

Suppression of Police Ill-treatment in Montenegro 2021-2023

*Analysis of Actions of the Control
Mechanisms of the Police Administration*

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1. Introduction



The Center for Democracy and Human Rights – CEDEM, in the period from April of the current year until the end of the same year, owing to the support of the Embassy of the Federal Republic of Germany in Montenegro, has implemented the project [Police at the service of citizens](#).

The project was implemented with the aim of fighting against human rights violations through three components: improvement of police capacity (including students of the Police Academy) and established mechanisms of control over the work of the police, as well as increasing citizens' awareness of actions in cases of human rights violations by the police officers.

One of the activities planned by the project was preparation of a report on the actions of authorities, i.e. independent bodies, which are intended as mechanisms for controlling the work of the police in a broader sense, including the actions of the State Prosecutor's Office, the Protector of Human Rights and Freedoms of Montenegro, the Department for Internal Control of the Police and the Council for Civic Control of Police Work, relating to allegations of police ill-treatment.

1.1. Methodology used

For the purposes of preparing this Report, it was necessary to analyse actions of the aforementioned authorities, that is, independent bodies in ten cases of human rights violations that were recognized in the public space.

When selecting cases, we were guided by the fact that information about them was made publicly available precisely by the victims of human rights violations themselves, their representatives and other interested members of the public.

Another condition stipulated by the project was that information on violations was made publicly available in the period from 2021 to June 2023.

The cases included in the analysis refer to:

1. Report of police ill-treatment to the detriment of Jovan Mrvaljević in Nikšić from January 3, 2021;
2. Report of police ill-treatment to the detriment of Milo Jovanović in Nikšić from January 3, 2021;
3. Report of police ill-treatment to the detriment of Jovan Durović in Bar from July 13, 2021;
4. Report of police ill-treatment to the detriment of Ivan Roganović in Cetinje from July 28, 2021;
5. Throwing of a shock bomb by a police officer at Stefan Vuković in Cetinje on September 5, 2021;
6. Report of police ill-treatment to the detriment of Lidija Vujović in Podgorica from December 28, 2021;
7. Report of police ill-treatment to the detriment of Damir Kojašević in Podgorica from November 1, 2022;
8. Report of police ill-treatment to the detriment of the Albanian citizen at the Sukobin border crossing in Ulcinj from February 21, 2023;
9. Report of police ill-treatment to the detriment of a group of citizens by members of the Special Anti-Terrorist Police Unit (SATPU) in Žabljak from March 12, 2023;
10. Report of police ill-treatment by officers of the Security Department Nikšić in Nikšić from April 14, 2023.

Also, during the preparation of the Report, other publicly available information relevant to the subject being treated was used, including reports from domestic and international organizations dealing with the prevention and suppression of ill-treatment, as well as information about the judicial epilogue of some of the mentioned cases (in cases in which information was publicly available).

In order to obtain relevant information, requests for free access to information were submitted to the State Prosecutor's Office, the Protector of Human Rights and Freedoms of Montenegro, the Department for Internal Control of the Police and the Council for Civic Control of Police Work, in which more information was requested about specific actions in the cases in question. Please note that, in relation to the prosecutor's office, the request was sent to the Supreme State Prosecutor's Office with a request that it be forwarded to the competent prosecutor's offices.

The Ombudsperson fully responded to the request, the Prosecutor's Office responded partially, while the Council for Civic Control of Police Work and the Department for Internal Police Control did not provide the requested information, despite the requests addressed to them. Bearing in mind the above, the actions of the Council and the Department were analysed through publicly available information, with a note that the presented information cannot be complete, precisely because the aforementioned bodies did not provide the requested answers.

All the information that could be obtained in relation to these two bodies by the desk research method is listed within the individual cases that were processed. Finally, the findings and information published by relevant NGOs dealing with the subject of the analysis were used.

2.

Domestic and International Framework for the Prohibition of Torture and Ill-treatment

2.1. Prohibition of ill-treatment - legal framework

The Constitution of Montenegro guarantees human dignity and security. The inviolability of the physical and psychological integrity of man, his privacy, and personal rights is guaranteed. No one shall be subjected to torture or to inhuman or degrading treatment. No one shall be held in slavery or servitude.¹

The Criminal Code stipulates: *whoever ill-treats another or acts towards him in a way that insults human dignity, shall be punished by imprisonment for up to one year, and if this act is committed by an official in the performance of their duties, they shall be punished by imprisonment from three months to three years.*²

The Law on Interior Affairs stipulates that police officers shall be obliged, inter alia, to adhere to the standards of police behaviour, especially the standards that arise from the obligations established by international acts, and refer to the prohibition of torture and the application of inhuman and degrading procedures.³

A global international framework for the prohibition of torture and ill-treatment was developed by the United Nations. The Convention against Torture and Other Cruel, Inhuman and Degrading Punishments and Procedures was adopted under the auspices of the United Nations in 1984, and was ratified by the SFRY in 1991. Montenegro was accepted as a member state of the United Nations on June 28, 2006.

1 Article 28 of the Constitution of Montenegro (Official Gazette of Montenegro, 001/07, 038/13).

2 Article 166a of the Criminal Code of Montenegro (Official Gazette of Montenegro, 040/08, 025/10, 073/10, 032/11, 064/11, 040/13, 056/13, 014/15, 042/15, 058/15, 044/17, 049/18, 003/20, and 026/21).

3 Article 20, paragraph 2 of the Law on Interior Affairs (Official Gazette of Montenegro 070/21 of 25.06.2021, 123/21 of 26.11.2021).

Definition of torture

The Convention defines torture as any act which intentionally inflicts pain or severe physical or mental suffering on a person in order to obtain from them or a third party information or confession or to punish them for an act that they or a third party has committed or for which the execution is suspected, of intimidating that person or exerting pressure on them or intimidating or exerting pressure on a third person or for any other reason based on any form of discrimination, if that pain or suffering is caused by an official or any other person acting in an official capacity or at their instigation or with their express or tacit consent. The definition does not refer to pain or suffering that results solely from, is inseparable from, or is caused by, lawful sanctions.

The regional international framework for Europe was developed by the Council of Europe, based in Strasbourg. On May 11, 2007, Montenegro became the 47th Member state of the Council of Europe. According to international law, the obligations of the Montenegrin authorities to ensure the prohibition of torture and other forms of ill-treatment originate (also) from membership in this international body.

The European Convention on Human Rights, which has established the European Court of Human Rights (hereinafter referred to as: "the EctHR"), and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, which establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT), entered into force on June 6, 2006.⁴

Formulated in an unconditional sense, the prohibition of torture and other forms of ill-treatment is an absolute right. Article 3 does not provide for exceptions and, according to Article 15 paragraph 2 of the Convention, no deviation is allowed.

This applies even in cases such as, for example, public danger that threatens the survival of the nation, suppression of terrorism⁵ or organized crime⁶, and an exception cannot be made even to save the life of an individual.⁷ Neither the behaviour of the victim nor the nature of the act can be taken into account as a justification for torture or ill-treatment, nor the motive of the competent authorities.

States as the High Contracting Parties have a negative obligation, of a substantial nature, that they may not directly engage in prohibited conduct, while on the other hand, they have a positive obligation that anyone who is under the direct jurisdiction of the state must be protected from prohibited conduct. Those positive obligations of the state should be of such a character that it is able to take all reasonable measures to prevent ill-treatment, torture, or inhuman treatment of which it knew or could reasonably be expected to have known. In such situations, states are expected to conduct an effective and independent investigation. This is a procedural obligation of the contracting states, regardless of who appears as a potential perpetrator of a criminal offense, be it a private person or one of the holders of state functions and powers.⁸

4 Prohibition of Torture and Inhuman and Degrading Treatment and Punishment, Handbook for the Implementation of Article 3 of the European Convention on Human Rights, CoE, Erik Svanidze and Graham Smith.

5 *Tomasi v. France* (Application no. 12850/87), judgment of August 27, 1992, paragraph 115.

6 *Selmouni v. France* (Application no. 25803/94), judgment of July 28, 1999, paragraph 95.

7 *Gäfgen v. Germany* (Application no. 22978/05), judgment of June 12 2010, paragraph 107.

8 Guide through Article 3 of the European Convention of Human Rights, CEDEM and the Ministry of Justice, 2020.

2.2. Montenegro and the UN Committee against Torture

The Committee against Torture (CAT) is a body of 10 independent experts that oversees the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its Member States. All States Parties are required to submit regular reports to the Committee every four years on how the rights are applied. The Committee examines each report and addresses its concerns and recommendations to the Member State in the form of *concluding observations*.

CAT considered the third periodic report of Montenegro at its 1889th and 1892nd sessions, which were held on 27-28 April 2022, and adopted the final considerations on the Third Periodic Report of Montenegro at the 1953rd session, held on May 10, 2022. Further, the CAT noted that the State of Montenegro has achieved some progress by welcoming the legislative, administrative and institutional measures taken by the state in areas of importance for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it is necessary for the state to make an additional effort, and in that sense gave its recommendations for further improvement. Montenegro has fully accepted all the recommendations and announced that in the upcoming period it will work intensively on fulfilling them.⁹

In its concluding deliberations in relation to Montenegro, the CAT, among other things, repeated the recommendations given earlier and called on the State to:

11. Accelerate adoption of amendments to Article 167 paragraph 2 in relation to paragraph 1 of the Criminal Code in order to include in the legal definition of torture all the elements contained in Article 1 of the Convention and ensure that the punishments for torture correspond to the gravity of the crime, as established in Article 4 paragraph 2 of the Convention. Montenegro should further ensure that there is no statute of limitations for the criminal offense of torture, in order to prevent any risk of impunity in connection with the investigation of the offense of torture and the criminal prosecution and punishment of the perpetrators;
12. Ensure that all persons who are arrested or detained are provided with all basic measures of legal protection against torture in practice, and not just on paper, from the very beginning of their deprivation of liberty.¹⁰

2.3. Montenegro and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The members of the CPT are independent and impartial experts of various profiles, including lawyers, doctors and prison and police experts. The Committee of Ministers of the Council of Europe elects one member for each signatory state. Members serve in their personal capacity (i.e. do not represent the country for which they were elected). In order to further guarantee their independence, the members do not visit the country for

⁹ Communication by the Ministry of Justice, available in Montenegrin in: [Završna razmatranja o Trećem periodičnom izvješću Crne Gore \(www.gov.me\)](#).

¹⁰ Including the rights: (a) to be informed in a timely manner, in a language they understand, of the reasons for their arrest and the charges against them; to sign the appropriate minutes confirming that they have understood the information presented to them; (b) to notify family members, or any other person of their choice, that they have been taken into police custody; (c) to immediate access to independent counsel; (d) to request and receive a medical examination by an independent physician from the beginning of the deprivation of liberty; to health examinations that are conducted out of sight and voice of police officers and prison staff, unless the doctor in question expressly requests otherwise; that the prosecutor is immediately notified of his medical records whenever findings or allegations may indicate torture or ill-treatment; and on health workers who are not exposed to any form of unnecessary pressure or retaliation when performing their duties; (e) that their detention is systematically recorded in the register at the place of detention and in the central register of persons deprived of liberty, which can be accessed by their lawyers and family members.

which they were elected.¹¹ After the visit to the country, the CPT prepares a report on the visit.

After the NGO Civic Alliance has expressed serious concern about the delay in the publication of the CPT Report for Montenegro on June 15 of the current year¹², the Report related to the visit that took place between June 7 and 13, 2022, was published.¹³

The Report showed that there was no substantial progress compared to the previous visit made in 2017, that is, the CPT repeated most of the recommendations that, in addition to concrete examples, refer to observance of the guarantees established in order to prevent ill-treatment, as well as the suppression of the culture of police ill-treatment (see Chapter *Concluding considerations*).

On this occasion, the NGO Human Rights Action (HRA) announced that, despite being warned several times, Montenegro did not suppress the culture of ill-treatment in the police, because it did not effectively prosecute and appropriately punish the police officers responsible for it, including superiors who must be held accountable for actions of those who they manage, as the CPT concluded in the Report on the visit of their delegation to Montenegro.¹⁴

It is also important to note that the CPT has stated that it believes that investigations into allegations of ill-treatment must be conducted quickly and reasonably quickly in order to be effective. It was previously stated that investigations continue to be hampered by the lack of opportunities to identify the perpetrators and that they last longer, especially in the initial stages.

11 More information about CPT available in Montenegrin at: <https://rm.coe.int/16806dbbed>.

12 More information available in Montenegrin at: <https://gamm.org/vlada-da-bez-odlaganja-da-saglasnost-za-objavljivanje-cpt-izvjestaja/>.

13 On June 22, 2023 CPT has published a report available at: <https://rm.coe.int/1680abb132>.

14 HRA announcement available in Montenegrin at: <https://www.hracion.org/2023/06/23/u-crnoj-gori-bez-napretka-u-posljednjih-20-godina-hra-o-izvjestaju-evropskog-komiteta-za-spreccavanje-mucenja/>.

3.

Control and Supervision of Police Work

The Law on Interior Affairs stipulates that the control and supervision of police work is provided by the parliamentary¹⁵, civil and internal control, as well as by the Protector of Human Rights and Freedoms of Montenegro when performing duties of the national preventive mechanism for protection of persons deprived of their liberty from torture and other forms of cruel, inhumane or degrading treatment or punishment and handling complaints about the work of police officers (Article 189).

As we have already said that the focus of the Report is on dealing with specific cases of publicly available allegations of ill-treatment, the parliamentary control will not be the subject of a special analysis on this occasion.

3.1. Council for Civic Control of Police Work

Civic control of police work is carried out by the *Council for Civic Control of Police Work* (hereinafter referred to as: “the Council”). The Council is a body that evaluates enforcement of police powers for protection of human rights and freedoms. Citizens and police officers can address the Council. The Council consists of five members, one of which is appointed by: the Bar Association of Montenegro, the Medical Chamber of Montenegro, the Association of Lawyers of Montenegro, the University of Montenegro and non-governmental organizations dealing with human rights (Article 191). The police are obliged, at the request of the Council, to provide the necessary information and notifications regarding enforcement of police powers (Article 192, paragraph 4). The Council makes assessments, recommendations and conclusions that are submitted to the Ministry. The Ministry takes care of the implementation of the evaluations, recommendations and conclusions of the Council (Article 193, paragraphs 1 and 2).

¹⁵ Parliamentary control of work of the Police is preformed in manner stipulated by a special law in line with Article 190.

3.2. Internal Control of the Police

The internal control of the police is carried out by a special organizational unit of the Ministry. Internal control is operationally independent from the Ministry, the police and other state administration bodies in carrying out tasks within its jurisdiction. The head of the internal control is responsible to the minister for their work and the work of internal control of the Police (Article 194). The tasks of the internal control of police work are, inter alia, control of legality of performance of police work, especially with regard to respect and protection of human rights during execution of police tasks and enforcement of police powers and other controls of importance for efficient and legal police work (Article 195).

The internal control police officer, in carrying out internal control tasks, shall act: on their own initiative; based on collected notifications and other knowledge; on the basis of proposals, complaints and petitions of natural persons and police officers, in connection with enforcement of police powers in performance of police duties; based on request and order of the competent state prosecutor's office; by complaint, if it refers to the response to a complaint about enforcement of police powers in performance of police duties; based on proposal and conclusion of the Security and Defence Committee; based on recommendations of the Protector of Human Rights and Freedoms of Montenegro, as well as based on analysis of evaluations and recommendations of the Council (Article 197, paragraph 1).

Written report on the performance of internal control and the documentation that was created during the internal control procedure can be submitted to the Minister and the Director of the Police in order to initiate procedure for determining the disciplinary accountability of a police officer, to the competent state prosecutor's office, the court and other authorities, based on the powers established by a special law (Article 199, paragraph 4).

The Minister has been informed in a timely manner, in writing, of all cases of undertaking or omission of actions and actions by the Police that are found to be contrary to the law in the internal control procedure.

3.3. Control of Police Work by the Protector of Human Rights and Freedoms of Montenegro

The Protector of Human Rights and Freedoms shall perform work of the national preventive mechanism for the protection of persons deprived of their liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment, and acts on complaints about the work of police officers, in accordance with the law regulating jurisdiction, powers, manner of work and actions of the Protector of Human Rights and Freedoms of Montenegro (Article 202).

The Law on the Protector of Human Rights and Freedoms of Montenegro¹⁶ stipulates that the Protector independently and on their own, on the principles of justice and fairness, shall undertake measures for protection of human rights and freedoms, when they are violated by an act, action or inaction of state bodies, state administration bodies, local self-government bodies and local administration, public services and other holders of public authority, as well as measures to prevent torture and other forms of inhuman or degrading treatment and punishment and measures to protect against discrimination (Article 2). In performing its function, the Protector shall act by indicating, warning, criticizing, proposing or recommending (Article 20, paragraph 2). The procedure for investigating violation of human rights and freedoms is initiated due to a complaint or on one's own initiative. The Protector shall examine violations of human rights and freedoms on its own initiative when they learn that human rights and freedoms have been violated by an act, action or inaction of an authority. In order to act on one's own initiative, the consent of the injured party is necessary (Article 28).

16 Law published in the Official Gazette of Montenegro 042/11, 032/14, 021/17.

After completion of the examination of the violation of human rights and freedoms, the Protector shall give an opinion on whether, in what way and to what extent there was a violation of human rights and freedoms. When the Protector determines that there has been a violation of human rights and freedoms, the opinion shall contain a recommendation on what should be done to eliminate the violation, as well as a deadline for its elimination (Article 41).

3.4. State Prosecutor's Office

As we have already stated, the CPT stated in its report for Montenegro that it is essential to carry out effective investigations into allegations of ill-treatment, in order to show that criminal offenses of the police will be punished, i.e. in order to oppose the current culture of impunity that permeates various parts of the police organization in our country, which supports every message about zero tolerance for ill-treatment.

According to the Constitution of Montenegro, the State Prosecutor's Office is a unique and independent state body that carries out the tasks of prosecuting perpetrators of criminal offenses.

4.

Acting on Publicly Presented Allegations of Ill-treatment

4.1. & 4.2. Report of police ill-treatment on the detriment of Jovan Mrvaljević and Milo Jovanović in Nikšić and Podgorica

On January 3, 2021, citizens Jovan Mrvaljević and Mile Jovanović publicly stated that few days ago current members of the Sector for Combating Organized Crime and Corruption (SCOCC) had *beaten, harassed, tortured, blackmailed them, threatened them with rape and murder, but also that they will harm their families*, asking them to testify falsely that they work for Jovan Vukotić from Kotor and that they have the task of killing someone from Kavač.

They have asked the Minister of the Interior, Sergej Sekulić, and the Police Administration (PA) to protect them and assess whether they are at risk, because members of the SCOCC, as they claim, told them that they knew they would not live for a month. The PA dismissed their accusations, stating that on that night they have prevented execution of a serious crime against life and limb, which could have arisen as a result of a conflict between members of organized criminal groups, and a gun with erased serial number was found in the car in which Mrvaljević, Jovanović and Vladan Mijušković (36), as well as balaclava, gloves, and encrypted phones. They also pointed out that false accusations and reports will not stop them, but that the activities will continue with *undiminished intensity, coordinated and planned, all with the aim of completely neutralizing these criminal groups*.¹⁷

The Prosecutor's Office, the Council, and the Department for Internal Control did not submit responses regarding their actions in this specific case, nor is there any publicly available information about it.

¹⁷ Part of media reports: Accused SCOCC for torture, Police claims they have been planning a murder?, Vijesti, January 3 2021; Reports about ill-treatment „hindsight”: Thus spoke Zoran Lazović at the end of January 2021, Vijesti, March 27, 2023.

From the Opinion of the Protector¹⁸ it follows that, based on actions taken in the case of Jovan Mrvaljević, and in connection with his allegations that he was tortured on the night between December 30 and 31, 2020 in order to force a confession from him, there was a violation of all three guarantees against ill-treatment. The Opinion in question states that the CPT consistently emphasizes importance of three procedural guarantees established in order to protect against ill-treatment, namely: the right to access a lawyer, the right to access a doctor and the right to be informed by a third party of choice. This presupposes that persons deprived of their liberty are properly informed of these rights, verbally after apprehension and, as soon as possible, in writing (e.g. through a *letter of rights* or other document establishing the rights of persons in police custody) in a language they understand. This *trinity of rights* should be applied from the very beginning of the deprivation of liberty by the police - that is, when the person in question is obliged to remain in the police.

Without privacy during a medical examination

Paragraph 17 of the Opinion: *The Protector has already noted that the medical examination of the complainant was carried out under the supervision of the acting official of the SCOCC, by the decision of the acting official, not a medical doctor, from which it can be concluded that the complainant was not able to express himself freely and possibly report ill-treatment. In this regard, the Protector notes that from the report of a specialist doctor no. of protocol 23197 from December 31, 2020 concludes that the acting officers spoke on behalf of the complainant: "brought by the police, who state that during the arrest there was suffocation, rapid breathing, clenched fists", while the report does not state that the complainant said anything.*

The Opinion further states that, bearing in mind the inconsistency of the complainant's allegations related to physical ill-treatment, presented in the newspaper text, in the statement given to the Department for Internal Control and before the Protector of Human Rights and Freedoms, which are significantly different both in terms of location, the number of perpetrators and the manner in which the ill-treatment was carried out, and given the fact that the complainant was at liberty immediately after the event, i.e. was able to obtain other medical findings and photographs that would indicate physical injuries that would undoubtedly have to be visible, and which findings and/or the claims of the complainant, before the Protector, were not substantiated by the photographs, the Protector could not establish the ill-treatment as presented in the complaint. At the same time, the Ombudsperson, in the Opinion they have submitted to the Basic State Prosecutor's Office, expressed the expectation that the BSPO will conduct the procedure within a reasonable time and inform the Institution about the outcome of the proceedings.

However, what the Protector has established based on the case file submitted by the Department for Internal Control, and what the Department did not establish, is that Mrvaljević was illegally deprived of his liberty by acting officers of the SCOCC. Also, it was established that the Department has violated the complainant's right to address - response from Article 57 of the Constitution of Montenegro, because the complainant did not receive any response, nor the results of the investigation regarding the report of ill-treatment to this Department.

18 Opinion of the Ombudsperson no. 640/22 of 30 December 2022.

Illegal summoning of citizens by the police, which is effective immediately

In this case, the Protector has noted that the complainant signed delivery note no. 914/03 dated December 23, 2020 in which it is stated that on December 30, 2020 he has received summons no. 914/03 dated December 23, 2020, from the appointed body (Police Administration Security Centre Nikšić), although the event in question happened on December 30, 2020. In this procedure as well, the Protector encountered a continuity of bad practice during the application of the institute of summoning citizens in order to collect information in their capacity as citizens, which is not in accordance with Article 259 of the Criminal Procedure Code, and about which he has warned several times. The Protector also reminded of the position of the European Court of Human Rights in the case of *Asanović v. Montenegro*, who was also summoned to report to the police immediately, that the Court considers that such a warning did not give the applicant the opportunity to act in accordance with the summons. Although the parties do not agree on whether the applicant complied with the summons voluntarily or was brought by the police, the domestic court found that the police officers took him by the hands to their vehicle and then to the police station, therefore, the Court considers that it was established that the applicant was forcibly brought to the police station, which is in violation of Article 259 paragraph 1 of the Criminal Procedure Code, which represents a *de facto* deprivation of liberty.¹⁹

The Ombudsperson gave a recommendation to the Police Administration to act consistently in future proceedings in accordance with provisions of the Criminal Procedure Code, as well as the Law on Interior Affairs, which prescribes the collection of notifications from citizens, as well as actions in the case of deprivation of liberty by the police, as well as the Department for Police Control to without delay, provide the complainant with a written response regarding the handling of the report that citizen Mrvaljević submitted to them.

Although the prosecution did not submit the response regarding the allegations of citizen Mrvaljević, it was reported in the media that he was questioned by the Basic State Prosecutor's Office in Podgorica in July 2023, and that *despite the actualization of that case at the beginning of this year, there is still no indications that accountable persons would be processed.*²⁰

At the time of concluding the work on this Report, proceedings before the Protector in the case of Milo Jovanović were ongoing. There is no publicly available information about actions of the prosecution, the Department for Control of Police Work, as well as the Council for Civic Control of Police Work.

Previously, the NGO for Human Rights Action, analysing proceedings of prosecution regarding the criminal complaint against an unknown perpetrator for the criminal offense of torture, which was filed shortly after Jovanović's arrest, his lawyer, concluded: *Although the State Prosecution did take several actions in this case, its action in completeness was such that it does not create even the semblance of an intention to conduct an effective investigation. No possible perpetrator is allegedly known to the prosecution, and the evidence that would have to enable identification certainly exists and could be provided.*²¹

19 *Asanović v. Montenegro*, paragraph 66.

20 Jovan Mrvaljević interviewed due to police torture, still no one held accountable, portal RTCG, July 29, 2023.

21 Report Efficiency of ill-treatment investigations in Montenegro 2020–2021, pg. 134, NGO Human Rights Action, June 2022.

4.3. Report of police ill-treatment to the detriment of Jovan Durović in Bar

Jovan Durović from Nikšić submitted a criminal complaint to the Basic State Prosecutor's Office in Bar against several police officers from Security Centre Bar for, as he stated, the ill-treatment and beating he has experienced on July 9, 2021. A report on the *brutal and horrible behaviour of some of the police officers from Bar* was also submitted to the Internal Control of the Ministry of the Interior. According to him, five members of the Bar Police, assisted by their colleagues from Bijelo Polje, beat him with a "wooden baton", "trundle" and "fists on the head". During the ill-treatment, the police officers used a "helmet" and "body armour" so that no marks would remain on his body. Due to the beating he has received, the young man was even unconscious at one point. This 24-year-old man from Nikšić claims that everything is stated in the medical report in which chest and shoulder injuries were noted. Durović was a participant in patriotic rallies during the spring, and when he was detained he was wearing a T-shirt with the Montenegrin coat of arms and patriotic motifs, which bothered the police officers from Bar.²²

According to publicly available data, the Council has concluded that there are serious allegations of disproportionately used means of coercion, which the Council deemed necessary to be checked without delay. On this occasion, the contacts of the citizen Durović were handed over to the Police Administration, a criminal complaint was submitted, which was received directly from the person in question by the competent state prosecutor, and the urgency of the action was requested.²³

The Police Administration has stated that the *officers of the Security Centre Bar have acted on the report of M.R. (22) from Lazarevac who is an officer of the police of the Republic of Serbia and who stated that while he was in Sutomore he was physically attacked by a person unknown to him and knocked him to the floor, while Jovan Durović from Nikšić, whom he met just before this event at that place, stole his official identification card, personal documents and money in the amount of 20 euros from his pocket.* On the same day, the police located and brought J.D to the official premises. who was interviewed about the circumstances of the event. The police collected information from N.R., the state prosecutor in the Basic State Prosecutor's Office in Bar was informed about the event, who stated that the actions of these persons do not contain elements of a criminal offense, the prosecution of which is undertaken *ex officio*. Against N.R. a *misdeemeanour report* was filed for a *misdeemeanour from the Law on Public Order and Peace*, according to a statement from the Police Administration. Employees of a hotel in the area of Bar, as they say, found a stolen official ID on the beach and it was returned to the owner.²⁴

Negative solidarity of police officers

Also, the Council noted that in this specific case, the Security Centre Bar police officers showed excessive solidarity with their colleague from the Republic of Serbia and thus raised an unnecessary fuss about the disappearance, loss or misappropriation of his official badge. Finally, the Council assessed that the police officers who exercised police powers against the citizen Mr. Jovan Durović, during the arrest and transportation to the official premises of the Security Centre Bar as well as in the official premises of the Security Centre Bar, exceeded their authority and resorted to treatment and interrogation techniques that led to and represent inhuman and degrading treatment.²⁵

22 Part of media reports: BRUTAL POLICE TORTURE IN SECURITY CENTRE BAR; Coat of Arms of Montenegro perceived as provocation; Person from Nikšić FAINTED from beatings, body armour used to hide injuries!?, portal Standard, July 13, 2021; Durović: I am willing to take polygraph, Analitika, July 17, 2023; Citizens protested because of attack on Durović, Bar info, July 23, 2021.

23 More information available in Montenegrin at: <http://www.kontrolapolicije.me/blog/barski-policajci-zlostavljali-jovana-%C4%91urovi%C4%87a-iz-nik%C5%Al%C4%87a>.

24 Police Administration: Officers of the Security Centre Bar did not make threats to Durović nor have used force, Standard, July 15 2021.

25 More information available in Montenegrin at: <http://www.kontrolapolicije.me/blog/barski-policajci-zlostavljali-jovana-%C4%91urovi%C4%87a-iz-nik%C5%Al%C4%87a>.

On November 1, 2021, the Department for Internal Control of the Police informed the citizen Durović that the report with the case files, drawn up in the internal control procedure, was submitted to the Basic State Prosecutor's Office in Bar for further proceedings, and a final assessment and decision whether in the actions and behaviour of the police officers R.M., M.S., R.D. and D.S. of the Security Centre Bar, who in the case in question undertook official measures and actions against the citizen Durović, have elements of the criminal offense of ill-treatment or other criminal offense for which they are prosecuted *ex officio*.

After the CEDEM has requested more information about this case from the prosecutor's office, the Basic State Prosecutor's Office in Bar issued the decision Tuspi no. 7/23 of August 9, 2023, in which it is stated that the Basic State Prosecutor's Office in Bar upon report by Jovan Durović from Nikšić on July 12, 2021 has opened a case business designation Kt no. 388/21 against police officers S.D., M.R. and S.M. due to the criminal offence of ill-treatment referred to in Article 166a paragraph 2 in connection with paragraph 1 of the Criminal Code of Montenegro. After the procedure, on June 30, 2023, the State Prosecutor has issued a Decision dismissing the criminal charges, because there is no reason to suspect that the suspects have committed the reported criminal offense, nor any other criminal offense prosecuted *ex officio*. It has also been stated that the notification with the Decision on the dismissal of the criminal complaint was properly delivered to the injured party, who does not require a review of the given decision by submitting a complaint to the Higher State Prosecutor's Office in Podgorica.

The Protector of Human Rights and Freedoms did not act in the specific case, that is, Jovan Durović did not address the aforementioned authority nor did he act on his own initiative.

4.4. Report of police ill-treatment to the detriment of Ivan Roganović in Cetinje

Ivan Roganović from Cetinje filed a criminal complaint against the police officer who has hit and stomped on him during the raid in his restaurant on July 28, 2021. *Roganović has submitted a video to "Vijesti" showing how during a police raid a uniformed police officer is putting him on the ground, and then stomps on his head and hits him. The raid was carried out by officers of the Anti-Crime Sector (ACS).*²⁶

In its Opinion²⁷ the Ombudsperson has concluded that the officer of the Police Administration – Anti-Crime Sector, on a critical occasion, acted inhumanely to the detriment of the complainant, hitting him four times in the head and body area, which has led to violation of Article 3 of the Convention.

Negative solidarity makes it impossible to prove ill-treatment

After the officers have tried to present the obvious ill-treatment from the video recordings as the legal actions of their fellow officers through official notes, the Ombudsperson has noted that, in context of the described actions of the prison officials, the complainant's efforts to prove the ill-treatment would probably be futile without the existence of the video recordings and the fact that the punches he has suffered did not lead to physical injuries. In this regard, the Ombudsperson reminded that if information indicating ill-treatment is not acted upon quickly and efficiently, *officials who are prone to ill-treating persons deprived of their liberty will quickly believe – and with reason – that they can do so with impunity. All efforts made to promote human rights, through strict recruitment and professional training, will be doomed to failure. If effective measures are not taken, all*

26 Part of media reports: Police officer kicked owner of a pub, Pobjeda, July 30, 2021; Roganović: If the Police Administration does not do it I will say who ordered to stamp me on the head during a raid, Vijesti, August 3 2021; DISTURBING: Police officer during a raid stamping on the head and kicks person from Cetinje, Vijesti, July 29, 2021.

27 Opinion number no. 01- 598/21-8, of January 25, 2021.

the persons concerned – colleagues, senior managers in the police, investigative bodies – will contribute to the corrosion of those values that form the very basis of a democratic society.²⁸

In this case, the Ombudsperson has recommended to the Police Administration to ensure consistent compliance with national regulations, confirmed international agreements and generally accepted rules of international law that relate to the respect of human rights when undertaking actions within its jurisdiction, with a special emphasis on ensuring zero tolerance of ill-treatment, as well as that all claims that someone has been ill-treatment, regardless of the fact that they are not presented in the form of a criminal report or a formal complaint, are immediately processed in accordance with the Law. He also recommended to the Department for Internal Control of the Police to examine the existence of responsibility of the police officers of the Security Centre Cetinje in connection with the handling of allegations of ill-treatment made by the complainant on July 28, 2021.

From the report of the Department for Internal Police Control K.47/21 dated August 17, 2021. on the control of the legality of the actions of police officers, it was concluded that the police officer V.V. unlawfully used coercion against a citizen R.I., whereby his actions acquired the characteristics of a serious breach of official duty referred to in Article 95 paragraph 1 point 4 of the Law on Civil Servants and State Employees, which is why it is proposed to initiate disciplinary proceedings. In addition, it was suggested that the said report is be submitted to the Basic State Prosecutor's Office in Cetinje for further proceedings, due to the existence of a well-founded suspicion that V. V. committed the criminal offense referred to in Article 166 a paragraph 2 of the Criminal Code of Montenegro.²⁹

The Council for Civic Control of Police Work found that during the intervention in Cetinje there was an obvious excessive use of force by a police officer. The Council called on the (current) Director of the Police Administration, Zoran Brđanin, to temporarily remove the police officer who, as reported, had clearly exceeded his police powers, pending the completion of further proceedings.³⁰

After the CEDEM has requested more information about this case from the prosecution, the Basic State Prosecutor's Office in Cetinje has issued the Decision Tuspi no. 7/23 of August 14, 2023, in which it is stated that the Basic State Prosecutor's Office in Cetinje, after the investigative procedure, has submitted an indictment to the Basic Court in Cetinje on September 21, 2021 against the suspected police officer V.V. from Podgorica due to the criminal offence of ill-treatment referred to in Article 166a paragraph 2 in connection with paragraph. 1 of the Criminal Code of Montenegro, carried out to the detriment of I.R. from Cetinje on July 28, 2021 in Cetinje. After the main hearing before the Basic Court in Cetinje, Judgment K. no. 74/21 dated January 1, 2022 was issued, by which the defendant V.V. from Podgorica was found guilty of the aforementioned criminal offense and was sentenced to four months in prison, which will be served the living premises of the defendant. On January 24, 2022 the prosecutor has filed an appeal against the decision on the sentence, which, according to the Judgment of the High Court in Podgorica business designation Kž. 103/2022 of April 15, 2022 was dismissed as unfounded, and the first-instance judgement was confirmed.

28 General CPT Report No. 14 – Combating impunity of torture, 2004, paragraph 25.

29 See judgment of the Basic Court in Cetinje K 74/2021, available in Montenegrin at: <https://www.sudovi.me/osct/odluka/476834>.

30 The Council for Civic Control of Police Work: Obvious excessive use of force by police officer, Vijesti, July 29, 2021, available in Montenegrin at: <https://www.vijesti.me/vijesti/crna-hronika/560254/savjet-za-gradjansku-kontrolu-rada-policije-ocigledna-prekomjerena-upotreba-sile-policijskog-sluzbenika>.

Lenient penalty policy for ill-treatment

The cited judgment of the Basic Court in Cetinje states that the official V.V. is found guilty because on July 28, 2021, at around 10:00 p.m., in front of a catering establishment... he was aware of his act, the execution of which he wanted, knowing that his act was prohibited, acting as an official in performance of his duties – a police officer of the Police Administration – Department for special operational support in the Anti-Crime Sector, ill-treated the victim R. I. and treated him in a manner that insults human dignity, by approaching the victim and addressing him with the words: Lie down, you pig, after which he has hit the victim with his right foot in the in the area of the victim's right thigh, then a kick with the left foot in the right rib area, then a kick with the sole of the right foot in the back of the victim's head, pushing his head to the ground, then a kick with the right foot in the right rib and shoulder area of the victim's body, thereby committing a criminal offense ill-treatment referred to in Article 166a paragraph 2 in connection with paragraph 1 of the Criminal Code of Montenegro, for which he was sentenced to a prison term of 4 (four) months, which shall be served by the defendant serving it in the premises where he lives. When deciding on a criminal sanction, the court in the sense of Article 42 paragraph 1 of the Criminal Code of Montenegro appreciated all the circumstances that affect its choice and length, so as extenuating circumstances on the part of the defendant, the court appreciated his personal and family circumstances, that he is married, the father of one minor child whom he is obliged to support, his behaviour after the committed the crime expressed in a way he has accepted the responsibility and has shown remorse for the committed crime, as well as his earlier life, i.e. earlier impunity... According to the court's assessment, considering the personality of the defendant and his earlier life, it can be expected that the purpose of punishment referred to in Article 32 of the Criminal Code of Montenegro within the general purpose of prescribing and imposing criminal sanctions referred to in Article 4 paragraph 2 of the Criminal Code of Montenegro, and in the Risk Assessment Report prepared by the Directorate for the Execution of Criminal Sanctions, it is concluded that in a specific case, the applicable criminal sanction is imprisonment in the premises where the convicted person lives, because the total estimated risk of recidivism, in the short term and in the long term, it is at a low level.

After the prosecutor filed an appeal against the decision on the sentence, it was dismissed by the judgment of the High Court of the court in Podgorica business designation Kž. 103/2022 of April 15, 2022 was rejected as unfounded, and the first-instance judgement was confirmed.

In connection with the criminal policy, see below the judgment regarding the ill-treatment of a football player Damir Kojašević.

4.5. Throwing a stun grenade at Stefan Vuković in Cetinje

Stefan Vuković (24) from Nikšić, with assistance of a civic activist Aleksandar Saša Zeković and the Montenegrin Helsinki Committee, addressed the Council for Civic Control of Police Work, the Internal Control of the Police and the Ombudsperson with a complaint about the actions of a police officer who, as he claims, repeatedly targeted him with a stun grenade on September 5 in Cetinje.³¹

³¹ Part of media reports: Person from Nikšić submitted a complaint: The police officer has thrown stun grenades on me on purpose, Pobjeda September 10, 2021; Person from Nikšić has complained: The Police officer has thrown stun grenades on me on purpose, Standard, September 10, 2021; They have thrown stun grenades although they are not allowed to do so, Vijesti, December

In its Opinion, the Ombudsperson³² has established a violation of Article 3 of the Convention to the detriment of Stefan Vuković, having previously established that citizen Vuković sustained physical injuries during the aforementioned event in the form of burns on his left cheek and ear, as well as on his left tibia.

Failure to make a report on the use of chemical agents – serious breach of official duty

The Ombudsperson has noted that the reports on the use of chemical agents that were used on this occasion were not made, which is a serious breach of official duty according to the Law³³ and at the same time pointed out the importance of timely preparation of reports on the use of coercive means. In connection with the reports on the use of chemical means of coercion, the Protector recalled the previously given Opinions³⁴ in which formalism was observed in reporting and the procedure for assessing the legality and justification of the use of chemical means that were applied in relation to citizens who participated in a public unannounced gathering in 2020 in Pljevlja.

In the specific case, the Ombudsperson has recommended the Police Administration to ensure that reports on the use of coercive means are prepared without exception and they should contain all relevant circumstances and information regarding the use of coercive means in each specific case in accordance with the Law, to organize training on the proper use of chemical coercive means consistent compliance with national regulations, confirmed international agreements and generally accepted rules of international law, as well as to consider the possibility of audio-visual recording of all police actions.

From the Ombudsperson's Opinion it can be concluded that the Department for Internal Control of the Police also have acted, but it is not stated how the Department has concluded the case.

The Council for Civic Control of Police Work has initiated the procedure, but it is not known how the control procedure has ended.³⁵

After the CEDEM has requested more information about this case from the prosecution, the Basic State Prosecutor's Office in Cetinje has issued the decision Tuspi no. 7/23 of August 14, 2023, which states that after the investigation in the criminal case formed due to reported police ill-treatment committed on September 5, 2021 in Cetinje, to the detriment of S.V. from Nikšić, this prosecutor's office, in relation to the accused police officer B.D. due to lack of evidence on July 28, 2023 has issued an order on the suspension of the investigation, conducted due to the criminal offense of torture referred to in Article 167, paragraph 2 in connection with paragraph 1 of the Criminal Code of Montenegro, in conjunction with the criminal offense of ill-treatment of official position referred to in Article 146 paragraph 1 of the Criminal Code of Montenegro, in connection with Article 48 paragraph 1 of the Criminal Code of Montenegro, while in the same case the Basic State Prosecutor's Office, on August 1, 2023, has filed an indictment before the Basic Court in Cetinje, against the accused police officers R.K. for the criminal offense of torture by incitement from Article 167 paragraph 2, in

4, 2021.

32 Opinion no. 01-706/21-4 of February 17, 2021.

33 In addition to more serious violations of official duties determined by the law regulating the rights and obligations of civil servants and state employees, more serious violations of official duties of police officers shall be: failure to report on the use of coercive means. (Article 173, paragraph 1, point 18).

34 Opinion no. 01-128/20-5 of September 9, 2020; Opinion no. 01-369/20-3 of November 13, 2020.

35 Information on initiating the procedure available in Montenegrin at: <http://kontrolapolicije.me/blog/policajac-vi%C5%A1e-puta-ciljano-ga%C4%91a-%C5%A1ok-bombom-gra%C4%91anina-vukovi%C4%87a>.

connection with paragraph 1, in connection with Article 24, paragraph 1 of the Criminal Code of Montenegro and against M.L. for the criminal offense of torture referred to in Article 167, paragraph 2, in connection with paragraph 1 of the Criminal Code was carried out on September 5, 2021. in Cetinje to the detriment of S.V. from Nikšić, and before the Basic Court in Cetinje, the process of control and confirmation of the indictment is ongoing.

Until the conclusion of the work on the Report, it is not known whether the indictment has been confirmed.

4.6. Report of police ill-treatment to the detriment of Lidija Vujović in Podgorica

On December 28, 2021, citizen Lidija Vujović told Vijesti in a telephone conversation that the police officers ill-treated them in the family home, looking for their son. *They have blocked the entire street, besieged the family house, upset the children... They have searched the house twice, without showing a warrant, said Lidija Vujović. She also explained that one of the police officers, while she was asking for a search warrant, tried to jump over the fence, and that some of them threatened to kill their dogs. She added that, before the illegal search, her husband was fraudulently called to the Podgorica Security Centre, allegedly for a traffic violation, and that they used that time to force their way into their house. Vujović also pointed out that the police officers did not want to tell her why they were looking for her son.*³⁶

The Ombudsperson concluded existence of violation of Article 28, paragraph 2 of the Constitution, by the Police Administration which did not fulfil its positive obligation to protect the procedural aspect of the right to the prohibition of torture in accordance with Article 3 of the European Convention, in such a way that it would have investigated without delay the allegations given in the written complaint of the complainant contained in the Certificate of Entry into the Apartment and other premises on December 28, 2021. Previously, the Protector established that the allegations contained in the complaint were consistent with the written objection that the complainant made immediately after the action was carried out, when she stated on the Certificate of Entry into the apartment and other premises: *The officers in civilian clothes and uniforms told me that they had an Order that they didn't want to show me. They also threatened to force their way in, break everything and kill the dogs. I let them in because I was afraid of people with balaclavas. There were over 20 of them and no one told me their name. They have coming in and out of the house as they wanted. I believe that this is illegal and I will ask them to review the procedure of "forcible" entry into the house because there was no order from the investigative judge. They have searched the house from the basement to the roof and did not find the person they were looking for, who I told in advance was not there. I believe that the state prosecutor should be informed about this, and they have told me that they would inform him about it later on. I was also deceived, because they told me they had an Order and that they would give it to me when they entered. And, of course, they didn't have it. For how long things will be done like this?*

The Ombudsperson has also noted that the acting official made a Certificate of entry into the apartment and other premises in which he stated, as the reason for entry: the owner of the apartment requested it, although it follows from the complaint contained in the certificate that the complainant (owner of the apartment) did not request entry .

36 Police searching for Ivan Vujović, Vijesti, December 28, 2021.

Efficient and effective investigation – the key to preventing ill-treatment

The Ombudsperson stated that the Police Administration is obliged to investigate allegations of ill-treatment and to make all necessary efforts to prosecute perpetrators of criminal offences. The key to preventing ill-treatment and effectively combating it is to conduct an efficient and effective investigation in all cases where there is a serious suspicion that ill-treatment has occurred. Serious suspicion exists in all circumstances in which there are facts that directly or indirectly indicate that an official or another person in an official capacity unjustifiably violated physical or psychological integrity. Detecting, prosecuting, and punishing perpetrators of ill-treatment represents one of the most vital social interests, which suppresses the phenomenon of impunity and creates a strong deterrent effect on state agents to whom the law has delegated the authority to use force.

In the cited Opinion, the Ombudsperson recommended to the Police Administration to effectively investigate without delay the allegations of the applicant, which she presented in the form of objections to the Certificate of entry in the apartment and other premises from December 28, 2021, as well as that, in the future, Police Administration officers consistently apply police powers in accordance with the Law on Interior Affairs and the Code of Criminal Procedure.

There is no publicly available information that the State Prosecutor's Office, the Council for Civic Control of Police Work and the Department for Internal Control of the Police have acted on this occasion.

4.7. Report of police ill-treatment on detriment of Damir Kojašević in Podgorica

Lawyer Azra Jasavić publicly stated that on October 28, 2022, *Kojašević was tortured by the police on October 28 when he was stopped in Konik and that children from a nearby school could also see it. Damir Kojašević had a cast on his arm. It is clear that he did not resist at all and that he has experienced what you saw on the video, which is that he was tortured and ill-treated, said Jasavić in the morning TV program Dobro jutro Crna Goro.* She has submitted criminal reports to the Supreme State Prosecutor's Office, and addressed the Police Administration, the Ministry of Interior Affairs, and the Ombudsperson. We expect all competent authorities to take all the measures provided for by law, to establish all the facts related to this case and to prosecute everyone who participated in it, she said. She pointed out that Damir Kojašević expects the authorities to do their job.³⁷

The Council for Civic Control of Police Work has established that one of the police officers had an extremely unprofessional attitude towards athlete Damir Kojašević, abusing him through violent behaviour and a demonstration of force and power towards him. The Council believes that the second police officer tried to prevent or stop such behaviour of his colleague towards the citizen, while the third police officer did not take part in the physical contact. The Council believes that the second police officer tried to prevent or stop such behaviour of his colleague towards the citizen, while the third police officer did not take part in the physical contact. The council, they recalled, had previously noted that the Police Administration gave announcement only after the independent media CdM has published a

³⁷ Part of reports in media: Jasavić: Kojašević has experienced a torture, I expect that police officers will be held accountable, *Analitika*, November 1, 2022; JASAVIĆ: Kojašević has experienced a torture, it is expected that responsible persons will be processed, *Standard*, November 1, 2022

video recording of the ill-treatment. This indicates, it was announced from the Council, that there is still a *culture of silence in the Police Directorate and that, despite promises, nothing has been done to overcome it and strengthen accountability*.³⁸

Although the Police Administration has announced that the Department for Internal Control is familiar with the video, and will decide whether the police officers will be temporarily removed from work³⁹, no publicly available information about the final decision can be found.

In its Opinion,⁴⁰ the Ombudsperson has concluded that the action of the police officer in the specific case has violated the right to inviolability of the physical and psychological integrity of the complainant referred to in Article 28, paragraph 2 of the Constitution and represents humiliating treatment that violates Article 3 of the European Convention. In this case, too, it was noticed that the official notes made by the acting police officers did not correspond with the content of the video recording.

The medical report was not made in accordance with the Istanbul Protocol

The Ombudsperson has indicated that the report of the specialist doctor in this case was not prepared in accordance with the Istanbul Protocol. Namely, the Istanbul Protocol prescribes the method of documenting the injuries of a person who claims to have been previously ill-treated or tortured by police officers and reminds that the doctor's report should contain details about the patient, place and time, details of the history of the event, physical examination and therapy, identification and description of the injuries, other information from medical records, and a conclusion on the degree of coincidence of injuries. The concrete report of the Clinical Centre did not contain a clear description of the injuries, as well as a photograph of the injury. In this regard, the Ombudsperson has reminded of the obligation to take colour photos as soon as possible, even with the simplest photo camera.

The Ombudsperson has recommended the Police Administration to ensure the implementation of the CPT's recommendation that there must be a clear understanding that responsibility for ill-treatment extends beyond the perpetrators themselves to all those who know, or should know based on their position, that ill-treatment is taking place, and do not undertake actions to prevent it or report it, which implies the existence of a clear line of reporting, as well as the adoption of protective measures for persons who report ill-treatment, and consideration of the possibility of audio-visual recording of all police actions. Also, the Clinical Centre was recommended to ensure the consistent application of the Istanbul Protocol in practice.

According to the first-instance judgment of the Basic Court in Podgorica, police officer M.S. was found guilty of the criminal offence of ill-treatment, which he has committed to the detriment of D.K. and sentenced to a prison sentence of 3 months, which will be served in the premises where the defendant lives... This criminal offense is punishable by a prison sentence of three months to three years, and the court, when determining the sentence, appreciated numerous mitigating circumstances on the part of the defendant, as a result of which he found that such a punishment would achieve both special and general prevention. At a critical moment, the injured party was stopped in traffic by the sound and light signalling of the official vehicle, after which the defendant treated him in a manner that insulted human dignity, asking him if there were problems, then grabbed him by the collar of his shirt and pushed him towards

38 Council for Civic Control: Police officer ill-treated football player Damir Kojašević, portal CdM, December 9, 2022.

39 Investigation regarding allegations on police ill-treatment of a Montenegrin football player, Radio Free Europe, October 31, 2022.

40 Opinion no. 01-750/21-4 of December 9, 2022.

the back of the vehicle, giving him two punches with an open fist in the neck area, and when the injured party told him that he was going to sue him, the defendant pushed him away and has hit him again with fist in the neck area, swearing at him. The injured party suffered a slight physical injury in the form of a swelling of the right behind the ear.⁴¹

At the time of concluding the work on the Report, the first-instance judgment was not legally binding, while the injured party, Kojašević, announced that he would file an appeal.⁴²

Civil Alliance – continued lenient criminal policy

On the occasion of the first-instance judgment, the NGO Civic Alliance announced that it is inadmissible for police officers to be punished with house arrest for offence of ill-treatment, as in the case of ill-treatment of the football player Damir Kojašević, which continues the lenient punishment policy of Montenegrin courts, which, appreciating mitigating circumstances, reduced penalty to a legal minimum. *In this way, judicial practice gives a message that ill-treatment will not be adequately sanctioned and that police officers can return to regular police work without any consequences. This is supported by the case of police inspector Slobodan Vulcanović, who was punished with the same sentence for giving 30 punches to the head and limb, lasting four months, the Civil Alliance has announced.* They also stated that such a judgment raises serious doubts about accountability in cases of police torture, which creates an atmosphere of impunity, and supports an unacceptable type of behaviour among police officers, as well as that such behaviour further threatens citizens' trust in police institutions and the judicial system.⁴³

4.8. Report of police ill-treatment on the detriment of the Albanian citizen at the Sukobin border crossing in Ulcinj

On February 21, 2023, a video recording of ill-treatment of an Albanian citizen by members of the Montenegrin police was published on social networks, stating that it was an event from January 15, which took place at the Montenegrin-Albanian border crossing Sukobin – Murićani, near Ulcinj.⁴⁴

On this occasion, the Police Administration has stated: *in relation to this event, actions were taken that resulted in establishing the identity of all actors of the said event. The determination of the responsibility of the officers of the Police Administration is ongoing, as well as the procedure before the Department for Internal Control of the Police.*⁴⁵

The Council for Civic Control of Police Work assessed that the police officers acted unprofessionally in the specific situation. The Council stated: *if there was no recording, the compromised and unprofessional behaviour would have remained unknown. After so many years, the poor quality of police culture is once again coming to the fore. Inappropriate and illegal solidarity is still present. Not a single officer of the Border Police reported a colleague who behaved inappropriately towards a university professor from Tirana on the critical day.* The Council also assessed that the police officer whose behaviour was documented in the

41 The announcement of the Basic Court in Podgorica is available in Montenegrin at: <https://sudovi.me/ospg/sadrzaj/kyBn>.

42 Kojašević: I am not satisfied with the judgment; there will be an appeal. *Vijesti*, September 15, 2023.

43 GA: It is inadmissible for police officers to be punished by house arrest for ill-treatment, *Vijesti*, September 17, 2023.

44 Part of media reports: Montenegrin police officers ill-treated the Albanian citizen, *Vijesti*, February 21, 2023; Police officers from video recording on the border arrested: Ill-treatment of the Albanian citizen?, *Dan*, February 22, 2023.

45 The Montenegrin Police states that recording of ill-treatment of the Albanian Citizen on the border dates from January, Radio Free Europe, February 21, 2023.

video should be temporarily removed from service because the available evidence indicates a more serious violation of official duty. The Council has previously indicated several times that the activities undertaken by other competent authorities, such as the State Prosecutor's Office, have no reference, do not influence or challenge the need and obligation to implement and complete disciplinary procedures within the Police Administration and the Ministry of Interior Affairs.⁴⁶

Temporary removal of police officers from work of police officers

In a similar situation, and in connection with five police officers against whom, on May 16, 2022, the Decision of the Basic Court in Podgorica Kvo. no. 22/22, confirmed indictment for the criminal offense of extorting a statement referred to in Article 166 paragraph 2 of the Criminal Code of Montenegro to the detriment of the citizen M.B., the Ombudsperson, due to different interpretations of the imperative norm of Article 176, paragraph 1 point 3 of the Law on Interior Affairs, and the appeal of the NGO Human Rights Action to join the initiative to protect the legality of work in relation to the Ministry of Interior Affairs, on April 3, 2023, called for the consistent application of the law, i.e. acting in accordance with the cited provision. The aforementioned provision stipulates that a police officer shall be temporarily removed from work, if criminal proceedings have been initiated against him due to a criminal offense committed at work or in connection with work.⁴⁷

The Minister of Interior Affairs informed the HRA that on April 5, he has signed Decisions on the temporary removal from work of four police inspectors. Thus, as they stated, Minister Adžić fulfilled his legal duty after nine months of refusing to do so. *Inter alia*, the HRA stated that this suspension would not have occurred without the efforts of Action for Human Rights to persevere in reminding Minister Adžić that he is obliged to apply the law, instead of openly doubting the correctness of both that law and the international standard for the prohibition of torture, which contains the same rule. The minister called their admonitions *pressure, harassment, attempts to collapse institutions for the sake of obtaining grants, influence aimed at stopping the fight against organized crime, etc., thus placing them in the same rank as criminals.*⁴⁸

In its Opinion,⁴⁹ the Ombudsperson has established that behaviour of the official towards the Albanian citizen, as well as his son, was a violation of Article 28, paragraph 3 of the Constitution of Montenegro, which stipulates that no person may be subjected to torture or inhuman or degrading treatment.

The Ombudsperson further noted that the officers present at the scene made a statement about the disputed event only after the control procedure had been initiated. Previously, they did not state that it was one of the superiors who prevented the police officer from committing illegal acts. Not a single police officer who was present during the event in dispute stated in his official note that physical contact took place. On this occasion, the Ombudsperson has pointed out the continuity of the bad practice of making official notes that do not correspond to the content of the video.

46 Council: Border police sector discovered attempt to hide unprofessional behaviour, Pobjeda June 22, 2023.

47 Reaction of the Ombudsperson available in Montenegrin at: <https://www.ombudsman.co.me/34917news.html>.

48 HRA announcement available at: [https://www.hraction.org/2023/04/21/ministar-adzic-suspendovao-policijske-inspektore-optuzene-za-torturu/](https://www.hrraction.org/2023/04/21/ministar-adzic-suspendovao-policijske-inspektore-optuzene-za-torturu/).

49 Opinion no. 01- 157/23-14, of August 1, 2023

Ombudsperson – prosecute those who cover up illegalities

The Ombudsperson, analysing the actions of the Department for Internal Control of the Police, determined that they acted immediately after learning about the event from the media, that is, documentation was requested from the Police Administration about the event in question, and the video material from surveillance cameras at the border crossing was seized. However, in his Opinion, the Ombudsperson problematized the fact that the Department for Internal Control failed to examine whether the actions of officials, who tried to protect colleagues who had acted illegally, met the conditions for proposing the initiation of disciplinary proceedings precisely because of the concealment of a serious violation of official duties and failure to submit a proposal for initiation of disciplinary proceedings. The Ombudsperson, analysing the actions of the Department for Internal Control of the Police, determined that they have acted immediately after learning about the event from the media, that is, documentation was requested from the Police Administration about the event in question and the video material from surveillance cameras at the border crossing was seized. However, in his Opinion, the Ombudsperson problematized the fact that the Department for Internal Control failed to examine whether the actions of officials, who tried to protect colleagues who had acted illegally, met the conditions for proposing the initiation of disciplinary proceedings precisely because of the concealment of a serious violation of official duties and failure to submit a proposal for initiation of disciplinary proceedings. In this regard, the Ombudsperson has recommended to the Department for Internal Control of the Police to investigate existence of responsibility of the acting senior commanders of the Border Police Station I - Ulcinj and the assistant commanders in connection with the concealment of commission of a serious violation of official duty and failure to submit a proposal for the initiation of disciplinary proceedings, as well as to investigate existence of the responsibility of officers who, in connection with a specific event, and for the purposes of conducting proceedings before the Department for Internal Control of the Police, made official notes that do not correspond to the content of the available video recordings.

After the CEDEM has requested more information about this case from the prosecutor's office, the Basic State Prosecutor's Office in Ulcinj issued the decision Tuspi no. 13/23 of August 21, 2023, in which it is stated that a criminal report was submitted to the Basic State Prosecutor's Office Ulcinj by Security Department Ulcinj, against police officers D.Š. and N.B., due to the criminal offence of ill-treatment referred to in Article 166a paragraph 2 of the Criminal Code of Montenegro, committed to the detriment of the injured P.M. and A.M. from the Republic of Albania. According to this report, a case was formed in this prosecution with the business designation KT. no. 28/23. The suspects, who were previously deprived of liberty, were questioned in the Criminal Investigation Department Ulcinj on February 23, 2023, namely the suspect D.Š. in presence of defence attorney M.M., and the suspect N.B. in presence of defence attorney R.R. The hearing of the injured party's witness from the Republic of Albania was also requested by rogatory letter, which was still not granted until August 21.

Until the conclusion of the work on this Report, there was no more publicly available information about the epilogue of the prosecution's actions.

4.9. Report of police ill-treatment of a group of citizens by members of the Anti-Terrorist Police Unit (ATPU) in Žabljak

On March 11, 2023, it was announced to the public that at least a dozen members of the Anti-Terrorist Police Unit (ATPU) got into a fight... in a mass fight that took place after midnight in the *Pub Kino* in the centre of Žabljak. Part of the members of the ATPU are training for winter conditions in Žabljak, and according to the regulations, they should not be in the bar in the late evening hours, while the regular annual training is going on. According to *Vijesti's* information from the Police Directorate, a large group of young men, who were intoxicated, attacked members of the ATPU. As many as five people were injured in the mass brawl, who got the better of them in the conflict with members of the ATPU. The prosecutor from Pljevlja was informed of the event in Žabljak, on whose orders measures and actions are being taken to establish all the facts of the mass fight. Managers of the ATPU will initiate an internal procedure to determine possible accountability of the unit members.⁵⁰

The CdM portal announced that on March 14, 2023, officers of the Department for Internal Control of the Police of the Ministry of the Interior began interrogating members of the ATPU who participated in the fight.⁵¹

There are no publicly available information on the outcome of the actions of the Department for Internal Control of the Police, as well as on whether the Council for Civic Control of Police Work acted on the allegations in question.

In August of the current year, the institution of the Ombudsperson replied that the procedure was initiated on its own initiative and that the case is still in progress.

4.10. Report of ill-treatment by police from Security Department officers in Nikšić

On April 14, 2023, it was announced to the public: *police officer Jovan Peković was arrested and suspected of ill-treating a person in Nikšić. After a short discussion, the police officer has physically attacked a fellow citizen, knocking him to the ground, hitting him twice and inflicting serious injuries in the form of three fractured ribs.*⁵²

The Police Administration has announced that on April 12, 2023, the police in Nikšić was informed by police officer Jovan Peković that he needed a vehicle in order to carry out an official action - the deprivation of liberty and the arrest of a person. An intervention unit was dispatched to the scene and brought the person B.S. to the official premises of the Nikšić Security Department, who requested a medical examination, which he was granted. In the Medical Centre in Nikšić severe physical injuries were found on B.S. in the form of three rib fractures. The competent prosecutor in the Basic State Prosecutor's Office in Nikšić was informed about the situation, on whose order further measures and actions were taken, the collection of information and the determination of facts and circumstances in relation to the mentioned event. According to the statement of B.S. he was injured when, after a short verbal argument, a police officer physically attacked him and knocked him to the asphalt surface, after which he gave him two more punches on the body. It was also stated that police officers collected information from several witnesses to the event, seized, and reviewed several recordings from video surveillance. The case files, as stated, were submitted to the acting prosecutor, who qualified the criminal offense of ill-treatment in connection with the criminal offense of grievous bodily harm and ordered that the police officer Jovan Peković

⁵⁰ Part of media reports: Parents of those injured in the fight in Žabljak: The anti-terrorist unit acted inhumanely and unprofessionally, *Vijesti*, March 13, 2023; Mass fight with the ATPU members in Žabljak, *PV Informer*, March 15, 2023; Incident in Žabljak: It is not known whether they have been fighting while being drunk, March 16, 2023.

⁵¹ Internal control began questioning the ATPU members over the fight in Žabljak, CdM portal, March 15, 2023.

⁵² Part of reports in media: Watch police's ill-treatment in Nikšić (VIDEO), *Standard*, April 14, 2023; Police officer arrested, suspected for ill-treatment of one person in Nikšić, *Vijesti*, April 14, 2023.

shall be deprived of his liberty. It was stated that the immediate manager in relation to the mentioned police officer will initiate disciplinary proceedings, and the case files will be sent to the Department for Internal Control of the Police.⁵³

On the same day, the Basic State Prosecutor's Office in Nikšić announced that the state prosecutor in the Basic State Prosecutor's Office in Nikšić, after the hearing, issued a decision on the detention of the police officer J.P. and submitted a proposal for his detention for the criminal offense of ill-treatment in connection with the criminal offense of grievous bodily harm and due to reasonable suspicion that on April 12, 2023 he has ill-treated B.S., R.M. and V. M. and treated them in a way that insults human dignity and B.S. has also caused serious bodily injury.⁵⁴

After the CEDEM has requested more information about this case from the prosecutor's office, the Basic State Prosecutor's Office in Nikšić adopted the Decision Tuspi no. 11/23 of August 14, 2023, in which it is stated that the Basic State Prosecutor's Office in Nikšić has submitted an indictment to the Basic Court in Nikšić against Jovan Peković on June 21, 2023 due to the commission of the criminal offense of ill-treatment referred to in Article 166a paragraph 2 in relation to paragraph 1 of the Criminal Code of Montenegro in conjunction with the criminal offense of grievous bodily harm referred to in Article 151 paragraph 1 of the Criminal Code of Montenegro committed to the detriment of the injured persons S.B., M.V. and M.R.

The trial is ongoing before the Basic Court in Nikšić. The accused police officer Peković denied the commission of the criminal offense he is accused of. The injured party was heard as well, who gave up the criminal prosecution of the police officer Peković, although he joined the criminal prosecution at the state prosecutor's office in May of the current year. Answering the judge's questions, the defendant stated that taking police action against the injured party did not differ in his behaviour compared to all the actions he had been taking for many previous years as a police officer, and that the only difference in the behaviour of the injured party B.S. Also, it has pointed out that he has applied all activities towards the injured party in a professional manner. The continuation of the trial is scheduled for November 23, 2023.⁵⁵

In August of the current year, the institution of the Ombudsperson replied that the case is still being processed.

53 Police officer from Nikšić arrested, suspected for ill-treatment, portal Dan, April 14, 2023.

54 Announcement available at: <https://sudovi.me/otnk/sadržaj/JQMD>.

55 NGO Civil Alliance monitors the trial within the project No impunity for violation and violation of human rights in Montenegro, with the support of the Delegation of the European Union to Montenegro.

5.

Concluding Considerations and Recommendations

Despite the recommendations of the relevant domestic and international bodies, the will of the most responsible actors to resolutely oppose the phenomenon of police ill-treatment is still lacking. This primarily refers to the Ministry of Interior Affairs and the Police Administration, which, as the analysis showed, do not show a determined intention to prosecute officers prone to ill-treatment, despite the recommendations of the Ombudsperson and the Council for Civic Control of Police Work.

In such an approach, one should look for the cause of persistence in the negative solidarity of police officers, which is reflected in the fact that citizens, and then the prosecution, find it difficult to prove allegations of ill-treatment without a video of the incident itself. Even in such cases, as detailed in the analysis, the officers who witnessed the ill-treatment did not want to change their statements, which clearly does not correspond to the actual event shown on the video, in order to protect their colleagues. **These observations were made several times by the Ombudsperson and the Council for Civic Control of Police Work.**

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), after visiting our country in 2022, stated in relation to the suppression of ill-treatment that, as a whole, it remains concerned about key shortcomings that may contribute to creation of a culture in which police officers are absolved from accountability for their actions or they can create an environment in which a culture of impunity can flourish. **Unlike the Department for Internal Control, the Ombudsperson, in accordance with the findings of the CPT, took the approach that in cases of proven ill-treatment, those officials who witnessed the ill-treatment, but did not report it, should also be prosecuted.**

As the Ombudsperson and the Council have emphasized, the Police Administration is obliged to investigate allegations of ill-treatment and to make all necessary efforts to prosecute perpetrators of criminal offenses. The key to preventing ill-treatment and effectively combating it is to conduct an efficient and effective investigation in all cases where there is a serious suspicion that ill-treatment has occurred. Serious suspicion exists in all circumstances in which there are facts that directly or indirectly indicate that an official or another person in an official capacity unjustifiably violated physical or mental integrity. **Detection,**

criminal prosecution, and punishment of perpetrators of ill-treatment represent one of the most vital social interests, which suppress the phenomenon of impunity.

The Police Administration does not correct proven bad practices in work activities, nor does it proactively approach the adoption of new practices that contribute to suppression or effective prosecution of ill-treatment.

In this sense, the Ombudsperson has noted that the Police Administration, despite the position of the European Court of Human Rights, persists in bad practice when applying the institute of summoning citizens in order to collect notifications in their capacity as citizens, which is valid immediately, which is not in accordance with Article 259 of the Criminal Procedure Code. In the *Asanović v. Montenegro* case, who was also summoned to report immediately, the European Court took the position that such a warning did not give the applicant the opportunity to act in accordance with the summons, which represents a *de facto* deprivation of liberty. Also, the Ombudsperson has noticed continuation of practice of formalism in reporting and procedure for assessing the legality and justification of the use of chemical agents in the Police Administration. On the other hand, despite the recommendations of the CPT, the Ombudsperson, and the Council, not all police officers have been provided with identification tags or audio-visual recording of all police actions.

The CPT Report also recognized other weaknesses of the system: the currently prescribed punishments still do not correspond to the seriousness of the criminal offences of torture and ill-treatment, while the number of disciplinary sanctions, including the imposition of conditional sentences, as well as the number of prison sentences imposed for cases of torture and ill-treatment and still too low to serve as a real deterrent, that is, to curb the practice of ill-treatment.

The analysis of available information shows that the prosecutor's office reacts promptly when it comes to prosecuting officials whose actions were recorded on video recordings that, published in the media, cause public concern. However, **processing of allegations of ill-treatment that are not supported by video remains very slow.**

The CPT notes that one of the examples of delays in the prosecution's actions is the fact that there are challenges when it comes to the identification of police officers as alleged perpetrators of criminal offences. **In this regard, it is necessary for the prosecutor's office to take a more pro-active approach in handling and use all possibilities provided by law to prevent any obstruction of the investigation by police officers.**

When it comes to suspension or temporary removal from work, as stated by the Ombudsperson, it is necessary to consistently apply the norm referred to in Article 176, paragraph 1 point 3 of the Law on Interior Affairs, which stipulated that a police officer shall be temporarily removed from work, if criminal proceedings have been initiated against him for a criminal offense committed at work or in connection with work.

Findings about a lenient penal policy are confirmed through both analysed cases that received a judicial epilogue. The convicted police officers were sentenced to four or three months in prison, which will be served by the defendants serving their sentences in the premises where they live. In both cases, citizens were insulted, that is, cursed, and hit in the head and body. Also, in both cases, the court appreciated numerous mitigating circumstances in favour of the police officers.

It is also noted that medical examinations are not carried out in privacy, that is, in a way that would allow a citizen to freely make allegations of ill-treatment without the presence of an official, as the Ombudsperson has repeatedly pointed out.

The analysis has also showed that NGOs play a strong role when it comes to insisting on application of the law, i.e. zero tolerance of torture and ill-treatment. It is necessary to refrain from any kind of pressure on NGOs, which argue that they insist on the indiscriminate application of laws and international regulations.

Recommendations:

For the Ministry of Interior Affairs

1. Develop an operational Action Plan related to the findings and recommendations of the CPT, with reasonable implementation deadlines and measurable indicators on the basis of which the implementation of the plan can be monitored.
2. Harmonize actions of the various authorities in charge of implementing the Plan.
3. Act without delay on all recommendations of the Ombudsperson and the Council for Civic Control of Police Work, which have not yet been fulfilled.
4. Refrain from any form of pressure on critically oriented NGOs that point to shortcomings in the work of police officers.

For the Department for the Control of Police Work

1. Regularly inform citizens about the initiated proceedings, and about the petitions that contain allegations of ill-treatment.
2. In each specific case, assess behaviour of those police officers who knew about the ill-treatment, but did not report it and/or gave statements obviously done on purpose in order to avoid determining the responsibility of colleagues who acted illegally.
3. When acting on the petition, especially appreciate the circumstance of whether allegations of ill-treatment were examined at the level of the Police Administration organizational unit, and in accordance with the internal organization, that is, the division of responsibilities.
4. In accordance with the regulations, ensure the minimum publicity of the work.

For the Supreme State Prosecutor's Office

1. Develop a plan for dealing with previously submitted reports of ill-treatment and monitor implementation of the plan in relation to lower prosecutor's offices.
2. Provide pro-active approach through a binding instruction on behaviour or in another way, including undertaking all mechanisms stipulated by law to prevent obstruction of investigation of allegations of ill-treatment.

For the Ombudsperson:

1. Intensify work on cases that are still in progress.
2. Continue with the practice of publicly pointing out observed systemic deficiencies in connection with the behaviour of police officers and the occurrence of ill-treatment.
3. Monitor implementation of given recommendations in cases where a violation of the right to prohibit ill-treatment has been established and inform the public about the findings.

4. Initiate a debate on the criminal policy of the courts in order to achieve a deterrent effect in relation to police ill-treatment.
5. Initiate a debate on the treatment of doctors and police officers during medical examinations in accordance with CPT standards and the Istanbul Protocol, and in accordance with the given recommendations

For the Council for Civic Control of Police Work:

1. Improve transparency of work through regular updates of the Council's website.
2. Monitor implementation of given recommendations and inform the public about the outcome.



POLICE

Podgorica, December 2023.
