, HRA, July 5, 2021, available at: <https://www.hracion.org/2021/07/05/foreign-forensic-specialists-confirm-allegations-of-victims-of-police-torture-in-the-investigation-of-bomb-attacks-hra-expects-urgent-reaction-from-police-and-state-prosecutors-office/?lang=en>

³⁴ Basic State Prosecutor, Kt. br. 502/21, Podgorica, 8 March 2022.

October 2015 protests in Podgorica

16. Investigations of the abuse of citizens following the opposition protests in October 2015 have not been conducted effectively to date. The Constitutional Court determined that in the case of M. Martinović³⁵, M. B.³⁶, B. V.³⁷ and N.B.³⁸. The same applies to the investigation of the case of three more persons (A.R., M.R. and D.Š.), where the masked perpetrators had also not been identified after more than six years.

A total of three police officers were found criminally responsible and only for the torture of Martinović - two were sentenced to one year and five months in prison for torture in conjunction with serious bodily injury, while the commander of the Special Anti-Terrorist Unit R.LJ. was sentenced to five months in prison for assisting an offender after the crime. Martinović received monetary compensation for the damage he suffered and some satisfaction in the fact that the state thus acknowledged responsibility for his beating. However, the investigation conducted in his case was not effective because the state prosecutor's office failed to identify most of the perpetrators, expecting the police to do so.

The European Court of Human Rights on March 11, 2021, ruled that the application in Martinović case was inadmissible.³⁹ The court found that he could no longer claim to be a "victim" because the investigation "led to the identification of two direct perpetrators, who were tried for torture and infliction of grievous bodily harm." This decision may well send the wrong message - that in cases of police torture involving numerous perpetrators, it is enough to find at least one scapegoat willing or forced to take responsibility for everyone else, without requiring the punishment of all those responsible.⁴⁰

In another case from a related incident, the European Court of Human Rights found the violation of the right to effective investigation under Article 3, as no police officer had ever been identified.⁴¹

17. Based on final judgments, decisions of the Constitutional Court, decisions of the European Court of Human Rights in relation to Montenegro, as well as an analysis of the actions of state prosecutors in numerous cases, HRA concludes that factors hindering the effectiveness of investigations in cases of abuse are:

³⁵ Decision of Constitutional Court of Montenegro, U – III no. 354/17, *op.cit*

³⁶ Decision of Constitutional Court of Montenegro, U – III no. 50/17, *op.cit*.

³⁷ Decision of Constitutional Court of Montenegro, U – III no. 49/17, *op.cit*.

³⁸ Decision of Constitutional Court of Montenegro, U – III no. 1760/18, *op.cit*.

³⁹ Martinović v. Montenegro, Application no. 44993/18.

⁴⁰ *Ibid.* The decision was made by a committee of only three judges, and not the usual panel of seven, because it was estimated that this is a type of recurring case, in accordance with Art. 28 of the European Convention on Human Rights, which is then decided by a smaller number of judges.

On the decision of the court in Strasbourg, see more in the statement of the HRA: "Decision of the court in Strasbourg in the case Martinović v. Montenegro" from April 1, 2021: <https://www.hracion.org/2021/04/01/odluka-suda-u-strasbourg-in-the-case-martinovic-against-montenegro/>

⁴¹ Baranin and Vukčević v. Montenegro Application no. 24655/18 and 24656/18.

- delayed initial reaction of the state prosecutor, because an inexplicably long period of time passes from the moment of filing the report or the moment when the state prosecutor had to know about the indications of a criminal offense to his first activity;
- lack of urgency in the procedure during the entire investigation, i.e., court proceedings, pre-investigation operations are undertaken at intervals of several months;
- late interrogation of suspects, without taking measures that would prevent them from reconciling their statements or influencing witnesses;
- same public prosecutor prosecutes the alleged victim of abuse and examines allegations of abuse in the context of the same events, which calls into question the independence and impartiality of the investigation;
- problem with the identification of the suspected police officers, because in some cases they are still allowed to act in disguise, and without visible individual markings, and because state prosecutors, as a rule, transfer full responsibility for identification to the police, whose impartiality is questionable;
- untimely attempts to collect material evidence or complete absence of attempts to collect it, in particular video recordings from video surveillance means and recordings of communication between police officers;
- inappropriately mild criminal sanctions, such as suspended sentences for the crimes of ill-treatment and torture with intent.

The State party should ensure that all investigations into cases of ill-treatment are conducted promptly, without undue delay, and in particular that key intangible and material evidence is urgently obtained, including statements by alleged victims, witnesses and suspects, who should not be allowed to reconcile or another way to influence investigation.

The State party should prevent the state prosecutor conducting criminal proceedings against the alleged victim of abuse from conducting an investigation into allegations of abuse that occurred in the context of the same events.

The State party should provide that state prosecutors are sufficiently trained for conducting effective investigations against the police and other state officers, that they are sufficiently independent and ready to fight impunity for torture.

Medical examination as the safeguard against torture and ill-treatment

18. Documenting injuries and other traces of torture and ill-treatment by medical professionals still represents a serious issue in Montenegro. The problem implies that doctors in civil institutions, but also doctors providing medical assistance in detention on remand still fail to document traces of ill-treatment in a manner envisaged in the Istanbul Protocol and standards of the CPT – the victim's statement, detailed description of injuries, and final assessment on the correlation between the first two. There are three layers of this problem:

- incomplete or inaccurate medical documentation on examinations of victims after incidents, contrary to the Istanbul Protocol;
- delayed and inadequate medical expertise, which does not involve direct examination and documentation of possible injuries, but is reduced to compiling reports and giving opinions solely on the basis of existing, often poor medical documentation, mostly in prison (AECS), emergency services or doctors general practice, without the participation of a forensic specialist;
- the absence of psychological and psychiatric expertise as additional evidence of abuse.

Medical expertise must be performed urgently, without delay, so that the person who reported the abuse is always examined directly, and not only the existing medical documentation, even if a significant time has elapsed since the infliction of injuries. In addition, expertise in cases of abuse, at least in the case of more serious cases, which may have psychological consequences, should include psychological and psychiatric expertise in accordance with the Istanbul Protocol.

Ensure that AECS doctors make medical findings of injuries in accordance with the UN Istanbul Protocol, in any case, document them by taking photographs, and attach the photographs to the prisoner's medical record. Sketches of the bodies used to make the findings and record the injuries should be increased to A4 size.

Guide all doctors on how to document bodily injuries, especially when a person reports torture.

Impunity for war crimes and remedy for victims

19. In the past eight years, from 2014 to 2022, four criminal trials were conducted in Montenegro for war crimes committed in the former Yugoslavia during the wars of the 1990s. A total of 24 persons were indicted and only five convicted by final court decisions (G. I. to imprisonment for a term of two years, G. B. to three years, L. Š. to three years, M. I. to imprisonment for a term of four years, and V. Z.

to imprisonment for a term of 14 years).⁴² Those penalties are not in line with the grave nature of committed crimes.

20. In its reports ever since 2013, the European Commission continuously criticized the approach of the state prosecutor's office and courts to war crimes prosecution, pointing to the impunity of war crimes, lack of self-initiative of the prosecution, non-application of criminal law institutes such as complicity, aiding, abetting and command responsibility, as well as the misapplication of international humanitarian law.⁴³ Despite that SSPO has not yet initiated any investigations or filed charges regarding command responsibility, complicity, incitement, or aiding and abetting war crimes.⁴⁴

21. Since Montenegro became an independent state, Montenegrin state prosecutors did not initiate a single war crimes investigation on their own initiative. In the last seven years, the only case resulting in conviction was the case of V. Z, a Yugoslav Army reservist who was charged with committing a war crime in terms of murdering four civilians in Kosovo and Metohija in 1999. He was delivered to Montenegro for prosecution by the Serbian War Crimes Prosecutor's Office.⁴⁵

In October 2021 the Special State Prosecutor's Office⁴⁶ issued one order to conduct an investigation against one person for war crimes against the Bosniak population in 1992. According to the indictment, S. P. Ć. is charged with killing two people and raping a Bosniak woman like a soldier in the Republika Srpska Army. This time it was Bosnia and Herzegovina who forwarded the case to Montenegro (working title: Foča case).

22. The War Crimes Investigation Strategy of the State Prosecutor's Office of Montenegro - that was adopted on 8 May 2015, by the then Supreme State Prosecutor Ivica Stanković - obliges the SSPO to review old, legally completed cases, but the SSPO reports talk only about the submitted letters rogatory,⁴⁷ searching of databases in The Hague,⁴⁸ and analyzing the existing data and verdicts,⁴⁹ none of which led to any results in more than six years. Also, there is no information that the SSPO has taken action in any of the old cases to investigate command responsibility. Also, all the criminal charges concerning old cases were dismissed by the end of the reporting period.

Criminal complaints filed in the context of the "Deportation" case were dismissed without an explanation. The criminal complaints that were rejected in 2017 and 2019 were rejected without

⁴² See T. Gorjanc Prelević, Đ. Drinčić, Implementation of the War Crimes Investigation Strategy of the State Prosecutor's Office of Montenegro, HRA, Podgorica, 2021, p. 5; B. Ivanišević, T. Gorjanc Prelević, War Crimes trials in Montenegro (2009–2015), HRA, Podgorica, 2016, p. 6

⁴³ Montenegro Progress Report for 2013, European Commission, October 2012, p. 10; Montenegro Progress Report for 2014, European Commission, October 2014, p. 48; Report on Montenegro for 2015, European Commission, November 2015, p. 61; Report on Montenegro for 2016, European Commission, November 2016, p. 70; Report on Montenegro for 2018, European Commission, April, 2018, p. 19; Report on Montenegro for 2019, European Commission, May, 2019, p. 20 and Report for Montenegro for 2020, European Commission, October 2020, p. 24; Report on Montenegro for 2021, European Commission, October 2021, p. 24.

⁴⁴ Ibid.

⁴⁵ See T. Gorjanc Prelević, Đ. Drinčić, Implementation of the War Crimes Investigation Strategy of the State Prosecutor's Office of Montenegro, op.cit, p. 20

⁴⁶ Hereinafter: SSPO

⁴⁷ Report on the Implementation of the War Crimes Investigation Strategy of 9 August 2017, item II, pp. 2-3.

⁴⁸ Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, pp. 2-3.

⁴⁹ Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015, item IV, pp. 3-4

instruction on the right to file an appeal against a decision rejecting the criminal report, contrary to Article 271, paragraph 2 of the CPC.⁵⁰ Also, SSPO has not responded to the criminal report filed in relation to the “Kaluderski laz” for seven years.

23. The European Commission’s expert Maurizio Salustro advised the state prosecutor’s office in 2014 to focus on the proactive examination of cases related to the Dubrovnik battlefield and the phenomenon of the so-called Montenegrin “weekend warriors” in eastern Bosnia and Herzegovina. This meant that instead of informal requests for cooperation, requests for new information and evidence ought to have been concretized and focused on these key events.⁵¹

The SSPO did not have any success in executing investigations in view of those war crimes to date.

24. Finally, in 2020, the International Residual Mechanism for Criminal Tribunals submitted to Montenegro a file referring to more than 15 suspects who could finally be investigated for serious crimes including sexual violence. To date, only one person was heard as a witness.

25. In this period some positive developments have been made, such as the removal of the Minister of Justice and Human and Minority Rights due to the relativization of the Srebrenica genocide. Also, Montenegro became the first country in the region to dismiss a minister for relativizing genocide and adopt two parliamentary acts condemning the Srebrenica genocide.

The State party should review unsuccessfully processed cases such as “Bukovica”, “Deportation”, “Kaludjerski laz”, etc., with the help of experts in international humanitarian law, because those decisions were not in line with international humanitarian law and promoted impunity for war crimes.

SSPO must show a proactive approach to war crimes investigations and finally raise issues of command responsibility so those in power in the 1990s are finally held accountable for their actions.

Missing persons

26. The list of missing persons in the armed conflict in the former Yugoslavia compiled by the Commission for Missing Persons of the Government of Montenegro includes 51 Montenegrin citizen and other persons who at the time their disappearance was reported, had resided in Montenegro - 39 persons are wanted on the territory of Kosovo, 9 persons on the territory of Bosnia and Herzegovina and three on the territory of the Republic of Croatia.

From 2014 to 2021, the Commission resolved and handed over the remains of 12 persons who were citizens of Montenegro at the time of their disappearance or whose seekers were citizens of Montenegro at the time they reported their disappearance.⁵²

⁵⁰ T. Gorjanc Prelević, Đ. Drinčić, Implementation of the War Crimes Investigation Strategy of the State Prosecutor’s Office of Montenegro, p. 54

⁵¹ Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes (by Maurizio Salustro), 2014, p. 9, item 25

⁵² Decision of the ministry of finance and social welfare Montenegro, no. UPI – 26 – 037 – 22 – 94, from February 18, 2022.

27. By the Law on Veterans and Disability Protection family members of survivors - civilian war invalids are recognized and protected, but not family members of civilian victims.⁵³

In 2011, Montenegro ratified the UN International Convention for the Protection of All Persons from Enforced Disappearance. However, enforced disappearance is still not criminalized in the CC as a separate criminal offense. Montenegro still does not have a Law on Missing Persons.

The State party should amend Law on War Veterans and Disability Protection, to access social aid for the civilian victims of war.

The State party should amend CC to criminalize enforced disappearance as a separate criminal offense.

The State party should pass the Law on Missing Persons.

Attacks against journalists and media property (Article 16)

28. Montenegro has made some progress about media freedom. On 29 December 2021, the Parliament of Montenegro unanimously, with 70 votes of all present deputies including both the majority and the opposition, adopted the amendments to the Criminal Code, which prescribe stronger criminal protection of journalists. This is the result of the initiative and long-term efforts of the Human Rights Action and Trade Union of Media of Montenegro.⁵⁴ The amendments prescribe qualified forms of criminal offenses Endangering Safety, Aggravated Murder, Serious Bodily Injury, and Coercion, when committed against a person who performs the job of public information, in connection with the performance of that work. Also, the criminal offense of Preventing the Printing and Dispersal of Printed Matters, Broadcasting and Publishing Information has been reformulated to provide more stringent penalties for obstructing or preventing the publication of information of public importance through the media. Stricter punishment is prescribed if the perpetrator is an official. Now the responsibility is even greater on state prosecutors. But in addition to the above, there is a need for further reforms to create a safe and open environment for independent journalism.

29. The European Commission in its latest report for 2021 noted that "... Montenegro has achieved some level of preparation in the area of freedom of expression. There was limited progress overall during the reporting period. Despite certain signals from the Government that it would consider this area a priority, last year's recommendations were only partially addressed, and the safety of journalists remains a serious concern. The full and effective judicial follow-up to important old cases of attacks against journalists remains to be ensured. In April 2021, the Government established a new

⁵³ Official Gazette of the Republic of Montenegro, no. 69/03 and Official Gazette of Montenegro, no. 21/08, 73/10, 40/11, 1/15 and 52/16.

⁵⁴ Press release "Parliament of Montenegro unanimously adopts amendments to the Criminal Code strengthening criminal protection of journalist", Human Rights Action, December 2021, available at: <https://www.hraction.org/2021/12/29/parliament-of-montenegro-unanimously-adopts-amendments-to-the-criminal-code-strengthening-criminal-protection-of-journalists/?lang=en>

ad-hoc commission for monitoring violence against media, but recommendations of the previous one still need to be addressed.”⁵⁵

30. Montenegro ranked 104th on the World Press Freedom Index, published in April 2021 by Reporters Without Borders (RSF), climbing one place compared to 2020, but yet, it remains the region’s worst-ranked country. “The authorities continue to harass the media and professional journalists while the main cases of violence against journalists remain unpunished. Several journalists were briefly arrested in 2020 for allegedly disseminating false news but were acquitted on trial...”⁵⁶

31. On the other side, In Montenegro, in the past seven years there were 75 cases of attacks on journalists, media outlets, and organisations, as well as threats to their safety. Only in 2021, there were 25 cases. According to the information of Trade Union of Media judicial epilogues were given to ten and convictions were handed down in four cases.⁵⁷ In 2020 there were 18 cases, in 2019 three, in 2018 four, in 2017 six, in 2016 three and 2015 there were 16 cases.⁵⁸

32. Although there were numerous announcements by the top authorities that there will be progress in the investigation of the 2004 murder of journalist and editor in chief of daily Dan, Dusko Jovanovic, to date there had not been any official information on the progress of the investigation. HRA in May 2016 published a [report](#) highlighting that the investigation of the murder had not been thorough, and that some important questions remained unanswered, which had for example, led to discovery of assassins of journalist Slavko Ćuruvija in Serbia. In the report, HRA proposed engagement of a foreign criminal investigation expert to independently review all the actions undertaken in the investigation of Jovanović’s assassination and issue recommendations on how to proceed.

Unfortunately, to date, the Government has done nothing to provide a foreign expert to help the Commission for Monitoring Investigations of Attacks on Journalists, especially with regard to the investigation in this case, although such appointment was called for by the former Commission for Investigation of Attacks on Journalists more than three years ago (in October 2018). The Commission plans to hire experts in several cases, but negotiations with the General Secretariat of the Government on how foreign experts could access classified information have been going on for far too long. Unfortunately, constant personnel changes in this Secretariat affect the resolution of this issue. HRA suspects that the investigation has been obstructed by powerful politicians who had been implicated in the assassination.

33. In November 2017, the Constitutional Court of Montenegro found that journalist Tufik Softić’s right to life had been violated due to ineffective investigation of his attempted murder since 2007. A majority of the judges also decided to award just satisfaction to Mr. Softić in the amount of 7,000 Euros to compensate for this failure. It is the first time in its history that the Constitutional Court of

⁵⁵ Montenegro 2021 Report, European Commission, October 2021, page 31, available at: https://ec.europa.eu/neighbourhood-enlargement/montenegro-report-2021_en

⁵⁶ More details available at: <https://rsf.org/en/montenegro>

⁵⁷ More details available at: <https://www.slobodnaevropa.org/a/crna-gora-napadi-novinari/31614371.html>

⁵⁸ More details available at: <https://safejournalists.net/podgorica/?lang=me>

Montenegro has awarded compensation for the moral harm caused by a violation of human rights. However, to date no person has ever been prosecuted.⁵⁹

34. In the case of attack on Olivera Lakić in May 2018, an investigative journalist covering organized crime and corruption for the daily *Vijesti*, the attack was first classified as attempted murder but later changed to grievous bodily harm. “In December 2021, Montenegro’s High Court ordered the [30-day detention](#) of two persons, who are suspected by the Special State Prosecutor’s Office of following Lakić before the attack and passing on information about her movements to the “Kavac” drug gang. While those arrests are a welcome development, no formal indictments have been brought against them or any of those suspected of involvement in the shooting. Overall, progress in prosecuting those behind the attack remains painfully slow. Multiple members of the drug gang, including the alleged gunman, have been formally identified as suspects. However, the case remains in the investigation phase. Due to the sensitivity of the case, the Special Prosecutors Office are [declining to disclose](#) secret information to the Commission for Monitoring the Competences of Threats and Violence against Journalists, meaning little information is publicly available”.⁶⁰

35. In its latest report from February 2022, the Commission for Investigation of Attacks on Journalists, stated that “the National Security Agency and the Directorate for the Protection of Classified Information have not yet completed the procedure for issuing permits for access to classified information for four members of the Commission since June 2021. This fact hinders the work of the Commission, so the Commission requests that these procedures be completed as a matter of urgency, so that it can fully consider the part of the submitted documentation that is classified”.

The State party should proceed with the reform of the legal framework in order to create a safe and open environment for independent journalism.

The State Party should take additional measures to reduce the number of attacks on journalists (compared to 2021).

The State party should take additional measures to improve the lack of investigation of old cases.

The State party should urgently engage a foreign expert to review investigation of Dusko Jovanovic’s murder upon request of the Commission for Monitoring Investigations of Attacks on Journalists from October 2018.

The State party should provide all members of the said Commission with access to classified information without delay, by urgent procedure.

⁵⁹ “Constitutional Court of Montenegro finds failure to investigate violent attack to be a violation of journalists rights to life”, HRA, November 2017: <https://www.hraction.org/2017/11/30/30112017-constitutional-court-of-montenegro-finds-failure-to-investigate-violent-attack-to-be-a-violation-of-journalists-right-to-life/?lang=en>

⁶⁰ “Montenegro: Impunity must end for shooting of journalist Olivera Lakić”, Article 19 and joint partners, January 2022: <https://www.article19.org/resources/montenegro-impunity-must-end-for-shooting-of-journalist-olivera-lakic/>

Asylum (art. 3)

36. In Montenegro, the principle of *non-refoulement* is prescribed by the Constitution⁶¹, the Law on Mutual Legal Assistance in Criminal Matters⁶² and the Law on International and Temporary Protection of Foreigners⁶³. A positive step was made on December 30th 2019 when the Constitutional Court for the first time revoked the decision on extradition of Harun Ayvaz, the manager of the student dormitory and a member of the Gulen movement, to Turkey due to the risk of torture, by applying this principle.⁶⁴ On the other hand, a Russian national who was in extradition detention because of a Moscow Interpol arrest warrant was extradited on January 14th 2022, despite the fact that the Asylum Directorate at the Ministry of the Interior did not finally decide on his status as an applicant for international protection.⁶⁵ The Protector of Human Rights and Freedoms pointed out that the decisions on extradition must not be stereotypical and that they must contain a reasoning and assessment of circumstances, which was something the decision in question was missing. The Protector was of the opinion that in this case there was a violation of the right to liberty and security as well as the right to an effective remedy guaranteed in Constitution of Montenegro and European Convention on Human Rights.⁶⁶

37. The problem of interpreting the safe third country concept has arisen in asylum proceedings (most often regarding Serbia, Albania, Republic of Kosovo, Hungary are the countries through which asylum seekers came from the East – Iran, Turkey, Macedonia, Greece, etc.). These countries formally have a regulated asylum procedure and are considered safe, but still, they do not respect the principle of *non-refoulement*. They allow the so-called *chain refoulement* mainly due to the fact that their authorities work closely with the authorities of the countries from which asylum seekers come and so do not want to jeopardize economic, geopolitical, or other interests because of them. For these reasons, in practice, these countries are not to be considered safe by courts or the bodies deciding on asylum.⁶⁷ Therefore, the problem arises because there are states that automatically apply the safe third country concept, instead of first considering whether it is really a safe third country in a particular case, i.e., making an objective assessment of its level of effective protection.⁶⁸

⁶¹ Constitution of Montenegro, *Official Gazette of Montenegro*, no. 1/2007 and 38/2013, Article 44, paragraph 1.

⁶² Law on Mutual Legal Assistance in Criminal Matters, *Official Gazette of Montenegro* no. 4/2008, 36/2013 and 67/2019, Article 22, paragraph 3.

⁶³ Law on International and Temporary Protection of Foreigners, *Official Gazette of Montenegro* no. 2/2017 and 3/2019, Articles 11 and 12.

⁶⁴ Decision of Constitutional Court of Montenegro, U-III no. 1874/19, from December 30, 2019.

⁶⁵ According to the Article 12, paragraph 5 of the Law on International and Temporary Protection of Foreigners: „The procedure of examining an application for international protection shall prevent extradition or surrender of an applicant against whom an international arrest warrant has been issued and for whom a decision on extradition or surrender to the country of origin had been reached, pending the final decision on the application for international protection.”

⁶⁶ Opinion of the Protector of Human Rights and Freedoms in Montenegro, no. 731/21, 599/21 and 868/21, from February 20, 2022.

⁶⁷ *Tarakhel v. Switzerland* (application no. 29217/12) and *Ilias and Ahmed v. Hungary* (application no. 47287/15) - in this case, the European Court of Human Rights found that Hungary violated Articles 3, 5 and 13 of the European Convention by returning two refugees from Bangladesh to Serbia in 2015, based solely on the 2015 Hungarian Government Decree which declared Serbia as a safe third country. The court assessed that their return to Serbia, which was declared not safe third country by UNHCR in 2012, created a risk of further return to Macedonia and Greece (chain refoulement) and exposure to acts contrary to Article 3 of the European Convention.

⁶⁸ Research Division, Articles 2, 3, 8 and 13, The concept of a “safe third country” in the case law of the Court, Council of Europe, 2018, p. 20: “The deporting State cannot simply rely on its own definition of the third country as safe, and it has a general procedural obligation to carry out a fair and thorough examination of the conditions in that third country.”

38. Finally, the European Commission highlighted that it is necessary for Asylum Directorate to improve the understanding of this concept⁶⁹ especially because since 2019 some decisions made on its basis has been annulled by the Administrative Court due to directorate's failure to determine whether the countries to which the concept applies respect the principle of non-refoulement and whether there is a risk of further forcible expulsion of asylum seekers to the country of origin.⁷⁰

The State Party should improve the asylum procedure in relation to the safe third country concept and prevent the practice of systematic abuse of this concept leading to violations of fundamental human rights and freedoms before the European Court of Human Rights by thoroughly examining whether the third country is really safe for the asylum seeker, i.e. whether there is a danger of their further return to the country of origin (chain refoulement) and by updating the list of safe third countries more frequently;

The State Party should strengthen the cooperation with UNHCR and Commissioner for Human Rights, international non-governmental organizations such as Amnesty International and Human Rights Watch as well as local non-governmental organizations whose reports and other documents can be useful for drawing a conclusion whether the country is a safe third country in a particular case;

The State Party should provide training on better interpretation of the safe third country concept for persons competent on procedures of examining the status of the applicant for international protection.

Independence of the judiciary

39. Since the establishment of the Judicial Council in 2008 until today, it has not been secured that the Council can operate as a genuinely independent state authority. Recommendations for strengthening the Council's independence, given by Council of Europe's Group of States against Corruption (GRECO) and European Network of Judicial Councils, have not been implemented. Montenegrin Constitution should be amended to exclude Minister of Justice from the Judicial Council, as GRECO recommended. To introduce criteria for election of members from among eminent lawyers, with a view to ensuring their independence and impartiality, as well as guarantees for all the Council members to avoid conflict of interests, Montenegro should amend the Law on Judicial Council and Judges. This process recently started but is quite uncertain how it will end. The level of guarantees against political influence and conflict of interest that is applicable to members of Judicial Council is incomparably lower than for the members of the Prosecutorial Council, Council of the Agency for Prevention of Corruption, Council of the Public Broadcaster (Radio and Television of Montenegro) and Council of the Agency for Electronic Media, although it is only for the Judicial Council that the Constitution stipulates that it must be an "autonomous and independent authority".

40. In its latest Compliance Report for Montenegro in February 2020, GRECO stated that it was "alarming that there is no progress in the composition and independence of the Judicial Council."⁷¹

⁶⁹ The Report of European Commission on Montenegro, 2021, p. 48.

⁷⁰ Administrative Judiciary in Montenegro – Reasonable time and execution of judgments of the Administrative Court, Civic Alliance, Montenegro, December 2020, p. 7.

⁷¹ <https://rm.coe.int/cetvrta-runda-evaluacije-sprecavanje-korupcije-u-odnosu-na-poslanike-s/16809a5bf3>

41. Since 2015, European Commission in its reports stated that judiciary is still perceived as vulnerable to political influence.

42. Executive branch of power exerted inappropriate political influence on judiciary and prosecution service for years rendering decisions by which, without any authority and in non-transparent procedures, the Governmental commission allocated apartments as gifts to judges and state prosecutors for 20% of their estimated value, as well as the financial support “for meeting housing needs.” Although originally it had a legal basis for allocating such support, the Government continued with the same practice after 2014 when the Law on Housing and Maintenance of Residential Buildings explicitly excluded the possibility for the Government to regulate the process of meeting housing needs for judges and state prosecutors. In the latest report on Montenegro, European Commission expressed special concerns in this respect⁷². Providing solutions for housing needs for judges is, by the way, within the competences of the Judicial Council, while the Commission solved housing issues for some judges, including the member of the Judicial Council and President of the Supreme Court. They did it in a non-transparent way, and even in cases when the judges had already met the needs for housing. It is particularly concerning that the Judicial Council, which is in charge of “ensuring independence and autonomy of courts and judges”, did not protest and did not request this unlawful practice to be stopped, since it jeopardized integrity of the judiciary.

Appointment of judges

43. The selection of candidates for judges in 2019 and 2020 was marked by irregularities in the written testing procedure that led to the annulment of one competition, annulment of the decision of the Judicial Council on the selection of candidates for judges by the Administrative Court of Montenegro more than a year after their election, i.e. in the very end of their initial training, as well as the continuation of the practice of the Judicial Council to make unreasonable decisions on the selection of candidates for judges and on the selection of judges after the completion of the initial training. The latter is an omission on which European Commission has been making identical criticisms since 2015.

Promotion of Judges

44. The decisions of the Judicial Council on the promotion of judges are not sufficiently reasoned either. Bearing in mind that when there is a promotion, the interview grade often decides the winner of the competition, the problem is that the decisions do not contain information about whether all the criteria for evaluating the interview were evaluated during the interview and how they were evaluated. Also, in the explanation of the evaluation of the work of judges, the approach was uneven, because the evaluations of all sub-criteria for evaluation were stated for some candidates, and for others they were not.

Performance assessment

45. The performance assessment system for judges in Montenegro is not objective, which was pointed out by the Human Rights Action in 2017. The rule for determining the grade, prescribed by

⁷² “Reports on state sponsored apartments or loans under favourable conditions granted by the previous governments to members of the judiciary and prosecution, including senior ones and those dealing with politically sensitive cases, continue to raise concerns.” - European Commission, Montenegro report 2021, Strasbourg, 19.10.2021, page 19.

the law, is unfair and illogical, because it allows judges who have unsatisfactory quality and quantity of work to advance, as well as those who have an unlimited number of violations of the Code of Ethics, to get promoted. On the other hand, the criteria prescribed by the bylaw are set either too strict (as in professional development and participation in professional activities, which the judge cannot always influence) or so that they do not take into account the significance and severity of violations of the Code of Ethics. The same applies to state prosecutors. All state prosecutors evaluated in the last few years received nothing but excellent ranking.

The State party should ensure the effective independence and professionalism of the judiciary by addressing all the remaining recommendations of the Council of Europe Group of States against Corruption (GRECO) and European Network of Judicial Councils.

The State party should review the disciplinary and ethical framework for judges as well as state prosecutors to strengthen their objectivity and effectiveness.

The State party - Protector of Property Legal Interests of Montenegro should initiate civil procedures to establish that fictitious contracts used by the executive branch of power to allocate money to selected judges and state prosecutors are null and void, to ensure compensation of damage to the state, i.e., return of the funds that were allocated on the basis of the contracts that were null and void. The State Prosecution Service should *ex officio* investigate each case where such monetary support was allocated, and it should establish whether in any of them there were elements constituting a criminal offence prosecuted *ex officio*. The State Prosecution Service should compose a report on investigated cases and publish it.

Individual complaints (art. 13)

46. According to HRA information obtained through practice, a number of cases of police and prison torture and ill-treatment in Montenegro remain unreported due to fear of the police, especially when victims are persons who have committed crimes before, users of psychoactive substances and/or those who cannot afford legal aid. HRA received information from people with regard to whom there is a *prima facie* evidence that they survived police ill-treatment, that prison officers warned them while in custody not to complain about „their friends“ from the Police. Such behaviour further entrenches distrust in the system. Persons apprehended and tortured by the police who are immediately taken to detention usually wait to be released before reporting ill-treatment, when too late for appropriate documentation of all their injuries. Prison doctors, who examine them on admission to prison lack interest to investigate injuries without explicit complaints and do not act in accordance with the Istanbul protocol, which all compromises effective investigation of torture.

The State party should instruct the prison authorities not to tolerate prison officers who are advising prisoners against filing complaints of police ill-treatment. The prison doctors should be aware that many victims are scared of reporting and should insist on thorough examinations and follow the Istanbul protocol. The State party should ensure full protection for complainants and witnesses in cases of torture and ill-treatment.

Training (art. 10)

47. Montenegro failed to completely implement the recommendation to intensify its efforts to provide human rights training programmes to all officials involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention or imprisonment.

48. Since 2017, when the Directorate for monitoring trainings and the process of professional development and advancement of police officers was established, by the end of 2021, a total of 442 trainings for police officers have been realized.⁷³ In 2019 the number of trainings on prevention of torture increased but still insufficiently (“Zero tolerance for abuse in accordance with national and international standards CPT” – attended by 106 police officers⁷⁴). In 2020 no training was conducted on prevention of torture. In relation to the number of police officers in the country - 4 551 police officers, only 11 trainings were conducted on the topic of International and domestic standards in protection against torture, abuse, inhuman and degrading treatment attended by 142 police officers.⁷⁵ In 2021 there was one training on prohibition of torture.⁷⁶ Although, there has been a noticeable increase in the training of police officers, there still is an insufficient number of police officers who attended those trainings.

49. The only training available to police officers regarding the investigative interviewing of victims, witnesses and suspects is the subject Tactical communication thought at the Police Academy in Danilovgrad with 20 hours of theory and 16 hours of exercises, which is insufficient compared to the goal. Only 7.5% of all Police inspectors attended this training in Danilovgrad⁷⁷. The result being that they are learning from their peers how to extract information, which includes inheriting violent practices.

50. Although the Centre for trainings of judges and prosecutors during last three years provided for a large number of trainings and seminars (in total 580 since 2019) on international and domestic human rights standards, it is noticeable that trainings on the Prohibition of Torture, Inhuman and Degrading Treatment or Punishment are mostly attended by court and prosecutorial advisers, candidates, or interns. Only 12 judges and 13 prosecutors attended training on Article 3 of the European Convention on Human Rights, and 13 candidates for judicial posts.

51. The medical reports executed by doctors, especially those employed in prison (the Administration for Execution of Criminal Sanctions - AECS), which are crucial for documenting evidence of torture and inhuman treatment have mostly been incomplete and superficial. The Ombudsman in his several opinions including the National Preventive Mechanism team found in their Report⁷⁸ that the quality of prison medical documentation is occasionally very poor, i.e., lacks closer description, with cases of complete neglect of recording of a large number of clearly visible

⁷³ Decision of the Ministry of the Interior, Department for personal data protection and free access to information 39, No: UPI- 03721-1804/3, May 2021 and No: UPI -037/22 -486/4, February 2022.

⁷⁴ Decision of the Ministry of the Interior, Department for personal data protection and free access to information 39, No: UPI- 03721-1804/3, May 2021.

⁷⁵ Decision of the Ministry of the Interior, Department for personal data protection and free access to information 39, No: UPI- 03721-1804/3, May 2021 and No: UPI -037/22 -486/4, February 2022.

⁷⁶ *Ibid.*

⁷⁷ EXPERT OPINION: REVIEW OF INTERVIEW TRAINING IN THE MONTENEGRIN POLICE, Dr Andy Griffiths, Human Rights Action, December 2021, page 6: <https://www.hraction.org/2021/12/21/review-of-interview-training-in-the-montenegrin-police-expert-opinion/?lang=en>

⁷⁸ The Protector of Human Rights and Freedom - National Preventive Mechanism Report on the imprisonment of short sentences according to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), May, 2019: <file:///C:/Users/andje/Downloads/izvjestaj-o-obilasku-zatvora-za-kratke-kazne.pdf>

injuries. The medical chamber of Montenegro does not have data collection on how many trainings and how much doctors have been trained including material according to the Istanbul Protocol. The only recognised training in accordance with the Istanbul Protocol that doctors attended was organized by Human Rights Action in late 2021. This online seminar caused a lot of interest and was attended by 205 medical doctors.⁷⁹

The State party should conduct continuous training for all police officers in order to train them to proactively identify and refer victims of torture, inhuman and degrading treatment and punishment.

The State party should ensure that all judges and prosecutors attend continuous specific trainings on how to identify signs of torture and ill-treatment and execute effective investigations in accordance with the Istanbul Protocol.

All police officers conducting interviews with citizens, suspects or witnesses should be trained on “investigative interviewing”⁸⁰ excluding all kind of coercion.

Bearing in mind the importance of a detailed, clear and comprehensive medical report in identifying and supporting victims of torture, it is crucial to educate all doctors, especially those employed in the AECs, on documenting signs of torture or other ill-treatment in accordance with the Istanbul Protocol.

It is necessary to develop a Guide of good practice for all doctors of medicine on forensic principles of documenting external signs of bodily injury⁸¹.

Conditions of detention

52. Montenegro has failed to implement recommendations regarding material conditions in prison as a Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII)). Prison conditions improved to some extent but not to the extent necessary. Accommodation capacities remain at an unsatisfactory level, especially in the Remand Prison and A pavilion. The European Court of Human Rights in two decisions found a violation of Article 3 of Convention, in the 2019 case of *Bigović v. Montenegro* and 2014 *Bulatović v. Montenegro*, due to overcrowding and lack of hygienic conditions. The Protector of Human Rights

⁷⁹ <https://www.hraction.org/2021/12/27/ljekarsko-izvjestavanje-o-povredama-nanijetim-zlostavljanjem-u-skladu-sa-medunarodnim-i-domacim-standardima-dvije-obuke-za-doktore-medicine-u-crnoj-gori/>

⁸⁰ In December 2021, Human Rights Action organized two trainings for representatives of Police Directorate and Police Academy and a lecturer at the training was Dr Andy Griffiths, recognised as international subject matter expert on investigative interviewing through unique combination of extensive career as an operational investigator, academic qualifications and international experience. For the purposes of the training for Police Academy, Dr Griffiths has assessed the existing training curriculum of the Police Academy and data on the continuing education of the acting criminal inspectors in Montenegro, prepared the opinion entitled “Review of interview training in the Montenegrin Police” and provided recommendations for appropriate training courses for students of the Police Academy and the acting police inspectors. The opinion also contains recommendations from best practice in interview training in the police https://www.hraction.org/wp-content/uploads/2021/12/REVIEW-OF-INTERVIEW-TRAINING-IN-THE-MONTENEGRIN-POLICE_final-2-3-2022.pdf (available on Montenegrin).

⁸¹ This is concluded on a training which HRA organized for doctors of medicine in December 2021. For more details see: <https://www.hraction.org/2021/12/27/ljekarsko-izvjestavanje-o-povredama-nanijetim-zlostavljanjem-u-skladu-sa-medunarodnim-i-domacim-standardima-dvije-obuke-za-doktore-medicine-u-crnoj-gori/> (available on Montenegrin).

and Freedoms (Ombudsman) reminded in his Report⁸² and Opinions⁸³ the importance of taking urgent measures to improve the quality of living conditions of detainees. Despite the aggravated conditions caused by the COVID-19 epidemic, material conditions in some premises in Remand Prison are still not in line with international standards.⁸⁴

53. The activities of detainees are limited to their cells, and they spend only an hour daily in fresh air instead of legally prescribed two, because the old prison building does not allow for more.⁸⁵ The prison in Bijelo Polje still does not have a psychologist⁸⁶. As a positive change, the special section of prison for Juveniles has been put into function, but there is still insufficient work with juveniles in terms of psycho-social assistance⁸⁷.

54. Although the Action Plan for the implementation of the Strategy on the execution of criminal sanctions⁸⁸ envisaged construction of four new facilities within the framework AECS as well as the construction of a new prison in the Bijelo Polje, the construction has not started to date.

55. On the occasion of incidents that took place in Podgorica prison in January 2015 between prisoners and guards⁸⁹ there was no adequate reaction - reporting to the competent authority, identification of responsible officials and determination of their disciplinary responsibility⁹⁰. Only five years later, the High Court in Podgorica upheld two convictions of 12 prison officers for the crime of torture and grave bodily injury, but replaced imprisonment with only suspended sentences.⁹¹ In connection with the same incident, within a year and a half, nine prisoners were convicted for criminal offences *Attack on a Public Official in the Discharge of an Official Duty and Serious Bodily Injury* to serious imprisonment sentences of two years and seven months to five years. During the proceedings, contrary to the practice of the European Court of Human Rights⁹², no prison officers were suspended, while the State prosecutor did not propose a measure of detention, so they continued to influence the victims and they soon stopped remembering who were the officers beating them.

⁸² Ombudsman Annual Report, March 2021: https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf

⁸³ Ombudsman's Opinion, No: 01-314/20-3, September 17, 2020: https://www.ombudsman.co.me/docs/1601640949_17092020-preporuka-ziks.pdf

⁸⁴ During the visit of NMP it was established that rooms L2 and L3 lacked minimal material conditions in terms of surface area and occupancy, as well as air quality and hygiene: https://www.ombudsman.co.me/docs/1601640949_17092020-preporuka-ziks.pdf (available on Montenegrin)

⁸⁵ In that sense the findings and recommendations from the report of HRA and Juventas on monitoring of prison conditions in 2014 and 2015 still apply: <https://www.hracion.org/2016/02/09/monitoring-postovanja-ljudskih-prava-osoba-u-pritvoru-i-na-izdrzavanju-kazne-u-zavodu-za-izvršenje-krivinih-sankcija-ziks-u-crnoj-gori/>

⁸⁶ NPM Ombudsman, <https://www.ombudsman.co.me/new2/img-articles-npm/36/izvje--taj-o-obilasku-zatvora-u-bijelom-polju.pdf>

⁸⁷ Ombudsman's Report for 2020, page 166: [1619074992_izvjestaj_01042021.pdf](https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf) (ombudsman.co.me)

⁸⁸ Action plan for the implementation of the Strategy for the Execution of Criminal Sanctions (2017 - 2021) <https://www.gov.me/dokumenta/7c1e0639-b672-4681-b549-0e62a75e2aa5>.

⁸⁹ See more information for this case in HRA publication from 2019: <https://www.hracion.org/2019/12/23/effectiveness-of-investigations-in-cases-of-ill-treatment-in-montenegro/?lang=en>.

⁹⁰ Annual Report of Ombudsman for 2020, page 167, March 2021. https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf (available on Montenegrin).

⁹¹ Judgments of Basic Court in Danilovgrad no. K/55 from May 2019 and K2/16 from September 2019 (available on Montenegrin).

⁹² Relevant cases of ECtHR: *Cestaro v Italy*, application no. 6884/11, judgment from April 2012 par. 210, *Atesoğlu v. Turkey*, application no. 53645/10, judgment from January 2015 par.25, *Saba v Italy* application no. 36629/10, judgment from July 2014, *Gäfgen v. Germany* application no. 22978/05, judgment from June 2010 par. 125.

Urgently start construction works for a new building of the Remand Prison, which should have rooms with fewer beds, complying with the standard of 4 m², as well as a special hospital within AECS.

Significantly reduce the occupancy level in the cells in the Remand Prison in Podgorica, the objective being to comply with the minimum standard of 4m² living space for prisoner.

Deliver a firm message to staff at the Institution for Execution of Criminal Sanction that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be punished accordingly.⁹³ Ensure that prison officers are immediately suspended when charged with crimes of ill-treating the prisoners.

State party should provide for maintenance of adequate level of hygiene in prison.

Data collection

56. HRA attempted to receive data from the State prosecutors' office on the number of criminal complaints filed against state officers for torture or other instances of ill-treatment and on the number of criminal charges raised against them. However, the Basic State Prosecutor's Office in Podgorica refused to provide us with the requested information, explaining that they do not keep such records. The fact that the Methodology for compiling the annual report on the work of the State Prosecutor's Office does not include the obligation to record this type of crime when officials are accused of it means that Montenegro did not apply the 2014 CAT recommendation to compile statistical data relevant to the monitoring of the implementation of the Convention at the national level including data on complaints, investigations, prosecutions and convictions regarding the above-mentioned cases of torture and ill-treatment.⁹⁴

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations and indictments regarding the above-mentioned cases of torture and ill-treatment.

Special psychiatric hospital „Dobrota“ in Kotor

57. The Special psychiatric hospital in Kotor (SPH) in 2020 and 2021 initiated one disciplinary proceeding against its employee for participation in a fight and violent, inappropriate and abusive behavior towards a patient. The procedure was initiated in September 2020 because the medical technician G. Đ, while separating two conflicting patients, physically attacked one of them. This proceeding was never completed as it became time-barred. The same was with three other

⁹³ 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 9 to 16 October 2017: <https://rm.coe.int/1680925987>.

⁹⁴ Concluding observations on the second periodic report of Montenegro, CAT/C/MNE/CO/2, para. 24.

disciplinary proceedings in the Hospital, in the same period, which did not involve ill-treatment of patients.

At the beginning of 2022, three criminal proceedings against employees of the institution were pending before the court, one of which concerned abuse of patients. In that case, on 30 July 2020, the Basic State Prosecutor's Office in Kotor filed an indictment against dentist R. S, for the criminal offense of grievous bodily harm, charging him for hitting and injuring a patient S. K. with a fist in the nose area on 18 June 2020, after which S.K. fell to the floor, causing S.K. severe bodily injury in the form of swelling and nose rupture. The hospital management did not conduct disciplinary proceedings against this employee.

In an exemplary bad practice of the Hospital management, a Hospital medical technician was reestablished in position after being convicted in the first instance of seven crimes of ill-treatment to the detriment of seven patients. In March 2016, in order to find out who had soiled the wall in the hospital, he lined up seven patients next to each other, started yelling, insulting, and threatening them, and after that kicking them in the legs and the lower back and beating them on the head with a larger bundle of keys.

After that, the High Court in Podgorica decided to dismiss the indictment due to statute of limitation. In other words, in this case, the act of execution was determined, but the accusation was rejected due to the ineffectiveness of the investigation and in violation of the Convention.

The state should ensure that no one formally acquitted of charges but responsible for ill-treatment is allowed to work with patients with mental disabilities.

The SPH should ensure consistent application of the rules on disciplinary liability. The State party should extend the statute of limitation for disciplinary cases.

Violence against women

58. The European Commission in its latest report for 2021 noted that "... Gender-based violence, in particular domestic violence remains a serious and persistent criminal, societal and public health issue. In 2020, 265 cases of domestic violence (2019: 281) were registered as criminal offences and further 2,133 (2019:1,819) by the misdemeanor courts, while specialised NGOs registered an increase of around 30% of cases in 2020 compared to previous year. It is estimated that the majority of cases of gender-based violence remain unreported. ... The definitions of gender-based violence and domestic violence across legislation need to be further aligned with the Istanbul Convention and the GREVIO recommendations. Sexual harassment is still not qualified as a criminal offence".⁹⁵ Only in the last four months (October 2021-January 2022), three women were murdered by their partners, while the daughter of one of the victims was seriously injured, as well as the father of another. In two cases, years of torture occurred in the presence of minor children. All three cases were reported to the competent institutions, and the last two even on multiple occasions over the

⁹⁵ Montenegro 2021 Report, European Commission, October 2021, page 29, available at: https://ec.europa.eu/neighbourhood-enlargement/montenegro-report-2021_en

period of several years. *All competent institutions have failed to act with due care and to protect victims and their minor children.*

Even following the above-mentioned cases of femicide, there was no concrete action to determine the responsibility of the competent institutions that failed to protect the victims who reported serious threats to their lives.

The State party should analyze the existing inefficient system for protection and support of victims and develop guidelines for the establishment of a new coordinated system that will place the rights and best interests of victims at the heart of all measures.

The State party should provide adequate human and financial resources for the implementation of all measures, policies and legislation aimed at preventing and combating violence against women.

The State party should provide specialization in institutions working on the prevention and suppression of violence against women and domestic violence – police, prosecutors, centers for social work, judiciary, health services and court experts.

The State party should ensure continuous supervision and evaluation of the work of competent institutions and determine the responsibility of all those who do not act in the best interests of victims.

The State party should improve the legal framework and harmonize it with the standards of the Istanbul Convention.

The State party should provide political and financial support to civil society organizations that run specialized services for women and children, while respecting their autonomy and working principles.

The State party should provide programs for social integration of victims of violence, such as social housing, employment programs, child care, etc.⁹⁶

⁹⁶ Recommendations of the NGO Women’s Rights Center, available at: <https://womensrightscenter.org/en/statement-on-the-occasion-of-the-international-day-for-the-elimination-of-violence-against-women/>