



**MONTENEGRO: FAILURE TO**

**IMPLEMENT INTERNATIONAL LAW**

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 29TH SESSION OF THE UPR WORKING GROUP, JANUARY 2018

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Montenegro in January 2018. In it, Amnesty International evaluates the implementation of recommendations made to Montenegro in its previous UPR (including in relation to the rights of Roma and Ashkali refugees from Kosovo), assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government of Montenegro to address the human rights challenges mentioned in this report.

Amnesty International is concerned about inadequate implementation of treaty obligations, such as failing to include a definition of torture in national law in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the limited authority of the National Preventive Mechanism; and weak implementation of a flawed anti-discrimination legal framework.

Amnesty International also raises concerns about impunity for crimes under international law, including enforced disappearance; restrictions on the media and impunity for attacks on journalists; torture and other ill-treatment; and excessive use of force in the context of public order policing.

## FOLLOW UP TO THE PREVIOUS REVIEW

During the second UPR of Montenegro, reviewing states made a total of 124 recommendations, of which Montenegro accepted 120.<sup>1</sup> These covered a range of human rights concerns, including impunity for war crimes; reparation for victims of crimes under international law; freedom of opinion and expression, the rights of Roma displaced from Kosovo; torture and other ill-treatment; discrimination; and the national human rights framework.

Yet, with respect to concerns raised in Amnesty International's previous submission, many recommendations have been only partially fulfilled or remain to be implemented. These shortcomings include Montenegro's failure to address impunity for war crimes, ensure reparation for victims of enforced disappearance, and make progress in ending impunity for attacks on journalists. These concerns are reiterated in this submission.

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<sup>1</sup> Human Rights Council, Outcome of the Universal Periodic Review: Montenegro\* (March 2013), UN Doc. A/HRC/DEC/23/110; Report of the Working Group on the Universal Periodic Review\* Montenegro, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, (March 2013), UN Doc. A/HRC/23/12/Add.1.

## ROMA AND EGYPTIAN REFUGEES FROM KOSOVO

Recommendations on the right to adequate housing of Roma refugees<sup>2</sup> from Kosovo, who have lived at the Konik camps outside Podgorica since 1999, have been only partially implemented.<sup>3</sup> By December 2015, 44 apartments in five buildings, funded by the European Union, had been completed and Romani families provided with adequate accommodation.<sup>4</sup> Another 171 apartments are envisaged for those remaining at Konik I, with 120 due for completion in August 2017.<sup>5</sup> Some 977 persons/182 families remain at Konik I, almost 18 years after their flight from Kosovo. Konik II closed in December 2016.<sup>6</sup>

The legal status of at least 800 Roma and Egyptians who remain at risk of statelessness is a pressing concern. UNHCR in Montenegro estimates that 800 Roma and Egyptians are among 935 persons with applications for regular status still pending before the Ministry of Interior. Another 379 persons have temporary residence, valid for only three years. Despite ratifying the 1961 Convention on the Reduction of Statelessness in 2013, as yet Montenegro has no procedure to determine statelessness.<sup>7</sup> Indeed, the government withdrew the draft text of such a procedure from the draft Law on Foreigners, before opening it for public discussion.<sup>8</sup>

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

As part of the accession process for EU membership, Montenegro is required to enhance the rule of law and ensure respect for human rights, including minority rights.

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<sup>2</sup> Described as internally displaced persons by Montenegro.

<sup>3</sup> Report of the Working Group on the Universal Periodic Review on Montenegro, (March 2013), UN Doc, A/HRC/23/12, recommendations on the right to adequate housing 117.86 (Morocco); 117.96 (Austria); recommendation on reduction of statelessness, recommendations by 119.5 (Austria), 119.6 (Germany).

<sup>4</sup> EU delegation to Montenegro, “New homes for 48 internally displaced Roma and Egyptian families”, 23 December 2015, <http://www.delme.ec.europa.eu/code/navigate.php?id=3405>; Government of Montenegro, “Refugee camp Konik II closed after 16 years”, 21 December 2016, <http://www.gov.me/en/News/167939/Refugee-camp-Konik-II-closed-after-16-years.html>; Mid-Term Report, p.53. <http://lib.ohchr.org/HRBodies/UPR/Documents/Session15/ME/Montenegro2ndCycle.pdf>. Construction of the remaining apartments started in March 2016.

<sup>5</sup> According to UNHCR Montenegro, the second phase, with 51 apartments, should be completed in August 2018.

<sup>6</sup> Pending the return to Kosovo of four families (18 individuals).

<sup>7</sup> Information received from UNHCR Montenegro, May 2017. The need for such a procedure, and the negative impact on those seeking to exercise their rights, was emphasized by the EC both 2015 and 2016, European Commission, *Commission Staff Working Document, Montenegro, 2015 Report*, p.62; *Commission Staff Working Document, Montenegro, 2016 Report*, p.66.

<sup>8</sup> A/HRC/23/12, recommendations 117.89 to 117.95, (USA, France, Slovakia, Slovakia, Sri Lanka, Czech Republic, and Australia). The consultation period ended on 7 June 2017.

Montenegro has ratified or acceded to most human rights conventions, but often fails to fully implement the obligations arising from these treaties.<sup>9</sup> Despite recommendations by reviewing states<sup>10</sup> and the Committee against Torture,<sup>11</sup> a series of amendments to the Criminal Code in March 2017 failed to bring the definition of torture in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to ensure that the penalties for torture are commensurate with the gravity of the crime or remove the statute of limitations on torture.

In March 2015, Montenegro established a National Preventive Mechanism (NPM), appointing a special Deputy Ombudsman and an NPM Working Group.<sup>12</sup> While concerns remain about the NPM's independence,<sup>13</sup> its recommendations in cases of torture and other ill-treatment are often ignored by the authorities. The NPM delayed publishing recommendations relating to a brawl at Spuž prison in January 2015, until November of that year. Nine prisoners were charged (and subsequently convicted) of attacking and injuring five guards, however, the prisoners alleged they were beaten and kept in solitary confinement. After protests by NGOs, 10 prison guards were indicted for beating 13 prisoners during the same incident.<sup>14</sup>

The 2014 Law on Amendments of the Law on Prohibition of Discrimination and the Law on Amendments of the Law on the Protector of Human Rights and Freedoms both sought to improve access to discrimination complaints procedures and to enhance the role of the Ombudsman.<sup>15</sup> Yet, Montenegro's already weak anti-discrimination architecture remains threatened. In October 2016, the Anti-Discrimination Council was abolished,<sup>16</sup> the Prime Minister's human rights adviser was dismissed, and LGBTI activists reported a decline in support for measures to guarantee the rights of LGBTI people.<sup>17</sup>

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<sup>9</sup> Montenegro declined to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, see A/HRC/23/12, recommendations 119.1 (Chile, Indonesia) and 119.3 (Philippines).

<sup>10</sup> A/HRC/23/12, recommendation 117.6: Allocate the necessary resources for the prompt establishment of a national mechanism to prevent torture with the characteristics enshrined in OPCAT (Mexico).

<sup>11</sup> *Committee against Torture, Concluding observations – the second periodic report of Montenegro*, CAT/C/MNE/CO/2, (June 2014), para.6.

<sup>12</sup> Under Article 17 of the Optional Protocol to the Convention against Torture, signed by Montenegro in 2006. *Mid-Term report of Montenegro on the implementation of recommendations received during the second cycle of Universal Periodic Review (UPR)*, p. 12, <http://lib.ohchr.org/HRBodies/UPR/Documents/Session15/ME/Montenegro2ndCycle.pdf>

<sup>13</sup> European Commission, *Commission Staff Working Document, Montenegro 2016 Report*, 9 November 2016, p. 62, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf). The NPM's recommendations following the excessive use of force by police during the October 2015 protests (discussed below) were ignored by the authorities, (available in Montenegrin), <http://www.ombudsman.co.me/img-publications/18/publikacija---pravo-na-fizi--ki-integritet-i-ljudsko-dostojanstvo.pdf>

<sup>14</sup> United States Department of State, *Country Reports on Human Rights Practices for 2015*, (Montenegro), 2015, p. 3 <https://www.state.gov/documents/organization/253093.pdf>. There has been no progress in the case of the guards.

<sup>15</sup> A/HRC/23/12, recommendations 117.9 (Chile), 117.10 (Cuba), 117.19 (Canada), 117.20 (Lithuania), 117.21 (Switzerland), 117.22 (Austria), 117.23 (Belgium),

<sup>16</sup> Established just before Montenegro's first UPR, UN Doc., A/HRC/23/12, para. 7.

<sup>17</sup> In interviews with LGBTI activists and organizations in March 2017, Amnesty International was told that the Strategy for Improving [the] Quality of Life of LGBT persons 2013-2018 had been deprioritized by the government and other institutions.

# HUMAN RIGHTS SITUATION ON THE GROUND

While Montenegro has introduced measures which could potentially improve the protection of human rights, in practice it has failed to address long-standing and serious violations of both international law and human rights law. This submission focuses on the climate of impunity enjoyed by state actors and persons believed to be acting with the authorization, support or acquiescence of the state.

## IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW<sup>18</sup>

Between 2012 and 2014, final instance decisions, following all possible appeals, had been rendered in four war crimes cases.<sup>19</sup>

In April 2014, four defendants were convicted of the torture and ill-treatment of 169 prisoners of war detained in a camp at Morinj; two defendants had earlier been acquitted on appeal. The defendants in all other cases were acquitted.

Seven defendants were acquitted in the “Bukovica Case” in March 2012. Five former Yugoslav army reservists and two former Montenegrin police officials had been indicted for crimes against humanity committed in 1992 in the Bukovica area, in the predominantly Muslim/Bosniak Sandžak region of Montenegro. On 31 December 2010, the defendants were acquitted, on the basis of insufficient evidence. In June 2011 the Appeal Court overturned the original verdict for procedural reasons, and returned the case for retrial. On 3 October 2011 the defendants were again acquitted, on the basis that there was insufficient evidence of a widespread or systematic attack against the Bosniak population. Finally, in March 2012, the Appeal Court dismissed an appeal against the acquittal by the prosecutor and victims' families, on the basis that at the time of the alleged offences, the defendants' actions “did not constitute a criminal act in the eyes of the law”. Amnesty International considers that this position presents an incorrect interpretation and misapplication of the legality principle (*nullum crimen sine lege*<sup>20</sup>), which, in turn, leads to the impunity of those responsible for such crimes.

In June 2013, nine police officials were acquitted - in what has become known as the “Deportations Case” - of responsibility for the enforced disappearance in 1992 of 60 Bosnian refugees.<sup>21</sup> In this case, the court agreed that the defendants had unlawfully arrested the Bosniak

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<sup>18</sup> A/HRC/23/12, recommendations by 118.11 (Spain), 119.13 (Switzerland).

<sup>19</sup> Each of these cases was included in Amnesty International's previous submission to the UPR, and to UN treaty bodies. See, for example, Amnesty International, *Montenegro: Submission to the UN Human Rights Committee September 2014*, (Index: EUR 66/005/2014). See also, Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013, <http://www.hraction.org/wpcontent/uploads/Report-War-Crime-Trials-in-Montenegro.pdf>

<sup>20</sup> *Nullum crimen sine lege* (“no crime without law”) is the moral principle in criminal law and international criminal law that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he/she performed the act.

<sup>21</sup> The decision had been based on the view that at the time of the event, there was no state of armed conflict in Montenegro, nor was Montenegro party to such a conflict. Amnesty International's full legal analysis is set out in its *Submission to the UN Human Rights Committee*, (op. cit.), pp. 9-11.

civilians, but acquitted them of war crimes on the basis they were not participants in the war in Bosnia and Herzegovina (BiH) or allied with any party to that war.<sup>22</sup> However, the nine police officials were agents of the Republic of Montenegro, which at the time of the offence was part of the Socialist Federal Republic of Yugoslavia, which was a party to the armed conflict in BiH. Moreover, the court characterized the war in BiH, erroneously, as a non-international armed conflict.

In December 2013, all eight defendants were acquitted in the “Kaluderski laz Case”. In this case, a former Yugoslav Army commander and seven reservists had been indicted for the killing of 18 Kosovo Albanian civilians, and injuring others, including six persons in the village of Kaluderski laz near Rožaje. The Kosovo Albanians had fled to Montenegro from the armed conflict in Kosovo in April and May 1999.

The decisions in these proceedings have cast doubts on the capacity of Montenegro to implement the rule of law and the willingness of the judiciary to apply international humanitarian and human rights law in its national courts, including the principle of command and other superior responsibility.<sup>23</sup> In Amnesty International’s view, the judiciary has rendered decisions which are inconsistent with generally held interpretations of international humanitarian law, the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and sentencing guidelines set out in domestic law. With respect to sentencing, in the Morinj case, defendants were convicted of the torture and ill-treatment of prisoners of war, but the sentences imposed failed to reflect the gravity of the crimes, being less than the statutory minimum of five years’ imprisonment.<sup>24</sup>

In March 2017, it was reported that seven war crimes cases, including those listed above, were under review to determine if sufficient grounds exist to reopen the proceedings.<sup>25</sup> Amnesty International welcomes the review, noting that in October 2015 the Supreme Court had rejected the Special Prosecutor’s request to review the legality of the final judgment in the “Deportations Case”,

In May 2015, with a new Strategy for Investigating War Crimes in place, a new Special Prosecutor’s Office was created along with a department charged with investigation and prosecution of war crimes. In December 2016, the Special Prosecutor reported that four cases were under investigation and three pre-trial investigations in progress.<sup>26</sup> However, proceedings have opened only in a new case, following the arrest of Vlado Zmajević in Montenegro in August 2016. He has been indicted for war crimes against the civilian population in Kosovo on the basis of a case file transferred from the Office of the War Crimes Prosecutor in Serbia.<sup>27</sup>

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<sup>22</sup> Judgement of the Podgorica High Court, Ks.no.6/12, 22 November 2012.

<sup>23</sup> “The judicial decisions reached so far have contained legal mistakes and shortcomings in the application of international humanitarian law”, European Commission, *Progress Report 2016*, p. 57.

<sup>24</sup> For minimum sentence, see Article 430 CC, (War crimes against prisoners of war), Amnesty International, *Submission to the UN Human Rights Committee*, pp.11 and 8-9.

<sup>25</sup> Balkan Insight, “Montenegro: Suspensions Persist Over War Crimes Probes”, 22 December 2016, <http://www.balkaninsight.com/en/article/montenegro-scepticism-greets-new-war-crimes-probes-12-22-2016-1>; US Department of State, *2016 Country Reports on Human Rights Practices*, 3 March 2017, <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265454.htm>

<sup>26</sup> “Montenegro: Suspensions Persist Over War Crimes Probes”, *ibid.*

<sup>27</sup> Vlado Zmajević, a Montenegrin national had served in the Yugoslav Army in Kosovo in 1999. He is accused of being part of a group of soldiers responsible for the killing of at least six ethnic Albanian civilians in the village of Žegra (Zhegër), in Kosovo in March 1999. See <http://www.vijesti.me/vijesti/niksic-uhapsen-zbog-sumnje-da-je-ratni-zlocinac-898838>; <http://www.balkaninsight.com/en/article/montenegro-to-trial-kosovo-war-murder-suspect-04-20-2017>;

Impunity thus persists for war crimes against the civilian population of Montenegro. With the exception of the “Bukovica Case”, no prosecutions have been brought against Montenegrin police suspected of the widespread and systematic torture, ill-treatment and persecution, from 1992 to 1995, of the Bosniak population in the Sandžak region.<sup>28</sup>

### Enforced disappearances

The authorities had not acted on recommendations made in October 2015 by the Committee on Enforced Disappearances (CED) by March 2017 when a draft revised Criminal Code was published.<sup>29</sup> The CED had called for the inclusion of enforced disappearance as a separate criminal offence in the Criminal Code, along with the recognition of enforced disappearance as a continuing series of acts.<sup>30</sup>

The CED further called on Montenegro to establish the fate and whereabouts of 61 individuals still missing following the armed conflicts of the 1990s. In August 2014, Montenegro had committed to resolving their fate, when then-President Djukanović signed a regional Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights.<sup>31</sup> However, no progress has been reported.

The CED also highlighted the absence of any other form of reparation - beyond compensation for the victims – including for the relatives of the missing.<sup>32</sup> The CED urged Montenegro to end the practice whereby relatives are required to initiate civil proceedings to declare a missing person dead in order to be eligible for compensation, including the pension rights of the disappeared person.<sup>33</sup>

Victims of crimes under international law have rarely received reparation.<sup>34</sup> The only significant compensation awarded to victims of enforced disappearance and their relatives, was paid in an extraordinary administrative procedure in the “Deportations Case” in 2008. They included nine survivors of the Bosnian Serb Army concentration camp at Foča, and 28 of their family members, as well as 156 relatives (parents and brothers and sisters) of the 33 men who were killed after being transferred by the Montenegrin police into the hands of Bosnian Serb military forces.<sup>35</sup> The survivors and relatives had previously filed civil cases for compensation, but the government

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<sup>28</sup> Amnesty International, *FRY: Still Seeking Justice in the Sandžak*, (Index: EUR 70/005/2003); *Serbia and Montenegro: Legal Loopholes Allow Impunity for Torturers in the Sandžak*, (Index: EUR EUR70/002/2003).

<sup>29</sup> [www.pravda.gov.me/biblioteka/nacrti-zakona](http://www.pravda.gov.me/biblioteka/nacrti-zakona)

<sup>30</sup> “The Committee wishes to draw the attention of the State party to the fact that enforced disappearance is a unique and consolidated series of acts which continues during the entire time until the victim’s fate or whereabouts are established, and is not a series of single acts,” para 10, Committee on Enforced Disappearances, *Concluding observations on the report submitted by Montenegro under article 29 (1) of the Convention\**, CED/C/MNE/CO/1, (15 October 2015), paras. 8-11; Montenegro ratified the Convention for the Protection of All Persons from Enforced Disappearance in 2011.

<sup>31</sup> <http://www.balkaninsight.com/en/article/montenegro-to-investigate-wartime-missing-persons>; “Bosnia and Herzegovina, Croatia, Montenegro and Serbia sign ICMP’s Declaration on Missing Persons”, <http://www.ic-mp.org/press-releases/bosnia-and-herzegovina-croatia-montenegro-and-serbia-sign-icmpsdeclaration-on-missing-persons/>

<sup>32</sup> A/HRC/23/12, recommendation 117.62 (France).

<sup>33</sup> CED/C/MNE/CO/1, paras 30-31.

<sup>34</sup> With the exception of prisoners of war subjected to torture and ill-treatment at the Morinj camp, <http://www.balkaninsight.com/en/article/montenegro-detention-camp-victims-got-compensation>, due to delays in procedure, civil proceedings were still ongoing in May 2017 for the final group of detainees.

<sup>35</sup> Amnesty International, *Submission to the Human Rights Committee*, (Index: EUR 66/005/2014), pp. 16-17.

appealed every decision in their favour. Such was the exceptional nature of the compensation that lawyers acting for the victims described it as “an historical event of an international importance”.<sup>36</sup>

## MEDIA FREEDOM

Journalists and media workers continue to receive threats by phone or social media, some have been physically assaulted, including by police officers, and independent media offices damaged. Impunity persists for past violations and for more recent attacks. In May 2017, Montenegro stood at 106<sup>th</sup> place in Reporters without Borders’ world survey of press freedoms.<sup>37</sup>

Since the last UPR,<sup>38</sup> some 20-25 cases of attacks against journalists and media outlets have been documented annually, including physical assaults, intimidation, threats to life and damage to premises or property; in few cases have the perpetrators been identified or brought to justice. In November 2016, for example, HRA reported 25 threats and attacks against journalists since August 2015. Of these, 15 were physical attacks on journalists and their property, and two were threats. The remainder took place during anti-government demonstrations in October 2015, including arbitrary arrests of journalists and seizure of equipment. All but three cases remained unresolved.<sup>39</sup>

Journalists critical of the government – along with NGOs and human rights defenders<sup>40</sup> – continue to be subjected to smear campaigns by media supportive of the government, including *TV Pink* and the tabloid daily, *Informer*. While many journalists practice self-censorship to protect themselves, investigative journalists are at serious risk.

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<sup>36</sup> “Public Announcement on Occasion of the Decision of the Government of Montenegro to Settle Reparation Cases with Victims of 1992 Deportation of Refugees War Crime”, [http://www.prelevic.com/Documents/Deportation\\_Public\\_Announcement.pdf](http://www.prelevic.com/Documents/Deportation_Public_Announcement.pdf)

<sup>37</sup> Reporters Without Borders, World Press Freedom Index 2017, <https://rsf.org/en/montenegro>

<sup>38</sup> A/HRC/23/12 recommendations 117.63 (Belgium); 117.64 (Australia); 117.65 (Lithuania); 117.69 (Czech Republic) and 119.14 (France).

<sup>39</sup> Human Rights Action (HRA), *Prosecution of attacks on journalists in Montenegro*, January 2014, <http://www.hraction.org/?p=5491>. Around 25 cases were documented: in November, security cameras recorded people throwing stones and rocks at the entrance of the newspaper *Vijesti*. The office was also attacked during the Podgorica Pride in October 2013. On 16 December 2013, the car of journalist Darko Ivanović, editor of investigative TV programme “Robin Hood”, was attacked and damaged. On 26 December 2013, an explosive device detonated outside the *Vijesti* offices shattering windows and damaging the facade.

On 13 January 2014, an explosion occurred outside the home of Jevrem Brković; a 2006 attack on the same writer remains unresolved. Also in January 2014, the premises of NTV *Montena* were stoned, and on 12 February 2014, another vehicle belonging to the Montenegrin newspaper *Vijesti* was set on fire, the fifth in a series of attacks on the newspaper’s vehicles since 2011. A police officer was charged with failure to protect the office. Further intimidation of a journalist and photographer for the newspaper *Dnevne novine* took place on 30 June, when unknown persons forced them to delete the photographs they had taken of alleged members of a criminal gang outside the Podgorica hospital.

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<https://www.hrw.org/news/2016/11/30/western-balkans-unchecked-attacks-media>; see also Human Rights Watch, *A Difficult Profession Media Freedom Under Attack in the Western Balkans*, pp. 24-28, 39-40, 48 & 58. [https://www.hrw.org/sites/default/files/report\\_pdf/balkans0715.pdf](https://www.hrw.org/sites/default/files/report_pdf/balkans0715.pdf)

<sup>40</sup> Including Vanja Calović, executive director of anti-corruption NGO MANS and Tea Prelević, Director of HRA.

In 2014, the UN Human Rights Committee expressed concern about “multiple reports of intimidation and violence against journalists, in particular against those investigating issues such as organized crime or alleged links between organized crime and the authorities”.<sup>41</sup> In October 2015, investigative journalist Jovo Martinović was detained and accused of involvement in the organized criminal network that he was investigating. In April 2016, he was charged with aiding and belonging to the organized criminal network, which was involved in drug-trafficking. Proceedings began in October 2016. Following international protests by human rights groups and journalist associations, he was released on 4 January 2017, but the charges remained and proceedings against him continue.

### **Impunity for past attacks**

In June 2013, following his visit to Montenegro, the UN Special Rapporteur on the right to freedom of opinion and expression urged Montenegro to set up a mechanism to ensure “effective accountability in all cases of violence against journalists”, stating that “[i]nsecurity will prevail as long as cases of attacks against journalists and media property remain unresolved. The impunity of well-known cases of violence against journalists is unacceptable”.<sup>42</sup>

Subsequently, and under pressure from the European Commission, in November 2013, the Ministry of Interior established a Commission for Monitoring Actions of Competent Authorities in the Investigation of Cases of Threats and Violence against Journalists, Assassinations of Journalists and Attacks on Media Property.<sup>43</sup> Some 14 priority cases were identified.<sup>44</sup>

The Commission has been hindered in its work by being denied access to relevant classified documents, requested in May 2015 and November 2016.<sup>45</sup> As of February 2017, five non-state members of the Commission were still denied security clearance.<sup>46</sup> The Commission has not met since 2016.

### **Emblematic cases**

The legacy of unsolved murders and attacks on the lives and property of independent journalists dates from May 2004, when Duško Jovanović, editor-in-chief and publisher of the independent daily, *Dan*, was shot dead leaving his office. In 2012, Damir Mandić<sup>47</sup> was convicted of being an accomplice to the murder, and sentenced to 18 years’ imprisonment,

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<sup>41</sup> Human Rights Committee, Concluding observations on the initial report of Montenegro, UN Doc CCPR/C/MNE/CO/1, 21 November 2014, paras. 21-22.

<sup>42</sup> OHCHR, “Impunity of violence against journalists is unacceptable”, 17 June 2013, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13467&LangID=E>

<sup>43</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Addendum, Mission to Montenegro, A/HRC/26/30/Add.1, 29 April 2014, para.17. <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G14/140/05/PDF/G1414005.pdf?OpenElement>; The Commission first met on 6 February 2014. It includes six representatives from the State Prosecutor’s Office, Police Administration and Agency for National Security, four journalists – including the Assistant Chief Editor of *Dan*, who chairs the Commission – and a representative of civil society.

<sup>44</sup> HRA has recommended that an international expert is invited to assist in progressing the case, see, *Unsolved Murder of Duško Jovanović, the Director and Editor-in Chief of the Daily Dan – Questions without Answers*, <http://www.hraction.org/wp-content/uploads/Report-final.pdf>

<sup>45</sup> The Commission’s mandate expired in December 2015, but was re-established in July 2016.

<sup>46</sup> HRA, “NGOs Appealed to the Government to Enable Work of the Commission for Monitoring Investigations of Attacks on Journalists”, 10 February 2017, <http://www.hraction.org/?p=12229>. They included Dalibor Tomović, a lawyer nominated by civil society, Duško Vuković, a media analyst; Marijana Camović, Independent trade Union of Journalists; journalist Veselin Racković; and Ranko Vujović, Media Council for Self-Regulation.

<sup>47</sup> A former karate champion, alleged to have driven the car from which Duško Jovanović was shot.

but the perpetrators were never identified.<sup>48</sup> In February 2014, prosecutors re-opened the investigation into the murder, and conducted or attempted to conduct interviews with high-level police and government officials.<sup>49</sup> In August 2015 Slavica Jovanović, co-owner of *Dan* and Duško Jovanović's widow, left the country after her car was vandalized and papers stolen. There has been no subsequent progress.<sup>50</sup>

Tufik Softić, a journalist for *Vijesti* and the weekly journal, *Monitor*, was badly beaten outside his home in Berane on 1 September 2007. He subsequently received further threats and attacks: in August 2013, an explosive device was detonated in front of his home.<sup>51</sup> In February 2014, he was placed under police protection, and in July two men were arrested in Budva on suspicion of his attempted murder; however, by December they had been released.<sup>52</sup> Although in its mid-term review, Montenegro claimed that the case of "T.S" had been resolved,<sup>53</sup> in November 2015, the prosecution closed the investigation, suspended police protection and recommended that Tufik Softić himself should initiate criminal proceedings.<sup>54</sup> Instead, in February 2017, Tufik Softić brought a case against Montenegro before the Constitutional Court for compensation, on the grounds that the authorities had failed to fully investigate and bring to justice the perpetrators of the 2007 attack, and for his continuing pain and fear because the perpetrators remain at large.<sup>55</sup>

## **TORTURE AND OTHER ILL-TREATMENT; EXCESSIVE USE OF FORCE AND FIREARMS**

Torture and other ill-treatment of detainees in police stations and prisons in Montenegro continue, while the authorities rarely conduct prompt and impartial investigations in order to

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<sup>48</sup> The verdict was overturned in July 2014, forcing a new trial. A new trial opened in February 2015, and Damir Mandić's conviction for complicity in the murder was confirmed in October 2015.

<sup>49</sup> These included the former head of the Podgorica police force, Milan Vijanović, and senior officers Milan Tomić and Tihomir Gačević. According to the State Prosecutor in July 2014, high-level officials included the then Prime Minister Milo Djukanović, the then Interior Minister Andrija Jovičević, former investigative judge Miroslav Basović and the then Deputy Prime Minister and Justice Minister Duško Marković, Head of State Intelligence in 2004, and current Prime Minister, see "Djukanović Faces Grilling Over Journalist's Death", 23 July 2014, <http://www.balkaninsight.com/en/article/montenegro-s-pm-to-be-examined-on-journalist-murder-case>.

<sup>50</sup> HRA has recommended that an international expert is invited to assist in progressing the case, see, *Unsolved Murder of Duško Jovanović, the Director and Editor-in Chief of the Daily Dan – Questions without Answers*, <http://www.hracion.org/wp-content/uploads/Report-final.pdf>

<sup>51</sup> For details of both attacks, see HRA, *Prosecution of Attacks on Journalists in Montenegro*, 31 January 2014, pp. 16-17 & 36-37, <http://www.hracion.org/wp-content/uploads/Report-Prosecution-of-Attacks-on-Journalists-in-Montenegro.pdf>

<sup>52</sup> Balkan Insight, "Montenegro Gives Journalist Police Protection", 28 February 2014, <http://www.balkaninsight.com/en/article/montenegrin-journalist-gets-police-protection>; "Two Held in Montenegro For Attacking Journalist", 17 July 2014, <http://www.balkaninsight.com/en/article/two-held-in-montenegro-for-attacking-journalist>

<sup>53</sup> "Intensive activities of police officers in communication with authorized prosecutors resulted in 2014 in resolving the cases of activating of an explosive device in front of the building of daily "Vijesti" in December 2013 and attack on journalist T.S. – attempted murder from 2007", *Mid-Term report of Montenegro* (UPR), *op. cit.* p. 27

<sup>54</sup> <http://www.balkaninsight.com/en/article/montenegro-police-withdraw-protection-from-reporter-despite-threats-12-15-2016>

<sup>55</sup> HRA, *Beginning Of The Trial Tufik Softić Against The State For Damage Compensation*, available in English at <http://www.hracion.org/?p=12343>

bring all those suspected of criminal responsibility to justice in fair trials.<sup>56</sup> The events of October 2015 suggest that impunity is also enjoyed in the context of public order policing, especially by Montenegro's Special Anti-Terrorist Unit (SAJ).<sup>57</sup>

On 17 October 2015, hundreds of riot police used excessive force to remove a camp outside Parliament, established during mass demonstrations that had commenced on 27 September. Opposition leaders and members of Parliament were injured. Two journalists were detained, one alleging that he had also been assaulted. On 24 October, members of the Democratic Front opposition party attempted to force their way into Parliament after being denied entry, injuring 20 police officers. The police reacted with tear gas, grenades and rubber bullets, injuring 27 individuals, including non-violent protesters, journalists and bystanders.<sup>58</sup>

Amnesty International analysed evidence in eight cases<sup>59</sup> concluding that law enforcement officers, including the SAJ, had used excessive, arbitrary, abusive or otherwise unlawful force.<sup>60</sup>

Despite initially stating that the police had acted lawfully, following pressure from the public and NGOs, the Ministry of Interior promised to undertake a thorough and impartial investigation into allegations of ill-treatment and excessive use of force. In November 2015, two members of the SAJ were detained for the ill-treatment of a boxer, Miodrag Martinović, who was dragged from his vehicle and assaulted; video footage shows between 20-30 SAJ police officers taking part in the assault or beating their sticks on his car.<sup>61</sup> As of June 2017, the final judgement had not been delivered. Their commanding officer, indicted in June 2016, was convicted of obstruction of justice at the first instance.<sup>62</sup> No other internal disciplinary measures or prosecutions have taken place.<sup>63</sup>

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<sup>56</sup> See, for example, European Court of Human Rights, *Milić and Nikezić v. Montenegro* (nos. 54999/10 and 10609/11). In 2014 the Human Rights Committee urged Montenegro “to ensure that allegations of ill-treatment are effectively investigated, alleged perpetrators are prosecuted and, if convicted, punished with sanctions commensurate with the seriousness of the crime, and that victims are adequately compensated”, Human Rights Committee, Concluding observations on the initial report of Montenegro, UN Doc CCPR/C/MNE/CO/1, 21 November 2014, para. 12.

<sup>57</sup> Specijalna antiteroristička jedinice (SAJ).

<sup>58</sup> The Council for Civil Control of the Police reviewed three incidents in the immediate aftermath, concluding that police officers were responsible for the ill-treatment of individuals, and abuse of authority, Savjet za građansku kontrolu rada policije, “Utvrđena ozbiljna i zabrinjavajuća prekoračenja policijskih ovlašćenja”, 26 October 2015, translation available at [http://www.hraction.org/?p=9694](http://www.hrraction.org/?p=9694)

<sup>59</sup> Based on first-hand observations by credible local non-governmental organizations, the findings of the Montenegrin Council for Civil Control of the Police, correspondence with victims, medical records, media reports and publicly available video footage.

<sup>60</sup> Amnesty International, “Montenegro: Police Must Cooperate with Criminal Investigations into Use of Excessive Force and Ill-Treatment of Protestors”, (Public statement), 1 December 2015, <https://www.amnesty.org/en/documents/eur66/2984/2015/en/>. Amnesty International's accompanying letter to the authorities has not been made public.

<sup>61</sup> A constitutional complaint has recently been lodged in this case, see HRA, “Constitutional Appeal Due To Ineffective Investigation Of Torture Against Martinović”, <http://www.hraction.org/?p=12794>

<sup>62</sup> The case remains pending appeal. The commanding officer was sentenced to five months' imprisonment; had the sentence been six months, he would have been dismissed from the police force, Amnesty International telephone interview with Tea Prelević, HRA.

<sup>63</sup> An appeal, on the grounds of the police's failure to investigate and their lack of cooperation, was unanimously adopted by the Constitutional Court on 26 June 2017, “Constitutional Court Adopts HRA Appeals on Account of Lack of Effective Investigation of Police Torture”, <http://www.hraction.org/?p=13194>. The appeal was filed by Human Rights Action on behalf of Branimir

Since this information was submitted to OHCHR, there have been developments in the two appeals mentioned: in June, the Constitutional Court found that there had been an ineffective investigation into the alleged torture and ill-treatment on behalf of Branimir Vukčević and Momčilo Baranin;<sup>64</sup> and in July, the court adopted an appeal by Milorad Mijo Martinović, similarly finding that the State Prosecutor's Office had failed to conduct an effective investigation in line with international standards on the prohibition of torture.<sup>65</sup>

While subsequent protests have been policed professionally, the authorities have ignored recommendations by the Ombudsperson and other organizations that the Chief of the Podgorica police force should be removed and that SAJ police reasonably suspected of an offence should be subject to disciplinary investigations.<sup>66</sup>

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF MONTENEGRO TO:

### ROMA AND EGYPTIAN REFUGEES

- Take prompt measures to introduce into law a robust process to determine statelessness in order to ensure that all Kosovo Roma and Egyptians are entitled to full enjoyment of their rights in Montenegro;

### TORTURE AND OTHER ILL-TREATMENT

- Amend the Criminal Code to define torture in compliance with the Convention against Torture, ensure that penalties for torture are commensurate with the gravity of the crime, and remove the statute of limitations on torture;
- Respect the independence of the National Preventive Mechanism and implement its recommendations.

### IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW

- Ensure that the State Prosecutor's reviews of completed war crimes proceedings are reviewed with regard to the legality of judicial decisions under domestic law, international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia;
- If proven that any proceedings were for the purpose of shielding the person concerned

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Vukčević and Momčilo Baranin, who allege that they were ill-treated during the 24 October 2015 political protests, see also <http://www.hraction.org/?p=12102>.

<sup>64</sup> HRA, "Constitutional Court Adopts HRA Appeals on Account of Lack of Effective Investigation of Police Torture", 21 June 2017, <https://www.hraction.org/?p=1319>

<sup>65</sup> HRA, "The State Should Not Support Police Torture By Ineffective Investigations", 25 July 2017, <http://www.hraction.org/?p=13406>

<sup>66</sup> Instead, decisions whether to investigate or not were left to the State Prosecutor who initiated proceedings only in the cases described above.

from criminal responsibility for crimes under international law, ensure that a new investigation or trial take place before a new prosecutor or court;

- Ensure that all prosecutions of crimes under international law are conducted promptly and impartially and in accordance with international fair trial standards, as also recommended to Montenegro in its previous review;<sup>67</sup>
- Fully implement the recommendations of the Committee on Enforced Disappearances, including to amend the Criminal Code to separately define enforced disappearance in the Criminal Code and recognize it as a continuing offence;
- Introduce legislation to provide an effective administrative framework for reparations for civilian victims of war, including the relatives of the missing, as recommended in the previous review.<sup>68</sup>

#### FREEDOM OF THE MEDIA

- Take effective action to end impunity for past attacks on independent media and journalists, including by providing members of the Commission for Monitoring Actions of Competent Authorities in the Investigation of Cases of Threats and Violence against Journalists, Assassinations of Journalists and Attacks on Media Property with the necessary resources, and security clearance, to rigorously monitor progress by the investigative authorities;
- Ensure that all reported threats and attacks against journalists and media workers, as well as NGOs and human rights defenders, are investigated promptly, thoroughly, impartially and independently, to avoid future impunity.

#### EXCESSIVE USE OF FORCE AND FIREARMS

- Renew efforts to identify all police officers suspected of using excessive force during the October 2015 protests, and hold them to account;
- Ensure the Ministry of Interior reviews the operational procedures and practices of the Special Anti-Terrorist Unit in line with the UN Basic Principles for the Use of Force and Firearms.

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<sup>67</sup> A/HRC/23/12, recommendations by 118.11 (Spain), 119.13 (Switzerland).

<sup>68</sup> A/HRC/23/12, recommendation 117.62 (France).

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>69</sup>

- *Montenegro: Police Must Cooperate with Criminal Investigations into Use of Excessive Force and Ill-Treatment of Protestors*, 1 December 2015, (Index: EUR 66/2984/2015).
- *Bosnia And Herzegovina/Serbia/Montenegro: Arrests in Štrpci Abduction Case: Progress At Last, After 21 Years*, 5 December 2014, (Index: EUR 63/005/2014).
- *Montenegro: Trafficked Woman Sentenced While Perpetrators Stay Free*, 21 November 2014, (Index: EUR 66/006/2014).
- *Montenegro: Submission to the United Nations Human Rights Committee: 112th Session, 7-31 October 2014*, 7 October 2014, (Index: EUR 66/005/2014).
- *Montenegro: Ensure Adequate Alternative Housing for Evicted Families*, 15 April 2014, (Index: EUR 66/002/2014).
- *Montenegro: Submission for European Commission: Progress Report 2013*, 18 December 2013, (Index: EUR 66/004/2013)
- *Montenegro: A decade of unresolved attacks on independent media*, 14 February 2014, (Index EUR 66/001/2014).
- *Montenegro: Government should take part in the Podgorica Pride*, 18 October 2013, (Index: EUR 66/003/2013).

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<sup>69</sup> All these documents are available on Amnesty International's website:  
<https://www.amnesty.org/en/countries/europe-and-central-asia/montenegro/>

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