PRAKSA EVROPSKOG SUDA ZA LJUDSKA PRAVA U ODNOSU NA CRNU GORU DO KRAJA 2016.

THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS WITH RESPECT TO MONTENEGRO UP UNTIL THE END OF 2016

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Pripremio AIRE Centar u saradnji sa Kancelarijom zastupnika Crne Gore pred Evropskim sudom za ljudska prava

Prepared by the AIRE Centre in cooperation with the office of the Government Agent of Montenegro before the European Court for Human Rights

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PRAKSA EVROPSKOG SUDA ZA LJUDSKA PRAVA U ODNOSU NA CRNU GORU DO KRAJA 2016.

Crna Gora

Crna Gora: predmeti pred Evropskim sudom za ljudska prava

U ovom se dokumentu navode presude i izabrane odluke koje je u odnosu na Crnu Goru donio Evropski sud za ljudska prava (u daljem tekstu: Sud). Crna Gora ratifikovala je Evropsku konvenciju o ljudskim pravima i osnovnim slobodama (u daljem tekstu: Konvencija) 6. juna 2006. godine, tri dana nakon što je postala nezavisna država. Ona se, međutim, smatra odgovornom za ispunjavanje obaveza po Konvenciji od datuma ratifikacije Konvencije od strane bivše Državne Zajednice Srbije i Crne Gore 3. marta 2004. godine. Na dan 31. decembar 2016. godine Sud je u odnosu na Crnu Goru donio 24 presude i 34 odluke o prihvatljivosti.[1]

Ovaj dokument sastoji se iz dva dijela. Prvi dio sadrži narativni pregled vrsta predmeta u kojima su donesene presude. U drugom je dijelu tabela, raščlanjena po članovima, u kojoj se navode izrečene presude, sa kratkim opisom pravnih pitanja o kojima je bilo riječi u svakom od predmeta. Neki predmeti su navedeni više puta u okviru istog člana ukoliko je Sud utvrdio da je bilo i da nije bilo povrede tog člana.

S obzirom na sve jaču potrebu za prevođenjem sudske prakse Suda kako bi se ona približila domaćem pravosuđu, izvršnoj grani vlasti i ostalim relevantnim institucijama država na Zapadnom Balkanu, ovaj dokument preveden je na službeni jezik Crne Gore.

Član 3

Tri presude donesene su u odnosu na član 3 – zabrana torture. Presuda u predmetu *Bulatović* odnosi se na uslove i dužinu pritvora podnosioca predstavke.[2] Povreda je utvrđena na osnovu skučenosti prostora, ograničenog pristupa dnevnoj svjetlosti, vodi i fizičkoj aktivnosti, kao i zbog loše hrane. Sud nije utvrdio da je došlo do povrede člana 3 Konvencije zbog nepostojanja medicinske njege u pritvoru. U predmetu *Milić i Nikezić* utvrđene su povrede kako materijalnog, tako i procesnog aspekta člana 3.[3] Što se tiče materijalnog aspekta, Sud je našao da, kada su određena dešavanja u cjelini ili velikim dijelom isključivo u saznanju vlasti, kao što je slučaj sa licima lišenim slobode kao u ovom predmetu, tada se javlja jaka pretpostavka vezana za povrede do kojih je došlo tokom takvog lišenja slobode. Vlasti treba da ponude zadovoljavajuće i uvjerljivo obrazloženje svake povrede. U ovom predmetu bilo je dokaza pretjerane upotrebe sile. Nadalje, s obzirom na tu silu i dokaze da su službenici obezbjeđenja u zatvoru zloupotrijebili svoj položaj i prekoračili svoja ovlašćenja, Sud smatra da nije ubjedljivo utvrđeno da je odluka državnog tužioca da odbaci krivične prijave bila bazirana na adekvatnoj ocjeni svih relevantnih činjeničnih elemenata u predmetu, uzimajući u obzir nalaze Ombudsmana i disciplinski postupak. U predmetu *Siništaj i drugi* utvrđene su povrede oba aspekta člana 3 nakon što je pritvoreno lice pokazalo jasne povrede. Primijenjena je pretpostavka vezana za povrede u situaciji lišenja slobode. Nadalje, povrede nisu istražene i istraga koju je sprovela unutrašnja kontrola policije nije se smatrala nezavisnom, jer ju je sprovela sama policija.[4]

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1 U ovom se dokumentu nalazi detaljan pregled presuda koje su usvojene od strane Vijeća, od sedam sudija, i Velikog vijeća, od sedamnaest sudija. Presude koje su donijeli Odbori od tri člana ili pojednačne sudije (v. članove 27 i 28 Konvencije), u takozvanim „repetitivnim predmetima", nisu uključene u zasebne detaljne analize u dijelu dva ovog dokumenta. Kada je riječ o presudama, o svim predmetima se odlučivalo u Vijeću, a kada je riječ o prihvatljivosti, o 12 predmeta odlučivalo se u Vijeću.

2 *Bulatović protiv Crne Gore,* presuda od 22. jula 2014. godine.

3 *Milić i Nikezić protiv Crne Gore,* presuda od 28. aprila 2015. godine.

4 *Siništaj i drugi protiv Crne Gore,* presuda od 24. novembra 2015. godine.

Član 5

Dvije presude donesene su u odnosu na član 5 – pravo na slobodu i sigurnost. Presuda u predmetu *Bulatović* odnosila se na član 5 stav 3. Relevantni period koji treba uzeti u obzir u svrhu ocjene dužine trajanja pritvora počinje onog dana kada je određen pritvor i završava onog dana kada se odluči o optužbi, pa makar samo od strane prvostepenog suda. Sud je našao da se pritvor koji traje više od pet godina mora smatrati nerazumnim. Presuda u predmetu *Mugoša* odnosila se na član 5 stav 1 (c) i na to da li je postupak bio „zakonit" i „u skladu sa procedurom propisanom zakonom".[5] Sud je naveo da je zakonitost određivanja pritvora po domaćim zakonima primarni ali ne uvijek i odlučujući elemenat – Sud mora biti zadovoljan kada pojedinac nije lišen slobode na proizvoljnoj osnovi i mora odrediti da li su domaći zakoni u skladu sa Konvencijom. Nedostajalo je preciznosti u rješenjima o pritvoru vezano za dužinu trajanja pritvora, kao i manjak dosljednosti o tome da li su zakonska vremenska ograničenja za preispitivanje osnova produženja pritvora obavezujuća ili ne, što ga je činilo nepredvidljivim u primjeni. Utvrđena je povreda.

Član 6

Većina presuda, 14 od ukupno 24 koje su donesene u odnosu na Crnu Goru, odnose se na član 6. U njih 13 utvrđeno je da je došlo do povrede prava. Ovi su se predmeti odnosili na niz različitih aspekata člana 6. Devet predmeta odnosilo se na pitanja dužine postupka prije glavnog pretresa, postupka donošenja pravosnažne presude ili izvršenja pravosnažne domaće presude. Sud je primijenio test za ocjenu koliko su kašnjenja u postupku razumna i naglasio važnost izvršenja kao sastavnog dijela prava zagarantovanih članom 6. Periodi kašnjenja u postupcima koji su problematični po mišljenju Suda bili su dugi od 5 do 9 godina nakon ratifikacije. U presudi *Mijanović* Sud je utvrdio da crnogorske vlasti nijesu preduzele potrebne mjere da izvrše presudu. U presudama *Bujković*, *Milić*, *Vukelić*, *Velimirović* i *Boucke*, uzimajući u obzir svoju sudsku praksu u ovoj oblasti i činjenicu da domaće vlasti nijesu pokazale adekvatnu ažurnost, Sud je našao da neizvršenje presuda predstavlja povredu člana 6. U presudama *Novović*, *Stakić* i *Živaljević* Sud je utvrdio povrede člana 6 navodeći da ukupna dužina predmetnih postupaka ne ispunjava uslov razumnog roka. U dva predmeta nije bilo riječi o dužini postupka. U prvom predmetu, *Barać i drugi*, Sud je utvrdio da je došlo do povrede prava na pravično suđenje jer je odluka u predmetu donesena na osnovu razloga koji nisu bili predviđeni domaćim zakonodavstvom.[6] U predmetu *Garzičić*, Sud je utvrdio da, kada podnosilac predstavke ne precizira vrijednost tužbe, ništa ne sprječava domaći sud da je utvrdi i postupi u predmetu.[7] U predmetu *Tomić i drugi* nije utvrđena povreda člana 6.[8] Taj predmet odnosio se na pitanje da li domaće presude koje su u koliziji predstavljaju povredu prava na pravično suđenje. Sud je konstatovao da nije njegova uloga da ispituje tumačenje domaćeg prava i da odstupanja u tumačenju mogu da se prihvate kao sastavni dio sudskog sistema. U ovom predmetu utvrđene su manje povrede. Istaknuto je da postoji razlika između te situacije i situacija u kojima dolazi do dubokih i dugotrajnih razlika u praksi, što može da bude suprotno principu pravne sigurnosti i može dovesti do povrede člana 6.

U predmetu *Mugoša protiv Crne Gore*[9] nije utvrđena povreda člana 6 stav 1. Sud je utvrdio da iako sudovi moraju da obrazlože svoje presude, ne moraju da daju detaljno objašnjenje za svaki argument. Ono što je relevantno jeste kontekst. Sud smatra da je nedostatak u predmetu *Mugoša* bio formalne, a ne materijalne prirode, kao i da je ubrzo uklonjen. Apelacioni sud je ispitao nedostatke i nije smatrao da je rješenje o pritvoru nezakonito. Ovaj nedostatak nije bio fundamentalan i nije zahtijevao hitan odgovor Ustavnog suda.

Ipak, vezano za pretpostavku nevinosti utvrđena je povreda člana 6 stav 2. Sud je ponovio da je pretpostavka nevinosti povrijeđena ukoliko sudska odluka ili izjava zvaničnika koja se tiče lica optuženog za krivično djelo odražava mišljenje da je kriv prije nego što se to dokaže. Dovoljno je da postoji obrazloženje u kojem se sugeriše da sud ili zvaničnik smatraju optuženog krivim i prijevremeno izražavanje mišljenja će doći u sukob sa pretpostavkom. U predmetu *Mugoša* Viši sud je

5 *Mugoša protiv Crne Gore*, presuda od 21. juna 2016. godine.

6 *Barać i drugi protiv Crne Gore*, presuda od 13 decembra 2011. godine.

7 *Garzičić protiv Crne Gore*, presuda od 21. septembra 2010. godine.

8 *Tomić i drugi protiv Crne Gore*, presuda od 17. aprila 2012. godine.

9 *Mugoša protiv Crne Gore*, presuda od 21. juna 2016. godine.

naročito naveo da je podnosilac predstavke „na podmukao način ... lišio života X ... na način što je pucao u njega..." i na taj način proglasio podnosioca predstavke krivim prije nego što je to dokazano na osnovu zakona. Ostali sudovi nijesu ispravili ovu grešku po žalbi, uključujući i sam Ustavni sud.

U presudi *Radunović i drugi protiv Crne Gore*[10] pitanje je bilo da li su podnosioci predstavke imali pravično suđenje, jer su domaći sudovi odbili da ispitaju osnovanost njihove građanske tužbe. Država je navela da se davanjem imuniteta drugoj državi u građanskom postupku teži legitimnom cilju usklađenosti sa međunarodnim zakonima i podsticanju dobrih međunarodnih odnosa između država i ne može se smatrati za uskraćivanje prava na pristup sudu. Sud je naveo da se mjere koje je preduzela država, a koje odražavaju opšteprihvaćena pravila međunarodnog zakona o imunitetu države, ne mogu suštinski posmatrati kao nametanje nesrazmjernih ograničenja prava na pristup sudu. Ipak, odbijanjem zahtjeva podnosilaca predstavke za isplatom nadoknade, oslanjajući se na državni imunitet bez davanja relevantnog i dovoljnog obrazloženja i uprkos primjenjivim odredbama međunarodnog kao i domaćeg prava, sudovi nijesu zaštitili razuman odnos proporcionalnosti.

Član 1 Protokola br. 1

U odnosu na član 1 Protokola br. 1 o pravu na imovinu donesene su četiri presude. U svim tim predmetima utvrđena je povreda. U predmetu *Mijanović* podnositeljka predstavke se žalila na neizvršenje presude donesene u korist njenog pravnog prethodnika i na povredu njegovih imovinskih prava koja je time počinjena. Sud je našao da činjenica da država nije izvršila pravosnažnu presudu predstavlja zadiranje u pravo na mirno uživanje imovine.[11] U predmetu *A. i B.* podnosioci predstavke su se žalili prije svega na kontinuirano neizvršenje pravosnažne presude u građanskom postupku za isplatu stare devizne štednje koju je njihova pokojna majka deponovala, a oni je naslijedili. Alternativno se njihova predstavka odnosila na činjenicu da Podgorička banka i/ili Centralna banka Crne Gore nisu registrovale predmetnu štednju, zbog čega ona nije mogla da se prevede u javni dug tužene države prema relevantnom domaćem propisu. Sud je našao očigledno zadiranje tužene države u imovinu podnosilaca predstavke i njihovo legitimno očekivanje da postepeno povrate predmetnu štednju. To zadiranje, prema mišljenju Suda, bilo je protivzakonito i zato je predstavljalo povredu Konvencije.[12] U predmetu *Bijelić*, koji je bio prvi predmet protiv Crne Gore, Sud je utvrdio da je nemogućnost podnosilaca predstavke kao vlasnika imovine da isele tužene stanare iz svoje imovine predstavljalo zadiranje u prava podnosilaca predstavke na mirno uživanje imovine.[13] Takođe, došlo je i do odugovlačenja postupka u periodu od gotovo pet godina nakon ratifikacije. U predmetu *Lakićević* utvrđeno je da smanjenje ili prekid u isplati penzije predstavlja zadiranje u mirno uživanje imovine.[14] Raspravljalo se o polju slobodne procjene i zaključeno je da je ono široko u oblasti socijalnih zakona. Sud je našao da državnim vlastima treba dozvoliti da implementiraju politiku u ovoj oblasti ukoliko ona nije bez razumnog osnova. Međutim, utvrđeno je da su podnosioci predstavke morali da podnesu preveliki i nesrazmjeran teret u ovom predmetu, što je dovelo do toga da Sud utvrdi da je došlo do povrede prava.

Član 8

Jedna je presuda donesena u odnosu na član 8 – pravo na poštovanje privatnog i porodičnog života. Utvrđena je povreda. Predmet *Mijušković* odnosio se na pozitivnu obavezu državnih vlasti da preduzmu mjere da izvrše spajanje roditelja sa djecom.[15] Sud je konstatovao da ta obaveza nije apsolutna, pošto treba poštovati i želje djece i roditelja o kojima je riječ. Međutim, u ovom predmetu državne vlasti nisu učinile adekvatne i djelotvorne napore da pravovremeno izvrše odluke o predmetnom odnosu.

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10 *Radunović i drugi protiv Crne Gore*, presuda od 25. oktobra 2016. godine.

11 *Mijanović protiv Crne Gore*, presuda od 17. septembra 2013. godine.

12 *A. i B. protiv Crne Gore*, presuda od 5. marta 2013. godine.

13 *Bijelić protiv Crne Gore i Srbije*, presuda od 28. aprila 2009. godine.

14 *Lakićević i drugi protiv Crne Gore i Srbije*, presuda od 13. decembra 2011. godine.

15 *Mijušković protiv Crne Gore*, presuda od 21. septembra 2010. godine.

Član 10

U odnosu na član 10 – pravo na slobodu izražavanja – donesene su dvije presude. U oba predmeta utvrđena je povreda. U predmetu *Koprivica* Sud je istakao suštinsku funkciju koju obavlja štampa u demokratskom društvu i važnost slobode novinara.[16] Sud je našao da su dosuđena naknada štete i troškovi u ovom predmetu bili nesrazmjerni legitimnom cilju koji se želio postići i naglasio da iznos naknade štete ne može biti takav da izazove takozvani „chilling effect".[17] U predmetu *Šabanović* Sud je ustanovio da državni službenici koji djeluju u svom službenom svojstvu podliježu širim granicama prihvatljive kritike nego privatna lica.[18] Prepoznato je da kada se informacije prenose u dobroj vjeri i o pitanjima od javnog interesa, netačne i štetne izjave o privatnim licima takođe ne krše član 10. Nadalje, Sud je naglasio da priroda i težina kazne izrečene fizičkim licima za klevetu, te „relevantnost" i „dovoljnost" argumentovanog odlučivanja domaćih sudova, predstavljaju pitanja od naročitog značaja kada se ocjenjuje srazmjernost predmetnog zadiranja u pravo da se ostvari željeni cilj.

Član 13

Sud je utvrdio dvije povrede člana 13 – prava na djelotvorni pravni lijek. Obje su bile u vezi sa članom 6.[19] U predmetu *Stakić* podnosilac predstavke se žalio na dužinu građanskog postupka i na nepostojanje djelotvornog pravnog lijeka za to. Sud je utvrdio da je došlo do povrede člana 13 Konvencije u vezi sa članom 6 Konvencije zbog nepostojanja djelotvornog pravnog lijeka u domaćem zakonodavstvu. U predmetu *Milić* podnosilac predstavke se žalio na neizvršenje pravosnažne presude kojom je naloženo njegovo vraćanje na posao i na nepostojanje djelotvornog pravnog lijeka u tom smislu. Sud je došao do istog zaključka kao i u presudi u predmetu *Stakić*.

Treba napomenuti da je Sud u predmetu *Vukelić protiv Crne Gore* pomenuo napredak koji je Crna Gora postigla u implementaciji djelotvornih pravnih lijekova za zaštitu prava na pravično suđenje u razumnom roku: „*Sud smatra da, u svjetlu značajnog razvoja relevantne domaće sudske prakse o ovom pitanju, zahtjev za reviziju mora, u principu i kadgod je dostupan u skladu sa relevantnim propisima, da se smatra djelotvornim pravnim lijekom u smislu člana 35 stav 1 Konvencije u odnosu na sve predstavke predate protiv Crne Gore nakon datuma na koji ova presuda postane pravosnažna*."

Član 41 i 46

Jedna presuda, u predmetu *Koprivica*[20], donesena je konkretno u vezi sa pitanjem pravičnog zadovoljenja po članu 41. U svojoj presudi o osnovanosti od 22. novembra 2011. godine, Sud je utvrdio povredu člana 10 i odlučio da odloži određivanje pravičnog zadovoljenja za podnosioca predstavke.

Sud je istakao član 46, o obavezujućoj prirodi i izvršenju presuda, u predmetu *Bijelić protiv Crne Gore i Srbije*[21], koji se odnosio na član 6 Konvencije. Tom presudom Evropski sud je tražio izvršenje pravosnažnih presuda koje su donijeli domaći prvostepeni sudovi.

Uvijek kada Evropski sud utvrdi da je tužena država povrijedila prava zagarantovana Konvencijom, on traži od države da preduzme pojedinačne ili generalne mjere tokom izvršavanja presude, koje se vrši pod nadzorom Komiteta ministara Savjeta Evrope. Sud može posebno tražiti od tužene države da preduzme generalne mjere koje će primijeniti na takozvane „sistemske probleme" u okviru svog pravnog sistema, kako bi spriječila povrede prava zagarantovanih Konvencijom u budućnosti.

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16 *Koprivica protiv Crne Gore*, presuda od 22. novembra 2011. godine.

17 *Chilling effect* predstavlja situaciju u kojoj prava, kao što je sloboda govora, bivaju ugrožena mogućim negativnim rezultatima ostvarivanja tih prava. Efekat je da se ućutkuju kritika i sloboda izražavanja, čak i u predmetima gdje je kritika savršeno validna.

18 *Šabanović protiv Crne Gore*, presuda od 31. maja 2011. godine.

19 *Milić protiv Crne Gore i Srbije*, presuda od 11. decembra 2012. godine; *Stakić protiv Crne Gore*, presuda od 2. oktobra 2012. godine.

20 *Koprivica protiv Crne Gore*, presuda od 23. juna 2015. godine.

21 *Bijelić protiv Crne Gore i Srbije*, presuda od 28. aprila 2009. godine.

U svojim presudama protiv Crne Gore Evropski sud za ljudska prava još uvijek nije utrdio povrede osnovnih ljudskih prava i sloboda koje su sistemskog karaktera. Povrede koje je ustanovio tiču se pojedinačnih slučajeva ugrožavanja ili povrede osnovnih ljudskih prava i sloboda navedenih u Konvenciji.

Dalje, iako je Sud posebno razmatrao član 46 Konvencije samo u predmetu *Bijelić protiv Crne Gore* (videti gore), Crna Gora je bez odlaganja ispunila sve svoje obaveze koje joj je Sud odredio presudom i usvojila akcioni plan za svaki pojedinačni predmet koji obuhvata i pojedinačne i opšte mjere. Treba napomenuti da Komitet ministara, kao tijelo koje vrši nadzor nad izvršenjem presuda Evropskog suda za ljudska prava, još uvijek nije razmatrao bilo koji predmeta protiv Crne Gore na plenarnim sjednicama.

Većina presuda u kojima je Evropski sud utvrdio da je Crna Gora povrijedila prava iz Konvencije bila su u vezi sa neizvršavanjem pravosnažnih presuda i/ili dužinom trajanja postupka.

Shodno tome, neke od opštih mjera koje su navedene u akcionim planovima za izvršenje presuda Suda uspješno su implementirane vezano za obavezu potpunog izvršavanja pravosnažne sudske odluke domaćih sudova. U predmetu *Mijanović*, na primjer, Sud je utvrdio da tužena država treba da plati podnosiocu predstavke, u roku od tri mjeseca od dana pravosnažnosti presude, nadoknadu koju su odredili domaći sudovi, uključujući i zakonsku kamatu i troškove koji su time obuhvaćeni, na ime materijalne štete. Dodatno, u predmetu *Vukelić*, Sud je tražio od Crne Gore da obezbijedi izvršavanje presude u korist podnosioca predstavke. Crna Gora je sprovela reformu postupka izvršenja i uvela instituciju javnih izvršitelja. Time je poboljšala efikasnost postupka izvršenja, koji je doveo do smanjenja broja predmeta koji su se podnosili Sudu u Strazburu.

U presudi *A. i B. protiv Crne Gore* Evropski sud je utvrdio da Crna Gora treba da plati podnosiocima predstavke sve rate, uključujući kamatu, koje im se dugovala od momenta kada je štednja u staroj stranoj valuti postala javni dug na osnovu relevantnog domaćeg zakonodavstva do datuma kada je presuda postala pravosnažna, kao i da mora da preduzme sve potrebne mjere da obezbijedi da nadležni organi sprovedu relevantno zakonodavstvo u odnosu na podnosioce predstavke i time obezbijede isplatu svih budućih rata pod istim uslovima.

Što se tiče slobode izražavanja, Vrhovni sud Crne Gore je donio pravni stav koji je u suštini obavezujući za sve sudove u Crnoj Gori. Na osnovu tog stava, iznosi koji su dodijeljeni na ime nematerijalne štete na građanskim postupcima za klevetu protiv novinara moraju biti u skladu sa stavom Evropskog suda (koji je naveden u presudi u predmetu *Koprivica*).

U presudi u predmetu *Bulatović* Evropski sud je utvrdio da je Crna Gora povrijedila članove 3 i 5 Konvencije u odnosu na uslove i dužinu trajanja pritvora, kao i nedostatka medicinske njege dok je bio u pritvoru. Relevantni organi vlasti preduzeli su adekvatne mjere u cilju poboljšanja uslova u pritvoru i smanjenja dužine trajanja pritvora.

Sve odluke i presude koje su donesene u odnosu na Crnu Goru prevedene su i objavljene u Službenom listu Crne Gore, kao i na veb-stranici Vrhovnog suda Crne Gore i Bazi evropske sudske prakse o ljudskim pravima, sa ciljem da se javnost upozna sa njihovim sadržajem. Prevodi su takođe dostavljeni svim državnim organima koji su bili uključeni u osporavane sudske odluke kako bi se upoznali sa precedentnom sudskom praksom i omogućili da se evropski standardi primjenjuju od strane svih državnih organa u svakodnevnom radu.

Sudska praksa po članovima Konvencije

ČLAN 2 – PRAVO NA ŽIVOT

1. Pravo na život svakog lica zaštićeno je zakonom. Niko ne smije biti namjerno lišen života, osim prilikom izvršenja presude suda kojom je osuđen za zločin za koji je ova kazna predviđena zakonom.
2. Lišenje života se ne smatra protivnim ovom članu ako proistekne iz upotrebe sile koja je apsolutno nužna:
   a. radi odbrane nekog lica od nezakonitog nasilja;
   b. da bi se izvršilo zakonito hapšenje ili spriječilo bjekstvo lica zakonito lišenog slobode;
   c. prilikom zakonitih mjera koje se preduzimaju u cilju suzbijanja nereda ili pobune.

Po ovom članu nije donesena nijedna presuda.

ČLAN 3 – ZABRANA MUČENJA

Niko ne smije biti podvrgnut mučenju ili nečovječnom ili ponižavajućem postupanju ili kažnjavanju.

Predmeti u kojima je utvrđena povreda

1. *Siništaj i drugi protiv Crne Gore,* presuda od 24. novembra 2015. godine
- tortura i zlostavljanje od strane policijskih službenika, nepostojanje istrage;
- kada su određena dešavanja u cjelini ili velikim dijelom isključivo u saznanju vlasti, kao što je slučaj sa licima lišenim slobode kao u ovom predmetu, tada se javlja jaka pretpostavka vezana za povrede do kojih je došlo tokom takvog lišenja slobode;
- može se smatrati da je teret na vlastima da pruže zadovoljavajuće i uvjerljivo obrazloženje;
- istraga mora da bude takva da može da dovede do utvrđivanja činjenica predmeta i, ako su one tačne, da vodi do identifikacije i kažnjavanja odgovornih;
- podnosilac predstavke uhapšen je i istražni sudija i zatvorski ljekar primijetili su njegove povrede;
- istraga unutrašnje kontrole policije sprovedena je, ali nije bila nezavisna istraga jer ju je sprovela policija i nije bila temeljita jer su u potpunosti zanemarene pritužbe i povrede podnosioca predstavke;
- ustavna žalba može se u principu smatrati djelotvornim pravnim lijekom od 20. marta 2015. godine (stav 123 presude).

2. *Milić i Nikezić protiv Crne Gore,* presuda od 28. aprila 2015. godine
- kada su određena dešavanja u cjelini ili velikim dijelom isključivo u saznanju vlasti, kao što je slučaj sa licima lišenim slobode, tada se javlja jaka pretpostavka vezana za povrede do kojih je došlo tokom takvog lišenja slobode;
- može se smatrati da je teret na vlastima da pruže zadovoljavajuće i uvjerljivo obrazloženje;
- domaći organi utvrdili su da su zatvorenici udarani gumenim palicama;
- domaći sudovi prihvatili su da je upotreba sile bila pretjerana;
- navodi protiv službenika obezbjeđenja u zatvoru i nedostatak djelotvorne istrage;
- obaveza da se istraga sprovede nije obaveza rezultata već sredstava;
- dokaz da su službenici obezbjeđenja u zatvoru zloupotrijebili svoj položaj i ovlašćenja;
- nije uvjerljivo utvrđeno da su se odluke državnog tužioca da odbaci krivične prijave bazirale na adekvatnoj ocjeni svih relevantnih činjeničnih elemenata u predmetu, te da je trebalo uzeti u obzir činjenične nalaze koje je utvrdio Ombudsman i koji su utvrđeni u disciplinskom postupku;
- povrede i procesnog i materijalnog aspekta člana 3.

3. *Bulatović protiv Crne Gore,* presuda od 22. jula 2014. godine
- neadekvatni uslovi pritvora – hrana, voda, skučenost prostora, nedostatak fizičke aktivnosti;
- nije utvrđeno da ne postoji zdravstvena zaštita;
- ova presuda je donesena i u odnosu na član 5 (utvrđena je povreda).

ČLAN 4 – ZABRANA ROPSTVA I PRINUDNOG RADA

1. Niko se ne smije držati u ropstvu ili ropskom položaju.
2. Ni od koga se ne može zahtjevati da obavlja prinudni ili obavezni rad.
3. Za svrhe ovog člana izraz „prinudni ili obavezni rad" ne obuhvata:
   a. rad uobičajen u sklopu lišenja slobode određenog u skladu sa odredbama člana 5 ove Konvencije ili tokom uslovnog otpusta;
   b. službu vojne prirode ili, u zemljama u kojima se priznaje prigovor savjesti, službu koja se zahtjeva umjesto odsluženja vojne obaveze;
   c. rad koji se iziskuje u slučaju kakve krize ili nesreće koja prijeti opstanku ili dobrobiti zajednice;
   d. rad ili službu koji čine sastavni dio uobičajenih građanskih dužnosti.

Po ovom članu nije donesena nijedna presuda.

ČLAN 5 – PRAVO NA SLOBODU I SIGURNOST

1. Svako ima pravo na slobodu i sigurnost ličnosti. Niko ne može biti lišen slobode osim u sljedećim slučajevima i u skladu sa zakonom propisanim postupkom:
   a. u slučaju zakonitog lišenje slobode na osnovu presude nadležnog suda;
   b. u slučaju zakonitog hapšenja ili lišenja slobode zbog neizvršenja zakonite sudske odluke ili radi obezbjeđenja ispunjenja neke obaveze propisane zakonom;
   c. u slučaju zakonitog hapšenja ili lišenja slobode radi privođenja lica pred nadležnu sudsku vlast zbog opravdane sumnje da je izvršilo krivično djelo, ili kada se to opravdano smatra potrebnim kako bi se preduprijedilo izvršenje krivičnog djela ili bjekstvo po njegovom izvršenju;
   d. u slučaju lišenja slobode maloljetnog lica na osnovu zakonite odluke u svrhu vaspitnog nadzora ili zakonitog lišenja slobode radi njegovog privođenja nadležnom organu;
   e. u slučaju zakonitog lišenja slobode da bi se spriječilo širenje zaraznih bolesti, kao i zakonitog lišenja slobode duševno poremećenih lica, alkoholičara ili uživalaca droga ili skitnica;
   f. u slučaju zakonitog hapšenja ili lišenja slobode lica da bi se spriječio njegov neovlašćeni ulazak u zemlju, ili lica protiv koga se preduzimaju mjere u cilju deportacije ili ekstradicije.
2. Svako ko je uhapšen mora biti odmah i na jeziku koji razumije obavješten o razlozima za njegovo hapšenje i o svakoj optužbi protiv njega.
3. Svako ko je uhapšen ili lišen slobode shodno odredbama iz stava 1 c ovog člana mora bez odlaganja biti izveden pred sudiju ili drugo službeno lice zakonom određeno da obavlja sudske funkcije i mora imati pravo da mu se sudi u razumnom roku ili da bude pušten na slobodu do suđenja. Puštanje na slobodu može se usloviti garancijama da će se lice pojaviti na suđenju.
4. Svako ko je lišen slobode ima pravo da pokrene postupak u kome će sud hitno ispitati zakonitost lišenja slobode i naložiti puštanje na slobodu ako je lišenje slobode nezakonito.
5. Svako ko je uhapšen ili lišen slobode u suprotnosti s odredbama ovog člana ima utuživo pravo na naknadu.

Predmeti u kojima je utvrđena povreda

1. *Mugoša protiv Crne Gore,* presuda od 21. juna 2016. godine
- član 5 stav 1;
- nepreciznost u rješenjima o pritvoru vezano za trajanje;
- manjak konzistentnosti u stavu da li su zakonski rokovi za preispitivanje osnova pritvora obavezujući i time nepredvidljivi u primjeni;
- presuda takođe donijeta u odnosu na član 6 stav 1 (nema povrede); član 6 stav 2 (povreda).

2. *Bulatović protiv Crne Gore,* presuda od 22. jula 2014. godine
- dužina pritvora od pet godina jeste prekoračenje razumnog roka;
- dužina trajanja pritvora se računa od dana kada je optuženi stavljen u pritvor i završava se kada se odluči o optužbi, pa makar samo od strane prvostepenog suda;
- ova presuda je donesena i u odnosu na član 3 (utvrđena je povreda).

ČLAN 6 – PRAVO NA PRAVIČNO SUĐENJE

1. Svako, tokom odlučivanja o njegovim građanskim pravima i obavezama ili o krivičnoj optužbi protiv njega, ima pravo na pravičnu i javnu raspravu u razumnom roku pred nezavisnim i nepristrasnim sudom, obrazovanim na osnovu zakona. Presuda se mora izreći javno, ali se štampa i javnost mogu isključiti s cijelog ili s dijela suđenja u interesu morala, javnog reda ili nacionalne bezbjednosti u demokratskom društvu, kad to zahtjevaju interesi maloljetnika ili zaštita privatnog života stranaka, ili u mjeri koja je, po mišljenju suda, nužno potrebna u posebnim okolnostima kada bi javnost mogla da naškodi interesima pravde.
2. Svako ko je optužen za krivično djelo mora se smatrati nevinim sve dok se ne dokaže njegova krivica na osnovu zakona.
3. Svako ko je optužen za krivično djelo ima sljedeća minimalna prava:
   a. da bez odlaganja, podrobno i na jeziku koji razumije, bude obaviješten o prirodi i razlozima optužbe protiv njega;
   b. da ima dovoljno vremena i mogućnosti za pripremanje odbrane;
   c. da se brani lično ili putem branioca koga sam izabere ili, ako nema dovoljno sredstava da plati za pravnu pomoć, da ovu pomoć dobije besplatno, kada interesi pravde to zahtjevaju;
   d. da ispituje svjedoke protiv sebe ili da postigne da se oni ispitaju i da se obezbjedi prisustvo i saslušanje svjedoka u njegovu korist pod istim uslovima koji važe za one koji svjedoče protiv njega;
   e. da dobije besplatnu pomoć prevodioca ako ne razumije ili ne govori jezik koji se upotrebljava na sudu.

Predmeti u kojima je utvrđena povreda

1. *Radunović protiv Crne Gore,* presuda od 25. oktobra 2016. godine
- član 6 stav 1 – pravo na pravično suđenje;
- EKLJP treba posmatrati u svijetlu Bečke konvencije o Zakonu o ugovorima i ne može biti interpretiran u vakuumu;
- pravila međunarodnog zakona se moraju uzeti u obzir, uključujući i one koji se odnose na davanje državnog imuniteta;
- mjere koje preduzima država, a koje reflektuju opšte priznata pravila javnog međunarodnog prava o državnom imunitetu, u principu se ne mogu smatrati nametanjem disproporcionalnog ograničenja prava na pristup sudu;
- odbijanjem zahtjeva podnosilaca predstavke za nadoknadu na osnovu državnog imuniteta, bez davanja relevantnog i dovoljnog obrazloženja i uprkos primjenjivim odredbama međunarodnog kao i domaćeg prava, sudovi nijesu uspjeli da sačuvaju razuman odnos proporcionalnosti.

2. *Mugoša protiv Crne Gore,* presuda od 21. juna 2016. godine
- član 6 stav 2;
- Viši sud je prekršio pretpostavku nevinosti;
- nije ispravljeno od strane ostalih sudova;
- presuda takođe donijeta u odnosu na član 5 stav 1 (povreda); član 6 stav 1 (nema povrede).

3. *Bujković protiv Crne Gore,* presuda od 10. marta 2015. godine
- pretjerana dužina postupka

4. *Mijanović protiv Crne Gore,* presuda od 17. septembra 2013. godine
- neizvršenje presude;
- ova presuda je donesena i u odnosu na član 1 Protokola br. 1 (utvrđena je povreda).

5. *Vukelić protiv Crne Gore,* presuda od 4. juna 2013. godine
- neizvršenje presude;
- 9 godina u okviru *ratione temporis;* više od 6 godina prije toga;
- Kontrolni zahtjev mora se u principu smatrati djelotvornim pravnim lijekom u smislu člana 35 stav 1 Konvencije u odnosu na predstavke podnijete protiv Crne Gore nakon 4. septembra 2013. godine (stav 85 presude).

6. *Milić protiv Crne Gore i Srbije,* presuda od 11. decembra 2012. godine
- neizvršenje presude;
- ova presuda je donesena i u odnosu na član 13 (utvrđena je povreda).

7. *Novović protiv Crne Gore,* presuda od 23. oktobra 2012. godine
- pitanja vraćanja na posao treba razmatrati „ekspeditivno";
- 5 godina, 3 mjeseca nakon ratifikacije; 12 godina, 8 mjeseci prije ratifikacije.

8. *Stakić protiv Crne Gore,* presuda od 2. oktobra 2012. godine.
- naknada štete za povrede koje je podnosilac predstavke pretrpio u tuči;
- 8 godina, 6 mjeseci u prvom stepenu nakon ratifikacije; 24 godine prije ratifikacije; de facto uskraćivanje pravde;
- nedostatak prioritetnog ili hitnog postupanja nije opravdao proceduralna kašnjenja ovolike dužine;
- ova presuda je donesena i u odnosu na član 13 u vezi sa članom 6 (utvrđena je povreda).

Predmeti u kojima je utvrđena povreda

9. *Velimirović protiv Crne Gore,* presuda od 2. oktobra 2012. godine
- izvršenje presude kao sastavni dio suđenja;
- 8 godina, 2 mjeseca nakon ratifikacije; 11 godina prije ratifikacije.

10. *Boucke protiv Crne Gore,* presuda od 21. februara 2012. godine
- predmet izdržavanja djeteta;
- država mora da preduzme sve potrebne korake da izvrši presudu;
- 7 godina, 9 mjeseci nakon ratifikacije; 6 godina prije ratifikacije.

11. *Barać i drugi protiv Crne Gore,* presuda od 13. decembra 2011. godine
- suđenje nije pravično ukoliko razlozi koji su dati za odluku nisu predviđeni domaćim zakonodavstvom.

12. *Živaljević protiv Crne Gore,* presuda od 8. marta 2011. godine
- test za ocjenu koliko je dužina postupka razumna;
- 6 godina, 11 mjeseci nakon ratifikacije; 7 godina prije ratifikacije;
- eksproprijacija kuće i zemljišta podnosioca predstavke; slučaj koji nije složen.

13. *Garzičić protiv Crne Gore,* presuda od 21. septembra 2010. godine
- ništa ne sprečava sud da utvrdi vrijednost spora kada to podnosilac predstavke ne učini sam.

Predmeti u kojima nije utvrđena povreda

1. *Mugoša protiv Crne Gore,* presuda od 17. aprila 2012. godine
- obaveza da se da obrazloženje ne znači obavezu detaljnog odgovora na svaki argument;
- hitan odgovor nije neophodan u predmetima kada su predmetni nedostaci formalni a ne materijalni, ispravljeno je brzo, ispitano od strane Apelacionog suda i utvrđeno da nije bilo nezakonitosti u rješenju o određivanju pritvora;
- presuda je takođe donijeta u odnosu na član 5 stav 1 (povreda); član 6 stav 2 (povreda).

2. *Tomić i drugi protiv Crne Gore,* presuda od 17. aprila 2012. godine
- nije utvrđena povreda;
- nije uloga Evropskog suda da ispituje tumačenje domaćeg prava;
- odstupanja u tumačenju mogu da se prihvate kao sastavni dio sudskog sistema, ali duboke i dugotrajne razlike u praksi mogu biti suprotne principu pravne sigurnosti.

ČLAN 7 – KAŽNJAVANJE SAMO NA OSNOVU ZAKONA

1. Niko se ne može smatrati krivim za krivično djelo izvršeno činjenjem ili nečinjenjem koje, u vrijeme kada je izvršeno, nije predstavljalo krivično djelo po unutrašnjem ili po međunarodnom pravu. Isto tako, ne može se izreći stroža kazna od one koja je bila propisana u vrijeme kada je krivično djelo izvršeno.
2. Ovaj član ne utiče na suđenje i kažnjavanje nekog lica za činjenje ili nečinjenje koje se u vrijeme izvršenja smatralo krivičnim djelom prema opštim pravnim načelima koje priznaju civilizovani narodi.

Po ovom članu nije donesena nijedna presuda.

ČLAN 8 – PRAVO NA POŠTOVANJE PRIVATNOG I PORODIČNOG ŽIVOTA

1. Svako ima pravo na poštovanje svog privatnog i porodičnog života, doma i prepiske.
2. Javne vlasti neće se miješati u vršenje ovog prava sem ako to nije u skladu sa zakonom i neophodno u demokratskom društvu u interesu nacionalne bezbjednosti, javne bezbjednosti ili ekonomske dobrobiti zemlje, radi sprečavanja nereda ili kriminala, zaštite zdravlja ili morala, ili radi zaštite prava i sloboda drugih.

Predmeti u kojima je utvrđena povreda

1. *Mijušković protiv Crne Gore,* presuda od 21. septembra 2010. godine
- uživanje roditelja i djeteta u uzajamnom društvu kao osnovni element „porodičnog života";
- pozitivna obaveza da se preduzmu mjere da se roditelji i djeca spoje;
- pozitivna obaveza nije apsolutna;
- propust da se učine adekvatni i djelotvorni napori da se odluke centra za socijalni rad i presuda suda blagovremeno izvrše.

ČLAN 9 – SLOBODA MISLI, SAVJESTI I VJEROISPOVJESTI

1. Svako ima pravo na slobodu misli, savjesti i vjeroispovijesti; ovo pravo uključuje slobodu promjene vjere ili uvjerenja i slobodu čovjeka da, bilo sam ili zajedno s drugima, javno ili privatno, ispoljava vjeru ili uvjerenje molitvom, propovijedanjem, običajima i obredom.
2. Sloboda ispovijedanja vjere ili ubjeđenja može biti podvrgnuta samo zakonom propisanim ograničenjima neophodnim u demokratskom društvu u interesu javne bezbjednosti, radi zaštite javnog reda, zdravlja ili morala, ili radi zaštite prava i sloboda drugih.

Po ovom članu nije donesena nijedna presuda.

ČLAN 10 – SLOBODA IZRAŽAVANJA

1. Svako ima pravo na slobodu izražavanja. Ovo pravo uključuje slobodu posjedovanja sopstvenog mišljenja, primanja i saopštavanja informacija i ideja bez miješanja javne vlasti i bez obzira na granice. Ovaj član ne sprečava države da zahtijevaju dozvole za rad televizijskih, radio i bioskopskih preduzeća.
2. Pošto korišćenje ovih sloboda povlači za sobom dužnosti i odgovornosti, ono se može podvrgnuti formalnostima, uslovima, ograničenjima ili kaznama propisanim zakonom i neophodnim u demokratskom društvu u interesu nacionalne bezbjednosti, teritorijalnog integriteta ili javne bezbjednosti, radi sprečavanja nereda ili kriminala, zaštite zdravlja ili morala, zaštite ugleda ili prava drugih, sprečavanja otkrivanja obavještenja dobijenih u povjerenju, ili radi očuvanja autoriteta i nepristrasnosti sudstva.

Predmeti u kojima je utvrđena povreda

1. *Koprivica protiv Crne Gore,* presuda od 22. novembra 2011. godine
- suštinska funkcija koju obavlja štampa u demokratskom društvu;
- granice štampe i značenje novinarske slobode;
- uzimanje u obzir gorućih društvenih potreba;
- zadatak suda u izvršavanju nadzorne funkcije;
- odnos srazmjernosti kod naknade štete.

2. *Šabanović protiv Crne Gore,* presuda od 31. maja 2011. godine
- sloboda izražavanja kada se primijeni na ideje koje vrijeđaju, šokiraju ili uznemiravaju;
- pravo da se, u dobroj vjeri, saopštavaju informacije o pitanjima od javnog interesa, čak i kada one uključuju netačne ili štetne izjave o privatnim licima;
- mora se uzeti u obzir da li se izraz o kome je riječ odnosi na privatni život lica ili na njihovo postupanje ili stavove u svojstvu zvaničnika;
- šire su granice prihvatljive kritike kada se ona odnosi na državne službenike koji djeluju u svom zvaničnom svojstvu, nego kada se odnose na privatna lica;
- u ovom slučaju, kritika je bila uperena protiv postupanja i stavova pojedinca u njegovom kapacitetu zvaničnika, a ne u privatnom životu;
- razlika između iznošenja činjenica i vrijednosnih sudova;
- priroda i težina izrečene kazne, te „relevantnost" i „dovoljnost" odlučivanja domaćih sudova, predstavljaju pitanja od naročitog značaja kada se ocjenjuje srazmjernost zadiranja;
- Vlada treba da pokaže da se uzdržava od pribjegavanja krivičnim sankcijama, naročito kada su na raspolaganju druga sredstva.

ČLAN 11 – SLOBODA OKUPLJANJA I UDRUŽIVANJA

3. Svako ima pravo na slobodu mirnog okupljanja i slobodu udruživanja s drugima, uključujući pravo da osniva sindikat i učlanjuje se u njega radi zaštite svojih interesa.
4. Za vršenje ovih prava ne smiju se postavljati nikakva ograničenja, osim onih koja su propisana zakonom i neophodna u demokratskom društvu u interesu nacionalne bezbjednosti ili javne bezbjednosti, radi sprečavanja nereda ili kriminala, zaštite zdravlja ili morala, ili radi zaštite prava i sloboda drugih. Ovaj član ne sprečava izricanje zakonskih ograničenja za ostvarivanje ovih prava kada je riječ o pripadnicima oružanih snaga, policije ili administracije države.

Po ovom članu nije donesena nijedna presuda.

ČLAN 12 – PRAVO NA SKLAPANJE BRAKA

Muškarci i žene odgovarajućeg uzrasta imaju pravo da stupaju u brak i zasnivaju porodicu u skladu s unutrašnjim zakonima koji uređuju ostvarivanje ovog prava.

Po ovom članu nije donesena nijedna presuda.

ČLAN 13 – PRAVO NA DJELOTVORNI PRAVNI LIJEK

Svako kome su povrijeđena prava i slobode predviđene ovom Konvencijom ima pravo na djelotvoran pravni lijek pred nacionalnim vlastima, bez obzira jesu li povredu izvršila lica koja su postupala u službenom svojstvu.

Predmeti u kojima je utvrđena povreda

1. *Stakić protiv Crne Gore,* presuda od 2. oktobra 2012. godine
- u vezi sa članom 6.

2. *Milić protiv Crne Gore i Srbije,* presuda od 11. decembra 2012. godine
- u vezi sa članom 6.

ČLAN 14 – ZABRANA DISKRIMINACIJE

Uživanje prava i sloboda predviđenih ovom Konvencijom obezbjeđuje se bez diskriminacije po bilo kom osnovu, kao što su pol, rasa, boja kože, jezik, vjeroispovijest, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, veza s nekom nacionalnom manjinom, imovno stanje, rođenje ili drugi status.

Po ovom članu nije donesena nijedna presuda.

PROTOKOL BR. 1 ČLAN 1 – ZAŠTITA IMOVINE

Svako fizičko i pravno lice ima pravo na neometano uživanje svoje imovine. Niko ne može biti lišen svoje imovine, osim u javnom interesu i pod uslovima predviđenim zakonom i opštim načelima međunarodnog prava.

Prethodne odredbe, međutim, ni na koji način ne utiču na pravo države da primjenjuje zakone koje smatra potrebnim da bi regulisala korišćenje imovine u skladu s opštim interesima ili da bi obezbjedila naplatu poreza ili drugih dažbina ili kazni.

Predmeti u kojima je utvrđena povreda

1. *Mijanović protiv Crne Gore,* presuda od 17. septembra 2013. godine
- propust da se izvrši presuda;
- ova presuda je donesena i u odnosu na član 6 (utvrđena je povreda).

2. *A i B protiv Crne Gore,* presuda od 5. marta 2013. godine
- zadiranje je bilo suprotno zakonu.

3. *Lakićević i drugi protiv Crne Gore i Srbije,* presuda od 13. decembra 2011. godine
- umanjenje ili prekid isplate penzije predstavlja zadiranje u pravo na imovinu;
- domaće vlasti u boljoj su poziciji nego međunarodni sudija da odluče o tome što je u javnom interesu;
- široko polje slobodne procjene u oblasti socijalnih zakona – treba omogućitu implementaciju politika ukoliko imaju razumne osnove;
- podnosioci predstavke dovedeni su u ovom predmetu u poziciju da su morali da snose pretjeran i nesrazmjeran teret.

4. *Bijelić protiv Crne Gore i Srbije,* presuda od 28. aprila 2009. godine
- pravo na imovinu uključuje i pravo na uživanje i na raspolaganje;
- nemogućnost da se tuženi isele iz imovine je zadiranje u pravo;
- sporno neizvršenje bilo je u okviru nadležnosti Suda *ratione temporis* gotovo 5 godina; 10 godina prije ratifikacije;
- ova presuda je donesena i u odnosu na: član 46.

ČLAN 41 – PRAVIČNO ZADOVOLJENJE

Kad Sud utvrdi prekršaj Konvencije ili protokola uz nju, a unutrašnje pravo Visoke strane ugovornice u pitanju omogućava samo djelimičnu odštetu, Sud će, ako je to potrebno, pružiti pravično zadovoljenje oštećenoj strani.

Predmeti gdje je zasebno odlučivano po članu 41

1. *Koprivica protiv Crne Gore,* presuda od 23. juna 2015. godine
- povreda člana 10 ranije je utvrđena u presudi *Koprivica protiv Crne Gore* od 22. novembra 2011. godine;
- pitanje primjene člana 41 Konvencije nije ranije bilo spremno za odlučivanje;
- Konvencija predviđa pravičnu naknadu samo ukoliko unutrašnje pravo ne omogućava punu reparaciju;
- dosuđena pravična naknada za materijalnu štetu i na ime troškova i izdataka.

ČLAN 46 – OBAVEZNOST I IZVRŠENJE PRESUDA

1. Visoke strane ugovornice preuzimaju obavezu da se povinuju pravosnažnoj presudi Suda u svakom predmetu u kome su stranke.
2. Pravosnažna presuda Suda se dostavlja Komitetu ministara koji nadgleda njeno izvršenje.
3. Ako Komitet ministara smatra da praćenje izvršenja pravosnažne presude remeti neki problem u vezi sa tumačenjem presude, može se obratiti Sudu radi donošenja odluke povodom pitanja tumačenja. Za odluku o obraćanju Sudu potrebna je dvotrećinska većina glasova predstavnika koji sjede u Komitetu. Ako Sud utvrdi da stav 1 nije prekršen, vratiće predmet Komitetu ministara, koji zaključuje raspravu o predmetu.
4. Ako Komitet ministara smatra da neka Visoka strana ugovornica odbija da se povinuje pravosnažnoj presudi u predmetu u kojem je stranka, Komitet ministara može, nakon što zvanično obavijesti tu Visoku stranu ugovornicu, a na osnovu odluke usvojene dvotrećinskom većinom glasova predstavnika koji sjede u Komitetu, da se Sudu obrati pitanjem da li je ta Visoka strana ugovornica propustila da ispuni svoju obavezu iz stava 1.
5. Ako Sud utvrdi da postoji povreda stava 1, upućuje predmet Komitetu ministara radi razmatranja mjera koje treba preduzeti. Ako Sud utvrdi da stav 1 nije prekršen, vratiće predmet Komitetu ministara, koji zaključuje raspravu o predmetu.

Predmeti gdje je primijenjen član 46

1. *Bijelić protiv Crne Gore i Srbije,* presuda od 28. aprila 2009. godine
- u vezi sa članom 6;
- Vlada da obezbijedi izvršenje presude tri mjeseca od datuma donošenja presude u Strazburu;
- ukoliko se ne obezbijedi izvršenje presude, Vlada će morati da plati veću naknadu štete nego što je prvobitno dosuđeno.

THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS WITH RESPECT TO MONTENEGRO UP UNTIL THE END OF 2016

Montenegro

Montenegro: cases before the European Court of Human Rights

This document sets out the judgments and selected decisions handed down by the European Court of Human Rights (hereinafter: "the Court") in respect of Montenegro. Montenegro ratified the European Convention of Human Rights and Fundamental Freedoms (hereinafter: "Convention") on 6 June 2006, three days after it became an independent state. It has been deemed responsible for complying with Convention obligations from the date of ratification of the Convention by the former State Union of Serbia and Montenegro, on 03 March 2004. As of 31 December 2016, the Court has handed down 24 judgments and 34 admissibility decisions in respect of Montenegro.[1]

The document is in two parts. This first part contains a narrative overview of the types of cases in which judgment has been given. The second part contains a table, broken down by Article, listing the cases in which judgment has been rendered with a brief description of the legal issues raised in the case. Some cases appear more than once under the heading of one Article as the Court has found both a violation and a non-violation in respect of that particular Article.

Concerning the evolving necessity to translate the case-law of the Court and to bring it closer to judiciary, executive and other relevant institutions of the countries in the region of Western Balkan, this document is translated into the official language of Montenegro.

Article 3

3 judgments have been given in respect of Article 3, the prohibition against torture. *Bulatović* concerned the conditions and length of the applicant's detention.[2] A violation was found on the basis of the cramped conditions, limited access to daylight, water and exercise, and poor quality food. The Court found no violation of Article 3 of the Convention in regards to the lack of medical care in detention. In *Milić and Nikezić*, violations of both the substantive and procedural limbs of Article 3 were found.[3] On the substantive aspect, the Court held that where events lie in whole or large part in the exclusive knowledge of the authorities, as for persons in custody like in the present case, then a strong presumption arises in respect of injuries occurring during such detention. The authorities should provide a satisfactory and convincing explanation of any injuries. In this case, there was evidence of excessive force. Further, in light of this force and evidence that prison guards had abused their position and exceeded their authority, the Court considered that it had not been convincingly established that the decision of the State Prosecutor to discontinue criminal proceedings was based on adequate assessment of all relevant factual elements in the case, taking into account the findings of the Ombudsman and disciplinary proceedings. In *Siništaj and Others*, violations of both limbs of Article 3 were found following a prisoner who presented with clear injuries. The presumption in respect of injuries in custody applied. Further, the injuries were not investigated and the investigation that took place, by the Internal Police Control, was not considered independent as it was done by the police themselves.[4]

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1 This document includes a detailed overview of judgments adopted by a Chamber of seven judges and a Grand Chamber of seventeen judges. Judgments rendered by Committees of three members or individual judges (see ECHR Articles 27 and 28), adopted in the so called "repetitive cases", are not included in the next sections of this document. Of the judgments, all the cases were decided by a Chamber. Of the admissibility decisions, 12 cases were decided by a Chamber.

2 *Bulatović v Montenegro*, judgment of 22 July 2014

3 *Milić and Nikezić v Montenegro*, judgment of 28 April 2015

4 *Siništaj and Others v Montenegro*, judgment of 24 November 2015

Article 5

2 judgments were given in respect of Article 5, the right to liberty and security. *Bulatović* concerned Article 5 § 3. The relevant period to be taken into consideration for the purposes of assessing its reasonableness begins on the day the accused is taken into custody and ends when the charge is determined, even if only by court of first instance. The Court held in this case that detention extending five years was considered beyond reasonable. *Mugoša* concerned Article 5§1(c), and whether action was "lawful" and "in accordance with a procedure prescribed by law".[5] The Court stated that the lawfulness of detention under domestic law is the primary but not always decisive element – the Court must be satisfied that the person has not been deprived of liberty in an arbitrary fashion and must determine whether domestic law itself is in conformity with the Convention. There was a lack of precision in the detention orders in respect of duration of detention and there was a lack of consistency on whether the statutory time limits for re-examination of detention grounds are mandatory or not, so this made it unforeseeable in application. A violation was found.

Article 6

The bulk of judgments, 14 out of 24 rendered in respect of Montenegro, have concerned Article 6. A violation was found in 13 of those cases. The cases involved a number of aspects of Article 6. Nine cases concerned the question of delay in proceeding to hearing, in giving a final domestic judgment, or in the execution of a final domestic judgment. The Court considered the test for assessing the reasonableness of delay and emphasized the importance of execution as an integral part of Article 6 rights. The periods of delay in issue ranged from between 5 years and 9 years post-ratification. In the *Mijanović* judgment the Court found that Montenegrin authorities did not undertake necessary measures to execute the judgment. In the judgments *Bujković*, *Milić*, *Vukelić*, *Velimirović* and *Boucke*, taking into account its case law in this field and the failure of the national authorities to show adequate promptness, the Court found that the failure to execute the judgments constituted a violation of Article 6. In the *Novović*, *Stakić* and Živaljević judgments the Court established violations of Article 6 stating that the overall length of the concerned procedures did not meet the reasonable time requirement. There were two cases which did not involve questions of delay. In the first case, *Barać and Others*, the Court found that there was a violation of the right to a fair trial where a decision was made in a case, based on a reason not envisaged by domestic legislation.[6] In *Garzičić*, the Court found that where an applicant had not specified the value of a claim, there was nothing preventing the domestic court from establishing this and proceeding with a case.[7] In *Tomić and Others*, no violation of Article 6 was found.[8] The issue here was whether conflicting domestic judgments constituted a violation of the right to a fair trial. The Court stated that it was not its role to question the interpretation of domestic law and those divergences in interpretation can be accepted as an inherent trait of the judicial system. Minor divergences were found in this case. This was distinguished from instances of profound and long-standing differences in practice, which could be contrary to the principle of legal certainty and result in a violation of Article 6.

In *Mugoša v Montenegro*,[9] no violation was found in respect of Article 6§1. The Court held that although courts must give reasons for their judgments, they need not give a detailed answer to every argument. Context is relevant. In *Mugoša*, the Court held that the flaw was formal not substantive, it was rectified rapidly and the Court of Appeals examined it and did not consider it made the detention order unlawful. This was not of a fundamental nature and did not require an express reply by the Constitutional Court.

However, in respect of the presumption of innocence and Article 6§2, a violation was found. The Court reiterated that the presumption will be violated if a judicial decision, or statement by a public official concerning a person charged with a criminal offence, reflects an opinion that he is guilty before this is proven. It suffices that there is some reasoning

5 *Mugoša v Montenegro,* judgment of 21 June 2016.

6 *Barać and Others v Montenegro,* judgment of 13 December 2011

7 *Garzičić v Montenegro,* judgment of 21 September 2010

8 *Tomić and Others v Montenegro,* judgment of 17 April 2012

9 *Mugoša v Montenegro,* judgment of 21 June 2016

suggesting that the court or official regards the accused as guilty, and a premature expression of the opinion will fall foul of the presumption. In *Mugoša*, the High Court had expressly stated that the applicant "in insidious manner…deprived X of his life…by shooting him…" and so had pronounced on the applicant's guilt before it was proved according to law. Subsequent courts failed to rectify this on appeal, including the Constitutional Court itself.

In *Radunović and Others*,[10] the issue was whether the applicants had been given a fair hearing as domestic courts had refused to examine their civil claims on the merits. The State submitted that the granting of immunity to a foreign State in civil proceedings pursued a legitimate aim of complying with international law and encouraging good diplomatic relations between States, and could not be considered a restriction on access to a court. The Court stated that measures taken by a state which reflect generally recognized rules of public international law on State immunity could not in principle be regarded as imposing a disproportionate restriction on the right of access to court. However, by rejecting the applicants' claim for compensation by relying on State immunity without giving relevant and sufficient reasons, and notwithstanding the applicable provisions of international law as well as national law, the courts failed to preserve a reasonable relationship of proportionality.

Article 1 of Protocol No. 1

4 judgments have been given in respect of Article 1 of Protocol No. 1 on the right to property. A violation was found in all cases. In the *Mijanović* case the applicant complained of non-execution of the judgment adopted to the benefit of her legal predecessor and of the violation of his property rights committed thereby. The Court held that the fact that the State did not execute the final judgment constituted an interference with the right to peaceful enjoyment of one's possession.[11] In the case *A. and B.* the applicants complained primarily of the continuous non-execution of the final judgment in the litigation for the re-payment of the old foreign currency savings that their late mother deposited and that they inherited. Alternatively, they complained of the fact that the Podgorička banka and/or the Central Bank of Montenegro had not registered the concerned savings and therefore had not converted it into the public debt of the respondent State according to the relevant national legislation. The Court found an obvious interference of the respondent State into the possessions of the applicants and their legitimate expectation to obtain the concerned savings back gradually. This interference, according to the Court, was against the law and hence constituted a violation of the Convention.[12] In *Bijelić*, the first case brought against Montenegro, the Court found that the applicant owners' inability to have the respondent tenants evicted from the applicants' property was an interference with the applicants' right to peaceful enjoyment of possessions.[13] There had also been a delay in proceedings of almost five years post-ratification. In *Lakićević*, the reduction or discontinuance of a pension was found to constitute an interference with the peaceful enjoyment of possessions.[14] The margin of appreciation of a State was discussed, and found to be wide in the area of social legislation. The Court found that State authorities should be allowed to implement policies in this area unless they were without reasonable foundation. However, the applicants were found to have been made to bear an excessive and disproportionate burden in this case, leading to the Court's finding of a violation.

Article 8

1 judgment was given in respect of Article 8, the right to respect for private and family life. A violation was found. The case *Mijušković* concerned the positive obligation on State authorities to take measures to reunite parents with children.[15] The Court noted that this obligation was not absolute, as the wishes of the children and parents involved also needed to be respected. However, in this case, the State authorities had failed to make adequate and effective efforts to execute decisions made on the relationship in question, in a timely manner.

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10 *Radunović v Montenegro*, judgment of 25 October 2016.

11 *Mijanović v Montenegro*, judgment of 17 September 2013

12 *A. and B. v Montenegro,* judgment of 5 March 2013

13 *Bijelic v Montenegro and Serbia*, judgment of 28 April 2009

14 *Lakicevic and Others v Montenegro and Serbia*, judgment of 13 December 2011

15 *Mijušković v Montenegro*, judgment of 21 September 2010

Article 10

2 judgments have been given in respect of Article 10, on the right to freedom of expression. In both cases, a violation was found. In *Koprivica*, the Court stressed the essential function fulfilled by the press in a democratic society and the importance of journalistic freedom.[16] The Court found that the award of damages and costs in this case was disproportionate to the legitimate aim served, and stressed that the amount of damages cannot be such as to cause a so-called "chilling effect".[17] In *Šabanović*, the Court stated that civil servants acting in an official capacity were subject to wider limits of acceptable criticism than private individuals.[18] It was acknowledged, that where information imparted was in good faith and on a matter of public interest, untrue and damaging statements about private individuals might not violate Article 10. Further, the Court stressed that the nature and severity of the penalty imposed on individuals for defamation, as well as the "relevance" and "sufficiency" of the national courts' reasoning, were matters of particular significance when assessing the proportionality of the interference in question with the legitimate aims sought to be realized.

Article 13

The Court found 2 violations of Article 13, the right to an effective remedy. These were in conjunction with Article 6.[19] In the case *Stakić* the applicant complained of the length of civil proceedings and of the non-existence of an effective legal remedy in that respect. The Court found a violation of Article 13 in conjunction with Article 6 of the Convention due to the lack of an effective legal remedy in domestic legislation. In the case of *Milić*, the applicant complained of non-execution of the final judgment that ordered his reinstatement and of lack of an effective legal remedy in that respect. The Court reached the same conclusion as in the *Stakić* judgment.

It is worth noting that the Court in the case *Vukelić v. Montenegro* referred to the progress Montenegro had achieved in the implementation of effective legal remedies for the protection of the right to fair trial within a reasonable time: "*the Court considers that, in view of the considerable development of the relevant domestic case-law on this issue, a request for review must, in principle and whenever available in accordance with the relevant legislation, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Montenegro after the date when this judgment becomes final.*"

Articles 41 and 46

One judgment, in the case of *Koprivica v. Montenegro*,[20] was rendered specifically in respect of just satisfaction under Article 41. In its decision on the merits of 22 November 2011, the Court found a violation of Article 10 and decided to defer its decision on whether to award just compensation to the applicant.

The Court raised Article 46, on the binding force and execution of judgments in one case, *Bijelić v. Montenegro and Serbia,*[21] regarding violation of Article 6 of the Convention. In that judgment, the Court required the enforcement of the final decision delivered by the domestic first-instance court.

Whenever the Court finds the respondent State in breach of a right enshrined in the Convention, it requires that State to take either individual or general measures during the execution of a judgment, which is monitored by the Council of Europe's Committee of Ministers. The Court may specifically require that the respondent State take general measures to

16 *Koprivica v Montenegro*, judgment of 22 November 2011

17 *A chilling effect* describes a situation in which rights, such as free speech, are threatened by the possible negative results of exercising these rights. The effect is to silence criticism and freedom of expression, even in cases where criticism is perfectly valid.

18 *Šabanović v Montenegro and Serbia*, judgment of 31 May 2011

19 *Milić v Montenegro and Serbia*, judgment of 11 December 2012; *Stakić v Montenegro*, judgment of 2 October 2012

20 *Koprivica v Montenegro*, judgment of 23 June 2015

21 *Bijelić v Montenegro and Serbia*, judgment of 28 April 2009

address so-called “systemic problems” within their legal systems, to preclude violations of Convention rights in the future.

In its judgments against Montenegro, the ECtHR has not yet found violations of human rights and freedoms that are systemic in character. The breaches it has found have regarded individual cases of threats to or violations of human rights and freedoms enshrined in the Convention.

Furthermore, although the Court reviewed Article 46 of the Convention separately only in the *Bijelić* case against Montenegro (see above), Montenegro has been fulfilling all its obligations set out in the Court’s judgments promptly and has been adopting action plans for every individual case, which comprise of specific individual and general measures. It needs to be noted that the Committee of Ministers, the mechanism supervising the execution of ECtHR judgments, has not reviewed any cases against Montenegro at its plenary sessions.

Most of the judgments in which the Court found Montenegro in violation of the Convention regarded the enforcement of final judgments and/or length of proceedings.

Accordingly, some of the general measures set out in the action plans for the execution of the Court’s judgments that have been successfully implemented regarding the obligation to fully enforce the final decisions of the domestic courts. In the case of *Mijanović*, for instance, the Court held that the respondent State was to pay the applicant, within three months from the date on which its judgment became final, the award made by the domestic courts, including the statutory interest and the legal costs referred to therein, in respect of pecuniary damage. In addition, in the case of *Vukelić*, the Court required Montenegro to ensure the enforcement of a decision in favour of the applicant. Montenegro has implemented a reform of its enforcement procedure and introduced public enforcement officers. It has thus improved the efficiency of the enforcement procedure, which has, consequently, led to a drop in the number of such cases submitted to the Strasbourg Court.

In its judgment in the case of *A. and B. v. Montenegro*, the Court held that Montenegro was to pay the applicants all the installments, including the relevant interest, due to them as of the moment when the old foreign currency savings became public debt by virtue of the relevant domestic legislation until the date when the judgment became final, and that it also had to take all appropriate measures to ensure that the competent authorities implemented the relevant legislation in respect of the applicants and thus secure the payment of all future installments under the same conditions.

As for freedom of expression, the Supreme Court of Montenegro issued a legal view which in principle is binding on all courts in Montenegro. According to this view, the amounts awarded in respect of non-pecuniary damages in civil libel trials of journalists must be in compliance with the Court’s views (stated in its judgment in the *Koprivica* case).

In its judgment in the case of *Bulatović*, the Court found Montenegro in violation of Articles 3 and 5 of the Convention with regard to the conditions and length of the applicant’s detention on remand and lack of medical care while in detention. The relevant authorities have undertaken adequate measures to improve the conditions in detention and reduce the length of detention on remand.

All decisions and judgments adopted in respect of Montenegro are translated and published in the Official Journal of Montenegro, as well as on the website of the Supreme Court of Montenegro and the European Human Rights Database, with a view to familiarising the public with their content. The translations are also communicated to all State authorities that were involved in decisions challenged in the applications with a view to familiarising them with the ECtHR’s precedent case law and to ensure that European legal standards are applied by all State authorities in Montenegro in their everyday work.

Jurisprudence broken down by Article

ARTICLE 2 – RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
   a. in defence of any person from unlawful violence;
   b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   c. in action lawfully taken for the purpose of quelling a riot or insurrection.

No judgments rendered under this Article.

ARTICLE 3 – PROHIBITION OF TORTURE

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

Cases where a violation was found

1. *Siništaj and Others v. Montenegro,* judgment of 24 November 2015
- torture and ill treatment by police officers, lack of investigation;
- where events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention;
- burden may be regarded as resting on authorities to provide a satisfactory and convincing explanation;
- investigation must be capable of leading to the establishment of the facts of the case and if true, identification and punishment of those responsible;
- applicant had been arrested and the investigating judge and prison doctor noticed his injuries;
- investigation of the Internal Police Control was done but this was not independent as done by the police, and not thorough as the applicant's complaints and injuries were completely ignored;
- a constitutional appeal can in principle be considered an effective domestic remedy as of 20 March 2015 (§123).

2. *Milić and Nikezić v. Montenegro,* judgment of 28 April 2015
- where events in issue lie wholly or in large part in the exclusive knowledge of authorities, as for persons in custody, strong presumptions of fact arise in respect of injuries occurring during such detention;
- burden may be regarded as resting on authorities to provide a satisfactory and convincing explanation;
- domestic bodies established that the prisoners were hit with rubber batons;
- domestic courts accepted that the use of force had been excessive;
- allegations against prison guards and the lack of an effective investigation;
- the obligation to investigate is not one of results but of means;
- evidence of abuse by the prison guards of their positions and authority;
- excessive force used, disproportionate to resistance from the applicants;
- not convincingly established that the decisions by the State Prosecutor to discontinue the criminal proceedings were based on an adequate assessment of all the relevant factual elements in the case, as well as taking into account the findings of fact as established by the Ombudsman and in the disciplinary proceedings;
- violations of both the procedural and substantive limbs of Article 3.

3. *Bulatović v. Montenegro,* judgment of 22 July 2014
- inadequate conditions of detention – food, water, cramped conditions, lack of exercise;
- no lack of medical care found;
- judgment also rendered in respect of: Article 5 [violation].

ARTICLE 4 – PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
   a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
   b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
   c. any service exacted in case of an emergency or calamity threatening the life or well being of the community;
   d. any work or service which forms part of normal civic obligations.

No judgments rendered under this Article.

ARTICLE 5 – RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   a. the lawful detention of a person after conviction by a competent court;
   b. the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
   c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
   d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
   e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
   f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Cases where a violation was found

1. *Mugoša v Montenegro,* judgment of 21 June 2016
- Article 5§1;
- lack of precision in detention orders in respect of duration;
- lack of consistency in whether statutory time-limits for re-examination of detention grounds mandatory, hence unforeseeability of application;
- judgment also rendered in respect of Article 6§1 [no violation]; Article 6§2 [violation].

1. *Bulatović v. Montenegro,* judgment of 22 July 2014
- lengthy detention of five years in excess of reasonable time;
- period of detention begins when accused taken into custody and ends when charge is determined, even if only by court of first instance;
- judgment also rendered in respect of Article 3 [violation].

ARTICLE 6 – RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
   a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   b. to have adequate time and facilities for the preparation of his defence;
   c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Cases where a violation was found

1. *Radunović v Montenegro,* judgment of 25 October 2016
- Article 6§1 – right to a fair hearing;
- ECHR has to be interpreted in light of the Vienna Convention on the Law of Treaties and cannot be interpreted in a vacuum;
- must take rules of international law into account including those relating to the grant of State immunity;
- measures taken by state which reflect generally recognized rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court;
- by rejecting the applicants' claim for compensation relying on State immunity without giving relevant and sufficient reasons, and notwithstanding the applicable provisions of international law as well as national law, the courts failed to preserve a reasonable relationship of proportionality.

2. *Mugoša v Montenegro,* judgment of 21 June 2016
- excessive length of proceedings.

3. *Bujković v. Montenegro,* judgment of 10 March 2015
- Article 6§2;
- presumption of innocence violated by High Court;
- not rectified by higher courts;
- judgment also rendered in respect of Article 5§1 [violation]; Article 6§1 [no violation].

4. *Mijanović v. Montenegro,* judgment of 17 September 2013
- failure to enforce a judgment;
- judgment also rendered in respect of Article 1 of Protocol No. 1 (violation).

5. *Vukelić v. Montenegro,* judgment of 4 June 2013
- Non-enforcement of a judgment;
- 9 years within ratione temporis; more than 6 years before that;
- a request for review must in principle be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Montenegro after 4 September 2013 (§85).

6. *Milić v. Montenegro and Serbia,* judgment of 11 December 2012
- Non-enforcement of judgment;
- judgment also rendered in respect of Article 13 [violation].

7. *Novović v. Montenegro,* judgment of 23 October 2012
- employment reinstatement questions should be considered 'expeditiously';
- 5 years, 3 months after ratification; 12 years, 8 months pre-ratification.

8. *Stakić v. Montenegro,* judgment of 2 October 2012
- compensation for injuries the applicant suffered in a fight;
- 8 years, 6 months, first instance post-ratification; 24 years pre-ratification; de facto denial of justice;
- lack of priority or urgent action did not justify procedural delay of this length;
- judgment also rendered in respect of: Article 13 in conjunction with Article 6 [violation].

Cases where a violation was found

9. *Velimirović v. Montenegro,* judgment of 2 October 2012
- execution of a judgment as an integral part of trial;
- 8 years, 2 months post-ratification; 11 years pre-ratification.

10. *Boucke v. Montenegro,* judgment of 21 February 2012
- child maintenance case
- State must take all necessary steps to enforce a judgment
- 7 years, 9 months post-ratification; 6 years pre-ratification

11. *Barać v. Montenegro,* judgment of 13 December 2011
- no fair trial where reason given for a decision was not envisaged by domestic legislation.

12. *Živaljević v. Montenegro,* judgment of 8 March 2011
- test for assessing reasonableness of delay;
- 6 years, 11 months post-ratification; 7 years pre-ratification;
- expropriation of applicant's house and land; not complex in this case.

13. *Garzičić v. Montenegro,* judgment of 21 September 2010
- nothing to prevent court from establishing value of claim when applicant has not done so.

Cases where no violation was found

1. *Mugoša v Montenegro,* judgment of 17 April 2012
- duty to give reasons does not require a detailed answer to every argument;
- no express reply required in this case where flaw at issue formal not substantive, rectified rapidly, examined by Court of Appeal and found not to make the detention order in issue unlawful;
- judgment also rendered in respect of Article 5§1 [violation]; Article 6§2 [violation].

2. *Tomić and Others v. Montenegro,* judgment of 17 April 2012
- no violation;
- not European Court's role to question interpretation of domestic law;
- divergences in interpretation can be accepted as an inherent trait of judicial systems but profound and long-standing differences in practice can be contrary to principle of legal certainty.

ARTICLE 7 – NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

No judgments rendered under this Article.

ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Cases where a violation was found

1. *Mijušković v. Montenegro,* judgment of 21 September 2010
- mutual enjoyment by parent and child of each other's company as a fundamental element of 'family life';
- positive obligation for measures to be taken to reunite parents and children;
- positive obligation is not absolute;
- failed to make adequate and effective efforts to execute the social care centre's decision and final court judgment in timely manner.

ARTICLE 9 – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

No judgments under this Article.

ARTICLE 10 – FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Cases where a violation was found

1. *Koprivica v. Montenegro,* judgment of 22 November 2011
- essential function fulfilled by the press in a democratic society;
- the boundaries of the press and meaning of journalistic freedom;
- consideration of pressing social needs;
- Court's task in exercising supervisory function;
- relationship of proportionality with compensation.
-

2. *Šabanović v. Montenegro,* judgment of 31 May 2011
- freedom of expression as applicable to ideas that offend, shock or disturb;
- right to impart, in good faith, information on matters of public interest even where the statements involved untrue and damaging statements about private individuals;
- has to be taken into account whether the expressions at issue concern a person's private life or their behaviour and attitudes in the capacity of an official;
- there is a wider limit of acceptable criticism against senior civil servants acting in an official capacity compared to a private individuals;
- in this case, criticism was against an individual's behavior and attitudes in his capacity as an official, rather than in his private life;
- distinction between statements of fact and value judgments;
- the nature and severity of the penalty imposed, as well as the 'relevance' and 'sufficiency' of the national courts' reasoning are matters of particular significance when assessing proportionality;
- Governments should display restraint in resorting to criminal sanctions, particularly where there are other means of redress available.

ARTICLE 11 – FREEDOM OF ASSEMBLY AND ASSOCIATION

3. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
4. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

No judgments rendered under this Article.

ARTICLE 12 – RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

No judgments rendered under this Article.

ARTICLE 13 – RIGHT TO AN EFFECTIVE REMEDY

Everyone whose rights and freedoms as set forth in this 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.

Cases where a violation was found

1. *Stakić v. Montenegro,* judgment of 2 October 2012
- raised in conjunction with Article 6.

2. *Milić v. Montenegro and Serbia,* judgment of 11 December 2012
- raised in conjunction with Article 6.

ARTICLE 14 – PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

No judgments rendered under this Article.

PROTOCOL 1, ARTICLE 1 – PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Cases where a violation was found

1. *Mijanović v. Montenegro,* judgment of 17 September 2013
- failure to enforce a judgment;
- judgment also rendered in respect of Article 6 (violation).

2. *A. and B. v. Montenegro,* judgment of 5 March 2013
- interference made was contrary to the law.

3. *Lakicević and Others v. Montenegro and Serbia,* judgment of 13 December 2011
- reduction or discontinuance of a pension constitutes interference with possessions;
- national authorities are better placed than the international judge to decide what is in the public interest;
- wide margin of appreciation in the area of social legislation – should allow implementation of policies unless without reasonable foundation;
- applicants made to bear excessive and disproportionate burden in instant case.

4. *Bijelić v. Montenegro and Serbia,* judgment of 28 April 2009
- right of property includes right to enjoy peacefully and to dispose;
- inability to have respondents evicted from property was an interference;
- impugned non-enforcement proceedings had been within Court's competence ratione temporis for almost 5 years; 10 years before ratification;
- judgment also rendered in respect of: Article 46.

ARTICLE 41 – JUST SATISFACTION

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 neceessary, afford just satisfaction to the injured party.

Cases where Article 41 was decided on separately

1. *Koprivica v. Montenegro,* judgment of 23 June 2015
- violation of Article 10 had previously been found (*Koprivica v. Montenegro,* judgment of 22 November 2011);
- the question of the application of Article 41 had not previously been ready for decision;
- Convention provides for just satisfaction only if internal legislation does not allow for full reparation;
- awarded pecuniary and non-pecuniary just satisfaction.

ARTICLE 46 – BINDING FORCE AND EXECUTION OF JUDGMENTS

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Cases where Article 46 was raised

1. *Bijelić v. Montenegro and Serbia,* judgment of 28 April 2009
- in conjunction with Article 6;
- Government to secure enforcement of judgment three months from the date of the Strasbourg judgment;
- failure to ensure enforcement will result in liability to pay greater damages than initially awarded against the Government.

AIRE Centar

AIRE Centar je nevladina organizacija koja unapređuje svijest o pravima zajemčenim evropskim pravom i pruža podršku žrtvama povreda ljudskih prava. Tim međunarodnih pravnika pruža informacije, podršku i savjete o pravnim standardima Evropske unije i Savjeta Evrope. Tim ima bogato iskustvo u zastupanju podnosilaca predstavki pred Evropskim sudom za ljudska prava u Strazburu i do sada je učestvovao u više od 150 postupaka pred tim sudom. AIRE centar je tokom poslednjih 20 godina sproveo i učestvovao u brojnim seminarima u Centralnoj i Istočnoj Evropi, koji su organizovani za advokate, sudije, državne službenike i nevladine organizacije.

AIRE centar se naročito usredsređuje na zemlje Zapadnog Balkana, u kojima više od 15 godina sprovodi niz dugoročnih programa unapređenja vladavine prava, u partnerstvu sa nacionalnim institucijama i sudovima. Svi naši programi imaju za cilj da unaprijede primjenu Evropske konvencije o ljudskim pravima na nacionalnom nivou, da doprinesu procesu evropskih integracija zemalja regiona putem jačanja vladavine prava i punog priznanja ljudskih prava u njima, kao i da podstiču regionalnu saradnju sudija i pravnih stručnjaka.

The AIRE Centre

The AIRE Centre is a non-governmental organisation that promotes awareness of European law rights and provides support for victims of human rights violations. A team of international lawyers provides information, support and advice on European Union and Council of Europe legal standards. It has particular experience in litigation before the European Court of Human Rights in Strasbourg and has participated in over 150 cases. Over the last 20 years the AIRE Centre has conducted and participated in a number of seminars in Central and Eastern Europe for the benefit of lawyers, judges, government officials and non-governmental organisations.

The AIRE Centre has been focusing on the countries of Western Balkans in particular, where it has been for over decade and a half conducting a series of long-term rule of law programmes in partnership with domestic institutions and courts. Our aim throughout these programmes has been to promote the national implementation of the European Convention on Human Rights, assist the process of European integration by strengthening the rule of law and full recognition of human rights, and encourage regional cooperation amongst judges and legal professionals.

Foreign & Commonwealth Office

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