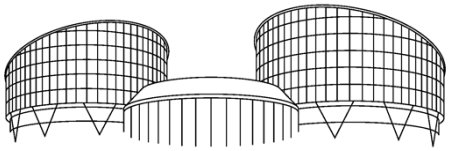

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BARANIN AND VUKČEVIĆ v. MONTENEGRO

(Applications nos. 24655/18 and 24656/18)

JUDGMENT

Art 3 (procedural) • Continuing ineffectiveness of investigation into police brutality after finding of Art 3 substantive and procedural violations by Constitutional Court • Investigation not prompt, thorough or independent, and not affording sufficient public scrutiny • No loss of victim status in light of continued ineffectiveness • Complaint under substantive limb struck out in view of domestic courts' ruling and award of damages

STRASBOURG

11 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Baranin and Vukčević v. Montenegro,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 24655/18 and 24656/18) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Momčilo Baranin ("the first applicant"), who has dual Montenegrin and Canadian nationality, and a Montenegrin national, Branimir Vukčević ("the second applicant"), on 15 May 2018;

the decision to give notice of the applications to the Montenegrin Government ("the Government");

the parties' observations;

Having deliberated in private on 2 February 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present cases concern the applicants' complaints under Articles 3 and 13 of the Convention concerning their ill-treatment by unidentified police officers on 24 October 2015, and specifically the alleged lack of an effective investigation into the incident, and lack of an effective domestic remedy in that regard.

THE FACTS

2. The applicants were born in 1977 and 1978 respectively and live in Podgorica. They were represented by Ms T. Gorjanc-Prelević, the executive director of the non-governmental organisation Human Rights Action.

3. The Government were represented by their Agent, Ms V. Pavličić.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background information

5. On 24 October 2015 an opposition coalition organised protests in Podgorica in front of Parliament. A large number of police officers were deployed to ensure security at the gathering, including members of the Special Police Unit ("SPU") and the Special Anti-Terrorist Unit ("SAU"). At some point the protests turned violent. Some of the protesters tried to force their way into Parliament, and started throwing stones and Molotov cocktails at the police. The head of the Security Centre (*Centar bezbjednosti* – "the SC") in Podgorica, who had been in charge of ensuring safety at the protests, ordered that the gathering be terminated. A number of related incidents followed in the city that night, such as the looting of shops and breaking of windows, including those of banks. The total number of injured was fifty-four, of whom twenty-nine were police officers and twenty-five protesters.

B. Events of 24 October 2015

6. The same evening, at about 10.30 p.m., the applicants were in the vicinity of the protests, but did not participate in them. In order to avoid a group of protesters, they headed towards police in a side street, who let them pass. A few metres further on several masked police officers approached the applicants, ordered them to lie on the ground, verbally insulted them and kicked them. One of the police officers pressed the second applicant's head to the ground with his foot. A SAU Hummer vehicle was at the scene, as well as a few other vehicles. The event was recorded from a window of a nearby office and put on YouTube by the editor-in-chief of the daily newspaper *Vijesti*.

7. On an unspecified date, after seeing the video footage, the State prosecutor's office (*Osnovno državno tužilaštvo* – "the SPO") opened a case file against unknown SAU officers for ill-treatment.

8. On 25 October 2015 the SAU issued a single report on the events and the use of force the previous night. The incident involving the applicants was not mentioned.

9. On 27 and 28 October 2015 respectively the applicants sought medical assistance. The medical report concerning the first applicant noted a painful haematoma 30 cm in diameter on his inner left thigh, a painful haematoma 20 cm in diameter on his inner right thigh, and a 1 cm haematoma around his left eyelid. The medical report concerning the second applicant noted an 8 by 4 cm haematoma in the area of his left ribcage, and a 15 by 7 cm haematoma on the back of his left knee.

10. On 30 October 2015 the applicants reported the incident to the police. The same day they were interviewed by SC police officers. The SC also requested video footage from the scene and from various media.

11. On 10 November 2015 the SPO asked the Police Directorate (*Uprava policije*) to inform it of the identity of the applicants. It also requested information as to what had been done in order to identify the SAU officers involved in two other incidents which had taken place that night, at the scenes of which the SAU Hummer vehicle had been seen, and into which the SPO had also opened case files. The SPO noted that these incidents had not been mentioned in the SAU report of 25 October (see paragraph 8 above).

12. On 12 November 2015 the SPO requested information from the SAU about the GPS position of all official vehicles used on 24 October 2015 between 9.30 p.m. and midnight. On 20 November 2015 the SAU submitted information regarding nine vehicles. Specifically, SAU officer Lj.P. had been in charge of all of them, including the Hummer. He had not driven any of them, however, as he had been in a fire vehicle stationed in front of Parliament. The report stated that the SC had examined the available video footage (from surveillance cameras and that made by the media), but given its poor quality and the fact that the police officers involved had been wearing gas masks and helmets, it had been impossible to identify them. The applicants could not have recognised them for the same reason either.

13. On 20 November 2015 the Police Directorate informed the SPO of three different incidents where force was used by the police on the night in question, including the incident involving the applicants, and specified the applicants' names.

14. On 3 December 2015 the SPO interviewed the applicants in relation to a reasonable suspicion that they had suffered ill-treatment. They maintained, in substance, that they could not identify any of the police officers involved as they had been wearing masks and helmets. They also submitted that two police vehicles had been at the scene, a Hummer and a Land Rover. That being so, the second applicant assumed that the drivers of the Hummer and the Land Rover had definitely been there. As he had learnt from the media that the SAU commander had been in the Hummer, the second applicant assumed that he had also been there. He also submitted that there had been nobody else on that street except for them (the applicants) and the police officers.

15. On 4 December 2015 the SPO asked the SC to provide video footage from the pharmacy in the vicinity of where the incident had taken place. On 30 December 2015 the SC informed the SPO that the camera in the pharmacy only captured images inside the premises, and that the shutters had been down as it had been closed. The SC submitted that they had also visited the nearby bakery, but that its owner had informed them that the camera had been out of order at the time and that, in any event, the recordings were only kept for twenty-one days.

16. On 12 January 2016 the Police Directorate informed the SC that they had no recordings of the radio communication between various police

commanders on the night in question as the relevant recording system had not been functioning.

17. On 26 January 2016 the SPO requested information from the Director of Police as to what had been done to identify the police officers involved and the reasons why this had not been done sooner.

18. On 29 February 2016 an expert medical report was provided in respect of the applicants' injuries following a request by the SPO on 8 February 2016 to that effect. In substance, the report confirmed the earlier medical reports (see paragraph 9 above). The injuries were classified as minor bodily injuries inflicted by blunt mechanical weapons, as well as the fists or feet.

19. On 7 April and 6 May 2016 the SPO urged the Police Directorate to identify the SAU agents involved in the event.

20. On 17 January 2017 the applicants lodged constitutional appeals complaining of torture, inhuman and degrading treatment and the lack of an effective investigation.

21. In the course of the proceedings that followed the SPO submitted to the Constitutional Court that all the evidence indicated that ill-treatment had been committed against the applicants, but that the SPO had no means of identifying the perpetrators since their faces had not been visible in the available videos and the applicants had been explicit in saying that they could not recognise them. The SPO had urged the head of the SC, the Police Directorate and the Minister of the Interior to take measures to identify the perpetrators. The Police Directorate submitted that they had interviewed the applicants and inspected the video footage, but could not identify anybody as the police officers had been wearing masks and helmets. They had forwarded the material obtained to the SPO.

22. On 21 June 2017 the Constitutional Court found a violation of both the substantive and procedural aspects of Article 3. In particular, the applicants had suffered inhuman and degrading treatment at the hands of unidentified SAU officers, resulting in minor bodily injuries, and causing them physical pain and mental anguish. As the applicants had done nothing to provoke it, the use of force had not been justified and had been excessive and disproportionate.

23. The court further found that the SPO's investigation had not been thorough, independent and prompt. Notably, the SPO had not interviewed journalists who had witnessed the events or any of the SAU officers. It had kept asking the Police Directorate to identify the police officers involved, neglecting the fact that those who had been asked to do so had been subject to the same chain of command as those being investigated. Lastly, it had not managed to identify the perpetrators in over nineteen months. The court considered it irrelevant that the SPO had prosecuted the SAU commander for helping the others evade responsibility (see paragraphs 37-40 below).

24. Moreover, the Police Directorate had not undertaken an effective and thorough investigation to identify and punish their officers. This could not have been affected by the allegations that identification had been impeded by the fact that the officers involved had had protective helmets and gas masks, and that the video footage had been useless. It also could not have been independent, as they had had to investigate their own colleagues. The court requested (*zahtijeva*) the Minister of the Interior and the Police Directorate to cooperate fully with the SPO, in order to collect the evidence and identify the relevant SAU officers.

25. The court ordered the SPO to conduct a thorough, prompt and independent investigation to ensure the identification and criminal prosecution of the police officers in relation to whom there was a reasonable suspicion that they had committed ill-treatment against the applicants. The court ordered that these decisions be enforced within three months of the date of their publication in the Official Gazette and that upon the expiration of that time-limit the SPO submit a report on the matter to the court. The decisions were published on 3 August 2017.

26. Between 18 September and 3 November 2017 the SPO interviewed the editor-in-chief of the *Vijesti* newspaper (see paragraph 6 *in fine* above), the director of *TV Vijesti*, the owner of the pharmacy, the SPU commander and fifty-four SAU officers. During the same period, it urged the Police Directorate and the Minister of the Interior to inform it of the measures taken to identify the perpetrators. It also requested the head of the SC in Podgorica to inform it if members of other intervening units had been deployed to the scene and, if so, to inform it of their identity.

27. The editor-in-chief of *Vijesti* and the pharmacy owner were interviewed as witnesses. They were accordingly warned that they had to tell the truth and that giving false evidence was a criminal offence.

28. The editor-in-chief of *Vijesti* submitted, in substance, that about five to seven uniformed men in helmets had beaten the applicants. One of those present had not had a helmet, but as it had been dark he could not recognise him or even tell if he had had something on his face or not. He had seen a Hummer vehicle in the vicinity. He had also noticed that about 20 to 30 metres away the police officers had been trying to get somebody out of a car or prevent him from doing so. He could not say more about this, as his attention had been focused on the applicants. He could not say who had been with him in the office that night.

29. The director of *TV Vijesti* submitted that none of its employees had recorded or witnessed the events in question. The owner of the pharmacy submitted that the cameras only covered the inside of the premises and that, in any event, the pharmacy had been closed at the time. The SPU commander maintained that his unit had not been deployed on the street where the incident had taken place.

30. The SAU officers, including the SAU commander, were questioned "as citizens" (*u svojstvu građana radi prikupljana obavještenja*) and were informed that they were not obliged to answer any questions. They were questioned, *inter alia*, on how they had been dressed on the night in question and what helmets they had been wearing. They submitted, in substance, that they had only learnt of the incident involving the applicants later, mainly through the media. They had all been wearing masks and helmets and full gear, and the video footage was of poor quality, meaning it was impossible to recognise any of the officers. Many of them considered that members of other units could have also been there, especially since some of them had had "police" written on their backs, whereas they had had "SAU" written on their backs. They could not tell who had been driving the Hummer that night. In general, the evening had been chaotic; they had had several interventions and most of them had been getting back into vehicles randomly after interventions, without knowing who had been in the same vehicle. The SAU commander submitted that he could not remember any details of that night or recognise anybody in the video footage. He confirmed that he had been in the Hummer all night, but did not know who else had been in the vehicle, as the officers had changed positions during the night.

31. The head of the SC informed the SPO that he had no information to suggest that members of other intervening units had been deployed in relation to the events.

32. On 3 November 2017 the SPO issued its report. It indicated all of the above measures that had been taken and their results, and stated that one of the SAU officers had not been interviewed as he had been on a peace mission abroad. It also indicated that the Minister of the Interior and the Director of Police had been asked twice to identify the police officers involved, but to no avail. The report concluded that some police officers had undisputably committed the criminal offence in question, but on the basis of all the newly collected and earlier evidence it was impossible to identify them. The report also stated that the *Vijesti* journalists had not been interviewed earlier because the police officers had been wearing masks and had been unidentifiable. The SAU officers had not been interviewed earlier in the course of the proceedings as they had already been interviewed in the course of the proceedings relating to the ill-treatment of M.M. by SAU officers the same night in a different part of the city (see paragraphs 11 and 13 above and paragraph 38 below).

33. On 17 November 2017 the applicants obtained the SPO report following a request made by them on 6 November 2017.

34. On 19 January 2018 the applicants' representative inspected the Constitutional Court's case file, and several days later the second applicant did the same.

35. On 30 January 2018 the judge rapporteur of the Constitutional Court proposed that the court find that its decision in the applicants' case had not been enforced and request that the Government ensure enforcement. The proposal was refused the same day.

36. The investigation appears to still be ongoing.

C. Criminal proceedings against the SAU commander

37. Between 19 November 2015 and 31 May 2016 the SPO interviewed a number of people in relation to the SAU commander being suspected of abuse of official authority, including the SAU commander himself, the SAU deputy commander, the head of the SC, the SPU commander and an SPU officer. In substance, they maintained that they had not been aware of the use of force in the cases in question (see paragraph 11 and 13 above, and paragraph 38 below), and that all the officers involved had been wearing masks, meaning it had been impossible to recognise them. It was also apparent from their statements that the head of the SC in Podgorica had been in charge of security at the protests that night, and that both the SAU and the SPU had been subordinate to him. The second applicant was also interviewed and, in substance, repeated his earlier statement.

38. On 31 May 2016 the SPO issued an indictment against the SAU commander for aiding a perpetrator following the commission of a crime. The indictment indicated that he had knowingly helped to conceal the identity of the SAU officers who had committed torture and ill-treatment. Even though he had known that they had unlawfully used force and inflicted bodily injuries on the applicants and others, he had given false information about the circumstances of the commission of these criminal offences. He had also allowed fifty-four SAU officers to make a single joint report on the use of force against M.M., even though they should have each made a report, and had allowed them not to make reports on the use of force against the others, including the applicants.

39. On 23 January 2017 the Court of First Instance (*Osnovni sud*) in Podgorica found the SAU commander guilty of the said criminal offence and sentenced him to five months in prison. In its judgment, the court found that the SAU officers had unlawfully used force in three locations in Podgorica on 24 October 2015. This judgment became final on 11 May 2017.

40. The SAU commander started serving his prison sentence on 21 September 2017. Twenty days later he was transferred to a hospital. He was released on parole on 9 January 2018. The Court of First Instance, in its parole decision of 3 January 2018, made no reference to any medical documentation.

D. Proceedings relating to the ill-treatment of M.M.

41. In the course of the criminal proceedings relating to the ill-treatment of M.M. by SAU officers the same night in a different part of the city, the SPO questioned, among others, the SAU commander and SAU officer Lj.P. as witnesses. The SAU commander stated, *inter alia*, that owing to the masks he did not know which two officers had been with him in the vehicle. Lj.P. was questioned on 21 March 2018. He confirmed that he had been in charge of most of the SAU vehicles on the night in question, but that he had not driven any of them, as he had been securing the fire vehicles near Parliament. He submitted that the SAU did not keep records of who took vehicles and when. The keys were in the commanders' offices and the officers would take keys as needed.

42. On 25 July 2017 the Constitutional Court ruled on M.M.'s constitutional appeal. The court found a violation of both the substantive and procedural aspects of Article 3 of the Convention. In particular, it found that M.M. had been subjected to torture and had suffered serious bodily injuries, even though he had done nothing to provoke the use of force. The court held that the investigation had not been thorough, independent and prompt. In particular, "it was incomprehensible that the prosecution had sought the collection of data and evidence from the commander of the police unit, whose members were reasonably suspected of having committed the criminal offence".

43. As regards the questioning of SAU officers, the court held as follows:

> "The Constitutional Court considers that while it is true that the State prosecutor in charge had interviewed the appellant and the witnesses, he had not put a single question to any of them. Furthermore, even though later, in [another] case (Kt. Br. 1126/15), the prosecutor had interviewed all the SAU officers, even though it had been obvious, given the footage clearly showing the events of that night, that none of the police officers had been telling the truth to try to evade criminal responsibility, they had not been asked a single question. There is therefore no indication that the State prosecutor in charge had been ready to question the police report on the events or to perform strict control over the police's version of events."

E. Other relevant facts

44. In the first piece of video footage referred to by the applicants, which is of poor quality, there are more than ten police officers wearing helmets. Some also have helmet visors or gas masks covering their faces, and for some it is hard to tell if they have anything on their faces. Some of them approach the applicants, who are lying on the ground in front of a pharmacy. It is unclear which of them kicks which applicant. In the second piece of video footage, of somewhat better quality, there are about twenty police officers, including ten around a dark car. After a few moments they leave the scene. The bakery is not visible on either of the two videos.[1]

45. Between 25 October 2015 and 31 May 2016 newspapers reported extensively on the events of 24 October 2015, including those involving the applicants. In a number of articles, various NGO representatives expressed their concern at the ill-treatment and failure to identify the police officers involved, emphasising the role of SAU commander in shielding the perpetrators.

46. On 26 October 2015 the Council for Civic Control of the Police (*Savjet za građansku kontrolu rada policije*) found that the police officers involved had used excessive force and severely violated the personal dignity of the applicants, who had put up no resistance. The Council asked the Police Directorate to inform the public without delay of the identity of all the officers involved, and to hold them and their superior officer responsible for their actions.

47. On 28 December 2015 the Ombudsman found that several police officers had used unjustified physical force, and through inhuman and degrading treatment had violated the applicants' human rights. The Ombudsman recommended that the Police Directorate take measures without delay in order to identify and establish the responsibility of all the police officers who had ill-treated the applicants and to submit a report within fifteen days on the measures taken. According to information the applicants obtained from the Ombudsman in December 2016, the Police Directorate had not yet submitted a report at that time.

48. On 30 June 2016 the Ministry of the Interior temporarily suspended the SAU commander and removed him from his post. This decision became enforceable on 4 July 2016. On an unspecified date thereafter he was appointed deputy head of the Department for the Security of Buildings and Diplomatic/Consular Representations (*načelnik odsjeka za obezbjeđenje objekata i DKP-a*) within the Police Directorate.

49. It appears from the case file that the Police Internal Control Department was informed of the events. It also appears that it took no action in that regard.

50. On 27 September 2017 the applicants instituted civil proceedings against the State – the Ministry of the Interior, seeking compensation in respect of non-pecuniary damage for physical pain and mental anguish suffered as a result of the beating on 24 October 2015. They claimed 25,000 euros (EUR) each. On 14 June 2019 the Court of First Instance in Podgorica ruled partly in their favour and awarded them EUR 5,000 each for non-pecuniary damage and EUR 630 jointly in costs. On 13 March 2020 the High Court upheld this judgment. In particular, the courts found that the applicants had been subjected to excessive and unnecessary use of force, and had been physically ill-treated. This had caused a violation of their right

[1] Two video footages referred to by the applicants can be found on the following links: https://www.youtube.com/watch?v=DCeZNEfSdDw and https://www.youtube.com/watch?v=5lmbx7Lc3uo.

to personal dignity, freedom, honour and reputation, and had been contrary to Article 3 of the Convention. The courts also found that the applicants had not provoked the use of force.

51. On 17 November 2017 the Rules (*Pravilnik*) of the Ministry of the Interior entered into force, providing, *inter alia*, that police uniforms had to have a "sign" composed of letters and/or numbers serving to identify a police officer.

52. On 3 April 2019 the Director of Police adopted Instructions on Implementing the Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), which followed the CPT's visit to Montenegro in October 2017. The Instructions included the prohibition of torture, ill treatment and inhuman and degrading treatment, the obligation to report such cases, investigate them and initiate adequate proceedings against the perpetrators, and that police uniforms had to bear a sign with the name or ID number of the relevant officer.

53. On 27 June 2019 the Supreme State Prosecutor's Office adopted General Instructions to be applied in cases where there was a reasonable suspicion that Article 3 of the Convention had been violated by police officers. The Instructions provide that the allegations and/or indications of ill-treatment need to be recorded in writing, and that the prosecutor needs to engage a medical expert witness and take all measures and actions in order to investigate the matter thoroughly.

54. A report submitted by the Government, seemingly prepared by the police, but which contains no date, signature or logo, describes the events of 24 October 2015. It lists, *inter alia*, the names of people identified as having taken part in incidents and committed criminal offences. The names of the applicants are not amongst them. The report also states that there had been incidents committed against individuals, including the applicants. In this regard, it is noted that SAU members "inadequately treated" the applicants, that this was still at the stage of investigation by SC police officers and that the identity of the SAU members had not yet been established.

55. On an unspecified date the SAU was disbanded.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM - nos. 01/07 and 038/13)

56. Article 28 guarantees to every individual, *inter alia*, dignity and safety, the inviolability of his or her physical and psychological integrity, and prohibits torture and inhuman and degrading treatment.

57. Article 134 provides that the State prosecutor's office is an independent State body in charge of prosecuting perpetrators of crimes and other punishable offences subject to public prosecution.

B. Criminal Code (*Krivični zakonik Crne Gore*; published in the Official Gazette of the Republic of Montenegro - OG RM - nos. 070/03, 013/04 and 047/06, and OGM nos. 040/08, 025/10, 073/10, 032/11, 064/11, 040/13, 056/13, 014/15, 042/15, 058/15, 044/17, 049/18 and 003/20)

58. Article 166a provides that anyone who ill-treats another person or treats a person in a humiliating and degrading manner will be punished with imprisonment of up to one year. If this offence is committed by an official acting in an official capacity, he or she will be punished with imprisonment of between three months and three years.

59. Article 167 provides that anyone who causes severe pain or suffering for the purposes of intimidating, unlawfully punishing or exerting pressure on someone will be punished with imprisonment of between six months and five years. If this offence is committed by an official acting in an official capacity, or with the explicit or tacit consent of an official, or if an official incites another person to commit such an offence, he or she will be punished with imprisonment of between one and eight years.

60. Article 183 provides that the above offences are subject to public prosecution.

61. Article 387 § 2 provides that anyone who assists a perpetrator of a criminal offence for which imprisonment is more than five years will be sentenced to between three months and five years.

62. Article 416 provides that abuse of official authority is a criminal offence. In particular, an official who by unlawful use of his or her official position or powers, by overstepping his or her official powers or by non-performance of his or her official duties, gains some benefit for him or herself or another, causes harm or damage to another, will be sentenced to between six months and five years.

C. Criminal Procedure Code 2009 (*Zakonik o krivičnom postupku*; published in OGM nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15 and 028/18)

63. Article 19 provides that the State prosecutor is obliged to undertake criminal prosecution when there are grounds for suspicion that a person has committed a criminal offence subject to public prosecution, unless otherwise prescribed by this Code.

64. Article 44 sets out the rights and duties of the State prosecutor, the main one being the prosecution of perpetrators of criminal offences. For criminal offences subject to public prosecution, the State prosecutor is in charge of, *inter alia*, guiding the actions of the police by issuing mandatory

orders or directly managing their activities. The police, and other State bodies, are obliged to inform the relevant State prosecutor before taking any action, except in an emergency. The police, and other relevant State bodies, are obliged to comply with any requests of the relevant State prosecutor. He or she also, *inter alia*, orders and conducts investigations, issues and represents indictments, and files appeals against court decisions. During the investigation he or she is obliged to establish with equal attention facts against the defendant and those in his or her favour.

65. Article 113 provides that before being questioned, a witness will be warned that he or she must tell the truth and must not withhold any information. He or she will also be warned that making a false statement is a criminal offence.

66. Article 257 provides that if there is a reasonable suspicion that a criminal offence subject to public prosecution has been committed, the police must inform the State prosecutor and, either of its own motion or at the State prosecutor's request, take necessary measures to find the perpetrator, anything that could serve as evidence, and collect all information that could be useful for the criminal proceedings.

67. Article 259 sets out details on collection by the police of information from citizens about a criminal offence and the perpetrator. Paragraph 3 provides, *inter alia*, that if a person refuses to give information, he or she can no longer be held. Paragraph 7 provides that when acting in accordance with paragraphs 1 to 6 of this Article the police cannot question citizens as accused, witnesses or expert witnesses.

68. Article 261 provides that if in the course of collecting information the police consider that the summoned citizen could be a suspect, they must immediately inform the State prosecutor, who will ask the police to bring the suspect in if questioning is necessary before an investigation is ordered.

69. Article 271 § 3 provides, *inter alia*, that when the perpetrator is unknown, the State prosecutor collects the necessary information directly or through other bodies. To that end, the State prosecutor may summon persons whom he or she considers able to provide information relevant to the decision on prosecution. If he or she is unable to do so, the State prosecutor asks the police to collect the necessary information and takes other measures to find out about the criminal offence and the perpetrator, pursuant to Articles 257, 258 and 259 of this Code. Paragraph 5 of the same Article provides that the State prosecutor may always request the police to inform him or her of the measures taken. The police are obliged to respond without delay.

70. Article 276 provides that the State prosecutor conducts the investigation. At the request of the State prosecutor or the defendant, certain actions in the investigation can be taken by an investigating judge.

71. Article 282 provides that the injured party and his or her representative can attend, *inter alia*, the questioning of the defendant, expert

witnesses and witnesses. The State prosecutor must inform the injured party and his or her representative in an appropriate manner of the time and place of the questioning that they can attend. Persons attending questioning may propose to the State prosecutor certain questions in order to clarify the matter. With the consent of the State prosecutor, they may ask questions directly.

72. Article 283 provides that if the State prosecutor or the investigating judge needs the help of the police in relation to the investigation, the police must provide such help upon request.

D. State Prosecutor's Office Act (*Zakon o državnom tužilaštvu*; published in OGM nos. 011/15, 042/15, 080/17 and 010/18)

73. Section 2 provides, *inter alia*, that the State prosecutor's office is in charge of prosecuting perpetrators of criminal offences subject to public prosecution. It performs its function on the basis of the Constitution, legislation and ratified international treaties.

74. Section 148 provides that the State prosecutor may ask the courts and other State bodies to submit files and information necessary for him or her to perform his duties, and the courts and other State bodies must comply with that request.

E. Civil Servants and State Employees Act (*Zakon o državnim službenicima i namještenicima*; published in OGM nos. 039/11, 050/11, 066/12, 034/14, 053/14, and 016/16)

75. This Act was in force between 1 January 2013 and 1 July 2018.

76. Section 81 provided that a civil servant or State employee was liable to disciplinary action for breach of official duty in employment, which could be minor or serious. Liability for a criminal or administrative offence did not exclude disciplinary liability.

77. Section 83 set out serious breaches of official duty, which included abuse of official authority or exceeding powers, and non-performance of official duties.

F. Execution of Prison Sentences Act (*Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti*; published in OGM no. 36/15, and 018/19)

78. This Act entered into force on 18 July 2015.

79. Section 47 sets out details as regards prisoners' healthcare. In particular, such healthcare is primarily provided in the prison or, when this is not possible, in a healthcare facility. The time spent in the healthcare facility is taken as time served.

80. Sections 120 to 127 set out details as regards parole. In particular, section 121 provides that the court ruling on parole obtains a report from the prison on the prisoner's personality and conduct, and other circumstances indicating if the purpose of the punishment has been achieved.

G. Internal Affairs Act (*Zakon o unutrašnjim poslovima*; published in OGM nos. 044/12, 036/13, 001/15 and 087/18)

81. Section 14 provides that police officers act in compliance with the Constitution, ratified international treaties, legislation and other regulations. They adhere to certain standards, especially those originating from international acts and relating to, *inter alia*, the exercise of human rights and the prohibition of torture and inhuman and degrading treatment.

82. Section 24 provides that a police officer follows orders of the court, the State prosecutor or his or her superior officer, or may act on his or her own initiative if the superior officer is not present and reasons of urgency require action without delay. The person in respect of whom action is being taken is entitled, *inter alia*, to be informed of the reasons and the identity of the police officer, and to indicate the circumstances he or she considers relevant in this regard.

83. Section 26 provides that police action must be proportionate to the reason for which it is taken. It must not cause more damage than that which would have occurred if no police action had been taken.

84. Section 29 provides that a police officer is obliged to introduce himself before acting, by showing his official badge and official ID, at the request of the person in respect of whom action is being taken. The police officer does not have to introduce him or herself if the circumstances indicate that doing so could jeopardise the aim of his or her action. In such cases, the police officer will warn the citizen by saying "police".

85. Section 59 provides that a police officer must submit a written report on the use of force to his or her superior officer as soon as possible, and within twenty-four hours at the latest. The report contains information on the means of force, the name and personal ID number of the person in respect of whom it has been used, the reasons and grounds for the use of force, and other facts and circumstances relevant for assessing its lawfulness. The lawfulness of the use of force is examined by the Director of Police or a person designated by him or her. If it is considered that force was unlawfully used, measures will be taken within five days of learning of the use of force to establish the responsibility of the police officer who used force or ordered its use. The police officer who used or ordered the use of force is personally responsible for its unlawful use.

86. Sections 110, 112, 114 and 115, taken together, provide that police work is controlled by means of parliamentary, civic and internal control. Civic control is performed by the Council for Civic Control of the Police,

and internal control is performed by a special department of the Ministry. Internal control includes the control of the lawfulness of police actions, especially in respect of their compliance with human rights.

H. Decree on the Organisation and Working Methods of the State Administration (*Uredba o organizaciji i načinu rada državne uprave*; published in OGM nos. 005/12, 025/12, 044/12, 061/12, 020/13, 017/14, 006/15, 080/15, 035/16, 041/16, 061/16, 073/16, 003/17, 019/17, 068/17, 087/17 and 028/18)

87. This Decree was in force between 24 January 2012 and 31 December 2018.

88. Sections 5 and 51, taken together, provided that the Ministry of the Interior was in charge of, *inter alia*, monitoring and the internal control of police work and procedures, expertise, lawfulness and efficiency and expediency in performance.

89. Sections 6 and 63, taken together, provided that the Police Directorate was an administrative body within the Ministry of the Interior. It was in charge of preventing and detecting criminal offences, identifying and capturing perpetrators, and bringing them before the competent bodies.

I. Decree on the Organisation and Working Methods of the State Administration (*Uredba o organizaciji i načinu rada državne uprave*; published in OGM nos. 087/18, 002/19, 038/19 and 018/20)

90. This Decree entered into force on 31 December 2018. It provides that the State administration consists of Ministries and various administrative bodies, including the Ministry of the Interior and the Police Directorate.

91. Section 4 provides that the Ministry of the Interior, *inter alia*, monitors the lawfulness and expediency of police work, its procedures, expertise and efficiency; performs internal control of the lawfulness of police action; and takes measures and actions in order to uncover and suppress criminal offences committed by police officers in the performance of their duties and in relation thereto.

92. Section 22 provides that the Police Directorate is in charge of preventing and detecting criminal offences, identifying and capturing perpetrators, and bringing them before the competent bodies.

93. Section 51 of this Decree replicates section 51 of the previous Decree.

J. Rules of Internal Organisation and Job Systematisation in the Ministry of the Interior (*Pravilnik o unutrašnjoj organizaciji i sistematizaciji Ministarstva unutrašnjih poslova*)

94. The Rules from September 2015 and January 2017 provided, *inter alia*, that the Police Directorate consisted of a number of units, including the SAU, SPU, Security Centres and the Forensic Centre (section 3 in both the 2015 Rules and 2017 Rules).

K. Rules on the Performance of Police Duties (*Pravilnik o načinu obavljanja određenih policijskih poslova i primjeni ovlašćenja u obavljanju tih poslova*; published in OGM no. 021/14)

95. Sections 5 and 6 of the Rules provide that when performing their duties, police officers must act carefully, making sure that they do not violate the dignity of people. They can only implement measures that allow them to ensure that their job is done with the least harmful consequences.

96. Section 218 provides that a police officer who has used force or ordered its use must immediately inform his or her superior officer and within twenty-four hours at the latest must submit a written report in that regard specifying all the details (place, date and time, type of force, the identity of the person against whom it was used, the reasons, circumstances, consequences and legal grounds for its use, the identity of the police officer who has used it or ordered its use and other circumstances necessary for the examination of its lawfulness and necessity).

L. Rules of Internal Organisation and Job Systematisation in the Police Directorate, April 2019 (*Pravilnik o unutrašnjoj organizaciji i sistematizaciji Uprave Policije, april 2019*)

97. The Rules describe, *inter alia*, the position of deputy head of the Department for the Security of Buildings and Diplomatic/Consular Representations. Specifically, in the absence of the head of the Department the deputy head directs and coordinates the work of the Department, decides on the most complex professional issues of organisational units within the Department, exercises police powers, and performs other police tasks at the order of his or her superior officer.

II. RELEVANT INTERNATIONAL MATERIAL – THE CPT REPORT OF 2008 IN RESPECT OF MONTENEGRO

98. Between 15 and 22 September 2008 the CPT visited Montenegro. In its report the CPT acknowledged that the wearing of masks may be justified as regards special interventions undertaken outside a custodial setting in the context of an "antiterrorist" operation. However, subsequent identification

of the individual officials concerned should in all cases be made possible (for instance, through the wearing of a distinctive sign/identification number on the uniform). The CPT recommended that the Montenegrin authorities take the necessary measures in the light of these remarks and stated that, if need be, the relevant legal provisions should be amended (see paragraph 27 of the CPT report).

THE LAW

I. JOINDER OF THE APPLICATIONS

99. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Scope of the case

100. In their initial applications, the applicants complained, under Article 3 of the Convention, of ill-treatment by unidentified SAU officers on 24 October 2015, and specifically the alleged lack of an effective investigation in that regard.

101. Following the communication of the cases to the respondent Government, the applicants acknowledged that they had obtained an award of damages on account of the ill-treatment, albeit not yet final at that time. They also acknowledged that both the first-instance court ruling in the civil proceedings and the Constitutional Court had found a violation of the substantive aspect of Article 3, but that there had still been no effective investigation even after the Constitutional Court decision of 21 June 2007 in which the latter had also found a violation of the procedural aspect of Article 3. The applicants thus maintained their complaint of lack of an effective investigation.

102. In view of the domestic courts' finding of a violation of the substantive aspect of Article 3, the compensation obtained in that regard in the civil proceedings, and, in particular, the applicants' focus on the continuing ineffective nature of the investigation under the procedural aspect of Article 3, the Court considers that it is no longer justified to continue the examination of the applicants' initial complaint under the substantive aspect of Article 3, within the meaning of Article 37 § 1 (c) of the Convention. It also considers that no other element regarding respect for human rights as guaranteed by the Convention requires that the said complaint be examined further under Article 37 § 1 *in fine*. Accordingly, it is appropriate to strike the complaint in question out of the Court's list, the Court enjoying a wide discretion in identifying grounds capable of being

relied upon in striking out an application on this basis. It is understood, however, that such grounds must reside in the particular circumstances of each case (see *Association SOS Attentats and de Boery v. France* [GC] (dec.), no. 76642/01, ECHR 2006-XIV, and *Predescu v. Romania*, no. 21447/03, § 29 *in fine*, 2 December 2008). The Court will therefore limit its examination to the procedural aspect of Article 3.

103. The relevant provision of the Convention reads as follows:

Article 3

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

B. Admissibility

1. The parties' submissions

104. The Government submitted that the applications were inadmissible as the applicants had lost their victim status. Notably, the Constitutional Court had explicitly found a violation of both the substantive and procedural aspects of Article 3, and the applicants had been awarded EUR 5,000 each in civil proceedings, which was an adequate amount. They also submitted that the applicants had failed to inform the Court of these civil proceedings even though they had been initiated before the application had been lodged with the Court, and that incomplete submissions could be considered abuse of the right of application.

105. The applicants submitted that they could still claim to be the victims of a violation of Article 3 in view of the ineffective investigation as the civil proceedings, which were still ongoing at the moment when the applicants submitted their observations in reply, had only related to the substantive aspect of Article 3.

2. The Court's assessment

(a) The applicants' victim status

106. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. Hence, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings before the Court (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V, and *Rooman v. Belgium* [GC], no. 18052/11, §§ 128-133, 31 January 2019). The issue of whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 82, ECHR 2012).

107. The word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission at issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim". With respect to complaints under Article 3, such as those at issue in the present case, in addition to acknowledging the violation, the national authorities have to: (i) afford compensation, or at least provide the person with the possibility of applying for and obtaining compensation for the damage sustained as a result of the ill-treatment in question (see *Shestopalov v. Russia*, no. 46248/07, § 56, 28 March 2017, and *Gjini v. Serbia*, no. 1128/16, § 54, 15 January 2019); and (ii) conduct a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Jevtović v. Serbia*, no. 29896/14, § 61, 3 December 2019).

108. A breach of Article 3 cannot therefore be remedied only by an award of compensation to the victim because if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity. The general legal prohibition on torture and inhuman and degrading treatment, despite its fundamental importance, would thus be ineffective in practice (see *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008, and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 116 and 119, ECHR 2010). That is why awarding compensation to an applicant for the damage which he or she sustained as a result of the ill-treatment is only part of the overall action required (see *Cestaro v. Italy*, no. 6884/11, § 231, 7 April 2015). The fact that domestic authorities may not have carried out an effective investigation would, however, be decisive for the purposes of the assessment of an applicant's victim status (ibid., § 229, see also *Shestopalov*, cited above, § 56).

109. In view of the above, the Court considers that the question of whether the applicants have preserved their victim status is closely linked to the substance of their complaint about the State's alleged failure to conduct a thorough and effective investigation, and should therefore be joined to the merits of the complaint under the procedural aspect of Article 3 (see *Lotarev v. Ukraine*, no. 29447/04, § 74, 8 April 2010).

(b) Abuse of the right of application

110. The Court has consistently held that any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it

constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009). The submission of incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and *Predescu*, cited above, §§ 25-26). The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Gross*, cited above, § 28). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (ibid., § 28; see also *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, § 42, 7 July 2020). The rejection of an application on grounds of abuse of the right of application is an exceptional measure (see *Miroļubovs and Others*, cited above, § 62) and has so far been applied only in a limited number of cases.

111. Turning to the present case, the Court notes that the applicants did not inform the Court in their applications that they had instituted civil proceedings seeking compensation in respect of non-pecuniary damage. The Court also observes, however, that in their observations in reply to those of the Government, they acknowledged that they had obtained an award of damages on account of the ill-treatment, albeit not yet final at the time, and, moreover, focussed on their complaint concerning the continuing ineffective investigation. It also observes that the civil proceedings only related to the ill-treatment itself and that the Court considers that it is no longer justified to continue the examination of this part of the initial application (see paragraphs 101, 102 and 105 above). Even if the applicants had informed the Court at the outset about the civil proceedings which were ongoing at the time, the Court would still have to proceed and examine if there was an effective investigation in the present case, which is the applicants' main complaint. In view of all above, the Court considers that the circumstances of the present case are not those that would justify a decision to declare the applications inadmissible as an abuse of the right of application (see, *mutatis mutandis*, *Dimo Dimov and Others*, cited above, §§ 48-50).

112. It follows that the Government's objection must be dismissed.

(c) The Court's conclusion

113. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The applicants

114. The applicants reaffirmed their complaint.

115. In particular, they maintained that the investigative steps taken by the SPO had been independent, but had not been either prompt or thorough. The first witness had not been interviewed until a month and a half after the Constitutional Courts' decisions. Police officer Lj.P., who had been in charge of the official vehicles on the night in question, had been questioned two and a half years after the incident (see paragraph 41 above), and the SPO had not verified his whereabouts with an independent source. A few witnesses had still not been questioned, such as one SAU officer who had been due to return from a peace mission on 15 May 2018, the head of the SC in Podgorica, and the owner of the bakery. The owner of the bakery had been of particular importance as the video footage had shown someone entering the shop at the time of the incident. The information provided by the police had not been critically examined and verified, in particular the fact that the radio communications recording system had not been functioning and that the camera in the bakery had been out of order. No attempt had been made to identify the participants in the radio communications that night and question them.

116. The questioning of the fifty-four SAU officers had been routine, the questions put to them having been rather typical, such as how they had been dressed and if they had had black or white helmets. Unlike the editor-in-chief of *Vijesti* and the pharmacy owner, they had been questioned as citizens and advised that they did not have to provide any information. While they had been questioned as witnesses in other criminal proceedings, the Constitutional Court had found that they had not been asked a single question in those interviews (see paragraph 43 above).

117. The investigation had not followed up on two leads provided by the editor-in-chief of *Vijesti*: that one of the SAU members had not had a helmet, and that in the immediate vicinity of the incident involving the applicants another incident had been taking place (see paragraph 28 above). It did not appear that any attempt had been made to identify the officer without the helmet or the person in the car. In particular, there was no evidence that the State prosecutor had asked the SAU officers if any of them had not been wearing a helmet at any point during the evening. The SPO had not sought the assistance of a Forensic Centre in identifying the police officers appearing in the video footage. The Government's rejection of such a proposition reflected the authorities' overall lack of interest in identifying and prosecuting those responsible.

118. Even after the Constitutional Court's findings the SPO had continued to expect the Police Directorate to identify the perpetrators, which had been unwilling to do so, and internal control had never taken place.

119. The SAU commander had only been prosecuted because of constant public pressure (see paragraph 45 above) and the video footage, but his prosecution had never been intended to cause him any significant disadvantage. He had been prosecuted for a minor criminal offence, rather than any other, such as abuse of official authority, ill-treatment in the performance of his duties by aiding or abetting, or torture. He had only served two-thirds of his sentence, mostly in hospital. He had been released on parole on account of his health, but there was no record that the court had reviewed his medical documentation before granting him parole. He had never been subjected to disciplinary proceedings, even though his actions had amounted to an aggravated breach of official duty. Lastly, he had been appointed deputy head of the Department for the Security of Buildings and Diplomatic/Consular Representations, where he could still make decisions on complex professional issues and coordinate the work of the Department in the absence of its head.

120. The applicants could not effectively participate in the investigation. In particular, they had not been invited to attend the hearings of the witnesses – the pharmacy owner and the editor-in-chief of *Vijesti*, so that they could put questions to them. They had also only obtained the SPO's report at their own request.

121. The Montenegrin authorities had not ensured that the police officers wearing masks had also had a distinctive sign on their uniforms, in spite of the CPT recommendation to that effect (see paragraph 98 above) and the new Rules regarding the uniforms. The Instructions adopted by the Supreme State Prosecutor's Office had not led to the identification of perpetrators either.

122. The applicants also submitted that the authorities had not promptly taken certain measures involving an Ombudsman adviser and aimed at identifying one of the persons involved in the ill-treatment of M.M.

(b) The Government

123. The Government did not dispute that the applicants had been ill-treated by about ten unknown police officers and had thus suffered minor bodily injuries. As the Constitutional Court had already found a violation of Article 3, the Government maintained that they would not go into details as regards the investigation preceding the Constitutional Court's decisions.

124. They submitted that the SPO, which had conducted the investigation, was institutionally and functionally independent from the police. The SPO's request to the Police Directorate to identify the perpetrators had only been one of its steps, given that it had also taken other measures, in full compliance with the instructions of the Constitutional

Court. In addition, the SC in Podgorica, which had taken some of the investigative steps, was an entirely separate division within the Police Directorate.

125. The investigation had been impeded by the fact that all the police officers had been wearing masks, and that only one joint report had been made on the conflicts between the police and protesters that night. This might have legitimately aroused public confidence, and precisely to preserve it, the SAU commander had been prosecuted without delay, proving the SPO's independence. The SAU commander had been convicted and sentenced to five months in prison, which had corresponded to the seriousness of his criminal offence and which he had served. Under domestic law (see paragraph 79 above) and the Convention, prisoners were entitled to healthcare while serving their sentences, including, where appropriate, in hospital. In the present case, the SAU commander had been transferred to hospital following an assessment by the prison's medical team. His medical files had not been of relevance for his parole, but rather his conduct and other circumstances indicating whether the purpose of the punishment had been achieved (see paragraph 80 above). He had never been returned to any commanding position within the Police Directorate, and the SAU had been disbanded.

126. The SAU commander, the SAU officers, the head of the SC, the SPU commander and Lj.P. had all been questioned in the course of other proceedings (see paragraphs 37, 41, and 43 above). In particular, the SAU commander had been questioned as a witness in the criminal proceedings relating to M.M., including about who had been with him in the vehicle on the night in question (see paragraph 41 above). Raising this question again was thus of no relevance in the examination of the SPO's actions in this case. Furthermore, the applicants had not indicated any other omission in the SPO's questioning or what questions would have been adequate to identify the perpetrators. The remaining SAU officer who had not been questioned was on a peace mission abroad and would be questioned upon his return.

127. While the applicants maintained that the authorities had not followed up on information that one of the police officers had not had a helmet, they had nevertheless criticised the questions put to them even when the questions had referred to the helmets they had had and how they had been dressed that night. The applicants and the witness from *Vijesti* had explicitly submitted that they could not recognise anyone. It was therefore unclear what the State prosecutor should have done to satisfy the applicants. The Government doubted that a forensic analysis of the video footage would have led to the identification of the perpetrators, given its quality, assuming that that had been possible at all. Other police officers, apparently not from the SAU, had also been there, thus making the number of potential suspects rather large. In any event, these allegations did not indicate any

failures in the conduct of the investigation, especially if the proposal for the evidence was based on unrealistic assumptions. The State prosecutor could not be expected to take measures which, from an objective point of view, would not lead to additional clarification of the circumstances of the case.

128. The fact that the first measure after the Constitutional Court's decisions had been taken a month and a half later was not of any particular relevance, particularly considering that almost two years had passed since the events. The requirement for the investigation to be accessible did not require the applicants to have an insight into all police files or to be consulted or informed of every measure taken.

129. In addition to all of the above, general measures aimed at reinforcing the integrity of the police and preventing similar cases in the future had been also employed (see paragraphs 51-53 above).

130. The fact that the investigation had not yet managed to identify the perpetrators did not necessarily mean that it had been ineffective. Assessing its effectiveness at this stage would be premature, given that it was still ongoing. The State bodies, particularly the SPO, could not be blamed for any bad faith, lack of will or wilful stalling. The Government concluded, therefore, that there had been no violation of Article 3 of the Convention.

2. The Court's assessment

(a) The alleged ineffective investigation

(i) The relevant principles

131. The Court reiterates that where a person makes a credible assertion that he or she has suffered treatment contrary to Article 3 at the hands of State agents, that provision, read in conjunction with the States' 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 (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; and *Bouyid v. Belgium* [GC], no. 23380/09, § 124, ECHR 2015).

132. The lack of conclusions arising from any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of results, but of means". Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events. However, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 322, ECHR 2014 (extracts); *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012; and

Bouyid, cited above, § 120). There are several criteria an investigation has to satisfy for the purposes of the procedural obligation under Articles 2 and 3 of the Convention (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 323-346, ECHR 2007-II). These elements are inter-related and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the requirements for a fair trial under Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues must be assessed (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019).

133. Firstly, an effective investigation is one which is adequate, that is, it should be capable of leading to the identification and, if appropriate, punishment of those responsible (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 233 and 243, 30 March 2016; *Labita*, cited above, § 131; *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006; and *Stanimirović v. Serbia*, no. 26088/06, § 40, 18 October 2011). 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 (see *Labita*, cited above, § 131).

134. Secondly, for an investigation to be considered effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Mustafa Tunç and Fecire Tunç*, cited above, §§ 222-224; *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004; and *Kurnaz and Others v. Turkey*, no. 36672/97, § 56, 24 July 2007). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, among other authorities, *Mocanu and Others*, cited above, § 320; *Ramsahai and Others*, cited above, § 325; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII; see also *Ergi v. Turkey*, 28 July 1998, §§ 83 and 84, *Reports* 1998-IV, where the public prosecutor's investigation showed a lack of independence through his heavy reliance on information provided by the gendarmes implicated in the incident).

135. Thirdly, the investigation has to be thorough, which 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 (see *Mocanu and Others*, § 325, and *El-Masri*, § 183, both cited above).

136. Fourthly, a requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which

prevent progress in an investigation in a particular situation, 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 (see *Bouyid*, cited above, § 121). This obligation to react promptly means action should be taken 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 there has been ill-treatment (see *Stanimirović*, cited above, § 39).

137. Fifthly, an effective investigation is one which affords a sufficient element of public scrutiny to secure accountability. While the degree of public scrutiny may vary, the complainant must be afforded effective access to the investigatory procedure at all stages (see, for example, *Mocanu and Others*, cited above, § 324; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 137, ECHR 2004-IV (extracts); and *Gjini*, cited above, § 95, and the authorities cited therein).

(ii) Application of those principles

138. The Court firstly notes that there is no dispute between the parties that the applicants were ill-treated on the night in question. Their allegations were confirmed by video footage, and their ill-treatment established by the Council for Civic Control of the Police, the Ombudsman, the Constitutional Court and the civil courts, and acknowledged by the Government. They were credible and as such required an effective official investigation.

139. The Court notes that the investigation conducted in the present case resulted in clarifying some of the facts, in particular that the applicants had been indeed ill-treated by police officers and the injuries they had sustained thereby. It also resulted in the prosecution and conviction of the SAU commander for aiding a perpetrator following the commission of a crime (see paragraphs 18, and 38-39 above).

140. It is true that the State duty under Article 3 to conduct an effective investigation is not an obligation of result but one of means (see *Bouyid*, cited above, § 120). It cannot be excluded that, in circumstances where the national authorities had credible indications that the applicant might have been ill-treated by several police officers and, after a thorough investigation, succeeded in identifying and sanctioning some of them, the Court would accept that the State had discharged its above mentioned procedural duty. At all events, however, the Court must be persuaded that the fact that only some of the relevant facts were established and only some of those responsible were sanctioned was not the result of clearly deficient and ineffective investigation imputable to the authorities. It must therefore examine this issue in the present case.

141. In view of the Constitutional Court's findings that the investigation prior to that court's decisions had not met the Article 3 requirements, the Court will examine the investigation which took place after these decisions had been published in August 2017 (see paragraph 25 *in fine* above). In doing so, the Court will have regard to the Constitutional Court's factual findings which led it to its conclusion.

142. The Court notes that the investigation into the applicants' ill-treatment was and apparently still is being carried out by the State prosecutor's office, which is institutionally and hierarchically totally independent from the Police Directorate and the Ministry of the Interior (see paragraph 57 above). The State prosecutor took a number of investigative steps. In particular, in the months following the incident she had interviewed the applicants, obtained the medical reports, medical expert report, inspected the available video footage, and established the position of the SAU vehicles involved (see paragraphs 7, 12, 14, and 18 above). She had not, however, interviewed any of the SAU officers engaged on the night of the incident, other witnesses and potential witnesses, as the Constitutional Court rightly observed (see paragraph 23 above). The State prosecutor took these measures only between September and November 2017, after the Constitutional Court decisions had been published, that is two years after the incident (see paragraph 26 above). In other words, even though the State prosecutor eventually pursued most of the lines of enquiry and most of the traceable witnesses were interviewed, this was not done promptly, promptness being one of the elements of an effective investigation.

143. Furthermore, the State prosecutor did not pursue all lines of enquiry. Notably, as the applicants pointed out, not everybody was questioned – one SAU member, the owner of the nearby bakery and, potentially, the customer who was at the bakery at the time. While the Court acknowledges that the remaining SAU member was on a peace mission from at least 3 November 2017 (see paragraph 32 above) it finds it highly unlikely that he has not returned to the respondent State at all since then and that it has been altogether impossible to question him. The owner of the nearby bakery (see paragraphs 15 and 115 above) has not been interviewed either, not only to verify whether the camera at the bakery was functioning at the time, but also to find out whether he had seen or perhaps heard something that could have helped identify any of those involved or at least present, including whether there were any customers at the shop at the time, who could also have been questioned. It has also never been clarified if there were only SAU members on the scene that night (see paragraphs 29-31 above). The Forensic Centre does not appear to have been contacted either. While it is certainly possible that none of these lines of enquiry would have shed any additional light on the incident in question either, the Court does not consider that this sufficiently justifies not having pursued

them, especially in a situation where other collected evidence did not ensure the identification of the perpetrators. The Court notes the parties' submissions relating to the Ombudsman's adviser and the ill-treatment of M.M., but finds them irrelevant in the present case.

144. Moreover, as the collected evidence did not ensure the identification of the perpetrators, the State prosecutor depended heavily on the police in that regard. More specifically, the SPO requested the assistance of the Security Centre and the Police Directorate. It should be noted in this regard that on the night in question the SAU was under the command of the head of the very same Security Centre (see paragraph 37 *in fine* above). In addition, both the Security Centre and the SAU were parts of the same Police Directorate. In other words, those whose assistance was requested were subject to the same chain of command as the officers under investigation and thus lacked independence (see *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, 4 May 2001; and *Ramsahai and Others*, cited above, § 335), as the Constitutional Court rightly observed. This conclusion must in no way be interpreted as preventing police officers from performing any tasks in investigations into the use of force by other police officers (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 322, ECHR 2011 (extracts)), but if the police participate in such investigations, sufficient safeguards should be introduced in order to satisfy the requirement of independence (see *Hugh Jordan*, § 120, and *Ramsahai and Others*, §§ 342-46, both cited above). In the present case, there were no such safeguards.

145. It is also noted that the applicants were given the State prosecutor's report of November 2017 shortly after they had asked for it, and could consult the case file at the Constitutional Court (see paragraphs 33 and 34 above). It is also observed, however, that under national law the applicants, as injured parties, and their representative, can attend the questioning of, *inter alia*, witnesses so that they can propose questions or even put them directly (see paragraph 71 above). In order to be able to exercise that right they need to be informed of the place and time of the questioning, which does not appear to have been the case here, given that the Government have not contested the applicants' submissions in that regard.

146. The Court also notes the Government's submission that the applicants' complaint was premature as the investigation was still ongoing. There is, however, nothing in the case file as to what investigative measures, if any, have been taken after 3 November 2017 (see paragraph 32 above). Therefore, it cannot be said that the complaint is premature.

147. The Court acknowledges that there were a number of incidents and clashes that same evening, including attacks against the police, and that security considerations required police interventions. The Court has already held, however, that the procedural obligation under Articles 2 and 3 continues to apply in difficult security conditions. Even where the events

leading to the duty to investigate occur in a context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Articles 2 and 3 entail that all reasonable steps must be taken to ensure that an effective and independent investigation is conducted (see *Mocanu and Others*, cited above, § 319, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 164, ECHR 2011).

148. The essential purpose of an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and prohibiting torture and inhuman or degrading treatment and punishment in cases involving State agents or bodies, and to ensure their accountability for deaths and ill-treatment occurring under their responsibility (see *Nachova and Others*, cited above, § 110; see also *Mocanu and Others*, § 318, and *Bouyid*, § 117, both cited above). An obligation to investigate, as indicated above, is not an obligation of results, but of means. However, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see paragraph 132 above).

149. In view of the above, the Court considers that the investigation in the present case, conducted both by the prosecutor and the police, was not prompt, thorough, independent, and did not afford sufficient public scrutiny. It had deficiencies, as indicated above, which undermined its ability to identify the persons responsible, and insufficient efforts were made, following the Constitutional Court's decision, to remedy those deficiencies or comply with the Constitutional Court's instructions. In these circumstances, the fact that the facts concerning the actions of the SAU commander were established and that he was sanctioned cannot lead to the conclusion that the respondent State discharged their procedural duty under Article 3 to conduct an effective investigation.

(b) The applicants' victim status

150. The relevant principles as regards the victim status in the context of Article 3 complaints are set out in paragraphs 107-108 above and the authorities cited therein. In particular, a breach of Article 3 cannot be remedied only by an award of compensation to the victim, that being only part of the overall action required (see *Cestaro*, cited above, § 231). The fact that domestic authorities may not have carried out an effective investigation is, however, decisive for the purposes of the assessment of an applicant's victim status (ibid. § 229, see also *Shestopalov*, cited above, § 56).

151. The Court observes in the present case that the SAU commander was prosecuted and convicted for aiding a perpetrator after a commission of a crime, and that the domestic courts awarded the applicants EUR 5,000 each for non-pecuniary damage. Regardless of whether the amount awarded

was appropriate or not, the Court's finding above regarding the continuing ineffectiveness of the investigation even after the Constitutional Court's ruling (see paragraph 149 above), leads it to conclude that the applicants have not lost their victim status.

(c) The Court's conclusion on the complaint under Article 3

152. The Court therefore concludes that the applicants have retained their victim status and dismisses the Government's preliminary objection on that point (see *Jevtović*, cited above, § 63). It also holds that there has been a violation of the procedural aspect of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

153. The applicants complained that they had had no effective remedy for their complaint. They relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

154. The Government made no comment as regards Article 13 in respect of the period after the decisions of the Constitutional Court.

155. The applicants reaffirmed their complaint, namely that the constitutional appeal had not ensured an effective investigation into their ill-treatment.

B. The Court's assessment

156. Having regard to its finding above that there has been a violation of the procedural aspect of Article 3, the Court considers that the applicants' complaint under that provision was "arguable" for the purposes of Article 13. It follows that Article 13 was applicable. Given its rejecting the Government's objections concerning alleged abuse and loss of victim status and finding a violation of the procedural aspect of Article 3, the Court considers that the applicants' complaint under Article 13 taken in conjunction with Article 3 is not manifestly ill-founded and must be declared admissible.

157. In view of its finding of a violation of the procedural aspect of Article 3 the Court considers that the closely related complaint under Article 13 need not be examined separately on its merits (see *Shestopalov*, cited above, § 71).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

159. The applicants claimed compensation in respect of non-pecuniary damage resulting from the ineffective investigation, the amount of which they left to the Court's discretion.

160. The Government contested the applicants' claim as ill-founded, especially given that they had been awarded compensation by the domestic courts.

161. The Court awards the applicants EUR 7,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

162. The applicants did not claim any costs and expenses.

163. The Court therefore makes no award in this regard.

C. Default interest

164. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to strike the complaint concerning the substantive aspect of Article 3 of the Convention out of its list of cases;

3. *Decides* to join to the merits of the complaint concerning the procedural aspect of Article 3 the Government's objection as to the applicants' victim status and dismisses it after having examined the merits of that complaint;

4. *Declares* the remainder of the applications admissible;

5. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

6. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 11 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Registrar

Síofra O'Leary
President