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LAW, INVESTIGATIONS AND SENTENCING PRACTICES

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ACRONYMS

ASAPLSGU	Act on Staff of Autonomous Provinces and Local Self-Government Units
BCHR	Belgrade Centre for Human Rights
BPPO	Basic Public Prosecution Office
CAT	Committee against Torture
CC	Criminal Code of the Republic of Serbia
CC Decision	Constitutional Court Decision
CPC	Criminal Procedure Code of the Republic of Serbia
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe
CSA	Civil Service Act
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HPPO	Higher Public Prosecution Office
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICS	Internal Control Sector
LAA	Legal Aid Act
MIA	Ministry of Internal Affairs
PA	Police Act
PPA	Public Prosecution Act
PPO	Public Prosecution Office
PSEA	Penal Sanctions Enforcement Act
PSED	Penal Sanctions Enforcement Department
SORS	Statistical Office of the Republic of Serbia
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Part I

NATIONAL CRIMINAL LAW FRAMEWORK ON THE PROHIBITION OF TORTURE AND OTHER FORMS OF ILL-TREATMENT

1.1. Relevant Substantive Criminal Law

The Serbian Criminal Code (CC)[1] prohibits extortion of confessions and torture and ill-treatment in Chapter XIV dealing with crimes against human rights and freedoms.

Article 136 of the CC provides for the simple and aggravated forms of the criminal offence of extortion of a confession. Under paragraph 1 of this Article, the simple form of the crime is committed by a public official who, while acting in an official capacity, used force, threats or other inadmissible means to extort a confession or another statement from an accused, witness, court expert or another individual. The CC defines public officials as: 1) individuals discharging official duties in state authorities; 2) elected, appointed or assigned officials of state authorities, local self-government authorities or individuals permanently or temporarily discharging official duties and functions in such authorities; 3) notaries public, public enforcement agents, arbiters, individuals entrusted with public powers in institutions, companies or other entities deciding on the rights, obligations or interests of natural or legal persons or on public interest issues; 4) individuals effectively entrusted with discharging specific official duties or tasks; and, 5) servicemen (Art. 112(3)). Under paragraph 2 of Art. 136, the aggravated form of the crime is committed if the extortion of a confession or statement was accompanied by grave violence or resulted in particularly adverse consequences for the accused in criminal proceedings. The simple form of the crime carries a sentence of imprisonment ranging between three months and five years, while the aggravated form of the crime carries a sentence of imprisonment ranging between two and ten years.

The crime of torture and ill-treatment (Art. 137 of the CC) can have several forms. Under paragraph 1, the simple form of the crime, carrying up to one year imprisonment, is committed by anyone who ill-treated another or treated them

1 *Official Gazette of the RS,* 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

in a manner violating their human dignity. Under paragraph 2, the aggravated form of the crime is committed by anyone who caused substantial pain or great suffering to another with the aim of obtaining a confession, statement or other information from them or a third party, or of intimidating or illegally punishing them, or for other motives based on any form of discrimination. This form of the crime warrants imprisonment ranging from six months to five years. Paragraph 3 provides for harsher penalties in the event the simple or aggravated forms of the crime (under paragraphs 1 and 2 respectively) were committed by an official acting in an official capacity – imprisonment ranging from three months to three years (Art. 137(3) in conjunction with paragraph 1) and imprisonment ranging from two to ten years (Art. 137(3) in conjunction with paragraph 2).

Criminal prosecution and enforcement of penalties for extortion of a confession and torture and ill-treatment are subject to the general statutes of limitation laid down in Articles 103 and 105 of the CC. Under these provisions, criminal prosecution may not be undertaken after the lapse of: a) 10 years since the commission of the aggravated form of the crime of extortion of a confession (Art. 136(2)) or of the aggravated form of the crime of torture and ill-treatment committed by a public official acting in an official capacity (Art. 137(3)) in conjunction with paragraph 2); b) five years since the commission of the simple form of the crime of extortion of a confession (Art, 136(1)) or the aggravated form of the crime of torture or ill-treatment (Art. 137(2)); c) three years since the commission of the simple form of the crime of ill-treatment by an official acting in an official capacity (Art. 137(3) in conjunction with paragraph 1); and, d) two years since the commission of the simple form of the crime of torture and ill-treatment (Art. 137(1)). Given the ranges of penalties for extortion of a confession and torture and ill-treatment, these penalties shall not be enforced upon the expiry of: ten years from conviction to a term of imprisonment exceeding five years; five years from conviction to a term of imprisonment exceeding three years; three years from conviction to a term of imprisonment exceeding one year; and, two years from conviction to a term of imprisonment under one year.

Both the Pardon Act[2] and the Criminal Code (Arts. 109 and 110) provide for the possibility of pardoning and amnestying everyone, including public officials, charged with or convicted of extorting a confession, torture and/or ill-treatment.

Apart from imprisonment, the perpetrators of these crimes may be handed down a suspended sentence, ordered to perform community service or banned from practicing a profession, activity or duty along with the penal sanction, under the conditions laid down by the CC.

2 *Official Gazette of the RS*, 49/1995 and 50/1995.

Under the Criminal Code, community service may be imposed only for crimes warranting up to three years' imprisonment (Art. 52(1)), wherefore this penalty may be handed down only to officials and non-officials who committed the simple form of the crime of torture or ill-treatment (Art. 137(3) in conjunction with paragraph 1 and Art. 137(1) respectively).

Under the Serbian Criminal Code, suspended sentences may be imposed for crimes warranting up to eight years' imprisonment if the offender is sentenced to imprisonment not exceeding two years (Art. 66).[3] Therefore, suspended sentences may be imposed against perpetrators convicted of the simple form of the crime of extortion of a confession (Art. 136(1), CC) and of torture and ill-treatment (Art. 137 paragraphs 1, 2 or 3 in conjunction with paragraph 1).[4] The Criminal Code sets out that suspended sentences may not be imposed if more than five years have elapsed from the time a prison or suspended sentence for a premeditated criminal offence became final.[5] When deciding whether to pronounce a suspended sentence, the court shall have regard to the purpose of the suspended sentence and particularly take into consideration the offender's personality, prior conduct, conduct after the fact, degree of culpability and other circumstances relevant to the commission of the crime (Art. 66).

Under Article 85 of the CC, criminal offenders may be prohibited from practicing a profession, activity or duty if there are grounds to believe that their continued practice of a specific profession, activity or all or some of the duties related to the disposition, use, management or handling of another's property or care for such property would be dangerous. The duration of this measure may not be less than one or more than ten years as of the day the judgment becomes final, and the time spent in prison or a medical institution where the security measure has been enforced shall not be credited to it. Therefore, this security

3 Although Article 64 of the CC sets out that the purpose of a suspended sentence is not to impose a sentence for *lesser criminal offences* on offenders found guilty when it may be expected that admonition (a suspended sentence) will have sufficient deterrent effect, the Criminal Code, as it stands now, allows the courts to pronounce such sentences for crimes that cannot be considered lesser criminal offences given the terms of imprisonment they carry. Zoran Stojanović, *Commentary on the Criminal Code*, 4th updated edition, Službeni glasnik, Belgrade, 2012, p. 287.

4 Until the latest amendments to the CC entered into force in December 2019, the courts were allowed to impose suspended sentences also for the gravest form of torture and ill-treatment (Art. 137(3) in conjunction with paragraph 2), since the crime carried between one and eight years' imprisonment and suspended sentences could be handed down for all crimes warranting less than 10 years' imprisonment.

5 The latest amendments to the CC prohibit courts from handing down suspended sentences to offenders who had already been convicted to a suspended sentence (Art. 12 of the Act Amending the Criminal Code, *Official Gazette of the RS*, No. 35/2019).

measure may be imposed against officials convicted of committing or of complicity in the crimes of extortion of a confession and torture and ill-treatment.

As per sentencing, the CC lays down that the court shall determine a penalty for a criminal offender within the statutory limits, whilst taking into account the purpose of punishment and all circumstances bearing on the severity of punishment (extenuating and aggravating circumstances), and, in particular: the degree of culpability, the motives for committing the offence, the extent to which the protected good was threatened or damaged, the circumstances under which the offence was committed, the offender's prior conduct and personal situation, conduct after the fact, especially the offender's attitude towards the victim of the criminal offence, and other circumstances related to the offender's personality. When setting a fine, the court shall take particular account of the offender's financial standing (Art. 54). The court shall consider the commission of a crime out of hate against another person on account of their nationality, ethnicity, race, religion, sex, sexual orientation or gender identity as an aggravating circumstance unless it is prescribed as an element of the criminal offence (Art. 54a).

Under the latest amendments to the Criminal Code, the court shall consider as an aggravating circumstance the fact that less than five years have passed since the perpetrator of a premeditated criminal offence was convicted of or served a sentence for a prior premeditated crime. In such cases, the court may not impose a penalty below the statutory threshold or a milder penalty unless the law provides for the remittal of penalty but the court does not remit the penalty. The latest amendments to the CC also introduced the institute of multiple repeat offending: the court may not impose a sentence in the bottom half of the sentencing range prescribed by law in the event the perpetrator of a premeditated criminal offence had already been convicted twice for premeditated crimes to at least one year imprisonment and where less than five years have (cumulatively) passed from the offender's release to the commission of the new crime (Articles 55 and 55a).

Under the provisions on mitigation of sentences, the court may impose a penalty below the statutory threshold or a milder penalty against an offender where the law provides for milder punishment or remittal of the penalty but the court does not remit the penalty, as well as where the court finds particularly mitigating circumstances and holds that a milder penalty will achieve the purpose of punishment (Art. 56). Where the mitigation requirements are fulfilled, the court shall mitigate the penalty within the following limits: 1) if the lowest statutory penalty for the criminal offence is imprisonment of ten or more years, the sentence may be reduced to seven years' imprisonment; 2) if the lowest statutory penalty for the criminal offence is imprisonment of five years, the sentence may be reduced to three years' imprisonment; 3) if the lowest statutory

penalty for the criminal offence is imprisonment of three years, the sentence may be reduced to one year imprisonment; 4) if the lowest statutory penalty for the criminal offence is imprisonment of two years, the sentence may be reduced to six months' imprisonment; 5) if the lowest statutory penalty for the criminal offence is imprisonment up to one year, the sentence may be reduced to three months' imprisonment; 6) if the lowest statutory penalty for the criminal offence is imprisonment less than one year, the sentence may be reduced to thirty-day imprisonment; 7) if the statutory penalty for the criminal offence does not specify the minimum prison sentence, imprisonment may be replaced by a fine or community service; and, 8) if the statutory penalty for the criminal offence is a fine, the fine may be reduced by up to a half of the minimum statutory fine. Where the court is entitled to remit the penalty, it may reduce it below the specified limitations (Art. 57). The CC enumerates the crimes for which penalties may not be mitigated, but they do not include extortion of confessions or torture and ill-treatment.

The court may remit the penalty of a criminal offender only where such a possibility is expressly provided by law. It may also remit the penalty of an offender who had unintentionally committed a crime where the consequences of the crime have affected the offender so strongly that the imposition of the penalty would obviously not serve the purpose of punishment. Furthermore, the court may remit the penalty of a perpetrator of a crime warranting up to five years' imprisonment where the perpetrator eliminated the consequences of the crime or compensated the damage caused by the crime before learning they have been discovered (Art. 58) or, in the event the perpetrator of a crime warranting up to three years' imprisonment has fulfilled all the obligations they have undertaken in a settlement reached with the victim (Art. 59).

1.2. Main Procedural Law Provisions Relevant to Investigations of Ill-Treatment Allegations

The Criminal Procedure Code (CPC)[6] does not include any provisions dealing specifically with the prosecution of or trials for torture and other forms of ill-treatment. In other words, the prosecution of and trials for such offences are conducted in accordance with the CPC rules applying also to other criminal offences. However, depending on the severity of the penalty, the prosecution of and trials for extortion of a confession, torture and ill-treatment can be conducted in so-called regular (full) and in summary proceedings. In proceedings con-

6 *Official Gazette of the RS*, 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – CC Decision and 62/2021 – CC Decision.

cerning crimes warranting over eight years' imprisonment (such as the qualified form of extortion of a confession under Art. 136(2) and the most severe form of torture and ill-treatment under Art. 137(3) in conjunction with paragraph 2 of the CC), the public prosecution office (PPO) and court will apply the CPC provisions governing "regular" criminal proceedings. Summary proceedings will be conducted if the main penalty the defendant faces is a fine or up to eight years' imprisonment (for other forms of the crimes of extortion of a confession, torture or ill-treatment under Articles 136 and 137 of the CC).

Preliminary investigation is the initial stage that precedes the criminal proceedings, during which the public prosecutors, either themselves or via other state authorities – primarily the police and other legal persons – collect information in the event they cannot conclude based on the criminal report that the allegations are plausible, the information in the report does not provide sufficient grounds for a decision whether to undertake an investigation or in the event they found out that a crime has been committed in another manner (Art. 282, CPC).

The investigation, as a distinct stage of prosecution within "regular" criminal proceedings, is initiated against a specific or unidentified individual where there are grounds for suspicion that they have committed a crime, with a view to securing and collecting evidence and information in order to decide whether to file an indictment or discontinue the proceedings, evidence needed to ascertain the identity of the perpetrator, evidence at risk of concealment or destruction, as well as other evidence that might be useful during the proceedings, the presentation of which is expedient in the circumstances of the case (Art. 295, CPC). During the investigation, the suspects and their defence counsel may themselves collect evidence and material for the benefit of the defence (Art. 301, CPC). If the suspects and their defence counsel believe that a certain evidentiary action needs to be taken, they will file a motion to that effect with the public prosecutor. In the event the prosecutor refuses to undertake the action or fails to decide on the motion within eight days, the suspects and their defence counsel may file the motion with the preliminary proceedings judge, who is to decide on it within eight days. In the event the preliminary proceedings judge upholds the motion, they will order the public prosecutor to undertake the evidentiary action and will set a deadline for its implementation (Art. 302, CPC). Furthermore, suspects and their defence counsel are entitled to file an objection with the immediately superior public prosecutor about the dilatoriness of the proceedings or other irregularities during the investigation as soon as they become aware of them and before the completion of the investigation at the latest. The latter must decide on the objection within eight days – either uphold the objection and issue binding guidance to the relevant public prosecutor on how to rectify the identified irregularities in the investigation or reject the objection, in which case the suspect

and their defence counsel may file a complaint with the preliminary proceedings judge. In the event the judge finds the complaint well-founded, they will order undertaking measures to rectify the irregularities (Art. 312, CPC). Injured parties (victims) are also entitled to present facts and propose evidence of relevance to proving their claims (Art. 50, CPC) but, as opposed to suspects and their defence counsel, they are not entitled to file a motion with the preliminary proceedings judge in the event the prosecutor ignores or rejects their motion. Nor are they entitled to file an objection with the immediately superior prosecutor or a complaint with the preliminary proceedings judge about the dilatoriness of the investigation or other irregularities during it.

Public prosecutors are in charge of both the preliminary investigation and the investigation proceedings (Articles 285 and 298, CPC). Although public prosecutors are entitled to order the police to perform specific actions or entrust them with performing them (Articles 285 and 298, CPC) and require of other authorities to provide the requisite information (Art. 282, CPC), which occurs frequently in practice, the PPO (the relevant public prosecutor) remains responsible for managing the preliminary investigation proceedings and for conducting the investigation, i.e. for planning and directly collecting and, if necessary, proposing, ordering or entrusting other authorities with collecting evidence and information important for the detection of criminal offences and prosecution of the perpetrators. This obligation of the prosecution offices (prosecutors) is an *obligation of means*; they will be found to have performed this obligation if they prove that they have taken all reasonable measures in accordance with the law, promptly, thoroughly and impartially in order to shed light on the criminal law event and collect all evidence requisite for the successful prosecution of its perpetrators.[7]

7 Serbian legal professionals have increasingly been claiming that the public prosecution office "is the authority charged with criminal prosecution rather than with the detection of criminal offences and perpetrators" (see, among many others, the statements available in Serbian at: www.danas.rs/drustvo/slucaj-savamala-prati-svojevrsna-zavera-cutanja/ and rs.n1info.com/vesti/komlen-nikolic-o-predlogu-norme-o-skaju-moze-izuzetno-da-ugrozi-privatnost/). Such claims that "prosecution of perpetrators of criminal offences" does not include the identification of the perpetrators or the detection of the crimes themselves are dubious. First of all, the CPC lays down that *public prosecutors shall conduct investigations* (Art. 298), including investigations *against unidentified perpetrators*, in order to, inter alia, *collect evidence and information requisite for identifying the perpetrators* (Art. 295, CPC). Second, public prosecutors are in charge of the implementation of numerous evidentiary actors or of ordering or entrusting their implementation to other authorities (interrogation, confrontation of the defendant, examination of witnesses, ordering of forensic reports, crime scene inquest, reconstruction, sample taking, search, secret surveillance of communication, etc.) with a view to identifying crimes and their perpetrators. And third, if the police notify the prosecutor of the identity of a suspect for whom the prosecutor finds insufficient evidence to prosecute them or evidence indicates that

As already noted, the investigation is not a distinct stage of prosecution preceding the trial in summary proceedings, like it is in "regular" proceedings. This, however, does not mean that the public prosecutor does not collect the requisite information or conduct evidentiary actions before filing an indictment for crimes prosecuted in summary proceedings. Under the CPC, before deciding whether to file an indictment or dismiss the criminal report, the public prosecutor may take specific evidentiary actions in the shortest possible time possible (Art. 499(2), CPC). As opposed to regular proceedings, where, during the investigation, the defendant may be held in pre-trial detention for a maximum of six months – three months based on a ruling of the preliminary proceedings judge and another three months at most based on a ruling of an extra-procedural council of the immediately superior court (Art. 215, CPC), pre-trial detention in summary proceedings may not exceed 30 days; where the summary proceedings concern a crime warranting five or more years' imprisonment, pre-trial detention may be extended by another 30 days for justified reasons (Art. 498, CPC).

The legislator obviously intended to limit to six months the time prosecutors have to perform actions concerning crimes prosecuted in "regular" proceedings and those preceding the submission of indictments for crimes prosecuted in summary proceedings. Under the CPC, prosecutors, who do not complete an investigation against a suspect within six months, or a year in case of a crime prosecuted by a special public prosecution office under a separate law, are under the obligation to notify the immediately superior prosecutor of the reasons why they have not completed the investigation and the latter is under the obligation to take measures to complete the investigation, Art. 310 (2 and 3), CPC). As opposed to this automatic notification of the immediately superior public prosecutor of the non-completion of the investigation within the statutory deadline, such notification may occur for crimes prosecuted in summary proceedings only on the initiative of the injured party who had filed the criminal report. In summary proceedings, the injured parties are entitled to complain to the immediately superior public prosecutor in the event the relevant public prosecutors had

another individual may have committed the crime rather than the individual the police identified, the prosecution office, as "the authority charged with criminal prosecution", definitely does not have the obligation to automatically initiate and conduct proceedings against the individual brought to its attention by the "authorities charged with the detection of criminal offences" (e.g. the police and intelligence agencies). Whether the PPOs have the manpower and other capacities and legal mechanisms to ensure the implementation of actions they consider capable of resulting in the detection of crimes and their perpetrators and whether authorities, such as the police and the Security Intelligence Agency (BIA), which should be a "service" of the PPO, are willing to comply with its orders, are issues of crucial importance for the effective implementation of the prosecutorial investigation concept; they, however, have no bearing on the PPO's obligation to take all reasonable measures to conduct an effective investigation.

failed to file an indictment within six months from the moment they received the criminal report or to notify the injured parties of its dismissal (Art. 499(3)).

The public prosecutors' entitlement to collect the requisite information with the help of other state authorities, primarily the police, and order them to take other measures and actions to identify crimes and their perpetrators during the preliminary investigation proceedings (Art. 282, CPC) and the investigation (Art. 282(4)) is delicate in cases of torture and ill-treatment in which the officials of these authorities (e.g. the police) are implicated. Collection of the requisite information, ordering or entrusting the implementation of specific actions to public officials institutionally and/or actually associated with or close to the suspected officers would result in the violation of the independent investigation principle[8] and render the entire investigation ineffective. International bodies monitoring compliance with the prohibition of torture and ill-treatment as an imperative norm of international law recommend that prosecutors investigating cases of alleged torture and ill-treatment always in practice conduct investigative actions themselves, especially interview relevant witnesses, injured parties and police officers, always order forensic medical examinations, etc.[9]

Under Article 225 of the Police Act,[10] the Internal Control Sector (ICS) of the Ministry of Internal Affairs (MIA) shall take measures and actions in accordance with criminal procedure law to identify and prevent the commission of criminal offences by police officers and other MIA staff at work or in relation to work. The ICS staff shall have full police powers in conducting internal control and, in terms of their rights and duties, be equal to other police officers in the status of authorised officers (Arts. 225 and 226).[11] This rule should also apply to the so-called urgent police measures and actions enumerated in Article 286 of the CPC.[12] Therefore, public prosecutors should cooperate exclusively with

8 The principle concerning the independence of investigations is defined in numerous decisions of the European Court of Human Rights (ECtHR) and the UN Committee against Torture (CAT). It requires of individuals investigating allegations of torture and other forms of ill-treatment not to have any institutional (organisational, hierarchical) or actual connections with the individuals implicated in the impugned events. See: *infra*, Section 2.2.

9 See, e.g. the Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, § 26.

10 *Official Gazette of the RS*, 6/2016, 24/2018 and 87/2018.

11 Under the Police Act, the Head of the ICS shall notify the Minister of Internal Affairs, the relevant public prosecutor and the Protector of Citizens without delay of any police officers who violated human rights by overstepping their powers (Art. 227(2)). All MIA units that become aware in the course of their work that an MIA employee has committed a criminal offence during work or related to it shall notify the relevant public prosecutor and the ICS thereof without delay, not later than within 24 hours (Art. 227(3)).

12 If there are reasonable grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed, the police shall implement the necessary measures to lo-

the ICS on identifying and shedding light on crimes of torture and ill-treatment committed by police officers. Such provisions do not exist in the sections of either the Security Intelligence Agency Act[13] or the Military Security Agency and Military Agency Act[14] governing internal oversight of these intelligence agencies.

Although public prosecutors and their deputies are institutionally independent from the police and other public officials whom they can entrust the implementation of specific actions to, their actual independence may be brought into question in cases where they are conducting preliminary investigation proceedings and investigations against public officials – especially police officers – with whom they regularly cooperate on the detection of other crimes. This particularly applies to smaller communities where the numbers of public prosecutors and their deputies and police officers are not large. The institute of substitution, provided for by the Public Prosecution Act (PPA),[15] is a legal mechanism for addressing this problem. Under Article 20 of the PPA, an immediately superior public prosecutor may issue a ruling authorising a lower ranking public prosecutor to take over a case in the jurisdiction of another lower ranking public prosecutor when the latter is precluded from proceeding in it for legal or objective reasons.

Under the CPC, injured parties are entitled to take over criminal prosecution in the event the public prosecutors declare that they are abandoning prosecution after the confirmation of the indictment or the scheduling of the main hearing in summary proceedings (Arts. 52 and 497, CPC). In addition to the right to represent the prosecution, submit a motion and evidence corroborating the damage claim, retain and request the appointment of a proxy, an injured party acting as the subsidiary prosecutor shall exercise the rights of the public prosecutor, except those that the public prosecutor has in their capacity of a state authority (Art. 58 CPC). If the public prosecutor dismisses the

cate the perpetrators of the criminal offence, prevent the perpetrators or their accomplices from going into hiding or absconding, find and secure traces of the criminal offence and objects that may serve as evidence, as well as collect all information that may facilitate the successful conduct of criminal proceedings. To that end, the police may: seek the requisite information from citizens; perform necessary inspections of vehicles, passengers and luggage; restrict movement in a specific area for the requisite period of time not exceeding eight hours; undertake the necessary measures to establish the identity of individuals and objects; issue wanted circulars for individuals and objects they are searching for; in the presence of a responsible person, inspect specific facilities and premises of state authorities, enterprises, shops and other legal persons, inspect their documentation and, if necessary, seize it; undertake other requisite measures and actions (Art. 286 (1 and 2), CPC).

13 *Official Gazette of the RS*, 42/2002, 111/2009, 65/2014, 66/2014 and 36/2018.

14 *Official Gazette of the RS*, 88/2009, 55/2012 and 17/2013.

15 *Official Gazette of the RS*, 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 – CC Decision, 121/2012, 101/2013, 111/2014 – CC Decision US, 117/2014, 106/2015 and 63/2016 – CC Decision.

criminal report, discontinues the investigation or abandons criminal prosecution before the confirmation of the indictment or the scheduling of the main hearing in summary proceedings, the injured party is entitled to file an objection with the immediately superior public prosecutor within eight days from the day of notification thereof, or, in case they have not been notified, within three months from the day the public prosecutor rendered the impugned decision. The immediately superior public prosecutor must decide on the objection within 15 days. In the decision upholding the objection, the immediately superior public prosecutor shall issue binding instructions to the relevant public prosecutor to conduct or resume criminal prosecution (Art. 51, CPC). The law does not provide injured parties with any possibility of challenging the negative decisions of immediately superior public prosecutors either before the court or higher ranking prosecution offices, wherefore they are entitled to file constitutional appeals if the decisions violate their rights enshrined in the Constitution or ratified international treaties.[16]

Higher ranking public prosecutors may issue mandatory instructions to lower ranking public prosecutors (e.g. to continue criminal prosecution after they dismissed the criminal report) even if the injured parties did not object. Namely, the Public Prosecution Act entitles higher ranking public prosecutors to issue such instructions to lower ranking prosecutors in the event they doubt the efficiency and lawfulness of the latter's actions (Art. 18).

In cases of crimes warranting fines or up to five years' imprisonment (the simple and aggravated forms of the crime of torture and ill-treatment under Article 137, paragraphs 1 and 2 of the CC, the simple form of the crime of extortion of a confession under Article 136(1) and the simple form of the crime of torture and ill-treatment committed by a public official acting in an official capacity under Art. 137(3) in conjunction with paragraph 1), public prosecutors are entitled to propose to the suspects the deferral of their criminal prosecution. The public prosecutor shall issue a ruling dismissing the criminal report in the event the suspect agrees to fulfil one or more of the set obligations (eliminate the harmful effects of the committed crime or compensate damages; pay a sum of money into a public fund to be used for humanitarian or other purposes; perform specific community service or charity work; pay overdue maintenance;

16 In several recent decisions, the Constitutional Court of Serbia has held that the rulings of immediately superior public prosecutors on objections against the decisions of lower PPOs to dismiss criminal reports et al, were not enactments that could be challenged by constitutional appeals (see, e.g. the Constitutional Court's decision in case Už. 205/2015 of 9 June 2017, p. 2). The authors of this analysis consider this general opinion of the Constitutional Court erroneous because it "opens the door" for the injured parties to complain to the ECtHR and CAT directly, without first bringing their case before the Constitutional Court.

undergo alcohol or drug abuse treatment; undergo psychosocial treatment to eliminate the causes of violent behaviour; fulfil an obligation or comply with a restriction ordered by a final court decision) within the deadline (not exceeding one year) set by the public prosecutor in the deferred prosecution order. In that case, the injured party is not entitled to file an objection with the immediately superior public prosecutor (Art. 283, CPC).

Lawyers and doctors play a major role in preventing and facilitating effective prosecution of torture and ill-treatment cases, especially in the context of deprivation of liberty by the police and placement in pre-trial detention or prison.

Apart from the defendant's right to engage a lawyer of their own choosing, the CPC also specifies when the defendant must be represented by a defence counsel. For example, a defendant charged with a crime warranting minimum eight years' imprisonment must be represented by a lawyer from the first interrogation until the final conclusion of the criminal proceedings; a defendant in custody, pre-trial detention or under house arrest must be represented by a lawyer from the moment they are arrested until the ruling discontinuing the measure becomes final (Art. 74). However, Art. 294 of the CPC lays down that individuals placed into custody must be represented by a lawyer as soon as the custody ruling is issued (which can occur up to two hours after custody is ordered and the suspect is informed thereof). In the event the suspect does not retain a defence counsel within four hours, the public prosecutor shall assign them an *ex officio* lawyer, according to the order on the list of lawyers submitted by the relevant bar association.

The method of assigning *ex officio* lawyers has been criticised over the past few years as non-transparent and facilitating abuse, enabling the appointment of defence counsels insufficiently interested in suppressing ill-treatment and excessively "cooperative" with the police.[17] Consequently, the system of contacting and assigning *ex officio* lawyers was changed in February 2019.[18] A call centre was established and software assigning lawyers from the bar associations'

17 Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *Prohibition of Torture*, BCHR, Belgrade, 2017, pp. 107–115. The shortcomings of the prior system were noted also by international monitoring bodies. See, e.g. Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, § 36; Visit to Serbia and Kosovo*, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Human Rights Council, A/HRC/40/59/Add.1, 25 January 2019, § 14; Concluding observations on the second periodic report of Serbia, Committee against Torture, CAT/C/SRB/CO/2*, 3 June 2015, § 9.

18 Available in Serbian at: aks.org.rs/aks/wp-content/uploads/2019/02/SAJT-POČETAK-RADA-KOL-CENTRA-AKS.pdf.

lists was launched. The data entered into the application allow the production of statistical reports on each individual public defender, the authority that appointed them (court, PPO or the relevant police authority) and on all *ex officio* lawyers assigned on a daily, weekly and annual basis. Lists of *ex officio* lawyers assigned cases are published in reports posted on the website of the Serbian Bar Association.[19] The system should reduce (or eliminate) the possibility of giving preference to specific lawyers during the assignment of *ex officio* defence counsel and to contribute to the prevention of ill-treatment through the diligent and professional work of *ex officio* lawyers.[20]

Legal aid was introduced in Serbia by the adoption of the Legal Aid Act (LAA).[21] Legal aid covers representation in specific proceedings before the relevant authorities "to individuals exercising legal protection from torture and inhuman or degrading treatment or punishment" regardless of their financial standing (Art. 4(3)). The applicants must apply for legal aid with the relevant city or municipal administrative body in their place of habitual or temporary residence or the place where the legal aid is to be provided (Art. 27). The administrative authority must decide on the application within eight days from the day of receipt of the application or the requested additional documentation. If there is a risk of irreparable harm to the applicant or of the expiry of the deadline by which the applicant is entitled to take specific actions in the proceedings, the administrative authority must decide on the application within three days from the day of receipt. The application shall be deemed rejected in the event the administrative authority fails to issue a ruling on it within these deadlines (Art. 32). An applicant may appeal a negative decision of the city or municipal administration with the Ministry of Justice within eight days from the day of receipt of the ruling rejecting the application, or within eight or three days from the expiry of the deadline whereupon the application is deemed rejected. The Ministry must rule on the appeal within 15 days from the day of its receipt. An administrative dispute may be initiated against the Ministry decision, which is deemed final in administrative proceedings (Art. 34).

Under the CPC, arrestees are entitled to request an examination by a doctor of their own choosing without delay and, if their doctor is unavailable, by a doctor chosen by the public prosecutor or the court (Art. 69). Such an examination may also be requested by the arrestees' defence counsel, family members or partners. The public prosecutors may also order such an examination *ex officio*

19 Available in Serbian at: aks.org.rs/sr_lat/obavestenja/.

20 "2020 Judicial Monitoring Report," Dušan Protić, Katarina Grga, European Policy Centre – CEP, Belgrade, 2021, pp. 121 and 122. Available in Serbian at: otvorenavratapravosudja.rs/media/ovppolazni-zvestaj-o-pracenju-stanja-u-pravosudju-za-2020-godinu.pdf.

21 *Official Gazette of the RS*, 87/2018.

(Art. 293). Detainees may be visited, inter alia, by their doctor with the approval of the preliminary proceedings judge and under their supervision or the supervision of a person designated by them, subject to the house rules of the detention facility. Specific visits may be prohibited if it is likely that they might lead to the obstruction of the investigation. A detainee may appeal a ruling of the preliminary proceedings judge prohibiting such visits with the extra-procedural council of the court (Art. 219, CPC).

Under the Police Act, police officers shall facilitate the provision of medical assistance by health institutions to individuals vis-à-vis whom they are exercising their police powers and at their request (Art. 67). The Rulebook on Police Powers[22] sets out that police officers bringing individuals into custody shall arrange the provision of professional medical assistance to them if these individuals have visible injuries or are complaining of pain (Art. 22); before placing them into custody, the officers shall ask them whether they are in any pain or have health problems, undergoing medical treatment and whether they are in need of any specific medications or medical assistance; arrange the provision of medical assistance to arrestees with visible injuries or other health problem; and, enter in the custody report information on the arrestees' visible physical injuries, as well as injuries and any health changes that occurred since they have been taken into custody, and on the medical assistance extended to them (Art. 33). The Rulebook also lays down that police officers may be present during the individuals' medical examinations only on the request of the medical staff and for reasons of their security; in such cases, the examinations are attended by officers of the same sex as the examinees (Art. 36).

Under the Penal Sanctions Enforcement Act (PSEA),[23] remand and convicted prisoners shall undergo a medical examination on admission to a penitentiary (Arts.179 and 238). Convicts are to be examined upon return from furlough as well (Art. 115). Examinations are also conducted before release from pre-trial detention or prison (Arts. 179 and 246). Health examinations of convicts shall be conducted only in the presence of medical staff unless they request otherwise (Art. 114). Penitentiary doctors are under the obligation to keep separate records of the convicts' injuries and notify the governor of any signs or indications that they had been subjected to violence. The doctors are under the obligation to enter the convicts' claims about the causes of their injuries in their medical reports, and to state their view on whether the injuries are consistent with their claims (Art. 115). All remand and convicted prisoners subject to coercive measures, except fixation, must undergo medical examinations immediately, and be re-examined in the following 12–24 hours. The penitentiary

22 *Official Gazette of the RS*, 41/2019.

23 *Official Gazette of the RS*, 85/2014 and 35/2019.

security service's written report, medical documentation and reports on the performed medical examinations shall be forwarded to the governor without delay. The doctors are to include in their reports the claims of the individual subject to a coercive measure on the cause of the injuries and their opinion on whether the injuries could have been caused by the coercive measure. The governor shall notify the Director of the Penal Sanctions Enforcement Directorate (PSED) of the use of coercive measures and forward the reports within 24 hours from the time the coercive measure was applied (Art. 144). The governor may approve an examination by a specialist doctor at the convict's request if such an examination was not ordered by the doctor, and after receiving the doctor's opinion why it is deemed unnecessary. The costs of the specialist examination are borne by the convict unless the governor decides otherwise (Art. 117).

The effectiveness of investigations of allegations of torture and other forms of ill-treatment greatly depends on when the relevant public prosecutor is notified of the case. Rather than filing criminal reports to the relevant public prosecutors, citizens ill-treated by public officials tend to report the crime in their complaints to the heads of the state authorities in which the officials who ill-treated them work. Examinations of allegations of ill-treatment via complaint mechanisms have regularly failed to fulfil the above-mentioned requirement concerning the independence of investigations given that the complaint reviews are conducted by the immediate supervisors of the public officials suspected of ill-treatment. As a rule, the authorities and individuals charged with conducting these procedures cannot perform comprehensive and thorough reviews of ill-treatment allegations either, because they do not have all the powers public prosecutors have. Furthermore, complaints of torture and other forms of ill-treatment – which should be reviewed by the relevant PPOs or courts – are forwarded to the public prosecutors with a huge delay, if at all, when much of the evidence of ill-treatment (video footage, physical injuries, etc.) has already disappeared.

The Police Act lays down that the relevant public prosecutor, the ICS and the head of the unit in which the implicated officer is working shall be notified without delay of complaints by members of the public involving elements of a criminal offence (Art. 234). The MIA Complaints Review Rulebook[24] also sets out that public prosecutors must be notified without delay, *within 24 hours at most*, of complaints including claims that a crime prosecuted *ex officio* has been committed; that, in addition to the ICS, the Police Director and the body charged with implementing police anti-torture standards shall be notified of complaints including allegations of torture, inhuman or degrading treatment, physical injuries or threats of torture; and that the review shall focus on the parts

24 *Official Gazette of the RS*, 90/2019.

of the complaint not including claims of crimes (Art. 5). The Communal Militia Act[25] also sets out that the official charged with reviewing complaints shall notify the relevant public prosecutor if the complaint about the work of a communal militia officer or data collected during the review of the complaint give rise to suspicions that the officer committed a crime prosecuted *ex officio* whilst acting in an official capacity, in which case the head of the communal militia shall forward the case file to the complaints review commission, which will proceed with reviewing the complaint (Art. 32(4)).

As opposed to the above-mentioned laws, the PSEA does not govern situations when a convict's complaint includes claims of a crime, including torture or ill-treatment. The convicts' complaints are reviewed by the governor or a person they designate. The governor's decision may be appealed with the PSED Director. In the event the complaint concerns a threat or injury to the convict's life or health, the governor shall immediately order a medical examination of the convict (Art. 126). Complaints of torture and other forms of ill-treatment are mentioned in the Rulebook on Oversight of Penitentiaries,[26] albeit only in the list of issues overseen by the PSED Inspection Department (Art. 17(6(7))).

Neither the CPC nor the Police Act include provisions on audio-visual recording of interrogations of suspects in rooms specifically designated for that purpose,[27] which would substantially facilitate the protection of persons deprived of liberty from any police misconduct.

A special Methodology for investigating police ill-treatment[28] was introduced into Serbia's legal system "through the back door" in 2017, in the form of an MIA by-law[29] and general binding guidance issued by the Republican Public Prosecutor.[30] The Methodology includes a number of commendable provisions on investigations of police ill-treatment, notably:

25 *Official Gazette of the RS*, 49/2019.

26 *Official Gazette of the RS*, 85/2015.

27 In mid-2016, the Protector of Citizens submitted to the Serbian Government and National Assembly an initiative to amend the law to make mandatory audio-visual recordings of: interrogations of suspects during the preliminary investigation proceedings, use of coercive measures by police officers, communal police (now militia) officers and penitentiary guards and exercise of powers depriving people of liberty. The Government and parliament never commented on the initiative, which is available in Serbian at: www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/4831–2016–07–26–10–07–36.

28 The Methodology is available in Serbian on the website of the Judicial Academy: www.pars.rs/images/biblioteka/metodologija-za-sprovodjenje-istrage-u-slucajevima-zlostavljanja-od-strane-policije.pdf.

29 Guidance on the Methodology for Investigating Cases of Police Ill-Treatment, 01 No. 7209/17–6 of 18 October 2017 (not published in the Official Gazette of the RS).

30 General Binding Guidance on the Methodology for Investigating Ill-Treatment Cases, Republican Public Prosecution Office, O. No. 3/17, of 26 September 2017.

(1) Investigations of allegations of police ill-treatment are to be conducted by public prosecutors; they may entrust the performance of individual evidentiary actions to the ICS only exceptionally, in which case they are also under the obligation to effectively take the steps they are entitled to in order to facilitate the ICS' prompt and effective performance of these actions;

(2) The public prosecutor and ICS officers participating in the investigation shall be independent, both formally and actually, from the individuals whose actions are being investigated;

(3) Police officers, whose actions are being investigated, must be precluded from tampering with the investigation;

(4) Public prosecutors may initiate via the ICS a procedure to suspend the accused police officers pending the completion of the investigation;

(5) Police officers may not be present during the questioning of witnesses, including the injured parties; exceptionally, if the presence of police officers is necessary for security reasons, the examination of witnesses may be attended by police officers who are not implicated in the event under investigation;

(6) Injured parties or witnesses deprived of liberty should be transferred to institutions where police officers charged with ill-treating them cannot tamper with them; if an individual in police custody is at issue, the transfer order is issued by the public prosecutor, whereas, if an individual in pre-trial detention is at issue, the public prosecutor is to request of the preliminary proceedings judge to order their transfer to another penitentiary;

(7) All health examinations of injured parties deprived of liberty are to be performed out of the hearing and, if possible, out of sight of police officers or penitentiary guards; for security reasons or at the request of the doctor, an examination may exceptionally be attended by police officers not implicated in the event under investigation; the security reasons or the doctor's request must be specified in the official report of the police officer who attended the examination;

(8) All measures and actions to secure evidence must be undertaken urgently in police ill-treatment cases, especially those that may be obstructed or impossible at a later stage (photographing of injuries, collection of medical documentation and objects used during ill-treatment, taking photographs and evidence traces from the scene of the alleged crime, statements of the defendants, witnesses and injured parties, etc.);

(9) Only the public prosecutor may decide which evidentiary measures and actions are to be undertaken;

(10) Where the ill-treatment was reported to or otherwise brought to the attention of the police (e.g. by a health institution), the police officer is to notify the public prosecutor on duty thereof without delay; the prosecutor is to decide on the course of the investigation; after notifying the public prosecutor of allegations or indications of ill-treatment, the police officer is to undertake evidentiary measures and actions only on the order of the public prosecutor, with the exception of actions that cannot delayed, pursuant to Art. 286 of the CPC;

(11) Injured parties may be questioned only by the public prosecutor; the questioning of the injured parties should always be audio– or video-recorded, technology permitting;

(12) The public prosecutor should grant or request of the court to grant the injured party the status of a particularly vulnerable witness, if the statutory requirements are fulfilled;

(13) Public prosecutors are to perform urgent inquests in ill-treatment cases and may seek the assistance of forensic, medical and other professionals in identifying, securing and describing evidence traces; they are to make sure that the course of the inquest is photographed and, whenever possible, video-recorded; the photographs and video footage are an integral part of the inquest report;

(14) Where there are evidence traces or consequences of a crime on the body of the defendant or the injured party, the public prosecutor is to perform a physical examination of the individual irrespective of their consent, or order a forensic examination in the event the physical examination of the individual requires expertise the public prosecutor does not have; during the examination of the injured party, the criminal technician is to take colour photographs of the injuries on their face and body; the size and shape of the injuries should be presented with the help of a ruler and a colorimetric scale; depending on the manner in which the alleged ill-treatment occurred, samples of biological origin, clothing and footwear of the injured party and the defendant should be taken, in order to collect all the necessary evidence;

(15) The medical report should contain a detailed description of all injuries and their distance from anatomical landmarks, according to forensic medicine standards, such as: shape (size and colour), changes and direction of the injuries, their age and what may have caused them, the time when they were inflicted, as well as the

psychological state of the injured party (e.g. anxiety, fear, crying); the medical report should be accompanied by photographs of the physical injuries, which are as a rule to be taken by the criminal technician, or, if that is not possible, the doctor or public prosecutor (who e.g. photograph them with their cell phones); the doctor should specify in the report the injured party's descriptions of how and when they sustained the injuries; the doctor is to notify the relevant public prosecutor immediately after examining the injured party and completing the medical report;

(16) In cases of alleged ill-treatment, the public prosecutor should order forensic examinations as soon as possible, if necessary;

(17) In the event the injured party has been examined by a doctor or another medical professional, it needs to be ascertained whether influence has been brought to bear on them to conceal or change their findings;

(18) On the order of the court, retained data (listings of telephone traffic, used base stations, GPS on the tetra system) should be processed in order to ascertain the presence of the police officer and the injured party at the location at which the alleged ill-treatment occurred;

(19) Police officers charged with ill-treatment may be interrogated only by the public prosecutors; where two or more police officers are charged with ill-treatment, they should always be interrogated separately;

(20) The public prosecutor should take adequate measures (e.g. issue a custody ruling or request pre-trial detention) to preclude any communication among the defendants and their collusion.

1.3. Analysis of Valid Law

1.3.1. Analysis of Individual Provisions of Substantive Criminal Law

The descriptions of the criminal offences under Articles 136 and 137 of the CC define the criminal law concepts of torture and ill-treatment in Serbia in a non-systematic and incomplete manner.

The first general problem arises from the fact that the incrimination of torture and ill-treatment in Art. 137 of the CC is not "reserved" only for public officials. On the contrary, the commission of the simple and aggravated forms of this crime is possible without any involvement on the part of public officials.[31]

31 More on the reasons why criminal law should distinguish between the incrimination of torture and other forms of ill-treatment – as crimes entailing the involvement of public

Another deficiency of the valid provisions is the substantial overlap of the aggravated form of the crime of extortion of a confession (Art. 136(2), CC) and the gravest form of the crime of torture and ill-treatment (Art. 137(3) in conjunction with paragraph 2, CC). Both of these crimes can be committed only by public officials acting in an official capacity. The two offences are also similar with respect to the act of commission: as per extortion of a confession, the act is accompanied by "severe violence" against another, which may entail the use of serious force, threats or other inadmissible means or methods. As per the most severe form of torture and ill-treatment, the act involves inflicting substantial pain or great suffering to another, by use of force, threat or in other inadmissible manner. [32] Both crimes can be committed only intentionally; the intention to extort a confession or statement from another is an important element of the legal description of both offences. The situation has facilitated the inconsistent qualifications of the crimes by the PPOs and courts, which had visible consequences in the criminal law field until the Criminal Code was amended in December 2019 (investigations were launched in case of the aggravated form of extortion of a confession and summary proceedings in case of the gravest form of torture and ill-treatment) and sentencing (due to different ranges of prescribed penalties).[33] The problem was also noted by CAT in its 2015 report,[34] wherefore the legislator should formulate a single legal description of the crime now incriminated in Articles 136 and 137 of the CC.

Another deficiency of Article 137(2) of the CC arises from the legislator's failure to specify that the crime may be committed to coerce the victim or a third party, like in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[35]

The act of the simple form of the crime under Article 137 of the CC is defined in a general fashion – as ill-treatment of another or treatment of another in

officials, and acts of violence perpetrated by non-state actors without any involvement of public officials in: Vladica Ilić, Aleksandar Trešnjev, Tea Gorjanc Prelević, *Sentencing Practices in the Field of the Prohibition of Ill-Treatment in Montenegro*, BCHR, Belgrade, 2021, pp. 15–17 (available in Serbian at: www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Analiza-kaznene-politike-u-oblasti-zabrane-zlostavljanja-u-CG.pdf); Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit.*, p. 60 in fine.

32 Compare: Zoran Stojanović, *Commentary on the Criminal Code*, p. 457.

33 Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit*., pp. 66–67.

34 CAT/C/SRB/CO/2, § 8.

35 The provision does not explicitly state that torture may be committed for the purpose of "punishing him for an act he or a third person has committed or is suspected of having committed" like UNCAT does. Rather, it sets out that the crime may be committed in order to "illegally punish" a person.

a manner violating their human dignity. Apart from providing for the possibility of categorising a large number of actions as this offence, the provision may also give rise to problems in distinction.[36] National criminal law theorists consider that the act of the simple form of the crime of torture and ill-treatment (Art. 137(1), CC) entails undertaking specific actions causing a passive subject specific physical or mental anguish of lesser intensity not amounting to a light bodily injury, wherefore this form of the crime (*as well as the crime under paragraph 3 in conjunction with paragraph 1 of the same article – author's note*) may be conducted in conjunction with the infliction of light bodily injuries incriminated in Article 122 of the CC.[37] In view of the aggravated form of the crime under Article 137(2) of the CC, it may be concluded that the concurrence of these crimes is possible only under the condition that the general manner in which the victim was ill-treated – which may involve the infliction of light bodily injuries – has not reached the level at which it can be considered the infliction of "substantial pain" or "great suffering". It, however, needs to be noted that, in the case of the described concurrence of crimes, problems have arisen also because prosecution for the simple form of the crime of infliction of light bodily injuries is instituted by private action (Art. 122(4), CC), since part of the state's obligation under international law to conduct official investigations of allegations of ill-treatment by public officials is thus transferred to the victim.

Furthermore, there is a visible lack of aggravating circumstances and aggravated forms of the crimes, which, as noted, leads to the courts occasionally trying the perpetrators of these crimes in conjunction with other crimes. This has given rise to risks of inconsistent case law and opened the issue of the existence of actual or apparent concurrence of crimes, an issue not regulated by the CC or addressed in practice in accordance with specific theoretical, logical and other rules.[38] Second, trials for two crimes, each of which carries a milder range of penalties than the one that would be prescribed if the "missing part of the incrimination" in the latter crime were envisaged as an aggravating circumstance of the former crime[39] now results also in shorter statutory deadlines. The lack of

36 Vladica Ilić, Aleksandar Trešnjev, Tea Gorjanc Prelević, *op. cit*., p. 46.

37 Zoran Stojanović, *op. cit.*, pp. 458–459.

38 In Stojanović's view, Article 137(2) of the CC mentions the infliction of substantial pain or great suffering but not the infliction of grave physical injuries. Therefore, the concurrence of this crime and the crime of infliction of light bodily injuries is possible, but there would be no concurrence if the torture resulted in murder (in that case, the perpetrator would be charged with aggravated murder, committed in a cruel manner). *Ibid*., p. 460.

39 As a rule, the law lays down harsher penalties for crimes resulting in graver consequences than for those that can be handed down by applying provisions on sentencing for concurrent crimes, provided that unintentional infliction of graver consequences is at issue. This is the main reason why the legislator provided for aggravated crimes with graver conse-

specific aggravating circumstances may ultimately lead to the insufficient evaluation of specific facts of relevance in criminal law (e.g. instead of resulting in the qualification of an offence as aggravated, with a higher penalty range, they are considered merely aggravating circumstances). For instance, the features of the victim (e.g. a child, in poor health, suffering from a disability, deprived of liberty, et al), means of commission (involving the use of firearms, electric shocks, dangerous implements, etc.), manner of commission (persistence, long duration, repetition of the act), the number of perpetrators (e.g. the commission of the crime by more than one or a group of individuals) and intentionally or unintentionally inflicted grave consequences (grave physical injury, permanent health impairment, death) are relevant circumstances that the legislator should consider qualifying as aggravating in order to provide a comprehensive criminal law definition of the acts of torture and other forms of ill-treatment.

International monitoring bodies have over the past few years repeatedly criticised the lenient penalties laid down in Serbia for public officials found guilty of torture. The penalty range prescribed for the gravest form of the crime of torture and ill-treatment (Art. 137(3) in conjunction with paragraph 2, CC) and the aggravated form of the crime of extortion of a confession (Art. 136(2), CC) is drastically lower than the one considered appropriate for torture.[40]

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quences, considering that a new quality in terms of the severity of crimes. See, e.g. Zoran Stojanović, *Criminal Law – General*, 20th edition, Law School, University of Belgrade and Pravna knjiga, Belgrade, 2013, p. 205. See also: Ivan Đokić, *Criminal Offences Qualified as Aggravated on Account of Graver Consequences,* Penal Reaction in Serbia, Part III, Law School, University of Belgrade, Belgrade, 2013, p. 268. The same applies to the institute of complex criminal offences. The legislator's introduction of complex criminal offences – brand new crimes in the event two crimes are committed together – has mostly been guided by the following reason: the penalties laid down for the concurrent individual crimes would be inadequate in the light of the quality and severity of the new crime. See: Zoran Stojanović, *op. cit*., p. 247.

40 The ECtHR has held that it was absolutely incompatible with the obligations resulting from Article 3 of the ECHR to classify torture as an "average-level crime" warranting reduced sentences in national law given the extreme seriousness of the crime. See its judgment in the case of: *Pădureț v. Moldova*, Application No. 33134/03, of 5 January 2010, § 77. Criminal law applicable in ill-treatment cases must provide practical and effective protection of rights enshrined in Article 3 of the ECHR. See the ECtHR's judgment in the case of *Pulfer v. Albania,* Application No. 31959/13, of 20 November 2018, § 80. Through an analysis of the views expressed by individual CAT members, one author concluded that a custodial sentence of between six and twenty years would generally be considered an appropriate reflection of the gravity of the crime of torture. See: Chris Ingelse, The UN Committee against Torture: *An Assessment*, Kluwer Law International, 2001, p. 342. In its opinion on the incrimination of torture in Poland, the OSCE said that the penalties provided for torture in the legislation should not be less than six years of imprisonment, as recommended by the CAT (Opinion on Definition of Torture and its Absolute Prohibition in Polish Legislation, OSCE Office for Democratic Institutions and Human Rights, 2018, § 13B). A

The simple form of the crime of extortion of a confession (warranting between three months' and five years' imprisonment) and the simple form of ill-treatment committed by a public official acting in an official capacity (warranting between three months' and three years' imprisonment) are categorised as mild crimes because of the prescribed penalties. This enables the courts to issue an admonition (impose primarily suspended sentences) and may obstruct investigations of ill-treatment allegations. For instance, a public official who incites another to commit the crime of ill-treatment will not be held responsible if the ill-treatment has not been attempted or completed, given that criminal liability for unsuccessful incitement exists only for offences where the attempt to commit them is punishable.[41] It also needs to be noted that, under the Criminal Code, public officials inciting or aiding or abetting others, who do not have the status of public officials, to commit a crime incriminated in Articles 136 and 137 of the CC will be handed down a more lenient penalty in the range of those prescribed for perpetrators who do not have the status of public officials.[42]

The Criminal Code does not provide for the criminal liability of public officials who have failed to report the preparation or commission of the simple form of the crime of ill-treatment. Failure to report the preparation of an extortion of a confession and torture and ill-treatment by a public official acting in an official capacity warrants a fine or maximum one year imprisonment (Art. 331(1), CC), while failure to report the commission of these crimes warrants between six months' and five years' imprisonment (Art. 332(2), CC). The preparation of the crimes of extortion of a confession and torture and ill-treatment (e.g. procurement or installation of the means for committing them) is not punishable. Only conspiracy with others to commit a crime is punishable, by up to one year imprisonment (Art. 345, CC).

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comparative review of penalties for torture is available in: Vladica Ilić, Aleksandar Trešnjev, Tea Gorjanc Prelević, *op. cit*., pp. 33–37. Some are of the opinion that consequences of torture should not be decisive in sentencing and that aggravating circumstances, e.g. permanent disability or death of the victim, should not have bearing on the severity of the sentence, because the intention to torture entails the possibility of the victim sustaining lasting physical and mental effects. Manfred Nowak and Anna Zenz, *Der Straftatbestand der Folter in Österreich aus völkerrechtlicher Sicht*, in: Vielfalt des Strafrechts im internationalen Kontext—Festschrift für Frank Höpfel zum 65. Geburtstag (eds Robert Kert and Andrea Lehner), Neuer Wissenschaftlicher Verlag, 2018, p. 498. As quoted in: *The United Nations Convention Against Torture and its Optional Protocol – A Commentary*, 2nd edition (eds Manfred Nowak, Moritz Birk and Giuliana Monina), Oxford University Press, Oxford, 2019, p. 188.

41 Crimes warranting minimum five years' imprisonment and crimes where the Criminal Code explicitly provides penalties for attempt (Arts. 30 and 34, CC).

42 See: *vice versa*, Article 36(4), CC.

These provisions of the Criminal Code are unsuitable for the fulfilment of the state's obligation to adequately penalise torture and ill-treatment and all acts amounting to complicity or participation in their commission.

The law does not mandate the imposition of the security measure prohibiting the offender from practicing a profession, activity or duty (which the court may issue even in the absence of such a request on the part of the relevant public prosecutor) for any criminal offences committed by public officials. In tandem with the low penalties for the crimes incriminated in Articles 136 and 137 of the CC, this has enabled public officials convicted of these crimes to continue working in state authorities unless a criminal conviction automatically results in dismissal under the labour law. According to the valid standards, public officials found to have intentionally ill-treated another person should be discharged from public service.[43]

As mentioned, the court may punish a defendant found guilty of torture and ill-treatment under Art. 137(3) in conjunction with paragraph 1, CC, with community service, as an alternative to a custodial sentence.[44] Given that the legislator obligates the court ordering community service to take into account the kind of crime the defendant committed, the question arises whether this penalty is justified in cases of torture and ill-treatment convictions. On the one hand, as opposed to suspended sentences, community service is not a potential and suspended penalty, but effective punishment of the perpetrator. Furthermore, mandatory dismissal from public service plus community service may have satisfactory general preventive effect as regards the *mildest* forms of ill-treatment, given that a sentence of imprisonment for the failure to perform community service may not exceed 45 days (*arg.* under Art. 52, paragraphs 3 and 5, CC). The imposition of this penalty in lieu of imprisonment does not appear justified vis-à-vis individuals who had been convicted earlier, especially for similar crimes or crimes of the same class, given the court's obligation to take into account the "perpetrator's personality" when deliberating the imposition of this penalty.

Finally, a major shortcoming of Serbia's criminal substantive law concerns the fact that the prosecution of torture and ill-treatment and enforcement of penalties for all crimes of torture and ill-treatment by public officials are subject to statutory limitations, which are short due to the range of penalties. The law does not prohibit pardoning or amnestying public officials accused or convicted of torture or ill-treatment, which is directly in contravention of valid international human rights standards in this field.[45]

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43 See: *infra*, Section 3.2.

44 Zoran Stojanović, *Penalty System in Serbia's Criminal Law and the Need to Advance it,* in: Penal Reaction in Serbia, Part V, (ed. Đ. Ignjatović), *Crimen* Edition, Belgrade, p. 18.

45 See: *infra*, Section 3.2.

1.3.2. Analysis of Individual Procedural Law Provisions Relevant to Investigations of Ill-Treatment Allegations

One of the issues regularly arising with respect to the prosecution of ill-treatment is whether the CPC provisions on summary proceedings applicable to the crimes under Article 136(1) and Article 137(3) in conjunction with paragraph 1 of the CC due to the severity of the penalties are adequate in view of the state's obligation to conduct effective investigations of ill-treatment allegations. Some experts are of the view that the prosecution of these offences in summary proceedings indicates that the state does not recognise their actual severity in light of the absolute prohibition of torture.[46] The analysis of this issue should depart from the fact that special CPC provisions on summary proceedings apply in such proceedings and that other CPC provisions are to apply accordingly *unless something is specified otherwise in these provisions*, (Art. 495). Therefore, although summary proceedings do not include an investigation as a distinct stage of criminal prosecution, the rule in Article 495 of the CPC should be construed as follows: procedural rules and the rights of persons participating in investigations shall apply accordingly in summary proceedings in regard to the undertaking of evidentiary actions as long as they are not in contravention of the *lex specialis* provisions in Articles 496–520 of the CPC.[47] Therefore, the assessment of the adequacy of summary proceedings for effective investigations of ill-treatment allegations should be reviewed within the scope of the provisions on summary proceedings.

Although the 30-day (maximum 60-day) restriction of the pre-trial detention of a defendant in summary proceedings should not impede the conduct of an effective investigation, i.e. the collection of evidence of ill-treatment, there may be situations when the prosecutors might reasonably need more time to collect all the evidence they need in order to file charges against a public official suspected of ill-treatment, during which one or more grounds for ordering the pre-trial detention may exist. On the other hand, the CPC provisions entitling the public prosecutor to conduct certain evidentiary actions in the shortest possible time before deciding whether to file an indictment or to dismiss the criminal report (Art. 499(2), CPC) and allowing injured parties to file an objection in the event the public prosecutors fail to file an indictment or to notify the injured parties that they dismissed the criminal report within six months (Art. 499(3)), are not in themselves an obstacle to a thorough examination of ill-treatment allegations. The injured party's objection is a legal remedy against the prosecutor's

46 Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit*., p. 105.

47 This conclusion arises also from the principle of "equality of arms".

dilatoriness, but it does not imply that the prosecution office is under the obligation to file an indictment or dismiss a criminal report within six months in each individual case (e.g. if there are justified reasons why it needs some more time to collect the evidence in order to file charges). In other words, submission of an objection upon the expiry of six months from the day the criminal report was submitted need not automatically result in the upholding of the objection and the conclusion that the prosecution office was dragging its feet in investigating allegations of ill-treatment. However, the above-mentioned provisions appear defective in light of the state's positive obligation to conduct a *prompt, independent and thorough investigation into allegations of ill-treatment* for several reasons. The first concerns the requirement that the review of the prosecution office's promptness of action must be initiated by the *injured party who filed the criminal report;* the second concerns the *six-month deadline* from the day of receipt of the criminal report, which must pass before the objection is filed; the third concerns the *very reasons for filing the objection*; and the fourth regards the absence of *ex officio* oversight of the relevant PPO's (non-)action in case of expiry of the six-month deadline.

Given that prosecutorial dilatoriness in summary proceedings for crimes under Articles 136 and 137 of the CC may often occur before the expiry of the six-month deadline, especially in the light of the risk of the rapid disappearance of the evidence (e.g. traces of injuries on the victims, video recordings, precluding the collusion of public officials, etc.), it would be more expedient to entitle the injured parties – whether or not they filed a criminal report or the PPO itself initiated or ordered the implementation of the requisite actions because of the existence of grounds to suspect that a crime has been committed – to take procedural steps even before the expiry of the six-month deadline if they believe that the evidence may be lost due to the lack of diligence on the part of the prosecution office. Injured parties do not have all the procedural powers afforded to suspects: the latter are entitled to request of the public prosecutor to perform specific evidentiary actions during the investigation and the *summary proceedings* (*arg.* under Art. 495, CPC)), and in case of their refusal, submit such a motion to the preliminary proceedings judge (Art. 302, CPC). They are also entitled to file an objection with the immediately superior public prosecutor and subsequently a complaint with the preliminary proceedings judge *as soon as they become aware of other irregularities during the investigation and summary proceedings* (Art. 312, CPC). The status of injured parties under procedural law is unjustifiably weaker than that of the suspects in that sense. Injured parties may propose evidence of relevance to their claim (Art. 50, CPC), but they may file an objection only upon the expiry of the six-month deadline in summary proceedings (Art. 499, CPC) or only once the prosecutor has decided against criminal prosecution (Art. 51,

CPC). And, finally, in view of the state's *obligation* to conduct effective investigations of torture and ill-treatment allegations in all cases, it would be more adequate if the solution in the CPC – which is now reserved only for investigations due to the *lex specialis* rule in Art. 499(3) of the CPC – provided for *ex officio* oversight of the prosecutors' (non-)action in *all* cases involving torture and other forms of ill-treatment. Notably, under Art. 310 of the CPC, a public prosecutor, who fails to complete the investigation of the suspect within six months, shall notify the immediately superior public prosecutor of the reasons therefor and the latter shall take measures to complete the investigation.

Although an extremely low degree of suspicion that a crime has been committed or that an individual has committed a crime – grounds for suspicion – is required for the issuance of an order to conduct an investigation (Art. 295, CPC), in practice, cases formed on suspicions of ill-treatment are very frequently "kept" much too long in the preliminary investigation stage – the duration of which is not limited – and during which the prosecutors undertake evidentiary actions they should be undertaking during the investigation. This does not only render meaningless the six-month deadline for completing an investigation, but benefits the suspected public officials as well. For example, police officers may be suspended from work both when they are ordered into pre-trial detention and when an order to conduct an investigation against them is issued (Art. 217, Police Act). The CPC does not provide injured parties (who have no interest in the proceedings dragging on) with any procedural means in this respect; nor does it envisage *ex officio* oversight of prosecutorial diligence by the immediately superior prosecution office.

As far as the independence of investigations of allegations of police ill-treatment is concerned, it needs to be noted that there are legal and practical obstacles to considering the ICS sufficiently independent from the MIA's Police Directorate although it is established as a separate unit. First of all, under the Police Act, the head of the ICS shall account for the work of the ICS and their own work to the Minister of Internal Affairs, who is entitled to oversee the work of the ICS head and staff (Art. 232) and issue guidelines and binding guidance on the ICS' operations "with the exception of actions undertaken in the preliminary investigation and investigation proceedings at the request of the relevant public prosecutor". In addition to the question of the Minister's powers to issue a body charged with overseeing police operations binding guidance, the linguistic and logical interpretation of the provision (*arg. a contrario*) may lead, e.g. to the conclusion that the Minister may influence the ICS' operations, specifically its (non-)implementation of actions not ordered by the relevant public prosecutor and the manner of their implementation. On the other hand, ICS staff charged with overseeing police operations are ordinary officers who used to be police

officers, which per se gives rise to the risk of familiarisation. Furthermore, vacancies in the ICS are not publicly advertised, wherefore individuals who are not already working in the MIA but boast the professional and ethical competences cannot apply for the job.

Another dilemma arising in the context of effective investigations is the requirement that the injured party take over criminal prosecution in the capacity of subsidiary prosecutor only in the event the public prosecutor abandons the charges after the confirmation of the indictment or the scheduling of the main hearing in summary proceedings. Although this CPC solution unquestionably weakens the institute of the subsidiary prosecutor compared to the prior provisions of national law,[48] it is unclear whether allowing injured parties to take over criminal prosecution before the trial stage of the criminal proceedings begins would positively affect the conduct of effective investigations of ill-treatment allegations. In our view, the CPC solution has its advantages, given that it authorises only the relevant public prosecutors to conduct such investigations; as opposed to subsidiary prosecutors, the relevant public prosecutors are supplied with adequate powers and are thus capable of conducting such investigations effectively. It is quite unlikely that investigations of ill-treatment allegations conducted by injured parties in their capacity of subsidiary prosecutors would result in the establishment of all the relevant facts of the case[49] given that subsidiary prosecutors do not have the investigation-related powers public prosecutors do.[50]

In our view, the CPC provisions on objections by injured parties have a much greater negative impact (Art. 51, CPC). First, the subjective (eight-day) deadline for filing an objection may prove too short for the preparation of a

48 Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit.*, pp. 103–104.

49 *Jeronovičs v. Latvia* (ECtHR), Application No. 44898/10, judgment of 5 July 2016, § 103.

50 Injured parties acting as subsidiary prosecutors do not have the rights exercised by public prosecutors, who are a state authority. Unlike public prosecutors (Art. 19(1), PPA), they cannot count on the assistance of state authorities in collecting evidence (Art. 19, CPC), nor on the obligation of everyone they ask for such assistance to directly provide them with information and clarifications they need to take the actions they are entitled to by law. The police and other state authorities are under the obligation to comply only with all the requests of the public prosecutors. True, lawyers representing injured parties acting as subsidiary prosecutors are entitled to exercise the right under Article 36 of the Lawyers Act (*Official Gazette of the RS*, 31/2011 and 24/2012 – CC Decision) to require and promptly receive from state authorities, institutions, enterprises and other organisations information, files and evidence in their possession or under their control, but the scope of that right is nevertheless much narrower than of the one the public prosecutors have, both in terms of the range of entities vis-à-vis they can exercise it and in terms of the extent of cooperation. See: Goran P. Ilić, Miodrag Majić, Slobodan Beljanski and Aleksandar Trešnjev, *Commentary on the Criminal Procedure Code,* 7th updated edition, Službeni glasnik, Belgrade, 2014, p. 227.

high-quality objection (e.g. in the event the injured party is deprived or liberty, the case has been ongoing for years and the public prosecutor had undertaken a large number of actions and collected extensive documentation and evidence). Second, the expiry of the subjective or objective (three-month) deadline for filing an objection results in the injured parties' definite loss of their right to intervene because of the deficiencies in the investigation conducted and completed by the public prosecutor, which is not in accordance with the state's obligation to give priority to the thoroughness of investigations of ill-treatment cases and eliminate all obstacles precluding the prosecution and punishment of perpetrators of ill-treatment and contributing to the climate of impunity.[51] Third, the question may arise why the right to an objection in cases of crimes prosecuted in public interest (*ex officio*) is granted only to the injured parties, but not to the individuals who have submitted the criminal reports but are not themselves the victims, i.e. who have not suffered torture or another form of ill-treatment, especially in view of the fact that many of the injured parties are persons deprived of liberty, who are insufficiently informed of their rights and are subject to pressures by the officials who had ill-treated them or by their co-workers. Finally, the question arises whether an objection to the immediately superior public prosecutor can even be considered an independent control mechanism, in view of the fact that the Serbian public prosecution system is based on the principles of hierarchy and subordination.[52]

The legal possibility of avoiding the establishment of the criminal liability of public officials for offences under Articles 136 and 137 of the CC by deferring their criminal prosecution (in exchange for payment of a specific amount for charity, etc.) is doubtlessly not compatible with international standards on effective investigations of ill-treatment cases.[53] Suspects absolved in this way are considered innocent because the criminal reports against them are dismissed. In addition to contributing to the climate of impunity, the application of this institute can have multiple harmful effects on the injured parties as well. The obligations the prosecutors impose upon the suspected public officials in exchange for dismissing the criminal reports against them *may but do not have to* include the compensation of injured parties (Art. 283(1), CPC). An injured party, who has not been awarded pecuniary damages or maintains that they are too low, would have to seek compensation in court, by initiating a damage claim against the suspected police officer and, like any claimant, would have to bear the burden of proving the facts the PPO avoided establishing by deferring criminal prosecution. Above all, denying injured parties the right to file an objection in the

51 See: Vladica Ilić, Aleksandar Trešnjev, Tea Gorjanc Prelević, *op. cit.*, p. 30.

52 See Articles 16–25 of the PPA.

53 See: *infra*, Section 3.2.

event the suspected officer fulfils the obligations within the deadline set by the public prosecutor in the deferral order (Art. 283(3), CPC) clearly demonstrates that their interests are totally disregarded.

The CPC grants persons deprived of liberty and the accused, inter alia, the right to defend themselves on their own or with the professional assistance of a defence counsel, who may attend the interrogation, and with whom they are entitled to have confidential conversations before interrogation (Arts. 68 and 69). The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has repeatedly reiterated that, to be fully effective, the right of access to a lawyer should be guaranteed as from the very outset of a person's deprivation of liberty, irrespective of the precise legal status of the person concerned or the severity of the crime they are suspected of, recalling that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is the greatest.[54] The CPC makes absolutely no mention of the right of access to a lawyer in the earliest stages of deprivation of liberty (before interrogation by the prosecutors or the police). This lacuna might be used in practice to justify why persons deprived of liberty have been denied access to a lawyer for a period of time that may not be negligible. For instance, the police may arrest an individual if there are grounds for ordering their pre-trial detention, but they are under the obligation to bring the arrestee before the relevant public prosecutor without delay and submit to the prosecutor a report on the reasons for and time of arrest. If insurmountable obstacles preclude the police from bringing the arrestee before the prosecutor for over eight hours, the police are required to explain the delay in detail to the public prosecutor, which the latter will make an official note of (Art. 291, CPC). As already noted, the CPC has contradictory provisions on the moment as of which a suspect taken into 48-hour custody must have a lawyer – Article 74 sets out that suspects must have a lawyer as of the moment of deprivation of liberty, while Article 294 lays down that individuals placed into custody must be represented by a lawyer as soon as the custody ruling is issued. Given that there is no way of telling before interrogation whether an individual being deprived of liberty will exceptionally be held in 48-hour custody, it would be more expedient if the law laid down that suspects in custody must have a lawyer from the moment their *custody is ordered and they are notified thereof,* rather than once the custody ruling is issued, which can occur up to two hours later (Art. 294, CPC).

Guaranteeing the right to legal aid to individuals who have suffered torture or another form of ill-treatment is definitely commendable, provided that

54 CPT, Access to a lawyer as a means of preventing ill-treatment, Extract from the 21st General Report, CPT/Inf (2011) 28-part1, §§ 18–21 (available at: www.coe.int/en/web/cpt/access-lawyer).

the authorities ruling on applications for legal aid realise that time is of the essence. Individuals requiring legal aid because of the ill-treatment they allegedly suffered often need to receive such aid within a very short period of time, e.g. because the eight-day deadline for filing an objection against the public prosecutor's decision is running or because there is a risk that the evidence of ill-treatment will soon disappear. The achievement of the purpose of legal aid in individual cases depends on how promptly the application is submitted and on how promptly the relevant local administrative body decides on it. However, delays in granting legal aid may be attributed to one more reason as well: the failure of the Legal Aid Act to regulate the effective exercise of this right by individuals deprived of liberty and held in the police, a penitentiary, a psychiatric institution, et al, who have difficulties applying for legal aid as rapidly as people who are free.

Part II

PROSECUTORIAL ACTIONS IN RESPONSE TO CRIMINAL REPORTS OF EXTORTION OF CONFESSIONS, TORTURE AND ILL-TREATMENT

A major novelty in the valid Criminal Procedure Code (CPC) is the so-called *prosecutorial investigation* concept, providing PPOs, i.e. public prosecutors and their deputies, with the central role in the initial stages of the proceedings preceding the criminal trial stage. There were a number of reasons warranting the introduction of prosecutorial investigations, including: to improve procedural efficiency; to increase the level of activity of prosecutors during investigations given that they are the only ones entitled to undertake criminal prosecution in respect of most crimes; to regulate accountability for ineffective investigations more adequately; to replace the office-based approach to work by the investigating judges as the main active subjects in the judicial investigation concept.[55] However, many experts have alerted to the systemic normative and practical deficiencies accompanying the application of the prosecutorial investigation concept, which have also reflected on the prosecution of offenders suspected of torture and other forms of ill-treatment. Such a conclusion may also be drawn from the analysis of the cases of ill-treatment reported and prosecuted in the 2018–2020 period.

2.1. Statistical Overview and Main Findings

According to data obtained from BPPOs in response to BCHR's requests for access to information of public importance,[56] 27 criminal reports of extor-

55 More on the advantages of prosecutorial investigations over court investigations in: Stanko Bejatović, *Prosecutorial Investigation as a Characteristic of the Reforms of Criminal Procedure Legislation of the Countries in the Region (the reasons for its legislation in view of the criminal policy, current state and future prospects)* in Prosecutorial investigation regional criminal procedure legislation and experiences in application (eds Ivan Jovanović and Ana Petrović-Jovanović), OSCE Mission to Serbia, Belgrade, 2014, pp. 15–16.

56 Around 93% BPPOs replied to BCHR's requests for access to information and forwarded the requested data on the number of criminal reports of these crimes. BCHR therefore assumes that the number of criminal reports not covered by this Analysis is not high.

tion of a confession (Art. 136 CC) and at least 248 criminal reports of torture and ill-treatment (Art. 137 CC) were filed against public officials suspected of committing, co-perpetrating, inciting or aiding and abetting these crimes in the period from January 2018 to July 2020.

NUMBER OF CRIMINAL REPORTS	2018	2019	Jan – June 2020
Extortion of a confession (Art. 136 CC)	10	15	2
Torture and ill-treatment (Art. 137, paragraph 3 in conjunction with paragraphs 1 and 2, CC)	82	108	56
Torture and ill-treatment (Art. 137, paragraphs 1 and 2 CC) – public officials as co-perpetrators	1	1	0

Table 1: Number of Criminal Reports of Extortion of a Confession and Torture or Ill-Treatment Filed against Public Officials by Year

The criminal reports of extortion of a confession (Art. 136 CC) were filed against at least 65 public officials, while the criminal reports of torture or ill-treatment (Art. 137 CC) were filed against at least 476 public officials.

NUMBER OF PUBLIC OFFICIALS AGAINST WHOM THE CRIMINAL REPORTS IN TABLE 1 WERE FILED	2018	2019	Jan – June 2020
Extortion of a confession (Art. 136 CC)	22[57]	34[58]	9
Torture and ill-treatment (Art. 137, paragraph 3 in conjunction with paragraphs 1 and 2 CC)	186	182	103
Torture and ill-treatment (Art. 137, paragraphs 1 and 2 CC) – public officials as co-perpetrators	2	3	0

Table 2: Number of Public Officials against Whom Criminal Reports Were Filed for Extortion of a Confession and Torture and Ill-Treatment by Year

At least 205 (75%) of the 275 criminal reports were dismissed, for the most part because there were no grounds to suspect that a crime prosecuted *ex officio* had been committed (in 194 cases, i.e. 95% of all analysed criminal reports).

57 According to the data of the Statistical Office of the Republic of Serbia (SORS), criminal reports of extortion of a confession were filed against a total of 20 public officials in 2018 (*Adult Perpetrators of Crime in the Republic of Serbia, 2018 Bulletin*, p. 14).

58 According to SORS data, criminal reports of extortion of a confession were filed against a total of 31 public officials in 2019 (*Adult Perpetrators of Crime in the Republic of Serbia, 2019 Bulletin*, p. 14).

GROUNDS FOR DISMISSING THE CRIMINAL REPORTS IN TABLE 1	2018	2019	Jan – June 2020
The reported offence is not a criminal offence prosecuted *ex officio*	1	2	2
Expiry of the statute of limitations	0	2	0
The reported offence is covered by pardon or amnesty	0	0	0
Existence of other circumstances permanently precluding criminal prosecution	0	1	0
Insufficient evidence for reasonable suspicion that the suspect committed the offence	70	81	43
Suspect fulfilled the obligation under the deferred prosecution agreement	1	2	0

Table 3: Grounds for Dismissal of Criminal Reports against Public Officials Suspected of Extortion of a Confession and Torture and Ill-Treatment by Year

Indictments were filed in only 12 of the cases against public officials (around 4% of all filed criminal reports). Indictments were filed against a total of 23 public officials, or around 4% of all public officials the criminal reports were filed against.

Number of Indictments and Number of Public Officials against Whom They Were Filed Based on Criminal Reports in Table 1		2018	2019	Jan – June 2020
Extortion of a confession (Art. 136 CC)	Number of indictments	1	0	0
	Number of public officials	1[59]	0[60]	0

59 According to SORS 2018 data, no indictments were filed that year against public officials under reasonable suspicion that they had committed the crime of extortion of a confession (*Adult Perpetrators of Crime in the Republic of Serbia, 2018 Bulletin*, p. 40).

60 According to SORS 2019 data, an indictment was filed against one public official reasonably suspected of committing the crime of extortion of a confession (*Adult Perpetrators of Crime in the Republic of Serbia, 2019 Bulletin*, p. 42).

Number of Indictments and Number of Public Officials against Whom They Were Filed Based on Criminal Reports in Table 1		2018	2019	Jan – June 2020
Torture and ill-treatment (Art. 137, paragraph 3 in conjunction with paragraphs 1 and 2 CC)	Number of indictments	3	7	1
	Number of public officials	6	15	1
Torture and ill-treatment (Art. 137, paragraphs 1 and 2 CC) – public officials as co-perpetrators	Number of indictments	0	0	0
	Number of public officials	0	0	0

Table 4: Number of Indictments and Number of Public Officials against Whom They Were Filed Based on Criminal Reports of Extortion of a Confession or Torture and Ill-Treatment by Year

The above statistics demonstrate that a *negligible number of criminal reports of torture and ill-treatment reached the trial stage and that most criminal reports were dismissed*. The situation was similar in the preceding period as well.[61]

2.2. Relevant International Standards on Investigations of Ill-Treatment Allegations

The European Court of Human Rights (ECtHR) has consistently held that where a person raises an arguable claim or makes a credible assertion that he has suffered treatment contrary to Article 3 at the hands of State agents, that provision, read in conjunction with the general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation.[62] In this context, the term investigation should be construed more broadly than in domestic criminal procedure law, as including also the preliminary investigation proceedings, that is, all the activities of the relevant authorities, above all the PPOs, preceding the criminal trial.[63]

61 More in: Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit.*, pp. 117–120.

62 See, e.g. *Almaši v. Serbia,* Application No. 21388/15, judgment of 8 October 2019, § 60, *Jevtović v. Serbia*, Application No. 29896/14, judgment of 3 December 2019, § 82 with further references.

63 The term investigation will hereinafter be used in its broader meaning.

Whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when, strictly speaking, no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used.[64] The authorities must take into account the particularly vulnerable situation of victims and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint.[65]

In its document *Health care services in prisons*,[66] the CPT recommended that all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers. The importance of this rule in the context of identifying ill-treatment cases is emphasised also in CPT's document entitled *Documenting and reporting medical evidence of ill-treatment*.[67] The CPT stressed that it set much store by the observance of medical confidentiality in prisons and other places of deprivation of liberty; that the principle of confidentiality must not become an obstacle to the reporting of medical evidence indicative of ill-treatment; and that it was in favour of an automatic reporting obligation for health-care professionals working in prisons or other places of deprivation of liberty when they gather such information, regardless of the wishes of the person concerned (paragraphs 76–77). If a detained person is found to bear injuries which are clearly indicative of ill-treatment (e.g. extensive bruising of the soles of the feet) but refuses to reveal their cause or gives a reason unrelated to ill-treatment, his/her statement should be accurately documented and reported to the authority concerned together with a full account of the objective medical findings (paragraph 77). The means of implementing the reporting obligation in such cases should reflect the urgency of the situation. The health-care professional should transmit his/her report directly and immediately to the authority which is in the best position to intervene rapidly and put a stop to any ill-treatment taking place (paragraph 84). The reporting to the relevant authority of medical evidence indicative of ill-treatment must be accompanied by effective measures to protect the person who is the subject of the report, as well as other detained persons. For example, prison officers who have allegedly been involved in ill-treatment should be transferred to duties not requiring day-to-day contact with prisoners, pending the outcome of the investigation (paragraph 80).

64 See, e.g. *Almaši v. Serbia*, § 61, *Jevtović v. Serbia*, § 83, with further references.

65 See, e.g. *Krsmanović v. Serbia*, Application No. 19796/14, judgment of 19 December 2017, § 73.

66 CPT/Inf (93) 12-part, § 51.

67 CPT/Inf (2013) 29-part.

Even though the obligation to investigate is not an obligation of result, but of means,[68] the ECtHR has held there are several criteria an investigation has to satisfy for the purposes of the procedural obligation under Articles 2 and 3 of the Convention. Firstly, an effective investigation is one which is adequate, that is an investigation which is capable of leading to the identification and punishment of those responsible. The general legal prohibition of torture and inhuman and degrading treatment and punishment would otherwise, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for State agents to abuse the rights of those within their control with virtual impunity.[69]

The investigation must likewise be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.[70]

In its latest report on Serbia of 21 June 2018,[71] the CPT recommended that the relevant Serbian authorities take the necessary measures to ensure that: prosecutors investigating cases of alleged torture and ill-treatment should always in practice conduct investigative actions themselves, especially as regards interviews of relevant witnesses, injured parties and police officers and that, in such cases, they should also always order a forensic medical examination; furthermore, such an approach should be applied regardless of whether the shortened procedure applies or not (paragraph 26).

Furthermore, the investigation must be prompt and carried out with reasonable expedition. Although it has recognised that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, the ECtHR has stressed that a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.[72] In this respect,

68 See, e.g. *Krsmanović v. Serbia*, § 74.

69 See, e.g. *Habimi and Others v. Serbia*, Application No. 19072/08, decision of 3 June 2014, § 73, *Krsmanović v. Serbia*, § 74, with further references.

70 See, e.g. *Habimi and Others c. Serbia*, § 74, *Almaši v. Serbia*, § 62, and *Jevtović v. Serbia*, § 84, with further references.

71 CPT/Inf (2018)12.

72 See, e.g. *Bouyid v. Belgium*, Application No. 23380/09, Grand Chamber judgment of 28 September 2015, § 121

the ECtHR has frequently examined when the investigation was launched after the incident was brought to the attention of the authorities and when individual investigation actions, such as interviews of witnesses and victims and gathering of forensic evidence, were undertaken.[73] The importance of conducting prompt medical examinations of ill-treatment victims is emphasised in the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[74]

As per the requirement to conduct independent investigations of ill-treatment allegations, the ECtHR has emphasised that generally speaking, it is necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events, which means not only a lack of hierarchical or institutional connection but also independence in practice.[75] For instance, in its judgment in the case of *Ergi v. Turkey,*[76] the ECtHR concluded that the public prosecutor's investigation showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident.

Finally, the investigation must afford a sufficient element of public scrutiny to secure accountability. Whilst the degree of public scrutiny required may vary, the complainant must be afforded effective access to the investigatory procedure in all cases.[77]

The ECtHR has on many occasions held that where a State agent has been charged with crimes involving ill-treatment, it is important that he or she be suspended from duty during the investigation or trial and dismissed if he or she is convicted, which is crucial for preserving public confidence in the work of state authorities.[78]

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73 See, e.g. *Labita v. Italy*, Application No. 26772/95, Grand Chamber judgment of 6 April 2020, § 133, *Tekin v. Turkey*, Application No. 22496/93, judgment of 9 June 1998, § 67, *Mikheyev v. Russia,* Application No. 77617/01, judgment of 26 January 2006, §§ 109 and 113.

74 Available at: www.ohchr.org/documents/publications/training8rev1en.pdf, § 104.

75 See, e.g. *Habimi and Others v. Serbia*, § 75, *Krsmanović v. Serbia*, § 74.

76 Application No. 23818/94, judgment of 28 July 1998, §§ 83–84.

77 See, e.g. *Almaši v. Serbia*, § 62, *Jevtović v. Serbia*, § 84, *Habimi and Others v. Serbia*, § 75, *Krsmanović v. Serbia*, § 74.

78 See, e.g. *Cestaro v. Italy*, Application No. 6884/11, judgment of 7 April 2015, § 210, *Ateşoğlu v. Turkey*, Application No. 53645/10, judgment of 20 January 2015, § 25, *Saba v. Italy*, Application No. 36629/10, judgment of 1 July 2014, § 78, *Gäfgen v. Germany*, Application No. 22978/05, judgment of 1 June 2010, § 125, *Yeşil and Sevim v. Turkey*, Application No. 34738/04, judgment of 5 June 2007, § 37, *Nikolova and Velichkova v. Bulgaria*, Application No. 7888/03, judgment of 20 December 2007, § 63, *Ali and Ayşe Duran v. Turkey*, Application No. 42942/02, judgment of 8 April 2008, § 64, *Türkmen v. Turkey*, Application No. 43124/98, judgment of 19 December 2006, § 53.

2.3. Effectiveness of Investigations of Ill-Treatment Allegations in the Analysed Prosecutorial Cases

2.3.1. Promptness of Investigations

In most of the analysed cases, the PPOs and ICS failed to demonstrate the expected expedition in collecting all evidence and information capable of confirming or refuting ill-treatment allegations.

First of all, in a number of cases in which complaints of ill-treatment had first been made to the police or penitentiary units, the latter forwarded them to the PPOs with an unacceptable delay, if at all. A few such examples will be described in the ensuing text.

In one case in Užice, in which the police intervened in late November 2019 in response to a domestic violence report, the man taken into custody alleged in the police station the same day that he was ill-treated and sustained bodily injuries that were diagnosed the same day. Two weeks later, he repeated his ill-treatment allegations to the prosecutor during proceedings launched against him for domestic violence and assaulting a police officer. However, the preliminary investigation into the allegations was initiated only two months later, after his lawyer filed a criminal report against the police officers with the PPO.[79]

In another case in Leskovac, the day after the police intervention at issue, a private individual filed a complaint for the record against a police officer, who, he claimed, had physically abused him. It took the police station a month to notify the PPO of the complaint; previously, the chief of the police station qualified the complaint as ill-founded and the individual withdrew the complaint, telling the police he had been inebriated at the time he had filed it and that it was untrue that the officer he had reported had dealt him blows to the nape of the neck.[80]

Substantial delays in notifying PPOs of ill-treatment reports were registered in Novi Sad as well. For instance, in one case, the police notified the PPO they had received a criminal report claiming torture and ill-treatment with a one-month delay.[81] In another case, rather than drawing up a report of a victim's oral complaint of ill-treatment or notify the PPO thereof, the police instructed the victim to submit his complaint in writing. The PPO was notified of the ill-treatment allegations by the victim's mother, who had witnessed her son complaining of

79 Užice BPPO Case Kt. No. 85/20.

80 Leskovac BPPO Case Kt. No. 803/18. The similar thing happened in another case of this BPPO, Kt. No. 1533/18, Mladenovac BPPO Case Kt. No. 509/18 and Prokuplje BPPO Case Kt. No. 292/19.

81 Novi Sad BPPO Case Kt. No. 2833/18.

ill-treatment in the police station. The mother contacted the HPPO in Novi Sad directly, after her son's dead body was found the following morning.[82]

In one other case, the Čačak PPO was notified with nearly a month's delay that a nurse reported to the police that an individual "with injuries sustained in a fight" had come to seek medical assistance and that he later claimed that his injuries had been inflicted by police officers, who had ill-treated him.[83]

In one case, it was established that ICS officers forwarded to the PPO the allegations of torture and evidence indicating torture with a delay (after two weeks). It took the ICS a month and a half to take the first step and fulfil the PPO's subsequent request to collect the required information.[84]

A Belgrade penitentiary inmate's claims that the guards ill-treated him in February 2020 were not forwarded to the relevant PPO for several months, although they were substantiated by reports of numerous physical injuries registered by the doctors in the penitentiary and the hospitals he was taken to (lacerated eardrum, numerous strip-like injuries on the back, haematoma on his body, etc.). The PPO was notified of the case in July 2020, after the BCHR filed a criminal report against two of the penitentiary guards.[85]

Minor delays were registered in forwarding ill-treatment allegations reported by convicted prisoners in several other cases as well. For instance, one convict in the Padinska Skela penitentiary complained to the governor that a guard had beaten him up during an intervention two days earlier. He was later diagnosed with numerous physical injuries (lacerated eardrum, haematoma on the neck, arms, torso and leg). The penitentiary forwarded its report to the PPO four days after the governor notified it, i.e. six days after the incident.[86]

Only in a few cases did the PPOs promptly undertake or order the prompt implementation of measures after they become aware of ill-treatment allegations (forensic examination of the victims and their injuries, interrogation of the suspects, questioning of the victims and witnesses,[87] securing video footage, et

82 Novi Sad HPPO Cases Ktr. No. 524/18 and Ktn. No. 14/19. See more at: youtu.be/SfuiFeBAnxY.

83 Čačak BPPO Case Kt. No. 478/19.

84 Vrbas BPPO Ktr. No. 307. The Protector of Citizens also identified deficiencies in the actions of the police and the ICS in this case (Case File No. 3122–783/2020). See more at: youtu.be/TdflC7qWE5E.

85 Belgrade First BPPO Case Kt. No. 4067/20.

86 Belgrade First BPPO Kt. No. 4196/19.

87 In the above-mentioned case of the Belgrade First BPPO Kt. No. 4196/19, although the PPO was notified of the impugned event just several days later, it ordered a forensic examination after more than two years, questioned the suspects after three years and two months and the witnesses after three and half years, and some of them after three years and ten months had passed since the impugned event.

al).[88] Where the PPOs requested of other authorities (e.g. the ICS) to collect the necessary information, they as a rule made such requests several weeks (usually between 20 and 60 days) after they had received the criminal reports.[89] In some cases, the ICS forwarded its reports on actions taken on the PPOs' requests with a several-month delay.[90] In some cases, the ICS collected the evidence with a major delay.[91]

In the above mentioned case of the Belgrade penitentiary inmate who claimed he was tortured in early February 2020, the Belgrade First BPPO was notified of the allegations at the very end of July 2020, i.e. nearly six months after the incident. After it received and registered the criminal report, it took the PPO as much as a month and a half to assign the case to a deputy prosecutor. The said prosecutor took the first action in the case – requested the collection of the requisite information – a month later and the second action – requested the collection of additional information – two months after he was assigned the case. In another case of alleged ill-treatment of a convict, the Belgrade First BPPO questioned the victim and the witnesses more than three years after the incident was reported to it.[92]

The relevant authorities hardly ever question the suspected officers promptly. It therefore comes as no surprise that their statements and those of their fellow officers who witnessed the reported ill-treatment are as a rule synchronised. *None of the questioned officers, who witnessed the impugned events, confirmed the victims' allegations of ill-treatment by the suspected officers in any of the analysed PPO cases (at least 226 statements by officers-eyewitnesses were analysed)*. In other words, the PPOs and the ICS have clearly failed to take any measures to prevent the suspected officers from agreeing amongst themselves or with their fellow officers, who had witnessed the impugned events, on what they were going to say.

Finally, in the vast majority of cases, the speed at which the PPOs rendered decisions on criminal reports against public officials for crimes under Articles

88 Rare commendable examples of promptness were registered in the following cases: Užice BPPO Case Kt. No. 1131/19, a Stara Pazova BPPO Case, the number of which is blacked out.

89 E.g. Šabac BPPO Case Kt. No. 1327/19, Užice BPPO Case Kt. No. 391/20, Jagodina BPPO Case Kt. No. 180/20, Vrbas BPPO Case Kt. No.748/18.

90 E.g. in the Niš BPPO Case Kt. No. 616/20, the ICS forwarded the information this PPO requested after five months, whereas, in the Čačak BPPO Case Kt. No. 253/20, it forwarded the information four months after it received its request.

91 In the Niš BPPO Case Kt. br. 1184/19, in which the criminal report against police officers was filed with the BPPO two days after the impugned event, the footage of the CCTV in the police station in which it occurred was not obtained because the ICS required it only once 30 days from the day of the event expired (footage is automatically deleted after 30 days due to lack of server memory).

92 Belgrade First BPPO Case Kt. No. 4196/19.

136 and 137 of the Criminal Code cannot be qualified as fulfilling the promptness requirement. In many cases, the PPOs adopted decisions dismissing the criminal reports after 6–18 months from the day they were filed; in some cases, such decisions were adopted after more than two or three years had passed.[93] In several cases, the PPOs' dilatory actions on reports of crimes under Articles 136 and 137 of the Criminal Code greatly contributed to the expiry of the statute of limitations during the court proceedings, given that they filed the indictments with the courts after as many as four or five years since the impugned events.[94]

2.3.2. Independence of Investigations

Half of all investigations of torture and ill-treatment investigations conducted in the observed period (January 2018 – June 2020) suffered from deficiencies indicating that they were not independent. This was particularly true in cases against police officers; PPOs still tend to forward requests for the collection of the necessary information to the police departments and stations in which the suspected officers work, rather than the ICS[95] and to excessively and uncritically rely on the findings and conclusions of the suspected officers' immediate supervisors after their reviews of the complaints.[96] In some cases, in response to the PPOs' requests to collect the requisite information, the ICS merely forwarded them documents on the checks of ill-treatment allegations performed by the suspected officers' supervisors.[97]

Similar deficiencies were identified in investigations into inmates' complaints of ill-treatment in prison. For instance, in one case, the Belgrade First BPPO fully relied on the information collected from and assessments made by officers of the PSED Inspection Department, who have a strong institutional and hierarchical connection with the officers suspected of torturing an inmate in the Belgrade penitentiary (given that they "share" a line manager – the PSED Director).[98] The independence of the investigation in this case was compromised for

93 E.g. Mladenovac BPPO Cases Kt. Nos. 509/18 and 1006/18; Novi Sad BPPO Case Kt. No. 3666/15; Aranđelovac BPPO Case Kt. No. 319/17; Zrenjanin BPPO Case Kt. No. 1132/18; and Belgrade First BPPO Case Kt. No. 1444/20.

94 See: *infra*, Section 3.3.4.

95 See, among many others, e.g. Šabac BPPO Case Kt. No. 1528/18, Belgrade First BPPO Cases Kt. Nos. 2745/18 and 4044/20, Belgrade Second BPPO Cases Kt. Nos. 2314/19 and 2934/19, Belgrade Third BPPO Cases Kt. Nos. 4187/18 and 5030/18, Novi Sad BPPO Cases Ktr. No. 524/18 and Ktn. No. 14/19, Leskovac BPPO Case Kt. No. 27/20, et al.

96 See, among many others, e.g. Belgrade Second BPPO Case Kt. No. 2389/18, Belgrade First PPO Kt. No. 2745/18, Belgrade Third BPPO Case Kt. No. 2325/19, Leskovac BPPO Cases Kt. Nos. 803/18 and 1533/18, Mladenovac BPPO Cases Kt. Nos. 509/18 and 1006/18, et al.

97 Novi Sad BPPO Case Kt. No. 2003/20 and Valjevo BPPO Case Kt. No. 464/20.

98 Belgrade First BPPO Case Kt. No. 4067/20.

another reason as well – the Inspection Department officials the PPO asked to collect the information were aware of the impugned event even before they received the request; their failure to file a criminal report clearly indicates that they did not think there was any reason to suspect that a crime had been committed against the victim. The meaninglessness of their engagement by the PPO in the preliminary investigation is also corroborated by the fact that these officials would have incriminated themselves had they communicated to the prosecutor their conclusions on the illegal actions against the victim since they initially failed to report suspicions that a crime had been committed.[99]

In the above-mentioned case of the Belgrade First BPPO, the prosecutor handling the case did not take any steps to check the claims in the criminal report. The same happened in many other cases involving allegations of police torture and ill-treatment. Although the MIA by-law and the Republican Public Prosecutor's Binding Guidance on conducting investigations of police ill-treatment set out that investigations of police ill-treatment allegations shall be conducted by public prosecutors who may – *only exceptionally* – entrust ICS officers with carrying out particular evidentiary actions and that only public prosecutors may question the suspects and interview the victims,[100] the opposite rule is applied in practice: the PPOs entrust the implementation of most evidentiary actions to the ICS and the police, including the interviewing of the victims and witnesses and the questioning of the suspects. The problem of the prosecutors' "office-based" approach to investigations of ill-treatment allegations has persisted for years now.[101]

In a case concerning alleged ill-treatment by communal militia officers, the Belgrade First PPO requested the necessary information from the city authorities charged with communal militia affairs, i.e. the ones that have hierarchic and institutional connection with the suspects.[102]

The actual independence of public prosecutors investigating allegations of police ill-treatment in small towns has rarely been brought into question in practice given their cooperation with the suspects and their closest fellow officers in

99 Under Article 332(2) of the Criminal Code, public officials who knowingly fail to report a crime warranting five or more years of imprisonment they have become aware whilst performing their duties shall be sentenced to imprisonment ranging from six months to five years. Similar deficiencies were identified in the Kraljevo BPPO Case Ktr. No. 1307/20, where the BPPO relied on the conclusions of the prison management about the proper use of the means of coercion against the convict.

100 See: *supra*, Section 1.2 (the part on the methodology for investigating police ill-treatment cases).

101 See: Nikola Kovačević, Radmila Dragičević Dičić, Gordana Jekić Bradajić, Jugoslav Tintor, *op. cit.*, pr. 98.

102 Belgrade First BPPO Case Kt. No. 6959/18.

identifying and prosecuting other crimes. However, in one case, at the initiative of the Obrenovac BPPO, the Belgrade HPPO entrusted the investigation to the Leskovac BPPO, explaining that it would be expedient to recuse the Obrenovac BPPO since "all public prosecutors in the Obrenovac BPPO know the officer" and "have been cooperating with him [...] on a number of cases all the time".[103] On the other hand, the Sombor HPPO dismissed as ill-founded an initiative filed by a victim that the criminal report he filed with the Vrbas BPPO be handled by another relevant PPO because the Vrbas public prosecutors reportedly had business ties with the suspected police officers; The Sombor HPPO qualified the initiative as a complaint about the work of the Vrbas BPPO.[104]

The independence of investigations of ill-treatment allegations is also undermined by the persisting practice of police stations and departments to review complaints against police officers alleging torture and other forms of ill-treatment without notifying the relevant PPOs and the ICS of them;[105] the health professionals' regular practice of notifying police stations and departments rather than the PPOs and/or the ICS of their patients' ill-treatment allegations despite the likelihood that the potential perpetrators work in those police stations or departments;[106] and the tendency of police officers in police stations and departments to take steps in such cases and interview the individuals who had complained of ill-treatment to the doctors rather than promptly notify the relevant PPOs and the ICS thereof.[107] All these deficiencies have also undermined the thoroughness of the investigations and increased risk of retaliation and pressures against people alleging ill-treatment.

2.3.3. Thoroughness of Investigations

In addition to the fact that the quality of investigations is as a rule lower when the evidentiary actions are undertaken with a delay or by individuals not independent from the officers implicated in the impugned events, the authors of this analysis also observed that the PPOs in the analysed cases failed to undertake or order evidentiary actions that could have been undertaken and that could have reasonably provided them with the relevant information about the

103 The number of this Lazarevac BPPO case remained unknown because it was blacked out on copies of all documents the BPPO forwarded in response to BCHR's request for access to information of public importance.

104 Sombor HPPO Case Ktr. No. 102/18 and Vrbas BPPO Case Kt. No. 307/20.

105 E.g. Belgrade City emergency police cases Nos. 3/16/7–07–61/19 and 03.15.7.2–07/770/19, and in Belgrade First BPPO Case Kt. No. 2499/19.

106 E.g. Gornji Milanovac BPPO Case Kt. No. 172/18, Vrbas BPPO Case Kt. No. 677/18, Sremska Mitrovica Case Kt. No. 311/20 et al.

107 Vrbas BPPO Case Kt. No. 307/20 and Belgrade First BPPO Case Kt. No. 2499/19.

impugned events. As the ECtHR would say, the impression is that the relevant PPOs failed to seriously attempt to find out what happened and relied on hasty or ill-founded conclusions as the basis of their decisions.

The shortcomings undermining the thoroughness of investigations in the analysed cases are extremely diverse. The most frequent ones included the PPOs': failure to order a forensic medical report of the victim, and forensic examinations of the injuries and medical documentation;[108] failure to obtain the statements of all the eyewitnesses – and in some cases the victims themselves; failure to collect the evidence specified in the criminal reports (e.g. surveillance camera footage); and uncritical acceptance of the suspected officers' synchronised statements as true. Several illustrative examples of non-thorough investigations will be presented in the ensuing text.

In one Belgrade First PPO case[109] concerning police ill-treatment in Belgrade during the state of emergency in April 2020, the public prosecutor believed the suspected police officer, who claimed that he was "protecting himself from spitting" by shielding his body with his hand, although he is heard on the recording of the incident asking the victim several times what his name is and rhythmically slapping him every time he asks the question.[110] Furthermore, the PPO fully accepted the statement the victim made before it two and a half months after the impugned event, whilst disregarding his initial statement to the ICS one day after it occurred. The victim initially told the ICS that he partly remembered what had happened and that he remembered a policeman slapping him while he was sitting in the back of the police car. However, the victim later told the Belgrade First PPO that he did "did not remember well" the event, that he did "not feel tortured or ill-treated" (the victim's change of heart may have been the result of police intimidation, another possibility the PPO failed to take into consideration). The PPO concluded that there was no crime under Art. 137(3) of the CC given that the victim did not feel tortured or ill-treated. Finally, although the suspected police officer confirmed the authenticity of the published video footage, the prosecutor based his decision to dismiss the criminal report also on the argument that "it is impossible to establish who made the recording and when."

In another case also handled by the Belgrade First PPO,[111] the prosecutor dismissed the criminal report of the crime under Art. 137(3) of the CC

108 The CPT alerted the Serbian authorities to the importance of conducting forensic medical examinations in all cases of physical ill-treatment allegations in its 2018 Report. See: CPT/Inf (2018) 21, § 26.

109 Kt. No. 2499/20.

110 The footage of the event is available at: www.blic.rs/vesti/beograd/uznemirujuci-snimak-policajac-na-vracaru-brutalno-samara-privedenog-muskarca/878p2gv.

111 Belgrade First PPO Case Kt. No. 4067/20.

against two Belgrade penitentiary guards due to lack of grounds for suspicion that a crime had been committed, without first undertaking any of the following actions: obtain a statement of the victim (serving a prison sentence) about the impugned event; order a forensic report on the large medical documentation (including colour photographs of the victim's bodily injuries taken during two medical examinations); question the suspects or the eyewitnesses of part of the incident – the penitentiary health workers; and, explain the laceration of the victim's eardrum diagnosed several hours after the impugned event. The PPO's decision to dismiss the criminal report was based on the synchronised written reports of the suspected guards about use of force, the fact that the victim was serving a sentence for a grave crime, and its uncritical acceptance of the PSED officer's statement that the victim had delusions of persecution and was prone to exaggeration.[112]

In one other Belgrade First PPO case,[113] the victim underwent medical examination after the police officers' alleged ill-treatment, during which the doctor diagnosed numerous bodily injuries (in the regions of his temple, eyelid, kidney, knee, etc.) The PPO, however, held that the medical documentation of injuries was not relevant to its decision on the criminal report because the victim had no personal documents when he was admitted to the health institution (his father accompanied him to the examination) and because the photographs of the injuries did not have the date when they were taken. The PPO did not question the doctor who examined the victim or his father, who attended the examination. These deficiencies in the PPO's actions and the doctor's failure to photograph the injuries and promptly notify the relevant PPO of the patient's allegations of ill-treatment were laid at the victim's door. Similarly, in a case handled by the Niš PPO,[114] the victim – who was questioned as a suspect – told the public prosecutor he had been ill-treated and that he had several bumps on his head and bruises on his back. The prosecutor did not order a forensic medical examination. He, however, qualified as decisive the fact that the victim had not himself requested a medical examination and that the police or the penitentiary he was in had not registered his injuries before he made a statement (he signed the statement without raising any complaints of ill-treatment).

112 Similar deficiencies were identified also in e.g. Belgrade First PPO Case Kt. No. 6959/18 – where, apart from failing to undertake a number of evidentiary actions, the PPO failed to provide any explanation for the fracture of the victim's left eight rib diagnosed on the day of the impugned event; and in Novi Pazar PPO Case Kt. No. 976/19 – where the PPO based its decision to dismiss the criminal report only on the fact that the victim has been charged with assaulting a public official.

113 Kt. No. 2745/18.

114 Kt. No. 616/20.

In one analysed case of the Niš BPPO,[115] the suspect told the prosecutor that the police officers physically ill-treated him after he admittedly cursed them. The police officers, for their part, claimed that the man had actively resisted their orders and physically assaulted them. The Niš Forensic Medical Institute concluded in its report that the injuries sustained by the complainant of torture and ill-treatment could have been sustained in a variety of ways (blunt force trauma, fall, etc.) and that the contusion of the skin of the area behind his left ear could have been caused by blunt force trauma or a fall. The PPO believed the account of the event of the suspected police officers and their fellow officer who joined them later during the incident, and the suspects' supervisors, who assessed that the officers' use of means of force against the victim was lawful and proportionate. Although the statements of the police officers and the victim were contradictory and although the incident at issue was witnessed by numerous people, none of them were summoned to give a statement during the proceedings. The PPO dismissed the criminal report because "the injured party failed to corroborate his allegations with sufficient material evidence indicating that there were grounds for suspicion that the actions of the reported individuals included elements of any crime prosecuted *ex officio*."

Statements were also not taken from 16 eyewitnesses in proceedings instituted after an underage ward of the Kruševac Juvenile Home filed a criminal report claiming a staff member beat him with a wooden club all over after he and another ward got into a fight.[116] The two staff members, who had intervened during the incident, told the BPPO that they had used their batons "several times" to separate the two wards "until the moment their resistance was broken", that this "lasted a very short while", "ten or so seconds or perhaps more". Their version was corroborated by a Home counsellor. The ward the complainant had gotten into a fight with said he had not seen the staff member beating the latter after they were separated or visible traces of blood on him during the medical examination. The Home doctor did not photograph the injuries on the wards' bodies after the impugned event, claiming his camera was broken. Based on the medical documentation, detailed descriptions of the bodily injuries of the complainant and the Home doctor's statement to the prosecutor given in the presence of the forensic medical expert, the latter concluded that the numerous haematomas on the complainant's body – stretching across the bottom of his back, both buttocks, backs and fronts of both thighs and along his left and right arms – were most probably caused by (at least) 50 truncheon strikes, and that numerous other haematomas across his chest could have been caused by (at least ten) punches or truncheon hits. In its reasoning of the ruling dismissing

115 Niš BPPO Case Kt. No. 1409/20.

116 Kruševac BPPO Case Kt. No. 1531/19.

the criminal report, the prosecutor said that the Home staff "used the degree [of force] least harmful to the lives and health of the individuals it was applied against, which successfully broke their resistance and was proportionate to the looming risk."

In the above-mentioned Novi Sad case, in which the police failed to draw up a report of the oral complaint of ill-treatment of a man taken into custody the previous evening or notify the PPO thereof,[117] the prosecutor believed the suspected officers, who claimed that the victim injured his head when "he fell off the bench he was sitting on in the detention hallway". Rather than ordering the police to hand over the station's CCTV footage, the relevant prosecutor relied on the claims of the suspected officer's supervisors that perusal of the footage did not disclose any unprofessional or unlawful treatment of the victim by the police officers. The police later claimed that the footage was automatically deleted after 30 days because "there were no official complaints about the conduct of the police officers [...] or a request by any other authorities (the PPO or the court) to forward the footage". The prosecutor failed to take the statements of two other individuals brought into custody at the same time as the victim, one of whom had sent the PPO a written statement describing in detail the officers' ill-treatment of the victim. The investigation of ill-treatment allegations was mostly conducted by the Novi Sad police, who have close institutional connections with the suspected officers. The ICS officers – who were brought into the case only after several months had passed – subjected the suspected police officers to lie detector tests and notified the prosecutor that they had not displayed any psycho-physiological reactions typical of lying. In the reasoning of the ruling dismissing the criminal report, the prosecutor said that, based on the lie detector test results, it "may be concluded" that the police officers had not ill-treated the victim. The dead body of the victim was found in a yard in a residential area in Novi Sad the day after he was released by the police. The prosecutorial investigation into his death suffered from numerous shortcomings.[118]

In a number of cases, the PPOs dismissed the criminal reports explaining that the absence of visible physical injuries on the bodies of victims alleging ill-treatment by public officials had, inter alia, led them to conclude that the crime of torture and ill-treatment had not been committed.

For instance, the prosecutor in a case of the Čačak BPPO[119] dismissed the criminal report, specifying: "The deputy public prosecutor is of the view that a blow with an open hand to the face, which has not been proven to have harmed

117 See, *supra*, Section 2.3.1. (description of the Novi Sad HPPO Cases Ktr. No. 524/18 and Ktn. Nos. 14/19, footnote 84).

118 See more at: youtu.be/SfuiFeBAnxY.

119 Kt. No. 253/20.

the injured party [...] does not amount to an act of crime [...] of torture and ill-treatment under Article 137(3) in conjunction with paragraph 1 of the CC, because such conduct, given the intensity of the suffering it would have caused the injured party, cannot be considered ill-treatment of another or treatment violating human dignity. The deputy public prosecutor is of the view that the existence of ill-treatment requires substantial harm and conduct violating human dignity, of which there is no evidence in the case at hand."

In another case, that of the Valjevo BPPO,[120] a convict alleged that he was ill-treated by a Valjevo penitentiary guard, who kicked him with his knee in the stomach and then punched him on the left shoulder while he was leaving the cafeteria for no reason. In the reasoning of the ruling dismissing the criminal report, the public prosecutor said that "even if it were assumed that suspect [...] dealt a blow to the injured party in the way described in the report [...] the crime of insult under Article 170 of the CC [...] would be at issue, because the crime of torture and ill-treatment under Article 137 of the CC entails longer-lasting conduct of the offender, which is of greater intensity [...] by far exceeding in volume the one instance of hitting the injured party." The prosecutor also attached relevance to the fact that the doctors did not find that the complainant had any injuries caused by the suspect's blows when they examined him prior to his release from prison ten days later.

In one other case of ill-treatment in Leskovac during the 2020 state of emergency,[121] the public prosecutor was of the view that "the physical force applied was not of the intensity to amount to the crime of torture and ill-treatment, [...] which emanates from the injured party's statement that the physical force applied against him left no consequences in the form of ill-treatment, torture, pain or suffering." The inadequate conduct of the police officers in this case was recorded by people nearby[122] and the footage showed the officers hitting and kicking the injured party, with his hands tied behind his back.

The presented conclusions of public prosecutors on the non-existence of the minimal degree of severity required for conduct to amount to degrading treatment violating human dignity are incompatible with ECtHR case-law. In the well-known case of *Bouyid v. Belgium*,[123] the issue was raised whether the police officer's administration of a slap in the face of a 17-year-old boy in the police station, without the intention of extorting a confession, sufficed to amount to a violation of Article 3 of the ECHR. Relying on the *ius cogens* character of the pro-

120 Kt. No. 236/20.

121 Leskovac BPPO Case Kt. No. 974/20.

122 The footage of the incident is available at: direktno.rs/vesti/srbija/261607/prekrsio-policijski-cas-pa-ga-pretukli-video.html.

123 *Bouyid v. Belgium,* § 112.

hibition of ill-treatment and the police officers' professional duty to protect civic rights and not to inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances, the ECtHR Grand Chamber held that the slap administered to each of the applicants by the police officers while they were under their control did not correspond to recourse to physical force that had been made strictly necessary by their conduct, and thus diminished their dignity and that that the case involved degrading treatment, The ECtHR said that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person, in particular if they were under the control of police officers (in a police station, et al) because it may arouse in them a feeling of arbitrary treatment, injustice and powerlessness. The ECtHR has repeatedly considered it particularly important to point out that, in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3.[124] As already noted, national criminal law theorists consider that the act of ill-treatment entails undertaking specific actions causing a passive subject specific physical or mental anguish of lesser intensity not amounting to a light bodily injury.[125]

2.3.4. Other Deficiencies of Investigations of Ill-Treatment Allegations Facilitating Impunity of Public Officials

In the analysed period, some PPOs continued applying the institute of deferred criminal prosecution to public officials suspected of committing torture and ill-treatment whilst performing their duties. In three cases, the suspected officers were ordered to pay a specific amount of money (between 35 and 40 thousand RSD i.e. around €300) for charity, which they duly did, thus avoiding the determination of their criminal liability.[126] None of them were ordered to eliminate the harmful effects or damage of their crimes (under Art. 283(1(1)) of the CPC). In one of these cases, the victim was a child.

124 *Ribitsch v. Austria* (ECtHR), Application No. 18896/91, judgment of 4 December 1995, § 38; *Barakhoyev v. Russia*, Application No. 8516/08, judgment of 17 January 2017, § 33–34; *Mihhailov v. Estonia*, Application No. 64418/10, judgment of 30 August 2016, § 105; *Vladimir Romanov v. Russia*, Application No. 41461/02, judgment of 24 July 2008, § 57; *Bouyid v. Belgium*, § 88; *Rodić and Others v. Bosnia and Herzegovina*, Application No. 22893/05, judgment of 27 May 2008, § 48.

125 Zoran Stojanović, *Commentary on the Criminal Code*, p. 458.

126 Aleksinac BPPO Case Keo. No. 294/19, Sombor BPPO Case Keo. No. 121/18 and Kruševac BPPO Case Keo. No. 55/19.

In several cases against public officials suspected of torture and ill-treatment, the public prosecutors proposed in the indictments that the court convict them to suspended sentences.[127] In one such case, two police officers were charged with committing the gravest form of the crime of torture (under Article 137 of the CC).[128]

In at least two cases, the higher PPO (the Belgrade HPPO) dismissed third-party initiatives to perform an *ex officio* review of the decisions of the lower PPO (the Belgrade First BPPO) to dismiss the criminal reports of manifest police ill-treatment during the 2020 state of emergency that was video recorded. Although Article 18 of the PPA entitles immediately superior prosecutors to issue binding instructions to the relevant public prosecutors to proceed in particular cases in the event there are doubts about the lawfulness of the latter's actions, third-party initiatives to issue such instructions[129] did not result in the official review of the Belgrade First PPO's decisions. The Belgrade HPPO dismissed one initiative, considering it inadmissible,[130] while the other initiative merely prompted the HPPO to order the Belgrade First BPPO to notify the victim of its decision to dismiss the criminal report "so that the injured party may *potentially* exercise his right to an objection" (italics ours). The HPPO thus left the continuation of prosecution in an obvious ill-treatment case to the will of the victim.[131]

In the oft-mentioned Novi Sad case,[132] Novi Sad police officers, found to have obstructed the investigation of ill-treatment allegations by the ICS, did not suffer any consequences under criminal or labour law. During its internal oversight, the ICS established, notably, that the police officers: (a) lied to the Novi Sad HPPO that the victim already had visible injuries when he was being hauled into the police station, which the doctor was unable to diagnose because he was aggressive; (b) lied to the HPPO that the police station CCTV cameras covered only the custody cell, but not the station hallway or the admission area where

127 E.g. Bečej BPPO Case Kt. No. 229/18, Užice BPPO Case Kt. No. 584/18, and Zaječar BPPO Case Kt. No. 200/20.

128 E.g. Bečej BPPO Case Kt. No. 229/18. More on the inadequacy of applying the deferred criminal prosecution institute and the imposition of suspended sentences against public officials suspected and convicted of ill-treatment *infra*, Section 3.2.

129 One such initiative was filed by the BCHR, available in Serbian at: www.bgcentar.org.rs/prvo-osnovno-javno-tuzilastvo-u-beogradu-odbacilo-krivicnu-prijavu-protiv-policijskog-sluzbenika-koji-je-udarao-gradanina-na-sedistu-sluzbenog-automobila-za-vreme-vanrednog-stanja/.

130 Belgrade HPPO Case, Ktpo. No. 727/20 (regarding Belgrade First BPPO Case Kt. No. 4044/20).

131 Belgrade HPPO Case, Ktr. No. 5079/20 (regarding Belgrade First BPPO Case Kt. No. 2499/20).

132 Novi Sad HPPO Cases Ktr. No. 524/18 and Ktn. No. 14/19 (analysed *supra*, in Sections 2.3.1 and 2.3.3).

individuals are taken before they are placed in the custody cell; (c) that they failed to notify the relevant PPO of the victim's complaints of ill-treatment to the Vojvodina Clinical Centre doctor in their presence and to the police station superiors the following day; and (d) having drawn up a report on the victim's oral complaint of ill-treatment, the police failed to save the video footage they had inspected and which reportedly did not disclose any unprofessional or unlawful treatment of the victim by the police officers.[133] The ICS thus recommended that the Novi Sad Police Department initiate disciplinary proceedings against the police officers for gross violations of duty. The Head of the Department, however, refused, qualifying their wrongdoings as "secondary" and sufficing a warning not to commit them in the future.[134]

Finally, the impunity of public officials for ill-treatment is facilitated by the irregularities in the work of the doctors, who properly documented the patients' allegations of ill-treatment, precisely described and photographed the injuries they identified and promptly notified the relevant PPOs thereof only in a negligible number of cases. As a rule, the doctors report the ill-treatment allegations to the police stations and departments in which the implicated officers work.

133 ICS Report 06.4 No. 12908/19 of 24 January 2019.

134 Novi Sad Police Department enactments 07/3–1794/20, of 15 September 2020, No. 07/3–1801/20 of 16 September 2020, and No. 07/3–1794/20–1 of 6 October 2020.

Part III

COURT PROCEEDINGS IN CASES OF ON EXTORTION OF CONFESSIONS AND TORTURE AND ILL-TREATMENT

3.1. Statistical Overview and Main Findings

According to information obtained in response to BCHR's requests for access to information of public importance, the Serbian PPOs filed at least 26 indictments against public officials for the crimes of extortion of a confession (Art. 136 CC) and torture and ill-treatment (Art. 137(3) in conjunction with paragraphs 1 and 2 CC) from 1 January 2018 to end June 2020. This number also includes indictments filed in cases reported to the PPOs before 2018 (as opposed to the indictments discussed in the prior section of the Analysis and Table 4).

NUMBER OF INDICTMENTS filed from 1 January 2018 to 30 June 2020					
Extortion of a Confession (Art. 136 CC)			Torture and Ill-Treatment (Art. 137(3) in conjunction with paragraphs 1 and 2)		
2018	2019	Jan – June 2020	2018	2019	Jan – June 2020
2	1	0	11	8	4

Table 5: Number of Indictments Filed against Public Officials for Extortion of a Confession and Torture and Ill-Treatment by Year

Twenty-five court decisions on these cases were adopted or became final during this period.

NUMBER OF FINAL COURT DECISIONS					
Extortion of a Confession (Art. 136 CC)			Torture and Ill-Treatment (Art. 137(3) in conjunction with paragraphs 1 and 2)		
2018	2019	Jan – June 2020	2018	2019	Jan – June 2020
0	0	1	10	9	5

Table 6: Number of Final Court Decisions in Cases against Public Officials Charged with Extortion of a Confession and Torture and Ill-Treatment by Year

These final court decisions were delivered in respect of 42 public officials. The courts found 20 public officials guilty, acquitted 16 of them, and rejected the charges or discontinued proceedings against six public officials.

NUMBER OF INDICTED PUBLIC OFFICIALS WITH RESPECT TO WHOM THE COURTS DELIVERED FINAL JUDGMENTS OF CONVICTION OR ACQUITTAL, REJECTED THE INDICTMENTS OR DISCONTINUED THE PROCEEDINGS					
Criminal Offence	Number of convicted public officials sentenced to			Number of Acquitted Public Officials	Number of indicted public officials with respect to whom the courts rejected the indictments or discontinued the proceedings
	Imprisonment	Suspended Sentence	Ban on Exercising a Profession		
Extortion of a Confession (Art. 136 CC)	0	1	0	0	0
Torture and Ill-Treatment (Art. 137(3) in conjunction with para 1)	0	8	0	5	5
Torture and Ill-Treatment (Art. 137(3) in conjunction with para 2)	2	9	0	11	1
Total	2	18	0	16	6

Table 7: Number of Indicted Public Officials with Respect to Whom the Courts Delivered Final Judgments of Conviction or Acquittal, Rejected the Indictments or Discontinued the Proceedings

The conviction rate is lower albeit not negligible (around 47.6%), but the same cannot be said of the share of public officials sentenced to effective penalties– only two police officers charged with complicity in the crime under Art. 137(3) in conjunction with paragraph 2 of the CC (the legal description of which corresponds to the definition of torture in Article 1 of the UNCAT) were sentenced to extremely mild prison sentences (one of them to eight months and the other to five months),[135] while all other (18) public officials found guilty of torture and ill-treatment by a final decision were handed down suspended sentences.[136] One judgment sentencing a police officer to a suspended sentence was based on a plea bargain agreement.[137]

None of the public officials found guilty by a final decision in the analysed period were prohibited from practicing their profession, activity or duty.

Criminal proceedings against five police officers ended with final court decisions rejecting the charges against them or discontinuing the proceedings due to the expiry of the statute of limitations.[138] The court rejected charges against one police officer because the public prosecutor decided against criminal prosecution.[139]

In all cases in which the courts rendered a final decision, the courts instructed the victims of torture and ill-treatment to claim damages in civil proceedings.

Most criminal proceedings in which the courts rendered a final decision were conducted against police officers (who accounted for 31 of the 42 indicted public officials). The defendants in the other cases included: a responsible person in a public company, a primary school teacher, a school principal, an Assistant Director of an outpatient health clinic, a kindergarten teacher, a communal militia officer, and five guards working in one penitentiary. In addition to 18 police officers, judgments of conviction were delivered against one communal militia officer and the Assistant Director of the health institution.

135 Niš Basic Court case K. No. 668/16 (see the Table in the Annex, Case No. 12).

136 Šabac Basic Court Case K. No. 709/15, Kragujevac Basic Court Case K. No. 427/17, Subotica Basic Court Case K. No. 587/17, Niš Basic Court Case K. No. 52/18, Aranđelovac Basic Court Case K. No. 112/18, Belgrade Higher Court Case K. No. 378/18, Belgrade Third Basic Court Case K. No. 510/18, Užice Basic Court Case K. No. 18/19, Pirot Basic Court Case K. No. 138/19, and Požarevac Basic Court Cases SPK. No. 11/19 and K. No. 71/20 (see the Table in the Annex, Case Nos. 1, 5, 6, 10, 13, 16, 17, 20, 21 and 22).

137 Požarevac Basic Court Case SPK. No. 11/19–49 (see the Table in the Annex, Case No. 17).

138 Belgrade Second Basic Court Case K. No. 1624/19, Belgrade Third Court Cases K. Nos. 556/15 and 231/18, and Vranje Basic Court Case K. No. 551/17 (see the Table in the Annex, Case Nos. 3, 4, 5 and 23).

139 Pančevo Basic Court Case K. No. 255/17 (see the Table in the Annex, Case No. 14).

3.2. Relevant International Standards on Punishment of Ill-Treatment

Under Article 4 the UN Convention against Torture, each State Party shall ensure that all acts of torture, attempts to commit torture and complicity or participation in torture are offences under its criminal law and that these offences are punishable by appropriate penalties which take into account their grave nature. Bodies monitoring the fulfilment of these State obligations under international treaties have also extended them to other forms of ill-treatment (cruel, inhuman or degrading treatment or punishment).

In the section of its General Report No. 14 on its activities devoted to combatting impunity, the CPT noted the importance of strictly punishing ill-treatment and called on States to take a firm attitude on ill-treatment committed by law enforcement officials:

> *"It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate. When ill-treatment has been proven, the imposition of a suitable penalty should follow. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only engender a climate of impunity. Of course, judicial authorities are independent, and hence free to fix, within the parameters set by law, the sentence in any given case. However, via those parameters, the intent of the legislator must be clear: that the criminal justice system should adopt a firm attitude with regard to torture and other forms of ill-treatment. Similarly, sanctions imposed following the determination of disciplinary culpability should be commensurate to the gravity of the case."*[140]

The CAT has stated that a penalty in the Criminal Code of the State Party of one to ten years' imprisonment for the basic crime of torture allowing the judge to impose a minimum sentence of one year is insufficient.[141] In its decisions on individual communications, the CAT found violations of Art. 4(2) of the UNCAT where the States handed down mild penalties for torture (e.g. one year imprisonment,[142] or mere dismissal from duties[143]).

The ECtHR and CPT have repeatedly found that the disproportion between the gravity of the offence and the penalty was the result of the prosecutors' and courts' inadequate classification of torture and other forms of ill-treatment as (more general) crimes that, as a rule, carried milder penalties under national

140 CPT/Inf (2004) 28, § 41.

141 *The United Nations Convention Against Torture and its Optional Protocol – A Commentary*, 2nd edition, p. 188.

142 See: *Guridi v. Spain*, CAT/C/34/D/212/2002, decision of 24 May 2005, § 6.7.

143 See CAT's Report: A/48/44, § 446.

criminal law.[144] For instance, in one case, the ECtHR found that torture had been prosecuted as the offence of bodily harm warranting extremely mild penalties, wherefore the charged officers, as first-time willful offenders, were merely ordered to pay fines amounting to around three of their monthly salaries.[145] The ECtHR found that these penalties were manifestly disproportionate to the seriousness of the officers' act, that they could not be regarded as having the necessary dissuasive effect and that the qualification of the offence as bodily harm did not take into account the applicant's psychological suffering.[146] In CAT's view, it would be a violation of the UNCAT to prosecute conduct solely as ill-treatment where the elements of torture are also present.[147]

Inadequate sentencing was the cause of the manifest disproportion between the gravity of the crime and the imposed penalties. In one case against Moldova the ECtHR ruled on, three police officers found guilty of ill-treatment were sentenced to three years' imprisonment suspended for one year and disqualified from working in a law-enforcement agency for two years. That term of imprisonment was the minimum penalty allowed by law and the courts explained the reason for the leniency of the sentence by reference to the accused's relatively young age, lack of previous convictions, and the fact that they had families and were viewed positively in society. The ECtHR, on the other hand, noted that the courts had not taken into account any of the applicable aggravating circumstances, notably that none of the officers had shown any sign of remorse, having denied throughout the proceedings any ill-treatment on their part.[148]

ECtHR has found it unacceptable that suspended sentences are handed down to officials found guilty of torture and other forms of ill-treatment. Under its case law, suspension of the pronouncement of a judgment undeniably falls into the category of the "measures" which are unacceptable as its effect is to render convictions ineffective, has a stronger effect than the deferral of the execution of the sentence and results in the impunity of the perpetrators.[149] In ECtHR's view, suspension of the execution of the convicted police officers' prison sentences is

144 See, e.g. CPT's Report on its visit to Albania CPT/Inf (2006) 24, § 53. See also: *Valeriu and Nicolae Rosca v. Moldova* (ECtHR), Application No. 41704/02, judgment of 20 October 2009, § 74, in which the ECtHR criticised the qualification of torture as abuse of power.

145 *Myumyun v. Bulgaria* (ECtHR), Application No. 67258/13, judgment of 3 November 2015, §§ 73–75.

146 *Ibid*. See also: *Pădureț v. Moldova*, § 74.

147 CAT/C/GC/2, § 10.

148 *Valeriu and Nicolae Rosca v. Moldova*, §§ 72–73.

149 *Ateşoğlu v. Turkey*, Application No. 53645/10, judgment of 20 January 2015, § 28; *Cestaro v. Italy*, Application No. 6884/11, judgment of 7 April 2015, § 208.

comparable to a partial amnesty[150] and does not ensure a sufficient deterrent effect to prevent ill-treatment in the future.[151]

Amnestying and pardoning the accused and convicted for ill-treatment, as well the allowing such cases to become time barred, have been criticised by all bodies monitoring compliance with the prohibition of torture.[152] In its General Comments Nos. 2 and 3, CAT stated that amnesties or other impediments precluding or indicating unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violated the principle of non-derogability and posed impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity.[153] This view was echoed by the UN Human Rights Committee (HRC).[154] In its decision in the well-known case of *Guridi v. Spain,* CAT said that granting pardon to people convicted of torture was a violation of Article 2(1) of UNCAT.[155]

The ECtHR has repeatedly emphasised that where a State agent has been charged with or convicted of crimes involving torture or ill-treatment, it was of the utmost importance that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible.[156] The ECtHR has found violations of Article 3 of the ECHR in all cases where prosecution for torture became time-barred or the public officials accused or convicted of torture were amnestied or pardoned.

The ECtHR has reiterated in a number of judgments that State agents accused of ill-treatment should be suspended from duty while being investigated or tried and should be dismissed if convicted.[157] In CPT's opinion, disciplinary

150 *Ali and Ayşe Duran v. Turkey* (ECtHR), Application No. 42942/02, judgment of 8 April 2008, § 69.

151 *Valeriu and Nicolae Rosca v. Moldova*, § 76.

152 CAT considers even the possibility of expiry of the statute of limitations on torture after 15, 18 or 40 years in contravention of the UNCAT. See: CAT/C/ITA/CO/5–6, §§ 12–13; CAT/C/TUR/CO/3, § 24.

153 CAT/C/GC/2, § 5; CAT/C/GC/3, § 41.

154 See: General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment), 1992, § 15, and General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant (ICCPR), CCPR/C/21/Rev.1/Add.13, § 18.

155 *Guridi v. Spain*, § 6.6.

156 *Abdülsamet Yaman v. Turkey*, Application No. 32446/96, judgment of 2 November 2004, § 55; *Pădureț v. Moldova*, § 75; *Cestaro v. Italy*, § 208; *Okkalı v. Turkey* (ECtHR), Application No. 52067/99, judgment of 17 October 2006, § 76; *Pulfer v. Albania*, §§ 83, 87; *Ateşoğlu v. Turkey*, § 25.

157 *Yeşil and Sevim v. Turkey*, Application No. 34738/04, judgment of 5 June 2007, § 37; *Türkmen v. Turkey*, Application No. 43124/98, judgment of 19 December 2006, § 53; *Ateşoğlu v. Turkey*, § 25; *Valeriu and Nicolae Rosca v. Moldova*, § 73 (in this decision, the ECtHR

culpability of the officials concerned should be systematically examined, irrespective of whether the misconduct in question is found to constitute a criminal offence,[158] a view shared by ECtHR[159] and the CAT.[160] Fines and bans on promotion are considered insufficient deterrence measures.[161]

Finally, determination of liability for torture and other forms of ill-treatment must be conducted with reasonable expedition.[162] In a number of judgments, the ECtHR found a violation of the ECHR because the proceedings were concluded after almost eight years.[163]

3.3. Penalties Imposed for Extortions of Confessions and Torture and Ill-Treatment in the Analysed Case Law

3.3.1. Classification of the Criminal Offences

The analysis of the national case law revealed discrepancies in the Serbian courts' views on whether some of the defendants were public officials. In one case, a teacher's ill-treatment of an underage primary school pupil was qualified as ill-treatment and torture under Article 137(1) of the CC (i.e. the court did not consider the teacher a public official),[164] while, in another case, the court correctly considered that the principal of a technical secondary school charged with ill-treating her subordinate was a public official.[165]

Another discrepancy worth mentioning was identified in the trial and appeals courts' assessments of whether the victim had suffered substantial pain or great suffering (a mandatory element of the legal description of the most severe

referred also to Annex I to the Istanbul Protocol); *Cestaro v. Italy*, § 210 (the ECtHR relied in this decision on its prior case-law: *Abdülsamet Yaman v. Turkey*, § 55; *Nikolova and Velichkova v. Bulgaria*, Application No. 7888/03, judgment of 20 December 2007, § 63; *Ali and Ayşe Duran v. Turkey,* § 64; *Erdal Aslan v. Turkey*, Application No.s. 25060/02 and 1705/03, judgment of 2 December 2008, §§ 74 and 76; *Çamdereli v. Turkey*, Application No. 28433/02, judgment of 17 July 2008, § 38; *Gäfgen v. Germany*, Application No. 22978/05, Grand Chamber judgment of 1 June 2010, § 125; *Saba v. Italy*, Application No. 36629/10, judgment of 1 July 2014, § 78).

158 CPT/Inf (2004) 28, § 37; CPT/Inf (2006) 22, § 38.

159 See, e.g.: *Okkalı v. Turkey*, § 71.

160 *Guridi v. Spain*, § 6.7.

161 See, e.g.: *Myumyun v. Bulgaria*, § 70; *Pădureț v. Moldova*, § 77; *Gäfgen v. Germany*, § 124.

162 See: *Valeriu and Nicolae Rosca v. Moldova*, § 76; *Yeşil and Sevim v. Turkey*, § 38.

163 See, e,g.: *Yeşil and Sevim v. Turkey*, § 40; *Ateşoğlu v. Turkey*, § 26. Compare with: *Myumyun v. Bulgaria*, § 72.

164 Bujanovac Basic Court Case K. No. 573/17 (see the Table in the Annex, Case No. 8).

165 Paraćin Basic Court Case K. No. 91/17 (see the Table in the Annex, Case No. 15).

form of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC). Namely, the first-instance court convicted four police officers of the gravest form of torture and ill-treatment (under Article 137(3) in conjunction with paragraph 2 of the CC) because they had used excessive force and inflicted substantial pain and great suffering on the victim in order to intimidate him. Notably, they first threw him on the ground in front of a shop and started kicking him all over. They then handcuffed him, took him to the police station, and continued beating him while he was handcuffed to a chair – they slapped him and, when he would fall on the ground, they kicked him. The victim sustained light bodily injuries – laceration of the eardrum, contusions to the skin of the left earlobe, left side of the nose bridge and left temple, as well as numerous other light injuries of various parts of his body. Each of the four police officers was convicted to eight months' imprisonment.[166] The appeals court, however, acquitted the officers, having found that the prosecution had failed to prove they had committed the crime they were charged with. The appeals court did not doubt that the officers had exceeded their powers and applied force against the victim in contravention of the law. However, the appeals court accepted the findings of a new forensic report on the intensity of the victim's pain and suffering it had commissioned, stating that he had not suffered substantial pain or great suffering since, as the report noted, he had suffered light bodily harm temporary in character that had no consequences on his physical health, that the physical pain of greater intensity lasted for a short while, while it was being inflicted, and that the victim said that he had not feared for his life.[167] The court concluded that, given the absence of substantial pain or great suffering, the defendants could be charged with inflicting light bodily injuries by firearms, dangerous implements or other means capable of inflicting grave injuries or seriously impairing health (Article 122(2), CC), but that prosecution of this offence had become time barred.[168]

3.3.2. Suspended Sentences

All public officials found guilty of ill-treatment by a final decision were handed down suspended sentences, except in one case. In the majority of cases, the prosecutors had themselves proposed in the indictments that the defendants be given suspended sentences.[169]

166 Požega Basic Court Case K. No. 187/16 (see the Table in the Annex, Case No. 18).

167 Kragujevac Appeals Court Case Kž1. No. 1163/17 (see the Table in the Annex, Case No. 18).

168 This would also apply to the criminal offence of torture and ill-treatment under Article 137(3) in conjunction with paragraph 1 of the CC.

169 E.g. the indictments initiating proceedings before the Belgrade Second Basic Court Case K. No. 1624/19, Belgrade Third Basic Court Case K. No. 556/15 i 231/18, Ivanjica Basic Court Case K. No. 160/19, Požarevac Basic Court Cases SPK. No. 11/19–49 and K. No.

In these cases, the courts imposed prison sentences verging on the statutory minimums for extortion of a confession and torture and ill-treatment and, in a substantial number of cases, sentenced the defendants to minimum imprisonment. In two cases, in which eight police officers were convicted by final judgments of crimes under Article 137(3) in conjunction with paragraph 2 of the CC, the courts sentenced them to suspended imprisonment under the statutory minimum.[170]

In most cases, the operational periods of the suspended sentences verged on or were equal to the statutory minimum. Although the CC lays down that the operational period may last between one and five years, the sentences of most of the convicted public officials were suspended for just one year. In one case, the sentence of the convicted public official was suspended for two years and in three cases, the sentences were suspended for three years.

Nine of the 18 public officials sentenced to suspended sentences in the analysed period were found guilty of the gravest form of torture and ill-treatment (Art. 137(3) in conjunction with paragraph 2 of the CC). One police officer was given a suspended sentence for the simple form of the crime of extortion of a confession (under Art. 136(1) of the CC), while the other eight public officials – six of whom were police officers – were sentenced to suspended sentences for the crime under Article 137(3) in conjunction with paragraph 1 of the CC.

The courts took into account the following mitigating circumstances in these cases – that the defendants did not have a criminal record, that they were married and had children, and that they were young. In one case, the court considered as mitigating factors the fact that the victim had not joined criminal prosecution and had not filed a claim for damages.[171] Treatment of the victim's procedural passivity (in a criminal proceeding initiated and conducted *ex officio*) as a mitigating circumstance is doubtlessly not based on the law.

The courts did not identify any aggravating circumstances in hardly any of the cases in which they handed down suspended sentences to the public officials they found guilty. In one case, involving a public official charged with the gravest form of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC, the court considered the social risk arising from the crime as an aggravating circumstance but nevertheless convicted him to imprisonment below the statutory minimum.[172] The courts did not consider as an

71/20, Užice Basic Court Case K. No. 18/19 and Vranje Basic Court Case K. No. 551/17 (see the Table in the Annex, Cases Nos. No. 3, 4, 5, 9, 17, 22 and 23).

170 Belgrade Higher Court Case K. No. 378/18, and Subotica Basic Court Case K. No. 587/17 (see the Table in the Annex, Cases Nos. 6 and 20).

171 Aranđelovac Basic Court Case K. No. 112/18 (see the Table in the Annex, Case No. 1).

172 Aranđelovac Basic Court Case K. No. 112/18 (see the Table in the Annex, Case No. 1).

aggravating circumstance the exceptional persistence the convicted public officials manifested whilst ill-treating the victims, the fact that they continued hitting the victims even after they had used force against them and rendered them helpless.[173] Such persistence points to an extremely high degree of culpability which should definitely be taken into account during sentencing under Article 54 of the CC. In some cases, the courts qualified the defendants' direct intent to commit ill-treatment as indication that a suspended sentence would suffice to deter the perpetrator from committing crimes in the future.[174]

3.3.3. Mitigation of Penalties

In addition to handing down suspended sentences to most public officials found guilty of ill-treatment, the courts mitigated the penalties in three cases involving defendants convicted of the gravest form of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC, ultimately sentencing them to imprisonment below the statutory minimum.

In the case in which both the trial and appeals courts found the existence of all elements of the definition of torture under Article 1 of the UNCAT,[175] the

173 "The Court finds beyond doubt that, whilst performing their official duties, defendant [...] and defendant [...] ill-treated the victim [...] in a manner violating his human dignity. After defendants [...] and [...] entered the room, defendant [...] approached the victim first and punched him in the head and body; defendant [...] then approached the victim and, together with defendant [...] punched the victim, pushing hum against the wall; the victim slid down the wall to the floor from their blows, whereupon the defendants continued hitting and kicking him in the head and body." Excerpt from the reasoning of the judgment of the Belgrade Third Basic Court in Case K. No. 231/18 (see the Table in the Annex, Case No. 5).

174 "On this occasion, the defendant directly intended to act in contravention of the law, aware that his actions amounted to ill-treatment of the victim and violation of his dignity, which was his intent. [...] Notwithstanding, given the severity and social risk of the committed crime [torture and ill-treatment under Article 137(3) in conjunction with paragraph 1 of the CC – author's note], the personality of the defendant [lack of a criminal record and father of an underage child] and the degree of culpability, the court finds that admonition may sufficiently deter the defendant from committing crimes in the future." Excerpt from the reasoning of the Užice Basic Court judgment in Case K. No. 18/19 (see the Table in the Annex, Case No. 22).

175 "The first-instance court correctly established that the defendants [...] applied force against [...] inflicting upon him substantial pain and great suffering with the goal of unlawfully punishing him in the following manner. After hauling him to the Crveni krst PI for an interview, they took turns hitting him on the head, notably slapping him over 20 times; when the victim tried to shield his head with his hands, the defendants ordered him to hold a typewriter in his hands and continued taking turns hitting him on the head and the hands. When the victim doubled over, one of the defendants grabbed his head and kicked him with his knee in the head, above his left eye. When the defendants realised that the

court qualified as an aggravating circumstance the fact that both police officers were twice convicted by a final judgment of crimes with elements of violence after they had committed the crime they were being tried for (the court qualified that as conduct after the fact, because they committed these other violent offences after torture and ill-treatment). However, the court qualified as particularly mitigating circumstances under Article 56(1(3)) of the CC the financial standing, unemployment and lack of a criminal record at the time of commission of the crime of one defendant and the fact that the other police officer was married and had children, unemployed and had no criminal record, thus mitigating their penalties to eight and a half months' imprisonment, which is below the statutory minimum for the crime under Article 137(3) in conjunction with paragraph 2 of the CC.[176] When fixing the sentence, the court also considered as relevant the fact that over ten years had passed from the time the crime was committed to the time when it delivered its judgment,[177] another issue difficult to justify under the Criminal Code.[178]

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victim was going to be sick, they stopped their physical abuse and torture and forced him to confess to a crime, promising they would let him go home if he did. They wrote down their telephone numbers on a piece of paper and gave it to the victim, telling him to contact them if anyone touched him, and that they would take him next time to "Bubanj" not the police if he "ratted" on them and reported them. The defendants set the victim free at around 1 pm." Excerpt from the reasoning of the Niš Appeals Court judgment in Case Kž1. 241/2018 (see the Table in the Annex, Case No. 12).

176 Some criminal law experts are of the view that mitigation of penalty under Article 56(1(3)) of the CC should be an exception given that the law requires the existence of particular (exceptional, outstanding) mitigating circumstances. They emphasise that particularly mitigating circumstances should be distinguished from ordinary mitigating circumstances and that their broad interpretation is not in accordance with the purpose of mitigating a penalty, which should be an exception. Scholars have also disagreed on whether a penalty may be mitigated on these grounds where there are aggravating circumstances. They have noted that this may primarily depend on the aggravating circumstances at issue and their relationship vis-à-vis particularly aggravating circumstances, as well as the requirement that the purpose of the punishment can also be achieved by a milder penalty. More in, e.g.: Zoran Stojanović, *op. cit.*, pp. 250–251. It also needs to be noted that the court considered that the lack of a criminal record at the time the two police officers had committed the crime was a mitigating circumstance and the fact that they were each twice convicted of crimes with elements of violence after the commission of the crime they were tried for as an aggravating circumstance. In such circumstances, the trial and appeals courts' qualification of the defendants' marital status, parenthood, unemployment and financial standing as particularly extenuating circumstances warranting mitigation of their penalties below the statutory minimum appears manifestly ill-founded.

177 Niš Appeals Court judgment in Case Kž1 241/2018.

178 Under Article 54 of the CC on the general rules on sentencing, the court shall fix a penalty against a criminal offender within the limits set forth by law for their criminal offence, whilst bearing in mind the purpose of punishment and taking into account all circumstances that may have bearing on the severity of the punishment (extenuating and

In another case, in which the court also found the existence of all the elements of the definition of torture under Article 1 of the UNCAT,[179] the court convicted the accused police officer for the gravest form of the crime of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC (warranting between one and eight years' imprisonment at the time) and sentenced him to eight months' imprisonment suspended for two years. When fixing the sentence, the court qualified as mitigating circumstances the fact that the defendant had no prior criminal record and his family circumstances (married, father of two); having found no aggravating circumstances, the court attached relevance to these circumstances as particularly mitigating circumstances indicating in the case at hand that the purpose of punishment could be achieved by a milder penalty.[180] Such an interpretation of the mitigation of penalty institute is not only at odds with its exceptional character; the court can also be criticised for failing to take into account the defendant's exceptional persistence during the commission of the crime (he continued hitting the victim after he had handcuffed him and then dragged him on the ground) as an aggravating circumstance when it was fixing his sentence.

aggravating circumstances), in particular: degree of culpability; motives for committing the offence; the degree to which protected goods were endangered or damaged; the circumstances in which the offence was committed; the past life of the offender, their personal circumstances, their conduct after the commission of the criminal offence and, in particular, their attitude towards the victim of the criminal offence, *as well as other circumstances related to the personality of the offender* (italics ours). Given that the passage of time from the commission of the crime to the conviction is not a circumstance concerning the personality of the offender, it would be extremely difficult to defend the view that it should be considered relevant during sentencing, especially to the advantage of the offender, who had denied that he had committed the crime throughout the proceedings. Furthermore, the court did not explain in the reasoning of its judgment why the criminal proceedings had lasted so long.

179 "Namely, the first-instance court clearly and unambiguously established that, whilst performing his police duties, the defendant [...] ill-treated the victim in the capacity of prosecutor [..] by applying force against him and treating him in a manner violating his human dignity, inflicting upon him substantial pain and grave suffering with the aim of intimidating him. Notably, the defendant left the police car and physically assaulted the victim in front of a number of eyewitnesses; specifically, he came up to victim [...] and slapped his face, causing him to fall down, whereupon he twisted his arms. After another policeman pinned the victim to the ground by standing on his back, the defendant handcuffed him, and kicked him all over and then dragged the victim by the handcuffs, saying 'Get up, get up, you're in pain pussy! I'll lock you up, I'm in charge of you, I've been following you for a long time now!' The defendant then hauled the victim to the police station." Excerpt from the reasoning of the judgment of the Novi Sad Appeals Court in Case Kž1. No. 165/18 (see the Table in the Annex, Case No. 20).

180 The Belgrade Higher Court set out nearly identical arguments for applying the institute of particularly mitigating circumstances in its judgment in Case K. No. 378/18 (see the Table in the Annex, Case No. 6).

3.3.4. Expiry of the Statute of Limitations and Duration of Court Proceedings

Although international bodies have repeatedly alerted the Serbian authorities to the inadequacy of the legal framework still maintaining the statute of limitations in respect of the crimes of extortion of a confession and torture and ill-treatment, resulting in numerous public officials accused of these crimes avoiding punishment,[181] another five public officials in four analysed cases were ultimately "acquitted" of all charges because the proceedings against them became time barred.[182] In addition, in one other case, the court rejected part of the indictment due to the expiry of the statute of limitations in respect of specific offences the defendant had been charged with.[183]

All defendants against whom proceedings were discontinued as time-barred had been charged with torture and ill-treatment under Article 137(3) in conjunction with paragraph 1 of the CC, for which the statute of limitations expires six years after the commission of the crime. In three out of five such cases, the PPOs filed the indictments only after more than four years had passed since the crimes were committed,[184] while, in one case, the indictment was filed as many as five years after the impugned event.[185] The courts were thus left with little time to complete the first– and any second-instance proceedings. In the fifth case, in which the PPO was slightly more expedient (and filed the indictment after more than two years), the proceedings before the first-instance court lasted three years and eight months; only six of the scheduled 27 hearings actually took place.[186] The court delivered the first-instance judgment two and a half months before the statute of limitations expired; the second-instance judgment – merely noting that the case was time-barred – was delivered three months after the first-instance judgment.

In two cases, the first-instance convictions of the police officers found guilty of torture and ill-treatment were modified by the second-instance court

181 More in the following concluding observations and reports: CAT/C/SRB/CO/2, § 8; CCPR/C/SRB/CO/3, §§ 26–27; A/HRC/40/59/Add.1, §§ 11–12; CPT/Inf (2018) 21, § 28.

182 Belgrade Second Basic Court Case No. K. No. 1624/19, Belgrade Third Basic Court Cases K. Nos. 556/15 and 231/18, and Vranje Basic Court Case K. No. 102/19 (see the Table in the Annex, Cases Nos. 3, 4, 5 and 23).

183 Šabac Basic Court Case K. No. 709/15 (see the Table in the Annex, Case No. 21).

184 Belgrade Third Basic Court Case K. No. 231/18, Šabac Basic Court Case K. No. 709/15 and Vranje Basic Court Case K. No. 102/19 (see the Table in the Annex, Cases Nos. 5, 21 and 23).

185 Belgrade Second Basic Court Case K. No. 1624/19 (see the Table in the Annex, Case No. 3).

186 Belgrade Third Basic Court Case K. No. 556/15 (see the Table in the Annex, Case No. 4). Date on the courses of the cases are available in Serbian at: tpson.portal.sud.rs/tposvs/.

because the statute of limitations expired during the appeals proceedings.[187] In the third case, the appeals court vacated the first-instance court's conviction for the same crime and remitted the case for reconsideration to the first-instance court less than a month before it became time-barred.[188]

3.3.5. Ban on Practicing a Profession, Activity or Duty

The courts did not render any final decisions in the 1 January 2018 – 30 June 2020 period prohibiting defendants found guilty of extortion of a confession or torture or ill-treatment from practicing their profession, activity or duty.

Obviously, neither the courts nor the public prosecutors, who did not even request such a ban, attached any relevance to the fact that the vast majority of the convicted defendants were police officers, whose main duty is to enforce the law and identify perpetrators of crimes and misdemeanours, and who had grossly abused their position and powers of coercion to extort confessions or unlawfully punish citizens under their control.

3.3.6. Suspensions and Dismissals of Public Officials Accused and Convicted of Ill-Treatment

As noted, under the human rights standards concerning the prohibition of ill-treatment, it is crucial that public officials charged with ill-treatment are suspended until the completion of the investigation and the trial and dismissed if they are convicted.[189] The suspension and dismissal of public officials charged with or convicted of torture and other forms of ill-treatment is crucial for maintaining the public's confidence in, and support for, the rule of law and preventing any appearance of the authorities' tolerance of or collusion in unlawful acts.[190]

Suspension of public officials charged with a crime and the employment-related consequences of criminal convictions are governed by numerous regulations in Serbia. Given that police officers, penitentiary guards and communal militia officers accounted for most of the perpetrators of the crimes this Analysis deals focuses on (extortion of a confession and torture and ill-treatment), the ensuing text will focus on the legal provisions on the suspension and termination of employment of these three categories of public officials and their application in practice.

187 Belgrade Third Basic Court Cases K. No. 556/15 i 231/18 (see the Table in the Annex, Cases Nos. 4 and 5).

188 Vranje Basic Court Case K. No. 102/19 (see the Table in the Annex, Case No. 23).

189 See, *supra*, Section 3.2.

190 See, e.g.: *Okkalı v. Turkey*, § 65; *Cestaro v. Italy*, § 206; *Ateşoğlu v. Turkey*, § 23.

3.3.6.1. Suspension of Public Officials Charged with Ill-Treatment

Under Article 217 of the Police Act, police officers shall be suspended when an order is issued for their pre-trial detention – as of the first day of pre-trial detention, and when they are objectively unable to work because the court has issued an order to ensure the presence of the defendant and the unhindered conduct of criminal proceedings – for the duration of the order. In both of these cases, suspension is automatic. In addition, MIA staff may be suspended on the reasoned request of their superiors when an order is issued to conduct an investigation against them for a criminal offence prosecutable *ex officio*, or when disciplinary proceedings are initiated against them for a grave violation of duty if their presence at work would be prejudicial to the interests of the service, impede the collection of evidence or the course of the criminal or disciplinary proceedings – pending the conclusion of the criminal or disciplinary proceedings. In such cases, suspension is optional because it depends on the superior's assessment; however, the suspension of a police officer charged with extortion of a confession under Article 136(1) of the CC or torture or ill-treatment under Article 137(3) in conjunction with paragraph 1 of the CC, is not even possible given that these crimes are prosecuted in summary proceedings in which an investigation does not constitute a distinct stage.[191]

Given that the PSEA does not have any provisions dealing specifically with the suspension of PSED staff, the provisions of the Civil Service Act[192] (CSA) apply to the suspension of prison and penitentiary guards.[193] Under the CSA,

191 The BCHR has alerted to the importance of the mandatory suspension of police officers – accounting for most public officials suspected of extorting a confession and torture and ill-treatment – for facilitating effective investigations. In July 2020, the BCHR submitted an initiative with the MIA to amend the Police Act and proposed that the following provisions be added to it: 1) mandatory suspension of MIA staff against whom criminal proceedings have been initiated on suspicion that they had committed the crimes of extortion of a confession or torture or ill-treatment – pending a final decision; 2) mandatory suspension of MIA staff even before the criminal proceedings are instituted, if so required by the public prosecutor due to the existence of credible claims or other evidence that they had committed the crimes of extortion of a confession or torture or ill-treatment – pending the withdrawal of the request; and, 3) mandatory suspension of MIA staff against whom disciplinary proceedings have been initiated on suspicion that they had intentionally resorted to excessive physical or psychological force – pending a final decision. The MIA notified BCHR that it would review the initiative during the forthcoming drafting of the amendments to the Police Act. BCHR's initiative is available in Serbian at: www.bgcentar.org.rs/bgcentar/eng-lat/bchr-files-initiative-with-ministry-of-internal-affairs-to-draft-amendments-to-police-act/.

192 *Official Gazette of the RS*, 79/2005, 81/2005 – corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009, 99/2014, 94/2017, 95/2018 and 157/2020.

193 Under Article 251 of the PSEA, the law governing the rights and duties of civil servants shall apply to PSEA staff unless otherwise provided for by that law.

civil servants against whom criminal proceedings have been initiated for a crime committed at or in relation to work or against whom disciplinary proceedings have been initiated for a gross violation of duty may be suspended pending the completion of the criminal or disciplinary proceedings if their presence at work would prejudice the interests of the state authority they are working in or impede the conduct of disciplinary proceedings; a suspension ruling is issued by the civil servant's superior in case of criminal proceedings or the disciplinary commission in case of disciplinary proceedings (Article 116). Therefore, the suspension of civil servants against whom criminal proceedings for the crimes of torture and ill-treatment or extortion of a confession have been instituted is not automatic; rather, it is based on the decision of the relevant official(s), which can be quite problematic in practice. As per suspension of civil servants due to the initiation of criminal proceedings against them under the CSA, it needs to be noted that Article 10 of the CPC lays down that, where the initiation of a criminal proceeding results in a restriction of specific rights and freedoms, such a restriction shall apply as of the day of confirmation of the indictment; the scheduling of the main hearing or the sentencing hearing in summary proceedings; or the scheduling of the main hearing in a proceeding for ordering the security measure of mandatory psychiatric treatment. In other words, a civil servant may not be suspended before the criminal proceeding enters the trial stage.

The same suspension requirements are laid down in the Act on Staff of Autonomous Provinces and Local Self-Government Units (ASAPLSGU),[194] which is referred to in the Communal Militia Act in respect of the employment-related rights and duties of communal militia officers (Art. 34).

Only in two of the analysed court cases did the BCHR ascertain that the public officials charged with torture and ill-treatment or extortion of a confession had been suspended during the proceedings.[195]

3.3.6.2. Termination of Employment of Public Officials Convicted of Ill-Treatment

Under the Police Act, police officers and other MIA staff shall be dismissed by force of law, inter alia, in the event they are convicted by a final judgment to an (effective) sentence of imprisonment of minimum six months; their termination of employment shall be effective on the day the final judgment is communicated to the MIA. In addition to other grounds for termination of em-

194 *Official Gazette of the RS*, 21/2016, 113/2017, 113/2017 – other law and 95/2018. Article 34 of the Communal Militia Act lays down that regulations governing the labour-related rights and obligations of local self-government units shall apply to communal militia officers, unless otherwise provided by that law.

195 See the Table in the Annex, Cases Nos. 6 and 17.

ployment enumerated in Article 172, the Police Act also entitles disciplinary bodies to order the dismissal of police officers found guilty of a gross disciplinary violation. Other regulations setting out grounds for dismissal include the CSA and the regulations it refers to.

The CSA lays down that the employment of civil servants shall be terminated by force of law, inter alia, in the event they are convicted to minimum six months' imprisonment or suspended minimum six months' imprisonment regardless of the operational period for a crime rendering them unworthy of performing the duties of a civil servant (Article 131). The CSA also lays down that the High Civil Service Council shall specify which crimes render a civil servant unworthy of performing the duties of a civil servant and that a civil servant's employment shall be terminated by force of law also on other grounds set out in general labour-related regulations on termination of employment irrespective of the will of the employee or the employer.

The High Civil Service Council Rulebook[196] sets out that the following shall render a civil servant unworthy of performing the duties of a civil servant: suspended minimum six months' imprisonment regardless of the operational period; any of the enumerated crimes against official duty (the list of which does not include extortion of a confession or torture and ill-treatment) and all other crimes warranting five or more years of imprisonment.[197] In all these cases, employment is terminated automatically – on the day the judgment becomes final.

The Labour Act,[198] which the CSA refers to, lays down that employment shall be terminated irrespective of the employee's or employer's will, inter alia, in the event the employees are prohibited from exercising specific duties under the law or in accordance with a final decision of a court or another authority and their employer cannot provide them with another job, as of the day of delivery of the final decision; in the event they have to be absent from work for at least six months because they have to serve a sentence of imprisonment, as of the day they begin serving the sentence; or in the event they have to be absent from work for at least six months because a security, correctional or protective measure has been imposed against them, as of the day of enforcement of the measure (Article 176).

The grounds for termination of employment by force of law set out in the CSA, the High Civil Service Council Rulebook and the Labour Act also apply to

196 Rulebook on Crimes the Conviction for Which Renders Civil Servants Unworthy of Performing the Duties of a Civil Servant, *Official Gazette of the RS*, 26/2019.

197 This requirement is fulfilled by both forms of the crime of extortion of a confession under Article 136 of the CC and the gravest form of the crime of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC.

198 *Official Gazette of the RS*, 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – CC Decision 113/2017 and 95/2018 – authentic interpretation.

prison and penitentiary guards. Furthermore, PSED staff may be dismissed if they have been sentenced to an unconditional term of imprisonment, regardless of its duration, for a criminal offence prosecutable *ex officio* (Article 254 of the PSEA).

The termination of employment of communal militia officers found guilty of a crime is regulated by the Act on Staff of Autonomous Provinces and Local Self-Government Units (ASAPLSGU),[199] and Article 176 of the Labour Act. Under the ASAPLSGU, employees shall be dismissed in the event they are convicted to at least six months' imprisonment by a final judgment or on other grounds laid down in general labour regulations on termination of employment irrespective of the employee's or employer's will (Article 163).

The analysis of the above-mentioned provisions on termination of employment clearly shows that a final conviction of public officials for crimes under Articles 136 and 137 of the CC need not always result in their dismissal. Termination of employment by force of law of all three categories of public officials (police officers, penitentiary staff and communal militia officers) depends on the type and/or severity of the imposed penal sanction, not just on the mere fact that they have been convicted of a crime under Articles 136 and 137 of the CC.[200] Given that the imposition of a ban on practicing a profession, activity or duty results in the automatic dismissal of all three categories of public officials, proper application of Article 85 of the CC would suffice to preclude officials, found to have abused the powers they have been entrusted with and tortured or ill-treated people, from continuing to perform their duties in public authorities, even if the above-mentioned regulations are not amended.

According to information published by the media, five police officers convicted in one case were dismissed after the judgment finding them guilty of torture and ill-treatment under Article 137(3) in conjunction with paragraph 2 of the CC became final.[201] On the other hand, the answers BCHR received in response to its requests for access to information of public importance indicate that one commu-

199 *Official Gazette of the RS*, 21/2016, 113/2017, 113/2017 – other law and 95/2018. Article 34 of the Communal Militia Act lays down that regulations governing the labour-related rights and obligations of local self-government units shall apply to those of communal militia officers, unless otherwise provided by that law.

200 In its above-mentioned initiative to amend the Police Act, BCHR said that a final conviction for the crime of torture and ill-treatment or extortion of a confession, as well as a final disciplinary decision finding a public official guilty of intentionally applying excessive physical or psychological force against an individual should be grounds for termination of employment of MIA staff by force of law. The adoption of such an amendment to the Police Act would result in the automatic termination of employment of all police officers convicted by court or found guilty in disciplinary proceedings of torture and other forms of ill-treatment and would enable Serbia to fulfil its international legal and constitutional obligations in this area.

201 Belgrade Higher Court Case K. No 378/18 (see the Table in the Annex, Case No. 6). In this case, seven police officers were found guilty, but two of them had already retired by the

nal militia officer and police officers found guilty of extortion of a confession and torture and ill-treatment in the other analysed cases had not suffered any employment-related consequences once the judgments against them became final,[202] with the exception of one police officer found guilty of a gross violation in disciplinary proceedings, whose salary was cut by 20%.[203] The courts' sentencing practices in respect of public officials found guilty of extortion of a confession or torture and ill-treatment remained mild, like in the previous period.[204]

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time the judgment became final. See the *Vreme* article, available in Serbian at: www.vreme.com/cms/view.php?id=1762408.

202 Kragujevac police letter 03.23 No. PS-68/21 of 5 July 2021, Kragujevac police Human Resources Department letter, 08/18 No. 2420/21 of 16 August 2021, Niš police letter Inf. No. 28/21 of 19 August 2021, Niš City Administration Communal Militia letter No. 1/247/2021-09 of 1 June 2021, Pirot Police Department letter 07/2–4 of 11 August 2021, Požarevac police letter No. 037–730/21 of 4 June 2021, and Užice police letter 03/39 No. 072/1–15/2021 of 11 August 2021 (see the Table in the Annex, Cases Nos. 1, 10, 12, 13, 16, 17 and 22).

203 Zemun police station letter No. 03.15.14.3 No. 07.2–2 of 12 March 2021 (see the Table in the Annex, Case No. 5).

204 According to BCHR's prior analysis, Serbian Basic Courts conducted 149 criminal proceedings against public officials charged with torture or ill-treatment (under Article 137(3) in conjunction with paragraphs 1 and 2 of the CC) in the 2010–2016 period. Some of these proceedings were still pending at the time this Analysis was completed. Of the 149 cases, 119 have been closed – the courts delivered 30 judgments of acquittal in respect of 55 public officials; 33 judgments of conviction in respect of 45 public officials, 39 rulings discontinuing criminal proceedings (before the adoption of the judgment) in respect of 81 public officials; eight rulings dismissing indictments against 23 public officials and nine rulings rejecting indictments against 17 public officials. The courts found only police officers guilty of the crimes they had been charged with (but never any of the accused penitentiary guards). In 25 cases, the courts convicted 33 police officers to suspended sentences; in two cases involving two police officers, they sentenced them to eight and four months' imprisonment respectively; and, in one case, the court sentenced two police officers to so-called home imprisonment (imprisonment served in the convict's home), while, in one case, the police officer was sentenced to community service. Sixteen of the 39 decisions discontinuing criminal proceedings against 31 public officials were adopted because the cases became time-barred. In 17 cases, such decisions were adopted after the victims abandoned criminal prosecution (usually by failing to appear at the hearings for no good reason) and six such decisions were adopted after the public prosecutors decided against prosecution. In the same period, the Serbian Basic Courts conducted 17 criminal proceedings for extortion of a confession (Article 136 of the CC). Fourteen of these proceedings ended with the adoption of a final decision: five judgments of acquittal in respect of 11 public officials; two judgments of conviction in respect of three public officials; three rulings discontinuing criminal proceedings in respect of eight public officials; two rulings dismissing the indictments against 11 public officials and two rulings rejecting the indictments against four public officials. The courts delivered judgments of conviction in two cases: in the first case, the court handed down suspended sentences to two public officials, while the defendant in the second case was sentenced to one year home imprisonment. One case against four police officers was discontinued as time-barred. More in BCHR's 2017 Human Rights in Serbia annual report, pp. 70–72 (available at: www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/03/Human-rights-in-Serbia-2017.pdf).

PART IV

INVESTIGATIONS OF CASES OF POLICE ILL-TREATMENT DURING THE JULY 2020 CIVIC PROTESTS

4.1. Chronology of the Events

People started spontaneously rallying in front of the National Assembly in Belgrade in the evening of 7 July 2020, after Serbian President Aleksandar Vučić said that the prohibition of movement (curfew) would be reintroduced to contain the COVID-19 pandemic on Friday, 10 July, and last until 13 July. The rallies were soon tainted by violent incidents caused by individuals. In addition to verbally expressing their dissatisfaction, some individuals started throwing rocks and various objects at the police deployed in front of the parliament. The increasing number of violent protesters, who clashed with the police more and more, led the police to use teargas and other means of coercion. The protesters threw the teargas back at the police and destroyed public property; some of them even set police cars on fire. However, several inadequate responses by the police later that evening shifted the focus from the violent protesters to the violent police officers, who ill-treated individuals who had not offered any resistance to use of force, attacked the police or destroyed property. For instance, the police truncheoned and kicked several individuals sitting peacefully on a bench in the park across the parliament and truncheoned and kicked a protester they had thrown on the ground.[205]

The protests grew in magnitude over the following days. They were held both in Belgrade and other large cities across Serbia. The protesters continued clashing with the police, but bystanders soon also noticed organised groups among the protesters, who provoked the police or "helped" them haul the protesters in. The police, reinforced by mounted police, used large quantities of teargas to suppress the protesters and even fired tear gas at the bodies of the

205 Video footage of the events is available at: www.youtube.com/watch?v=QaJ3R5k0Bus and www.krik.rs/rebic-policija-sinoc-bila-uzdrzana-reagovala-kada-su-ugrozeni-zivoti-policajaca/.

protesters.[206] Some of the shells found on the street indicated that the tear gas was around 30 years old.[207]

Several cases of police brutality filmed during the second day of the protest, the night of 8/9 July, were the "hallmark" of the July protests. On the Terazije square in the heart of Belgrade, several police officers chased down a protester, threw him on the ground, and truncheoned and kicked him all over. Another cordon of officers soon arrived and, one after another, truncheoned and kicked the man, who was already lying curled up on the street and not offering any resistance. When they left, he remained lying on the street, without moving, and a number of police cars coming down the street had to stop lest they run him over. Three officers got out of the car, came up to him, moved him to the sidewalk and went back to the cars that went on their way. The police did not administer any aid to him. The beaten up man continued lying on the sidewalk.[208]

That same evening, a uniformed police officer in Novi Sad left the police cordon and pulled an 18-year-old driving down the street off his bicycle. Another officer ran up to the young man lying on the ground and kicked him in the head.[209] Novi Sad residents staged further protests against this case of police brutality, demanding the dismissal of the implicated officers.[210]

Although initial police response to the provocations and violent actions of a small number of protesters was restrained, as time went by, the police increasingly resorted to excessive, even totally groundless use of force,[211] against many protesters who were not violent in the least and whose only "mistake" was that they were "in the wrong place at the wrong time".[212] Dozens of people, including

206 See, e.g.: www.youtube.com/watch?v=RPkPcF4E7jI and www.youtube.com/watch?v=eMQcWN1lwVI.

207 *Radio Free Europe*, "Tear gas from the 1990s fired during Belgrade protests," 13 July 2020. Available in Serbian at: www.slobodnaevropa.org/a/suzavac-iz-devedesetih-na-protestima-u-beogradu/30724102.html. See also: *N1,* "Movement of Free Citizens: police firing tear gas manufactured 30 years ago", 11 July 2020. Available in Serbian at: rs.n1info.com/Vesti/a618786/PSG-Policija-ispaljuje-suzavac-star-i-po-30-godina.html.

208 Video footage of the incident is available at: www.youtube.com/watch?v=2i60ixGw-8g. The testimony of the victim of police ill-treatment is available at: youtu.be/EeM3GTY65Mo.

209 Video footage of the incident is available at: www.youtube.com/watch?v=UfIsnKjFEZ8.

210 *N1,* "Protest in Novi Sad over police brutality and beating of a boy," 20 July 2020. Available in Serbian at: rs.n1info.com/vesti/a621724-protest-u-novom-sadu-zbog-policijske-represije-i-prebijanja-decaka/.

211 See, e.g.: www.youtube.com/watch?v=OkOuZT-XR8Q and www.youtube.com/watch?v=0ILpeCJXUSU.

212 *CINS*, "Testimonies of Police Brutality: After One Hits, Another One Comes to Do the Same," 10 July 2020. Available at: www.cins.rs/en/testimonies-of-police-brutality-after-one-hits-another-one-comes-to-do-the-same/.

women,[213] children,[214] journalists[215] and persons with disabilities, were victims of police brutality. Scores of people were hauled in by the police, held in custody, brought before misdemeanour judges and punished in summary proceedings, without adequate defence. Some were severely punished, even to sentenced to prison, for allegedly insulting police officers.

Instead of unequivocally recalling that any ill-treatment, including excessive use of force, was prohibited, Police Director Vladimir Rebić said on RTS, the public service broadcaster, after the first evening of the protests that the police had acted "with utmost restraint" and responded only when their lives were in danger.[216] The Protector of Citizens issued a press release after the second evening of the protests, when the most cases of police brutality were registered, saying that he had ascertained, by personal insight in the situation in the field, that the "police had not used excessive force against the protesters, except in individual cases," which he would investigate during his review of the MIA's operations.[217] Senior state officials thus began publicly downplaying the ill-treatment of people by dozens of police officers.

The BCHR filed 32 criminal reports again 70 unidentified police officers (30 with the Belgrade First BPPO and two with the Novi Sad BPPO) and as many complaints (initiatives) with the Protector of Citizens, seeking a review of the lawfulness of the MIA's operations. The civic association A11-Initiative for Economic and Social Rights filed another nine criminal reports of police brutality during the Belgrade protests and five complaints with the Protector of Citizens seeking a review of the lawfulness of the MIA's operations. BCHR arranged court medical experts' examinations of the 18 victims of police brutality, who had asked it for legal aid. BCHR forwarded the experts' reports, together with the video footage of the incidents, testimonies of police ill-treatment, and photographs of the injuries, to the relevant PPOs and the Protector of Citizens to supplement the criminal reports and complaints it had filed.

213 See: www.youtube.com/watch?v=1v8rWi8hoPk and www.youtube.com/watch?v=mBR4td-Douck.

214 *N1*, "Proceedings initiated because of torture: activists demanding release of other detainees," 16 July 2020. Available in Serbian at: rs.n1info.com/vesti/a620452-postupci-zbog-torture-aktivisti-traze-oslobadjanje-ostalih-pritvorenih/.

215 Independent Journalists Association of Serbia registered 21 assaults on news crews reporting on July protests. Available in Serbian at: www.slobodnaevropa.org/a/30720884.html, insajder.net/sr/sajt/vazno/19420/ i nova.rs/vesti/drustvo/institucije-da-pokazu-da-se-napad-na-novinare-ne-prasta/ i www.nedeljnik.rs/povredeni-reporter-ivana-ivanovica-i-novinar-nove/.

216 Available at: www.youtube.com/watch?v=NzjcS2Vget8.

217 See: www.ombudsman.org.rs/index.php?option=com_content&view=article&id=297:police-did-not-use-excessive-force-individual-cases-will-be-investigated&catid=44:opinions-and-views&Itemid=4.

Based on the footage of the protests posted on social networks and published by the media, estimates are that over 100 people were victim of police ill-treatment.

In mid-July 2020, CSOs rallied in the Platform of Organisations for Cooperation with UN Human Rights Mechanisms sent an urgent appeal to the UN Special Rapporteur on torture, asking him to call on the relevant Serbian authorities to conduct effective investigations of all cases of police brutality against the protesters.[218]

4.2. Prosecutors' and the MIA Internal Control Sector's Responses to Criminal Reports of Police Ill-Treatment during the July 2020 Civic Protests

BCHR lawyers filed a large number of criminal reports about police ill-treatment very soon after the incidents, since many of them were broadcast live on TV stations and footage of police brutality against the protesters was posted on social networks. In its criminal complaints concerning cases of excessive use of force by the police that were not captured on camera, BCHR suggested to the Belgrade First PPO to immediately take all the requisite steps to isolate the recordings of surveillance cameras at the nearby traffic junctions and on buildings. BCHR previously mapped the surveillance cameras that had probably registered the incidents reported by the individuals, photographed the cameras and the buildings where they were installed and forwarded all the material to the Belgrade First PPO and the MIA Internal Control Sector (ICS) together with the initial criminal reports or in follow-up submissions. BCHR filed all the criminal reports by e-mailing them to the official e-mail addresses of the relevant PPOs (the Belgrade First PPO and the Novi Sad PPO) and the ICS, so that they could promptly take steps to collect all the relevant information and undertake the requisite evidentiary actions.

As a rule, the ICS notified BCHR that it had "forwarded" its criminal reports to the relevant PPO within 5–7 days. Not only was such "forwarding" of the criminal reports to the PPO superfluous, since each criminal report was simultaneously e-mailed to both the ICS and the relevant PPO. The ICS also "forwarded" all the criminal reports of police ill-treatment to the MIA units in which the suspected police officers were working or to their superiors (the commander of the Gendarmerie, the Belgrade Chief of Police, the Novi Sad Chief of Police, the Crime Police Department, the Police Directorate, et al) "in accordance with the

218 More is available in Serbian at: platforma.org.rs/platforma-obavestila-specijalnog-izvestioca-ujedinjenih-nacija-za-torturu-o-policijskoj-brutalnosti-na-protestima-u-srbiji/.

Police Act and the MIA Rulebook on the Complaints Procedure".[219] In its letters to these MIA units, the ICS said that it was forwarding them the criminal reports "for your information and to take action and measures in accordance with Article 5(4) of the Complaints Review Rulebook.".[220] In its report in response to ICS' letter, the Belgrade City Police said that the forwarded criminal report "includes solely allegations of a committed crime, specifically torture and ill-treatment, which is under the jurisdiction of the ICS [...], wherefore the requirements for reviewing the complaint have not been met."[221]

In BCHR's opinion, the forwarding of the criminal reports of torture and ill-treatment to MIA units where the suspected officers work and to their superiors, together with the evidence submitted together with them (video footage, witness testimonies, photographs of the injuries, doctors' and court experts' reports, et al) is merely one of the many deficiencies (elaborated below) in the MIA's work, undermining the possibility of identifying the police officers who had ill-treated individuals during the July 2020. These officers, their colleagues and their superiors were provided with the opportunity to prepare non-incriminating statements and collude before they appeared before the prosecutors or the ICS during preliminary investigation proceedings, in which no action has been taken yet.[222]

In late August 2020, the Belgrade First PPO notified the BCHR lawyers representing the victims that it had initially formed one case on all the police ill-treatment reports,[223] that on 17 July, four days after the protests ended (and 10 days after the first criminal reports were filed) it had requested of the ICS to perform the requisite checks and "try to identify the police officers" and that it "supplemented its request" after the BCHR filed further criminal reports with a view to "acting on [...] the reports and additional submissions, reviewing the surveillance camera video footage and identifying the police and Gendarmerie

219 The ICS stated as much in a number of its letters, e.g.: 06.5 No. 4214/20, No. 4250/20, No. 4286/20, No. 4287/20, No. 4290/20, No. 4315/20, No. 4354/20, No. 4355/20, No. 4356/20, No. 4359/20 and No. 4361/20, all of them dated 15 July 2020, and its letters 06.5 No. 4577/20, No. 4578/20 and No. 4636/20, all of them dated 28 July 2020.

220 E.g. ICS's letter 06.5 No. 4578/20, of 28 July 2020.

221 Letter of the Belgrade City Police Internal Control Department, 03.15.1.2 No. 07.3–21/20–2, of 10 September.

222 In a number of its judgments, the ECtHR has noted that the respondent State's failure to prevent potential collusion of the suspects amounted to major lacunae in the investigation and resulted in the violation of its procedural obligations under the ECHR. See, e.g.: *Ramsahai and Others v. The Netherlands*, Application No. 52391/99, Grand Chamber judgment of 15 May 2007, § 330; and, *Jaloud v. The Netherlands*, Application No. 47708/08, Grand Chamber judgment of 20 November 2014, §§ 206–208.

223 Belgrade First BPPO, Case Ktr. No. 4080/2.

officers who may have taken part in suppressing the protests and committed a crime."[224]

For inexplicable reasons, the Belgrade First PPO's request of 24 August 2020[225] was forwarded to the ICS via the Registry Office of the Belgrade City Police, where its receipt was registered on 27 August 2020, while its receipt by the ICS was registered seven days later, i.e. on 31 August 2020.[226] The correspondence between the Belgrade First PPO and the ICS via the Belgrade City Police or another MIA unit in which the suspected police officers are working totally compromises the confidentiality of the investigations into allegations of police ill-treatment.

The ICS delegated the execution of a part of the PPO's instruction to the Belgrade City Police Internal Control Department, requiring of it to summon some of the ill-treated individuals and take their statements.[227] However, the scheduled interview of one of the victims in the Belgrade City Police was cancelled after the BCHR alerted the Belgrade First PPO, the Head of the ICS and the Head of the Belgrade City Police that an investigation into allegations of police ill-treatment could not be considered independent if it was conducted by police officers working with the suspected officers or in a hierarchical relationship with them and that such investigations would be in contravention of ECtHR case law and amount to a violation of Article 3 of the ECHR. A month later, when the Belgrade First PPO served a similar summons on another victim, the BCHR reacted again and the PPO cancelled the interview.

The ICS' collection of information on the instructions of the Belgrade First PPO in the cases in which BCHR had insight lasted up to three months after the July 2020 protests ended. The ICS reports[228] showed that officers of various MIA units were deployed during the protests in Belgrade (Gendarmerie units from various cities, officers of the Police Brigade and the Belgrade City Police, the Crime Police, the Belgrade City Intervention Unit 92, intervention police units from various cities – Pančevo, Požarevac, Valjevo, Šabac, Smederevo, etc.). They also showed that the police had no time to form police formations

224 Letter Belgrade First BPPO Deputy Public Prosecutor Stefan Petrović sent the BCHR on 24 August 2020.

225 Belgrade First BPPO's Request for Information, Ktr. No. 4080/20 of 24 August 2020.

226 ICS Report 06.5 No. 4994/S20 of 5 October 2020, p. 2.

227 As an officer of the Belgrade City Police Internal Control Department told BCHR over the phone on 23 July 2020.

228 ICS Reports including, inter alia, 06.5 No. 4578/20, of 28 August 2020; 06.5 No. 4250/S20 of 16 September 2020; 06.5 No. 5709/20 of 23 September 2020; 06.5 No. 5715/20 of 28 September 2020; 06.5 No. 4542/S20 of 30 September 2020; 06.5 No. 4994/S20 of 5 October 2020; 06.5 No. 4543/S20 of 16 October 2020.

during the first evening of the protests in Belgrade, which were unannounced, wherefore the officers ordered to report were urgently deployed to assist undermanned units in the field.

The ICS reports also show that the ICS interviewed a number of police officers deployed in the areas where the alleged police brutality had occurred or in their immediate vicinity, as well as officers charged with hauling the arrested protesters to Belgrade police stations. It transpired that many intervening officers had failed to report that they had used physical force and truncheoned the protesters; officers, who had reported use of force against unidentified individuals,[229] were all found to have used it justifiably.[230]

The statements of all officers, who used force against the protesters at various venues, are nearly identical. All of them alleged that they had not used force against the ill-treated protesters, that their fellow officers had acted professionally and with restraint, and that they did not know the uniformed individuals who used force in any of the impugned cases. Only several officers said that they had noticed that the protesters they were hauling in were injured and that they called the ambulance or MIA health units to extend them first aid.

The ICS collected the statements of police officers believed to belong to units that used excessive force against the protesters and those who may have useful information about these cases with a substantial delay. For instance, in one case, in which the criminal report was filed with the Belgrade First PPO and the ICS on 8 July 2020, the ICS took the statements of the police officers on 11 and 12 August and on 21, 23, 25 and 29 September 2020;[231] in cases in which the criminal reports were filed with the Belgrade First PPO and the ICS on 21 and 22 July, the ICS took the statements of the police officers on 18 and 19 August

229 One Police Brigade officer said the following in his report on use of force in the evening of 8 July 2020. "An unidentified individual wearing a green T-shirt and black gloves left the group that was assaulting and hurling objects at the First Operational Company deployed in a cordon and headed towards me. When he came up close to me, he swung a wooden bat he was holding in his right hand with the intention of hitting me on the head. I started using means of coercion – my truncheon, which I was holding in my right hand – at 22:55 pm, since I had no other way of repelling his immediate attack on me. Whilst endeavouring to inflict the fewest possible injuries on the individual, I hit his right forearm once, at an angle of 45 degrees, with the top of my truncheon. After using means of coercion against the individual, i.e. after hitting his right forearm once with my truncheon to repel his attack against me, he took a few steps backwards, turned around and headed down Beogradska Street towards the Tašmajdan Park with his bat." Report on the Use of Force, Belgrade City Police Brigade, No. 161/2020, of 9 July 2020.

230 E.g. the Belgrade City Police Brigade enactment 03.15.8 No. 161/2020, of 16 July 2020; Minutes of the Police Directorate Commission charged with reviewing the justification of the use of force, 03 No. 7790/20–3, of 7 August 2020.

231 ICS Cases, 06.5 No. 4302/20 and 4356/20, i.e. Belgrade First BPPO Case Ktn. No. 2795/20.

2020,[232] from 21 August to 1 September 2020,[233] from 25 August to 16 September 2020,[234] and on 25 September 2020.[235] The Belgrade First PPO did not take the statements of any police officers,[236] relying instead fully on the ICS' findings.

There were also cases in which the ICS did not even take the statements of police officers who had reported using their truncheons against the protesters at venues and times closely coinciding with those in the reports of ill-treatment. For instance, during their collection of information in the case of a protester who alleged he had been ill-treated by the police near the Belgrade Law School (at the *El Derecho* café) at around 11:30 pm on 8 July 2020, the ICS perused the MIA electronic database and concluded that five (named) officers of the Belgrade Gendarme Platoon reported using their truncheons "against unidentified individuals" near the Belgrade Law School that evening, between 11:05 and 11:07 pm. The ICS, however, neither took statements from any of them nor obtained their reports on use of force. The ICS relied on the findings of the commission set up by the Police Directorate, that the use of force in these cases was justified, concluding that "no evidence has been found that would corroborate with *unequivocal certainty* the allegations in the report by [*first and last names of the victim*] that he had been physically ill-treated by police officers and their identity."[237]

The fact that the above-mentioned five Belgrade gendarmes used their truncheons near the Belgrade Law School after 11 pm on 8 July 2020 was not even mentioned in the ICS' other reports[238] dealing with a number of other cases of ill-treatment of the protesters in the immediate vicinity of the Law School that evening; nor were these gendarmes interviewed about the incidents. One such incident occurred in the Kralja Aleksandra Boulevard across the Law School at around 11 pm, when several police officers ran up to a man and ruthlessly truncheoned

232 ICS Case 06.5 No. 4578/20, i.e. Belgrade First BPPO Case Ktn. No. 2796/20.

233 ICS Case 06.5 No. 4250/S20, i.e. Belgrade First BPPO Case Ktn. No. 2831/20.

234 ICS Case 06.5 No. 4542/S20, i.e. Belgrade First BPPO Case Ktn. No. 2794/20.

235 ICS Case 06.5 No. 4543/S20, i.e. Belgrade First BPPO Case Ktn. No. 3021/20.

236 In its latest report on Serbia, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that the Serbian authorities take the necessary measures to ensure that prosecutors investigating cases of alleged torture and ill-treatment should always in practice conduct investigative actions themselves, especially as regards interviews of relevant witnesses, injured parties and police officers, in order to ensure the effectiveness of investigations into allegations of ill-treatment by law enforcement officials. See: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, CPT/Inf (2018) 21, Strasbourg, 21 June 2018, § 26 (available at: rm.coe.int/16808b5ee7).

237 ICS Report, 06.5 No. 5715/20 of 28 September 2020.

238 ICS Report, 06.5 No. 4994/S20 of 5 October 2020.

him.[239] The ICS report to the Belgrade First PPO on this case[240] and addenda to the report state that officers of the Niš Gendarmerie Platoon handed the beaten up and visibly injured man over to the Belgrade City police. These gendarmes told the ICS that "two uniformed officers from a unit they did not know who were engaged in pushing the protesters back" handed the beaten up man over to them, while the Belgrade City police officers he was ultimately handed over to specified in their official report[241] that the Niš gendarmes, who handed the man over, said that they had not intervened against him and that he had been handed over to them by "colleagues from the Gendarmerie who were on the move".

The statements of the four of the five Belgrade gendarmes, who had reported use of their truncheons near the Law School after 11 pm on 8 July 2020, were taken only on 25 September 2020, and only with respect to a case of ill-treatment that happened that evening on Kralja Aleksandra Boulevard, between McDonalds and the Post Savings Bank.[242] They denied they had used force against the victim,[243] while the content of their statements leads to the conclusion that the ICS officers did not ask them any additional questions. They did not even specify in their statements to the ICS where exactly they had used their truncheons (in which street, on which side of the street, near which building, etc.), only that they used them "near" or "close to" the Law School. Furthermore, there are no indications that the ICS asked these gendarmes to describe the people they had truncheoned (their sex, approximate age, et al). The ICS did not take the statement of the fifth gendarme "because he was absent during the inquiry".[244] Another fact worth noting is that the content of the gendarmes' individual reports on their use of their truncheons in the evening of 8 July, which were written the following day, is identical,[245] which is a clear indicator of their non-credibility and their collusion, which the ECtHR considers a violation of the procedural aspect of Article 3 of the ECHR.

In his report to the Belgrade First PPO on the above-mentioned case of ill-treatment of an individual near the *El Derecho* café,[246] the ICS officer said

239 The video footage of the incident is available at: www.youtube.com/watch?v=OkOuZT-XR8Q.

240 ICS Report, 06.5 No. 4578/S20 of 28 August 2020.

241 Belgrade City Police, Čukarica Subsidiary, official report, no file number, of 9 July 2020.

242 ICS Case 06.5 No. 4543/S20, i.e. Belgrade First BPPO Case Ktn. No. 3021/20.

243 ICS official reports on information received from officers of the Specialist Company of the Belgrade Gendarmerie Platoon, 06.5 No. 4543/S20, all dated 25 September 2020.

244 Quote from the ICS Report 06.5 No. 4543/S20 of 16 October 2020 (p. 3).

245 Reports on use of force by the officers of the Specialist Company of the Belgrade Gendarmerie Platoon, 03.11.10.09 No. 368/20–6 – No. 368/20–10, all dated 9 July 2020.

246 The *El Derecho* café (the erstwhile *Bona fides*) is several metres above the entrance to the Mali Tašmajdan Park from Beogradska Street.

that his perusal of MIA records had led him to conclude that the Gendarmerie Platoons from Novi Sad, Niš and Kraljevo had not registered use of force – truncheons against the protesters at the critical time,[247] wherefore the ICS did not focus on reviewing the operations of police officers from those platoons (i.e. interviewing them, collecting official documents, etc.). The report on this case mentioned only the members of the Belgrade Gendarmerie Platoon, whose reports of use of force were registered in MIA's electronic records. However, there was information indicating that police officers of other units, not the Belgrade Gendarmerie, were responsible for the ill-treatment of another individual that occurred at the same time – at around 11:30 pm on 8 July – in the immediate vicinity of the *El Derecho* café – several metres below the entrance to the Mali Tašmajdan Park from Beogradska Street.[248] In its report submitted to the PPO,[249] the ICS said that the Gendarmerie Commander had notified it that "officers of the Novi Sad Gendarmerie Platoon exercised their police powers against *twenty individuals* in the Tašmajdan Park area that day" and that "given that the Mali Tašmajdan Park is in the immediate vicinity of the Tašmajdan Park, it is possible that the police officers of the Novi Sad Gendarmerie Platoon had used force against the individual at issue."[250] The ICS further noted that the Police Brigade Commander had also confirmed that "Police Brigade officers did use force, their truncheons, twice near the venue at issue, in Beogradska Street, near the building at number 71, across from the Tašmajdan Pools, from 22:55 to 22:56 pm."

The manifestly false statements some police officers made to the ICS did not draw the attention of either the ICS or the Belgrade First PPO. In one of the most prominent cases of ill-treatment, which occurred on Terazije Square in the evening of 8 July,[251] statements were taken from the police officers who moved the beaten up victim from the street to the nearby sidewalk so that the police cars could proceed. They said that the man was conscious and communicating, that he had no visible injuries and told them that he did not need medical aid.[252] However, the publicly available recordings of the incident clearly show him lying on the street and not moving, the three officers running up to him and quickly moving him to the sidewalk and immediately getting back into their cars,[253] and

247 ICS Report, 06.5 No. 5715/20 of 28 September 2020.

248 ICS Case 06.5 No. 4994/S20, i.e. Belgrade First BPPO Case Ktn. No. 2801/20.

249 ICS Report, 06.5 No. 4994/S20 of 5 October 2020.

250 Gendarmerie Commander's Report 03.11 No. 07–2121/20–9 of 7 September 2020.

251 The video footage of the incident is available at: www.youtube.com/watch?v=2i60ixGw-8g.

252 Three such statements were noted in the ICS' official reports on information received from the officers of the Belgrade City 92 Intervention Unit, 06.5 No. 4356/20 of August 11, and 23 and 29 September 2020.

253 Available at: youtu.be/2i60ixGw-8g?t=31.

the man lying unconscious on the sidewalk.[254] The victim himself told the prosecutor that he had not communicated at all with the officers and that he had fainted from the beating.[255] The BCHR therefore filed a criminal report against these police officers with the Belgrade First PPO for making false statements. The report was still pending by the time this Analysis was completed.

The Belgrade First PPO started taking the statements of victims of police ill-treatment during the July 2020 protests only in late February 2021, after their representatives required, under Article 330 of the CPC, of the PPO to request the Belgrade First Basic Court's approval to question them as witnesses without summoning the suspects (who were not identified) and their legal counsel to attend this evidentiary action.[256] At least three victims of the police ill-treatment had not testified by the time this Analysis was completed.[257]

The Belgrade First PPO did not order court medical experts to draw up reports on the physical injuries in any of the analysed cases, not even on the available medical documentation.[258]

The man, who had been ill-treated in front of the entrance to Mali Tašmajdan Park, told the Belgrade First PPO on 31 March 2021 that he had seen the face of one of the policemen who had ill-treated him because his visor had been raised, that the policeman was clean shaven and heavy set and that he believed he would be able to recognise him.[259] Unfortunately, no identification parade of the responsible officers[260] was organised by the time this Analysis was completed, although the ICS has at its disposal the data of the gendarmes and Police Brigade officers whose use of force near the place of the reported abuse at the critical time was on record. Nor was an identification parade of police officers organised for the victims in at least two other cases,[261] although they told the Belgrade First PPO that they would be able to recognise the responsible officers who had abused them because they had seen their faces.[262] The ICS knows

254 Available at: youtu.be/OP4HKv9efIg?t=1006.

255 Minutes of Questioning of the Victim in the Capacity of Witness before the Belgrade First BPPO, Ktn. No. 2795/20 of 19 April 2021.

256 Under Article 300 of the CPC, the public prosecutor shall as a rule notify the suspect and their counsel of the time and place of the questioning of the witness and of their right to attend the questioning.

257 ICS Case 06.5 No. 5711/20, i.e. Belgrade First BPPO Case Ktr. No. 4080/20.

258 See Article 127 of the CPC.

259 Minutes of Questioning of the Victim in the Capacity of Witness before the Belgrade First BPPO, Ktn. No. 2801/20 of 31 March 2021.

260 See Article 100 of the CPC on identification parades.

261 ICS Cases, 06.5 No. 4250/S20 and 4542/S20, i.e. Belgrade First BPPO cases Ktn. No. 2831/20 and 2794/20.

262 In one of these cases, the victim gave an extremely precise description of the officer to the prosecutor: "I'm convinced I could recognise him even today, although it happened a long

which MIA units intervened in both of these cases and the names of officers the ICS officers had themselves recognised,[263] and who, according to other officers, had used force against the victim "because he was pelting them with stones and resisting arrest".[264] Some officers also told the ICS that the protesters, including the victim, whom they caught up with and surrounded, told them that they sustained head injuries while they were running away from the teargas and the police and during physical showdowns with other protesters.[265]

The collection of footage from surveillance cameras that might have recorded police violence against the protesters was marked by prosecutorial inactivity and delays and lack of clarity of the ICS' operations. On 7 August 2020, the BCHR asked the Belgrade PPO to notify it whether it had taken measures to preserve the footage from the surveillance cameras of the MIA, the National Assembly, City of Belgrade, public companies and all other legal and natural persons covering the area around the parliament building and its vicinity, the Terazije Square, the Kralja Aleksandra Boulevard, the Kneza Miloša, Kralja Milana, Takovska, Beogradska and Mihaila Đurića Streets, the Tašmajdan Park, the Nikole Pašića Square, the Pioneer Park, the Republican Square, et al, from the evening of 7 July to mid-July 2020, given the well-known fact that various punishable offences had been committed both by private individuals and police officers in this part of the city and the possibility that the footage contained information that could shed light on these offences. The BCHR also asked the PPO to forward it copies of requests or other enactments ordering these institutions and persons to submit the relevant footage. In late August 2020, the Belgrade First PPO notified the BCHR that it did "not possess a document containing the requested information".[266] In other words, the Belgrade First PPO did not take any actions to secure the footage of the surveillance

time ago. He was around 30 years old, 10 cm taller than me, I'm 174 cm tall, athletic build, I can't remember if his hair was black or brown but it was definitely dark. He was wearing beige pants and a hoodie, or a jacket, I can't remember precisely, I don't remember what colour but it was a colour in contrast with the beige pants, so it was a dark colour." Minutes of Questioning of the Victim in the Capacity of Witness before the Belgrade First BPPO, Ktn. No. 2831/20 of 19 March 2021.

263 ICS Case No. 06.5 No. 4250/S20, i.e. Belgrade First BPPO Case Ktn. No. 2831/20.

264 ICS Official Report on information received from the Novi Sad Gendarmerie Platoon officers of 16 September 2020 (ICS Case No. 06.5 No. 4542/S20, i.e. Belgrade First BPPO Case Ktn. No. 2794/20).

265 Report of two Novi Sad Gendarmerie Platoon Captains, no registration number, of 9 July 2020 (ICS Case No. 06.5 No. 4542/S20, i.e. Belgrade First BPPO Case Ktn. No. 2794/20) and ICS Official Report on information received from the Novi Sad Gendarmerie Platoon officers of 16 September 2020 (ICS Case 06.5 No. 5709/20, i.e. Belgrade First BPPO Case Ktn. No. 2797/20).

266 Belgrade First BPPO's response, PI No. 54/20 of 21 August 2020.

cameras covering the city areas where cases of ill-treatment were registered and reported.[267]

On the other hand, the ICS tried to collect such evidence with a major delay in most cases. For instance, in the case of ill-treatment of an individual on Kralja Aleksandra Street between McDonald's and the Postal Savings Bank in the evening of 8 July 2020, the ICS requested of the owner of McDonald's to hand over the surveillance camera footage on 30 July 2020; the owner replied that the footage had been deleted due to lack of memory (the server stored footage up to 15 days).[268] The ICS said that the MIA surveillance camera (at the junction of Kralja Aleksandra Boulevard and Beogradska Street), which was pointing at the site of this case of ill-treatment and which BCHR lawyers photographed and notified the Belgrade First PPO and ICS of in their criminal report, had not been operational.[269]

ICS officers inspected the other sites of the reported cases of ill-treatment on 8 July to identify surveillance cameras only at the end of the month (on 29 July)[270] or in mid-August (on 13 August 2020).[271] In two cases, they notified the PPO that they had not noticed any surveillance cameras that could have recorded the events at issue, although, in their criminal report concerning the case that occurred several metres below the entrance to the Mali Tašmajdan Park from Beogradska Street,[272] BCHR lawyers specified that there was a camera pointing at the place where the ill-treatment had occurred.[273] The MIA Analysis, Telecommunications and IT Sector notified the ICS that this camera was not operational yet ("is not in the Belgrade City Police video surveillance system yet") in this case as well.

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267 The BCHR also asked the National Assembly General Secretariat whether measures to preserve the footage of the surveillance cameras covering the area around the parliament and the inside of the building as of the evening of 7 July 2020 until the end of the civic protests in mid-July 2020 had been undertaken in accordance with Article 280 of the CPC and whether the footage, if available, had been forwarded to the relevant PPO. Since the Secretariat failed to forward the requested information even after the BCHR sent a follow-up request, the BCHR filed a claim with the administrative court, which was still pending at the time this analysis was completed.

268 ICS Case 06.5 No. 4543/S20, i.e. Belgrade First BPPO Case Ktn. No. 3021/20.

269 ICS Report 06.5 No. 4543/S20 of 16 October 2020.

270 ICS Case 06.5 No. 4635/20, i.e. Belgrade First BPPO Case Ktn. No. 2800/20.

271 ICS Cases 06.5 No. 5715/20 and 4994/S20, i.e. Belgrade First BPPO Cases Ktn. No. 2793/20 and 2801/20.

272 ICS Case 06.5 No. 4994/S20, i.e. Belgrade First BPPO Case Ktn. No. 2801/20.

273 The camera is located in Beogradska Street, next to the pedestrian crossing between the Tašmajdan and Mali Tašmajdan Parks, and points at the pedestrian crossing and the Mali Tašmajdan Park. This camera could have recorded the moment the other victim, who was beaten up next to the *El Derecho* café several seconds later, passed (ICS Case 06.5 No. 5715/20, i.e. Belgrade First BPPO Case Ktn. No. 2793/20).

The ICS' lack of thoroughness is illustrated not only by its delay in requesting surveillance footage from the MIA Analysis Sector on several occasions in early September 2020 (i.e. two months after the impugned events),[274] but also by its failure to check the veracity of the claims that the cameras pointing at the two scenes of crimes were not operational.[275]

The Belgrade First PPO ascertained the identity of the victims of three of the 14 cases formed in response to the BCHR's criminal reports concerning unidentified victims of ill-treatment (the reports were filed based on footage broadcast on TV and posted on social networks). Two of the victims were interviewed in March 2021, while the third victim failed to respond to the PPO's summons. Unfortunately, like in the other cases before the Belgrade First PPO, the implicated police officers have remained unidentified.

Although it was clear already during the first night of the protests that it would be difficult to identify the implicated uniformed police officers, equipped with helmets, visors and gas masks but not wearing any visible ID, neither the ICS nor other MIA senior managers did anything to eliminate this deficiency in the ensuing days.[276]

The outcome of prosecutorial actions in response to several criminal reports of ill-treatment by plain-clothes police officers remains unknown.[277] So does the outcome of the cases initiated with the PPO by police officers, who had

274 E.g. ICS Cases SUK-a, 06.5 No. 4635/S20, 5711/20, 5715/20 and 4994/S20, i.e. Belgrade First BPPO Cases Ktr. No. 4080/20, Ktn. 2793/20 and 2801/20.

275 According to published allegations, which have not been denied, these "smart" cameras installed across Belgrade allow for the facial recognition of passers-by. See: hiljade.kamera.rs.

276 In one judgment, the ECtHR found a violation of the procedural aspect of Article 3 of the Convention (the States' obligation to conduct effective investigations into allegations of ill-treatment). It considered that, by allowing the special-unit officers to cover their faces with balaclava masks and not requiring them to wear any distinctive signs on their clothing, the Russian authorities had knowingly made futile any future attempts to have them identified by the victims. It found that the domestic authorities had deliberately created a situation of impunity in which any identification of the officers suspected of inflicting ill-treatment was impossible and an investigation inadequate. See the ECtHR's judgment in the case of *Dedovskiy and Others v. Russia,* Application No. 7178/03, of 15 May 2008, § 91. The CPT said in its 14th General Report that it had strong misgivings regarding the practice observed in many countries of law enforcement officials or prison officers wearing masks or balaclavas when performing arrests, carrying out interrogations, or dealing with prison disturbances, since such a practice would clearly hamper the identification of potential suspects if and when allegations of ill-treatment arise. CPT's 14th General Report of 21 September 2004, CPT/Inf (2004) 28, § 34 (available at: rm.coe.int/1680696a80).

277 Allegations were made in one of these cases that one of ill-treatment perpetrator was an ICS officer. See the *Danas* report of 8 July 2020, available in Serbian at: www.danas.rs/politika/aleksic-mladica-koji-je-lezao-na-zemlji-tukli-inspektori-povezani-sa-dijanom-hrkalovic/.

taken over the hauled individuals, some of whom had visible physical injuries, in the police stations. The PPO has not yet opened the issue of the liability of senior police managers and officers for tolerating or covering up the committed ill-treatment in any of the analysed cases.

Only three of the police officers covered by one criminal report have been prosecuted for violent conduct. The victim in this case was the young man who was pulled off his bicycle and beaten up in Novi Sad.[278] The Zrenjanin BPPO initiated criminal proceedings against the officers and questioned them, albeit only in late April 2021. To the best of BCHR's knowledge, only one of them has been suspended.

A good practice example worth mentioning was the referral of the case to the Zrenjanin BPPO.[279] Given that one of the suspects is a Novi Sad police inspector and that officers in the city often have official contacts with the prosecutors, it may be presumed that the decision to refer the case was taken to facilitate the conduct of an independent prosecutorial investigation.

The outcome of the proceedings initiated before the relevant PPOs remains uncertain. The six-month deadline by which the PPOs were to have filed the indictments for crimes prosecuted in summary proceedings or notified the victims that they were dismissing the criminal reports, which were filed in July 2020, expired in early 2021. The fate of some cases before the Belgrade First PPO seems already sealed. In several cases,[280] the Deputy Public Prosecutor of this Office issued an order to the PPO Registry to keep the case in the Registry "until the unidentified perpetrator of the crime under Article 137(3) of the CC is found or until the statute of limitations expires, on 9 July 2026." Judging by everything, the prosecutors are expecting someone else to find the unidentified perpetrators.

4.3. Protector of Citizens' Actions in Cases of Ill-Treatment during the July 2020 Civic Protests

The response of the Protector of Citizens to ill-treatment during the July 2020 protests had two aspects: one concerned the activities of the National Preventive Mechanism against Torture (NPM) and the other his reviews of the lawfulness and regularity of the MIA's operations on his own initiative and triggered by individual complaints.

On the second day of the protests, the Protector of Citizens published a press release on his website saying that he had initiated a review of the law-

278 The footage of the incident is available at: www.youtube.com/watch?v=UfIsnKjFEZ8.

279 See Article 20 of the PPA.

280 ICS Cases Nos. 06.5 4542/S20, 5709/20 and 5710/20, i.e. Belgrade First BPPO Cases Nos. Ktn. 2794/20, 2797/20 and 3020/20.

fulness of the MIA's operations in response to the information about and video footage of excessive use of force by the police in the night of 7/8 July 2020 in front of the National Assembly and in its vicinity, and that his staff would pay an unannounced visit to the Belgrade City police, talk with all the individuals taken into custody and the relevant authorities, and collect the relevant documentation in order to ascertain all the facts. He also said that the NPM and the Urgent Actions Department within his Office would hereinafter conduct on-site monitoring of police conduct during the protests and directly register any irregularities.[281] He issued another press release the same day, setting out that the NPM and Urgent Actions Department visited the people arrested during the protests and interviewed eight of them; four of the arrestees complained about the treatment they had been subjected to during the police intervention, but not about their treatment by the officers who had hauled them to the police stations and put them in custody. The Protector of Citizens said that his Office would review the conduct of the implicated policemen.[282]

The NPM and Urgent Actions Department teams spent the second evening of the protests (8/9 July 2020), when police brutality climaxed, in the streets of Belgrade, monitoring the actions of the police. The next morning, the Protector of Citizens issued a press release saying that his staff on the ground found that "the police did not use excessive force [...] except in individual cases"; that there was no "systemic repression" by the police; that "according to information collected by [his] three teams [...], at a number of locations in the heart of Belgrade, police officers had not overstepped their powers and responded only when some groups of people pelted them with stones, glass bottles and teargas"; that "the members of these teams witnessed the police exceeding their powers in several cases which the Ombudsman will examine, but that they also witnessed people hitting and assaulting the police officers, who refrained from responding to these attacks as much as they could". The Protector of Citizens said that, in specific situations, the presence of his staff had deterred the police from exceeding their powers during their interventions.[283]

One of the broadcast recordings of police ill-treatment that evening showed two staff of the Urgent Actions Department walking by a man lying on the sidewalk, who had been severely beaten up by the police just minutes ago.

281 The Protector of Citizens press release of 8 July 2020 is available in Serbian at: www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/6691-a-12.

282 Protector of Citizens press release of 8 July 2020 is available in Serbian at:: www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/6692-z-sh-i-ni-gr-d-n-bish-z-drz-n-lic-n-n-pr-s.

283 Protector of Citizens press release of 9 July 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6693-p-lici-ni-ris-il-pr-rnu-silu-p-din-cni-sluc-vi-bic-ispi-ni.

They were several metres away from him. The footage shows one of the staff glancing at the unmoving man and then proceeding with his colleague towards Knez Mihailova Street. The footage shows other passers-by running up to the injured man to administer him first aid.[284]

As soon as they saw the video footage, which was published very soon after the incident, BCHR lawyers phoned one of the staff (the man who had not glanced at the victim of ill-treatment), asking him whether he had seen the police beating the man on Terazije Square and what happened afterwards. This staff member first said he knew nothing about the incident. After he was sent the footage showing him and his colleague walking past the victim, he denied seeing either the police brutality or their victim lying on the sidewalk. He claimed that he had not turned his head towards the man and said he was sure the Protector of Citizens would initiate a review of the MIA's operations because of the incident.

The Protector of Citizens subsequently reiterated in a number of statements to the media[285] that his staff had noticed the man on the sidewalk, but had not witnessed his beating, and that, when they saw him lying on the sidewalk, they called the police to arrange first aid. However, other footage of the incident published on 10 July 2020 confirms that the two members of staff did nothing when they saw the man lying unmoving on the sidewalk.[286] That recording shows them – three seconds after one of them glanced at the victim[287] – calmly walking away towards Knez Mihailova Street. They did not approach the large number of police officers to their right to notify them about the victim. Nor are they seen phoning anyone.[288]

284 The video footage is available at: youtu.be/2i60ixGw-8g?t=66.

285 Available at: youtu.be/3Fw-itZtMic?t=4275 and at: youtu.be/Aue3HvHJEQ0?t=2184.

286 The video footage is available at: www.youtube.com/watch?v=OP4HKv9eflg&t=850s.

287 Such a conclusion can reliably be drawn from the careful perusal of the footage of this incident published on Twitter and YouTube and counting the seconds, since all the records are uninterrupted and all of them show the same moment: successive movement of police jeeps after the man was moved to the sidewalk. It can be seen on *Insajder*'s YouTube recording (0:48, see: youtu.be/2i60ixGw-8g&t=48s), and on SrbinInfo's YouTube recording (13:48, see: youtu.be/OP4HKv9eflg?t=828), preferably at playback speed 0.5 or 0.25).

288 The statement the Protector of Citizens gave *N1* TV, that there was an integral recording testifying to all the actions of his staff and that part of the footage had been misinterpreted by the public, prompted BCHR lawyers to file a request for access to information of public importance with the Protector, asking him to send them: the integral recording or specify where it could be found; information when exactly and how his staff had notified the police about the man lying on the sidewalk; and a copy of his staff's official reports on their actions in the evening of 8 July. The Protector of Citizens said that the integral recording was "available on social networks" and that information on when exactly and how his staff had notified the police was contained in his statement to *N1*; as per the last request, he said that he was "not in possession of a document containing the requested information"

In early June 2021, the NPM published its report of September 2020, quoting numerous allegations by people who were hauled in, taken into custody and found guilty of misdemeanours, whom the NPM interviewed during its visits to police stations and penal institutions during the July protests. Most of the individuals brought before misdemeanour judges complained that they had not been provided with the chance to call their lawyers, because the judges were "in a hurry" to close the cases and that they had not had the opportunity to consult with their lawyers before they were questioned by the police; one man said he had been appointed an *ex officio* lawyer although he had requested of the police to let him call his lawyer (lawyer of his choosing). A number of individuals told the NPM that they had not been provided with the opportunity to notify their family members of their arrest until they were transferred to prison. As a rule, the arrestees' medical examinations in the police stations were conducted in the presence of the police, although, as they claimed, the doctors had not requested police presence for security reasons. The doctors said in their reports on the examinations they had performed in the police stations that the arrestees' diagnosed injuries had been inflicted by "unidentified individuals" although the arrestees told them they had been inflicted by the police. In some cases, the police files said that the arrestees had no visible physical injuries, whereas police officers admitted to the NPM team that some of the individuals, who had been hauled in, had visible injuries that went unregistered. Some penitentiaries did not register the arrestees' detailed descriptions of their injuries or photograph them. As many as 17 of the 28 people the NPM team interviewed complained of police brutality during arrest. A number of them claimed they had been arrested by plain-clothes men who did not identify themselves as police. Many individuals had visible injuries which, in the doctors' opinion, could have been sustained under the circumstances they had described.[289]

Most of the ill-treatment cases brought before the Protector of Citizens were still pending by the time this Analysis was completed.[290]

In mid-February 2021, the Protector of Citizens published his findings after a review, concluding that eight individuals had been victims of police ill-treat-

since his staff had not drawn up any official reports (Protector of Citizens enactment No. 3611–427/2020, Reg. No. 25627, of 27 July 2020).

289 The NPM report is available in Serbian at: www.ombudsman.rs/attachments/article/7110/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98.pdf.

290 To recall, the BCHR filed initiatives and complaints of ill-treatment in 32 cases with the Protector of Citizens, requiring of him to review the lawfulness of the MIA's operations. The BCHR is legally representing the victims in 18 of these cases. Complaints of police ill-treatment and initiatives were filed with the Protector of Citizens also by the victims of ill-treatment themselves and by civic associations on their behalf (e.g. A11 – Initiative for Economic and Social Rights).

ment. Specifically, he found that the police had disproportionately and illegally used their truncheons and chemical substances against the protesters, whereby they violated the physical and mental integrity and human dignity of individual protesters; that the police were not wearing distinctive signs facilitating their identification, thus hampering investigations of ill-treatment reports; and that the ICS had failed to take all the steps promptly to ascertain the facts, collect the evidence and establish the liability of individual police officers.[291]

Unfortunately, the identified deficiencies in the MIA's operations were not accompanied by appropriate recommendations. All the recommendations the Protector of Citizens issued concerned the MIA's future operations. For instance, the Protector of Citizens recommended that the MIA senior officials send a clear message to the officers that ill-treatment was prohibited and punishable; that the MIA ensure that police officers at public rallies wore distinctive identification signs; that the ICS hereinafter promptly undertake the requisite steps to investigate ill-treatment cases; that police officers undergo training on human rights standards related to the prohibition of torture; and, that all MIA units be familiarised with these recommendations. The Protector of Citizens, however, made no mention in his recommendations of the need to redress the victims or punish ICS officers who fail to act promptly on each individual case. In early June 2021, the Protector of Citizens issued a press release stating that "the MIA is acting on the recommendations of the Protector of Citizens"; he, however, did not indicate whether any steps would be taken to redress the victims or ascertain the liability of ICS officers.

In his findings, the Protector of Citizens noted the statements several police officers gave the ICS during the preliminary investigation proceedings; they claimed that the individual beaten up by the police on Terazije on 8 July was "communicating, that he had no visible injuries and told them that he did not need medical aid". The obvious falsity of these statements did not spark the interest of the Protector of Citizens; another fact that escaped his attention was that ICS officers had forwarded all the criminal reports and corroborating evidence filed by the BCHR and others to the police units where the implicated officers worked before it took any preliminary investigation steps, thus facilitating their collusion. The Protector of Citizens even expressed satisfaction that the criminal reports had been forwarded to the Police Directorate, failing to recognise that such "sharing" might obstruct investigation.[292] The fact that the Protector

291 The Protector of Citizens press release and findings No. 3122–870/20, Reg. No. 3163 of 5 February 2021 are available in Serbian at: www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/6974-u-vrdi-i-dg-v-rn-s-z-n-z-ni-i-n-pr-viln-p-s-upnj-p-lici-s-ih-sluzb-ni.

292 Protector of Citizens enactment No. 3122–967/20, Reg. No. 30160 of September 2020.

of Citizens and the ICS communicated in writing indirectly, via the Police Minister's Office and the MIA Secretariat, could only have further facilitated such obstruction.

The document with the findings issued by the Protector of Citizens also states that the Chief of Belgrade Police had recommended to the Police Director to relieve the Police Brigade Commander of his duties and assign him to another "appropriate" job "because of his failure to take the requisite measures and actions within his remit, and the fact that he was not in the field and in charge of his officers on 7/8 July". It, however, remained unknown which specific measures and actions the Commander had failed to take, what the consequences of his inaction were and which job he has been assigned to.

Part V

SURVEY OF PUBLIC AWARENESS OF POST-ARREST RIGHTS AND VIEWS ON POLICE BRUTALITY DURING THE JULY 2020 CIVIC PROTESTS

In cooperation with Ninamedia Kliping d.o.o., the Belgrade Centre for Human Rights in January 2021 conducted a survey of public awareness of post-arrest rights and public views on police brutality during the July 2020 civic protests. The survey *sample included 1000 respondents over 18 years old and 400 respondents aged between 18 and 40 (a total of 1400 respondents)*.

The survey results showed *lack of public awareness of rights of people deprived of liberty*. They showed that most respondents were aware that they had the right to remain silent, the right to legal aid in case of police ill-treatment, and the right to obtain a copy of the doctor's report on their medical examination during police custody. The results, however, also showed that not as many respondents were aware that police officers were allowed to attend their examination only on the doctor's request and that they could exercise the right to legal aid in case of police ill-treatment in a procedure before the local self-government bodies.

Asked to *list the fundamental rights they had in case they were arrested* (no choices were offered), over one-third of the respondents (34.9%) said that they had the right to notify and hire a lawyer of their own choosing, while as many as 24.2% said that they were unable to list any rights they had in case of arrest. Around 16% respondents said that they had the right to notify a person of their own choosing of their arrest, while only 2.3% listed also the right to a medical examination. Around 2.5% said they had the right to be informed of the reasons for their arrest.

In response to the question *who was entitled to choose a doctor to examine them in case of arrest*, 41% of the respondents did not know the answer, 36% said that they had the right to choose the doctor (most of these respondents were over 60 years old), while 23% said that only the police could choose the doctor that was to examine them.

The greatest share of respondents (around 37.5%) *did not know whether police officers were entitled to attend their medical examinations upon their arrest.* Around 29% of them opined that police officers were not allowed to attend the

medical examinations at any time, while slightly less than 26% of them thought that police officers were always entitled to be present during the examinations. Of the 7.4% of the respondents who replied that police officers could attend medical examinations of arrestees only under specific conditions, most (1.7%) thought that was the case if the arrestees had committed a serious crime (1.7%) or if they were "violent and dangerous" (1.3%).

Asked *how long the police and prosecutors could hold people in custody before having to bring them before the court* (no choices were offered), 38.9% of the respondents correctly replied that this period stood at 48 hours. Around 14% of the respondents were of the view that the police and prosecutors had to bring the arrestees before the court within 24 hours from arrest, while 10% said that two or more weeks could pass before the arrestees had to be brought before the court.

A high share of the respondents (around 82%) were aware that *arrestees did not have to reply to questions*, i.e. that they had the right to remain silent.

Although over two-thirds of the respondents (68%) gave an affirmative answer to the question *whether they were entitled to legal aid in case of police ill-treatment*, only a small number of them knew before which authority they could claim that right (no choices were offered in response to the latter question). For example, only 2.7% of the respondents said that they would claim that right before the city or municipal authorities, while 1.8% said that they would seek legal aid from "lawyers in institutions". Around 27% would turn to a lawyer or the bar association for legal aid, 12.2% would seek it from the Protector of Citizens, 9.8% would seek it from the court and 7.4% from non-government organisations.

The respondents were also asked *whether there were cases of excessive use of force by the police during the July 2020 protests*. The greatest share of the respondents (nearly 37%) said that they did not know the answer to that question; 32.4% said that there had been a lot of such cases; 17.2% said that there had been some cases of excessive use of force; and, 13.6% said that there had been no such cases, i.e. that the police had treated the protesters adequately. Among the respondents between 18 and 40 years of age, most (39.3%) said that there had been a lot of cases in which the police had used excessive force, while 6.5% of them had found no fault in police actions during the protests.

Of the respondents who said that the police had resorted to excessive force against the protesters in July 2020, over half (54.7%) thought that police brutality had greatly (37%) or totally (17.7%) *impacted on their duration (resulted in their "stifling")*, while 9.8% of the respondents held that excessive use of force had not impacted on the duration of the protests at all. Among the 18–40-year-old respondents, 37.4% believed that police brutality had greatly – and 19.8% that it had absolutely – impacted on the duration of the protests.

Annex

TABLE OF FINAL COURT DECISIONS IN PROCEEDINGS FOR THE CRIMES OF EXTORTION OF A CONFESSION (ARTICLE 136 OF THE CRIMINAL CODE) AND TORTURE AND ILL-TREATMENT COMMITTED BY PUBLIC OFFICIALS ACTING IN AN OFFICIAL CAPACITY (ARTICLE 137(3) OF THE CRIMINAL CODE) FROM 1 JANUARY 2018 TO 30 JUNE 2020

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
1.	Aranđelovac Basic Court	The defendant, an Aranđelovac police officer, was charged with ill-treating the victim during interrogation in the local police station on 4 January 2016 and inflicting on him substantial pain and great suffering with the aim of extorting from him a confession of a robbery. The defendant yelled at the victim and told him he had to confess where the sour cherry seedlings were. He then ordered him to take off his shoes and put his feet on the other chair and thread his hands through the back of the chair. The defendant then handcuffed him from behind and repeatedly hit his feet with a short rubber baton. When the victim started yelling with pain, the defendant ordered him to be quiet and hit him several more times. The defendant then ordered the victim to put his shoes back on and not to complain of the pain, took him out of the office, told him to watch the stairs and helped the victim, who could not walk by himself, reach the stairs. The defendant then again told him to go into the office and said he would "take off his pants and fuck him". The defendant was also charged with torturing the second victim during interrogation on the same day, inflicting on him substantial pain and great suffering with the aim of forcing him to confess to the robbery. After seeing the first victim off to the stairs, the defendant returned to the office and punched the second victim, who was sitting on a chair, several times in the back of his head, and then asked him: "Where are the sour cherry seedlings?" When the second victim said he did not know, the defendant continued punching him in the head, behind his left ear, telling him he would "kill him like a cunt," adding "Sing, where are the seedlings?" The defendant then ordered the second victim to take off his shoes and socks. He took his baton out of the drawer and ordered the second victim to put his feet on the other chair, came up to him, put his left foot on the second victim's shins,	Aranđelovac BPPO, Kto. 13/18, 9 Feb 2018	K. 112/18, 26 Mar 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2, CC)	Guilty	**Suspended sentence** (one year imprisonment suspended for three years)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
1.	Arandelovac Basic Court	hit his feet with the baton and continued interrogating him about the sour cherry seedlings, while the second victim screamed and yelped with pain. The defendant hit him several more times and said he would not kill him, that he would be killed by the owner of the cherry seedlings. He again asked him where the cherry seedlings were and, when the second victim said he did not know, the defendant resumed hitting his feet with the baton. The second victim sustained light bodily injuries, specifically haematomas on both feet.					
2.	Belgrade Second Basic Court	The defendant, a counsellor tasked with looking after secondary school pupils at the Belgrade "Sveti Sava" boarding school, was charged with ill-treating the victim, a minor with light intellectual disabilities, on 23 September 2015. He took the victim, who had fought with his school mate, into the cafeteria, locked the door, took off his T-shirt and threw it on the camera. He then ordered the victim to sit down and cross his hands and then tied his wrists with Scotch tape. The defendant then lit a cigarette and burned the victim's hands in several places. The victim managed to take off the Scotch tape, hit the defendant in the stomach and started running away. While he was fleeing, the defendant grazed his right temple with his cigarette, resulting in burns above the right eyebrow arch.	Belgrade 2nd BPPO Kt. 2266/16, 24 Oct 2016	K. 1512/16, 17 Oct 2018 Belgrade Higher Court, Kž1. 818/18, 18 Feb 2019	Ill-treatment and torture (Art. 137(1) CC)	Acquitted due to lack of evidence	/
3.	Belgrade Second Basic Court	The defendant, a police officer, was charged with ill-treating the victim, a minor, in Belgrade on 1 November 2014, at 3:40 am. After the defendant and two other patrol officers stopped the vehicle the victim was driving, and ordered him to get out, the defendant took the victim to the side, threw him on the grass and pinned his head to the ground with his foot (the defendant was wearing sneakers). The defendant than started punching and kicking the victim in the head and body, inflicting on him the following light bodily injures: haematomas in the left orbital temple and right temple regions, abrasion in the right loin region, and abrasions and haematoma on the exterior of the left wrist.	Belgrade 2nd BPPO Kt. 2295/16, 1 Nov 2019	K. 1624/19, 2 Nov 2020	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Proceedings discontinued due to expiry of the statute of limitations	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
4.	Belgrade Third Basic Court	The two defendants, police officers, were charged with ill-treating the victim in Belgrade at around midnight on the night of 17/18 June 2013. Responding to a public report that several people were trying to break into a passenger vehicle, the co-defendant hit the victim on his left cheek with the top of his gun barrel and then hit him with an open hand a number of times on the head and body, while the main defendant punched the victim once in the face and once in the back. The co-defendants then handcuffed the victim's hands behind his back and put him in the police car. While the co-defendant was driving, the main defendant asked the victim: "Why were you stealing?" and "Who was with you?" and ordered him to keep his head down. When the victim replied that he had not been stealing the car, the main defendant hit him with an open hand several times on the head, the nape, the neck and the back. When the car stopped at one point, the co-defendant sat next to the victim on the back seat and asked him: "You want to cooperate with me?" and added he had "two options" – to tell him who he had been with and what he had been doing, and that there was no other option. He then threatened he would "break open his skull" and that such wounds did not heal. The victim persistently claimed that he had not done anything and the co-defendant again dealt him several blows to the head and body. The victim sustained the following light bodily injuries: contusions to the left side of the nape, the infraorbital right and temple right, excoriation on the left cheek, minor swelling in the left tibia region and minor haematomas in the regions of both wrists.	Belgrade 3rd BPPO, Kt. 6472/13, 31 July 2015	K. 556/15, 4 April 2019 Belgrade Higher Court Kž1. 399/19, 1 July 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Indictment rejected due to expiry of the statute of limitations	

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
5.	Belgrade Third Basic Court	The two defendants, police officers, were charged with ill-treating the victim in Zemun on 13 November 2013, at around 0:40 am, after a traffic police patrol had hauled him to the police station to sober up. The main defendant first punched him in the head and body. The co-defendant then joined him and they punched the victim together, shoving him to the wall. The victim slid to the floor from the punches, and both defendants continued punching and kicking him on the head and body and then left him. The victim was subsequently taken to the holding cell.	Belgrade 3rd BPPO, Kt. 1673/15, 14 Feb 2018	K. 231/18, 16 September 2019 and K. 510/18, 4 June 2019 Belgrade Higher Court, Kž1. 702/19, 25 November 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC) charged as co-perpetrators	Indictment against main defendant rejected due to expiry of the statute of limitations, co-defendant found guilty	Co-defendant sentenced to **suspended sentence** (eight months' imprisonment suspended for three years)
6.	Belgrade Higher Court	The seven defendants, police officers, were charged with ill-treating two victims (hereinafter: the third and fourth victims) in Belgrade on 28 September 2014 at around 11:30 am, using their batons and force. They dealt them a number of blows to the head and body, with the aim of intimidating them and punishing them illegally. The seven defendants also attacked and inflicted light bodily injuries on two servicemen (hereinafter: the first and second victims). The defendants had been tasked with securing a high-risk public rally, the 2014 Pride Parade. The second, third, fourth and sixth defendants, members of the Gendarmerie Fourth Platoon Special Vehicles Unit, were deployed at the corner of Birčaninova and Svetozara Markovića Streets, while the first, fifth and seventh defendants were deployed in three mobile teams. At around 11:30 am, the victims came up to the Gendarmerie Fourth Platoon officers: the first and second victims were performing their army duties, while the third and fourth victims were on their way to the apartment of the fourth victim's parents. When they approached the police, the first victim showed his official badge and the second victim held up his official	Belgrade HPPO, Kto. 24/15, 6 Feb 2015	K. 378/18, 17 Apr 2019 Belgrade Appeals Court, Kž1. 1040/19, 19 Dec 2019	Assault against a serviceman on duty (Art. 404(2) in conjunction with paragraph 1, CC) and ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2, CC), charged as co-perpetrators	Guilty	**Suspended sentences** (eight months' imprisonment suspended for three years)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
6.	Belgrade Higher Court	ID and they said: "Colleague, we're Military Police, on assignment". The third victim produced his driver's licence and the fourth victim held up his ID in his left hand. However, the police officers were shouting at them the whole time: "You can't go any further, move back". The fourth victim responded: "Guys, I don't want any problems, I'm going to see my parents, I'm not doing anything stupid." The third defendant then said that they could not pass; he and the other Gendarmerie officers then used their hands and shields to push the third and fourth victims back. The first and second victims then spread their hands between the officers and the third and fourth victims to protect the latter. The second, third, fourth and sixth defendants then came up and were immediately joined by the first, fifth and seventh defendants and they together used their batons and physical force against the victims.					
7.	Bor Basic Court	The defendant, the Deputy Director of the Bor Mine, was charged with ill-treating the victim and insulting his human dignity in Bor between 1 and 4 am on 20 October 2015. The defendant waved his flashlight at the victim, who was working as a driver and driving a truck, to stop. After the victim stopped and got out of the truck, the defendant started swearing at him and insulting him, saying he was a thief and a criminal, that he was stealing petrol and that all his wrongdoings would now come to life. The victim felt unwell immediately, shivering and choking and an ambulance was called. The victim's health problems were caused by the heavy stress he was thereafter treated for. He was on sick leave for two months.	Bor BPPO, Kt. 318/16, 4 Sept 2017	K. 313/17, 24 Jan 2018 Kž1. 41/18. 31 Aug 2018	Ill-treatment and torture (Art. 137(1) CC)	Acquitted due to lack of evidence	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
8.	Bujanovac Basic Court	The defendant, a teacher at the elementary school "Deveti maj" in the village of Reljan, was charged with ill-treating an underage pupil, at around 9:50 am on 17 December 2015. During recess, in the presence of other pupils, the defendant came up to the victim, who was sitting at his desk in the classroom, slapped him, pulled his ear, grabbed him by the sleeve and took him to the office of the school pedagogue.	Vranje BPPO, Kt. 179/17–1, 7 Dec 2017	K. 573/17, 10 May 2018	Ill-treatment and torture (Art. 137(1) CC)	Acquitted due to lack of evidence	/
9.	Ivanjica Basic Court	The defendant, a police officer, was charged with ill-treating the victim on 26 October 2018, from 11 pm to 7 am the following day. While on patrol, the defendant, he saw the victim and another man quarrelling. He came up to the victim, asked him what was happening and required of him to produce his ID. Since the victim did not have his ID on him, the defendant grabbed him by the hands and pushed him through the crowd towards the main street, all the time hitting him on his hands and ordering him to keep them down. When they approached a bakery, the defendant ordered the victim to spread his legs so he could search him, whilst kicking his feet. He then put the victim in the back seat of the police car, on the right hand side and sat next to him. When the victim said he would complain to his superiors, the defendant said "You're threatening, threatening me" and punched him in the back, below his ribs to the left. When they arrived at the Ivanjica police station, the defendant took the victim to an office, pushed him onto a filing cabinet and started hitting him in the head, while the victim was trying to shield himself with his hands. The defendant inflicted the following light bodily injuries on the victim: contusions to the nape, left loin area and the fifth digit on his left hand.	Čačak BPPO, Kto. 110/19, 10 Sept 2019	K. 160/19, 30 Jan 2020	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Acquitted due to lack of evidence	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
10.	Kragujevac Basic Court	The two defendants, police officers, were charged with ill-treating the victim in Kragujevac at around 4 am on 4 January 2015. After the victim stopped his car, the main defendant got out of the police car and headed towards him, saying "Move" and pushing him with both hands. The co-defendant then got out of the police car and hit and kicked the victim in the back, dealing him a number of blows to the head. After the victim fell, the main defendant gave him a strong push and he hit the curb with his head and front part of his body. He sustained the following light bodily injuries from the blows and the fall: abrasions and swelling on the forehead (5x5 cm).	Kragujevac BPPO, Kto. 208/17, 21 Mar 2017	K. 427/17, 20 Oct 2017 Kragujevac Higher Court, Kž1. 95/18, 19 Apr 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC) charged as co-perpetrators	Guilty	**Suspended sentences** (four months' imprisonment suspended for one year)
11.	Leskovac Basic Court	The five defendants, Leskovac District Prison guards, were charged with using force to intimidate and illegally punish the three victims at around 9:30 pm on 9 June 2009. After a fight broke out among a number of inmates, including the three victims, in the hallway of the prison Pavilion B, the defendants ordered the victims to leave their cells and line up in the hall. They then started hitting the victims on their heads and bodies with their batons, and when the victims fell to the ground, they continued truncheoning them and kicking their heads and bodies. The victims sustained the following light bodily injuries: first victim: contusion around and to the right shoulder blade and haematomas; second victim: six contusions to the left shoulder blade area with haematomas 15–20 cm on average, contusion to the right shoulder blade with four 10–15 cm haematomas, contusion to the exterior of the right upper arm with a 15x2.5 cm haematoma, contusion to the back part of the left upper arm with three 15x3 cm haematomas, contusion to the exterior of the upper right arm with a 10x2 haematoma; third victim: contusion to the right shoulder blade with a 20x3 cm haematoma.	Leskovac BPPO, Kt. 1409/19, 12 Jan 2009	K. 684/16, 28 Nov 2017 Niš Appeals Court, Kž1. 231/18, 27 Mar 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2 CC) charged as co-perpetrators	Acquitted due to lack of evidence	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
12.	Niš Basic Court	The two defendants, police officers in Niš, were charged with inflicting substantial pain and suffering to the victim at around 10 am on 6 June 2007, with the aim of illegally punishing him. After hauling the victim into the Crveni krst police station, the defendants seated him between themselves and yelled at him: "Why did you lie to our brother and he can't get married now?" They left the victim sitting there while they ate their sandwiches and then they started hitting him on his head and hands; they hit him with an open hand over 20 times. When the victim tried to shield his head with his hands, they ordered him to hold a typewriter in his hands and continued hitting him on the head and hands. When the victim doubled over, one of the defendants grabbed his head and kicked him with his knee in the head, above his left eye. When they realised that the victim was going to be sick, they stopped their physical abuse and torture and forced him to confess to a crime, promising they would let him go home if he did. They told the victim that they had beaten him because of their brother, not because he had committed a crime. They wrote down their telephone numbers on a piece of paper and gave it to the victim, telling him to contact them if anyone touched him, and that they would take him next time to Bubanj memorial park rather than the police station if he "ratted" on them and reported them. The defendants set the victim free at around 1 pm.	Charges filed by the victim as a subsidiary prosecutor, 23 May 2008	K. 668/16, 12 Oct 2017 Niš Appeals Court, Kž1. 241/18, 29 May 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2 CC) charged as co-perpetrators	Guilty	**Imprisonment** (main defendant sentenced to eight months' and co-defendant to five months' imprisonment)
13.	Niš Basic Court	The defendant, a Niš communal police officer, was charged with insulting the human dignity of the victim at around 6:30 am on 23 September 2014 near the College of Natural and Mathematical Sciences in Niš. After the public transportation controller reported that an individual – the victim, who had been riding on a city bus without a ticket, had disembarked, the defendant and his colleague came up to the victim. The defendant grabbed	Kragujevac BPPO, Kt. 547/11, 4 Aug 2011	K. 52/18, 3 Oct 2018 Niš Higher Court, Kž1. 46/19, 25 Feb 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Guilty	**Suspended sentence** (three months' imprisonment suspended for one year)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
13.	Niš Basic Court	the lapels of the victim's linen jacket, pulled him and asked: "Where do you think you are going, you hillbilly fuck?" He ripped the victim's jacket in the process. After the victim asked the defendant to let him go, emphasising that he had a heart condition and was not feeling well, the defendant said: "I know those hillbilly tricks". After pulling the victim again, the defendant pushed him towards a fence; the victim hit the fence with his back, lost his balance and fell on his knees on the sidewalk.					
14.	Pančevo Basic Court	The two defendants, police officers, were charged with using force and inflicting substantial pain to the victim in Sefkerin at around 0:50 am on 2 May 2008, with the intention of intimidating him. After the victim left a café and came up to the main defendant, caught him by the lapels and ripped his police shirt, the co-defendant punched the victim in the face, whereupon the main defendant dealt the victim multiple blows with his baton, inflicting on him injuries which together amounted to grave bodily injury. These injuries included, notably: fracture of the nasal bones and dislocation of fragments; contusion with a haematoma to the nose, contusion and haematoma on the right lip, fractured cap of the fourth tooth on the right side of the lower jaw, contusion with a haematoma under the chin and multiple contusions to his thorax and stomach.	Pančevo BPPO, Kt. 1028/08, 17 Mar 2011	K. 255/17, 5 Feb 2018 Belgrade Appeals Court, Kž1. 261/18, 29 Mar 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2 CC) charged as co-perpetrators	The main defendant was acquitted due to lack of evidence, while the charges against the co-defendant were rejected	/
15.	Paraćin Basic Court	The defendant, the Principal of the Technical Secondary School in Ćuprija at the time, was charged with ill-treating the victim, a teacher at the School, for discriminatory reasons and with the aim of intimidating and illegally punishing her on a number of occasions from January 2007 to April 2009, and inflicting grave mental anguish on her. On 26 January 2007, the defendant ordered the victim to submit a written statement why	Charges filed by the victim as a subsidiary prosecutor, 17 July 2013	K. 91/17, 14 Nov 2017 Kragujevac Appeals Court, Kž1. 131/18, 7 May 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2, CC)	Acquitted due to lack of evidence	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
15.	Paraćin Basic Court	she had been late for work on specific days in 2006 and 2007, although she was aware of the fact that the victim was working at three schools at the time, two in Ćuprija and one in Jagodina, that her class schedules overlapped and that she was unable to make it to school on time. On 24 September 2006, the defendant issued an ill-founded warning before instituting disciplinary proceedings against the victim, in which she falsely alleged that the victim had left class and taken the pupils out of the school, although the victim was holding a class on environmental protection outdoors; the defendant never initiated or conducted disciplinary proceedings against the teacher, nor issued any decision on the event. On 25 February 2009, the defendant required of the victim to submit a statement on why she was absent from work on 20 February 2009, although she was well aware that the city was snowed under that day, that many other teachers did not come to work either, and that only an average of four pupils in each class made it through the snowstorm to school, that the School management notified many teachers who did not come to work that day thereof and that they were not required to submit statements justifying their absence. On 13 March 2009, the defendant required of the victim to submit a statement on reasons why she did not come to work on specific days in 2008, although the School management had duly been notified of the reasons. She also required of the victim to submit another statement about her absence on 20 February 2009, although the victim had furnished one to the School management on 27 February 2009, and to submit a statement why she held a biology class on 12 December 2008 and on 23 January 2009 during the last period, without notifying the School Principal thereof, although the teachers customarily held make-up classes during periods not disrupting the schedule. On 27 March 2009, after an illegal polling she					

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15.	Paraćin Basic Court	ordered a staff member to conduct, the defendant required of the victim to submit a statement about allegations that she had insulted a ninth grader, claiming that the victim had also insulted pupils in her Biology class, telling them that they were "mildly retarded" and that their "parents were their greatest enemies". On 24 September 2009, the defendant filed an ill-founded motion to initiate disciplinary proceedings against the victim; such proceedings were never conducted and no decision was ever adopted.					
16.	Pirot Basic Court	The defendant, a police officer, was charged with using force in the Babušnica police station on 9 May 2018 with the aim of extorting a confession from the victim that he had committed aggravated robbery. During the interrogation, the defendant told the victim: "You'll confess everything to me now", came up to him, "got into his face" and asked him how much money he had borrowed from a third party. After the victim said he had borrowed €100, the defendant said: "You're lying, I know you borrowed 150", slapped him on the right cheek and said "You and I have many scores to settle, you'll confess to everything now", slapped him another five or six times, and, when the victim rose from his chair, the defendant grabbed him by his chin, "got into his face" and said: "Come on, you monkey, confess it's €150, not €100, I'll make you pay everything now," and then proceeded to slap and punch him in both shoulders and kick his legs, saying "Come on, confess everything, since this is your first robbery". The defendant continued to hit and punch the victim on the head, his hair, above the ears. The victim sustained light bodily injuries, notably: a minor circa 5 mm laceration-contusion to the buccal mucosa, on the inside of the mouth, where the upper and lower lips meet, four haematomas on the skin and subcutaneous soft tissue in the region of the left earlobe and the tissue of the scalp, immediately above it, 2x3 cm	Pirot BPPO, Kt. 379/18, 27 Mar 2019	K. 138/19, 3 Oct 2019	Extortion of a confession (Art. 136(1), CC)	Guilty	**Suspended sentence** (five-months' imprisonment suspended for one year)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
16.	Pirot Basic Court	in size, the back of the right shoulder, irregular in form, around 8x5 cm in size, the back of the left shoulder, irregular in form, 15x8 cm in size, and the left lateral part of the thorax, some 15 cm below the armpit, irregular in form and 3x5 cm in size.					
17.	Požarevac Basic Court	The two defendants, police officers, were charged with ill-treating the victim in the holding cell of the police station in Požarevac at around 6:20 pm on 21 September 2015. One of the defendants kicked the victim several times, while the other hit him with his baton, with the aim of illegally punishing him for breaking things in the holding cell.	Požarevac BPPO, Kto. 78/19, 13 Nov 2019	SPK. 11/19–49, 22 Jan 2020 and K. 71/2020, 17 Nov 2020	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Guilty (the court upheld the plea bargain one of the defendants concluded with the prosecutor)	**Suspended sentences** (three months' imprisonment suspended for one year and four months' imprisonment suspended for one year)
18.	Požega Basic Court	The four defendants, all of them police officers, were charged with ill-treating the victim and inflicting him substantial pain with the aim of intimidating him in Arilje at around 1:30 am on 22 April 2012. They kicked him in the leg, throwing him on the ground in front of a shop. They kicked him all over and then drove him in their police car to the Arilje police station. They handcuffed the victim to a chair and three of the defendants fiercely slapped him around 20 times, causing him to fall to the ground three times. The defendants then kicked the victim, stomped on his hands, pinned his head to the floor with their legs and then raised him back on the chair, where they continued slapping him. One defendant then caught his penis and squeezed it, saying: "How	Požega BPPO, Kt. 385/15, 3 Aug 2015	K. 187/16, 18 Aug 2017 Kragujevac Appeals Court, Kž1. 1163/17, 12 June 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2. CC) charged as co-perpetrators	Acquitted due to lack of evidence	/

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
18.	Požega Basic Court	tough are you now?" The defendants inflicted on the victim light bodily injuries: laceration of the left eardrum, contusions to the skin of the left earlobe, left side of the nose bridge root and left temple, haematoma on the chin and right loin region, and skin abrasions on the left part of the forehead, as well as contusions, haematoma and abrasions of the palms of both hands, wrists, popliteal fossa on the left leg, right nape and right loin regions.					
19.	Sremska Mitrovica Basic Court	The defendant, a police officer, was charged with ill-treating the victim in the Emergency Ward of the Sremska Mitrovica Medical Centre at around 4 am on 5 May 2012. He slapped the victim, who was sitting in a wheelchair, several times, inflicting on him light bodily injuries.	Charges filed by the victim as a subsidiary prosecutor, 2 Aug 2012	K. 264/17, 30 Mar 2018	Ill-treatment and torture (Art. 137(3). CC)	Acquitted due to lack of evidence	/
20.	Subotica Basic Court	The defendant, a police officer, was charged with ill-treating the victim and inflicting on him substantial pain and great suffering with the aim of intimidating him. The incident occurred in Subotica in the morning of 31 May 2008. The defendant got out of his police car and physically assaulted the victim in front of a number of eyewitnesses. He slapped the victim, who fell, twisted his arms and, after another police officer pinned the victim to the ground by stepping on his back, he handcuffed him. Both policemen proceeded to kick the victim in the head and the body. The defendant then dragged the victim by the handcuffs, saying "Get up, get up, you're in pain pussy! I'll lock you up, I'm in charge of you, I've been following you for a long time now." The defendant then took the victim to the police station. From there, he accompanied him to the	Charges filed by the victim as a subsidiary prosecutor, 9 Apr 2012	K. 587/17, 8 Dec 2017 Novi Sad Appeals Court, Kž. 165/18, 19 Apr 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 2 CC)	Guilty	**Suspended sentence** (eight months' imprisonment suspended for two years)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
20.	Subotica Basic Court	Subotica General Hospital, where the doctor issued a report not identifying any injuries. The victim's father took him to the same hospital after the police released him at 7 am the same day, and required his re-examination. The doctor in the Emergency Ward issued a report identifying the following injuries: a purple oval haematoma on the left side of the forehead the size of a hazelnut, a striplike excoriation 2x4 cm in size in the region of the right cheekbone, several smaller haematomas in the back of the neck in the form of neck chain links, several linelike excoriations in the region of the right crista iliaca between 3 and 9 cm long, and several linelike excoriations 4–5 cm long along the inside of the left forearm.					
21.	Šabac Basic Court	The defendant, Assistant Director for Non-Medical Affairs at the Šabac Outpatient Health Clinic, was charged with violating the victim's dignity in the Clinic on an unspecified date in January 2011. After the victim told her that she would be graduating from college that year, the defendant stood up from her desk, locked the office door, came up to the victim, grabbed her by the shoulder and said: "Kid, watch what you're doing. Anything can happen if you register absences from work incorrectly. You have no idea what can happen to you, I call all the shots. Why are you pursuing your education? You'll never be promoted here, I call all the shots. You've been making so many mistakes that I now have to teach you work and discipline. You plan on being the Financial Director? Never." She then showed her the middle finger and said: "You have no idea how strong I am, you want to be a Director, you'll regret the day you were born. You'll see how much I can hate, I can hate a lot!"	Šabac BPPO, Kto. 564/15, 23 Oct 2015	K. 709/15, 29 May 2018 Šabac Higher Court, Kž. 389/18, 25 Oct 2018	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Charges concerning the 2011 offence rejected due to expiry of the statute of limitations Guilty on other counts	**Suspended sentence** (four months' imprisonment suspended for one year)

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
21.	Šabac Basic Court	The defendant was also charged with treating the victim in a manner insulting her human dignity from an unspecified date in November 2012 until 7 November 2013 in the Šabac Outpatient Health Clinic. On an identified day in November 2012, the defendant entered the victim's office and started insulting her: "By riding [...]'s cock, you could only get through college. You would've been better off had you ridden it better. I'll prove you crazy since you're on all those drugs. Let's see what you'll do now. I'm the one deciding whether someone's college diploma counts. I could've taught you so many things, but you refused to be obedient and you'll bear the consequences yourself!" The defendant was also charged with entering the victim's office on an unspecified date in January 2013 and telling her that she was acting on behalf of the Director; she brought with her a report the victim had submitted and ripped it up, saying it was "her mirror, her pigsty", adding that she was in a bad mood that week and that the victim had to tolerate her, that she could not help it. Furthermore, on an unidentified date in late May or early June 2013, the defendant entered the victim's office and brought with her a report the victim had submitted and ordered her to rewrite it; she threw the files from the report on the floor, saying that "fucking doctor [...] was the only good move" the victim had made. On 7 November 2013, the defendant entered the victim's office and told her she wanted to discuss the victim's fate in "her house" and insulted her, saying "You little whore, you're lucky but I don't want you. You'll never have a college diploma as long as I live, I don't care about laws. I'll drive you mad! You'll be bleeding from all pores... I swear to you by my children, I loved you so much and you'll see how much I can hate you. I've become so powerful now, you'll see what I'll do to others!"					

No.	COURT	CHARGES (RELEVANT FACTS)	INDICTMENT SUBMITTER, CASE NO AND DATE OF SUBMISSION	CASE NO AND DATE OF ADOPTION OF FIRST-INSTANCE JUDGMENT COURT, CASE NO AND DATE OF SECOND-INSTANCE JUDGMENT	CRIMINAL OFFENCE	OUTCOME OF THE PROCEEDINGS	CRIMINAL SANCTION
22.	Užice Basic Court	The defendant, a police officer, was charged with ill-treating and violating the human dignity of the victim while he was taking a statement from him in the Čajetina police station on 1 June 2018 from 8 am to 11:34 am. When the victim refused to sign the official report on the statement, the defendant ripped up the report and threw the pieces of paper away, went to the cupboard and took from it a large baton, came up to the victim and pressed the baton against the nape of his neck. The defendant then grabbed the victim by the neck, raised him from the chair and pinned him to the office door, saying: "Now you'll see how I beat with a baton, since I don't have a gun". He then pushed the baton into the victim's stomach. When the victim said he wanted to see a doctor, the defendant replied: "We'll go when I decide." After a while, the defendant took the victim to the Outpatient Health Clinic in Čajetina and "got into his face" in front of the doctor in the examination room, saying in a raised voice "Tell him what happened if you dare". The ill-treatment left the victim with light physical injuries: minor abrasions, superficial injuries to the neck in the form of two haematomas around 1 cm in size on the right and left lateral sides of the neck.	Užice BPPO, Kto. 10/19, 11 Jan 2019	K. 18/19, 12 Mar 2019 Užice Higher Court, Kž1. 103/19. 10 June 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Guilty	**Suspended sentence** (four months' imprisonment suspended for one year)
23.	Vranje Basic Court	The defendant, a police officer, was charged with ill-treating the victim in Vranje at 4:40 pm on 21 April 2013. After the victim entered the police car to be taken to the Vranje police, the defendant said: "Why're you making trouble, you Gypsy motherfucker?", and hit him on the head and his kidneys. When they drove up to the police building, the defendant and another police officer caught the victim by the arms and took him into the building. He then kicked him in the groin and legs in front of the offices. The victim fell and hit his forehead on the radiator, sustaining light physical injuries: superficial trauma injuries of the skull with a haematoma and skin abrasion 1x1 cm in size, broken nasal bones without dislocation and haematoma on the left forearm.	Vranje BPPO, Kt. 653/15, 21 Nov 2017	K. 551/17, 15 Nov 2018 and K. 102/19, 22 Apr 2019	Ill-treatment and torture (Art. 137(3) in conjunction with paragraph 1, CC)	Charges rejected due to expiry of the statute of limitations	/

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