



Prison guards used excessive force, amounting to ill-treatment, against two detainees during a search of their cell

In today's **Chamber judgment**¹ in the case of **Milić and Nikezić v. Montenegro** (application nos. 54999/10 and 10609/11) the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the ill-treatment to which both applicants, Mr Milić and Mr Nikezić, had been subjected during a search of their cell as well as the ineffectiveness of the ensuing investigation into their complaints of ill-treatment.

The case concerned the applicants' allegation that the prison guards had beaten them with rubber batons during a search of their cell. According to the Montenegrin Government, the guards had had to use force against the applicants to overcome their resistance on entering their cell.

The Court found in particular that, even though it had been established in the compensation and disciplinary proceedings concerning the applicants' complaint of ill-treatment that the guards had used excessive force, the damages awarded to the applicants had not been sufficient. Nor had the domestic courts or the Government actually acknowledged that such behaviour had amounted to ill-treatment. The Court on the other hand found that hitting the applicants with batons – as established by the domestic bodies – had amounted to ill-treatment within the meaning of Article 3.

Principal facts

The applicants, Igor Milić and Dalibor Nikezić, are Montenegrin nationals who were born in 1974 and 1981 respectively and live in Podgorica.

Detained at the Institution for the Execution of Criminal Sanctions, the applicants allege that the incident took place on 27 October 2009 when their cell was to be searched on account of Mr Milić's upcoming transfer to a disciplinary unit. According to them, several guards entered the cell, and grabbing and handcuffing Mr Milić, beat him with rubber batons and their fists. Mr Nikezić, who had protested against the abuse, was then also beaten and kicked. Mr Milić subsequently refused to see a doctor, but Mr Nikezić was examined by an external forensic doctor who reported that he had bruising to his left thigh and around his eyes.

The Government submit that the prison guards had had to use force against the applicants to overcome their resistance on entering their cell, Mr Nikezić in particular having attacked and injured one of the guards.

The applicants' mothers, having noticed that their sons were injured during a visit, subsequently lodged criminal complaints and the State Prosecutor asked the domestic courts to investigate. The investigating judge then requested that the prison guards involved be identified, that the applicants have a medical examination, that a video-recording be submitted and also heard evidence from the applicants, the prison guards and the detainees who shared the cell with the applicants. On the basis

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

of those findings the State Prosecutor rejected the criminal complaints in February and then in October 2010. He concluded that the prison guards had had to use force, by hitting the applicants with rubber batons, in order to overcome their resistance and had therefore acted within their powers.

In the meantime in March 2010, the Deputy Ombudsman, who had also visited the applicants in prison and noticed injuries, gave her opinion on the incident, finding that excessive force had been used and recommending disciplinary proceedings. At the end of the ensuing disciplinary proceedings in May 2010 three guards were found to have abused their position by using excessive force – in particular hitting the applicants with batons – during the incident and were fined.

The applicants also lodged a compensation claim in the civil courts and they were ultimately awarded 1,500 euros each for non-pecuniary damage in October 2014 by the Supreme Court, which found that the guards' use of force could not be justified by the applicants' resistance and that their actions had degraded human dignity.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), the applicants complained that they had been ill-treated by prison guards on 27 October 2009 and that the ensuing investigation into their complaints had been ineffective.

The applications were lodged with the European Court of Human Rights on 7 September 2010 and 4 February 2011, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl Karakaş (Turkey), *President*,
András Sajó (Hungary),
Nebojša Vučinić (Montenegro),
Helen Keller (Switzerland),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 3 \(ill-treatment and investigation\)](#)

The Court found that, even though the applicants had lodged a compensation claim and had been awarded damages for their complaint of ill-treatment, the Supreme Court – in the compensation proceedings – had only referred to the prison guards' actions as degrading human dignity and had not therefore acknowledged a violation of the applicants' rights as clearly as would have been necessary. In any event, 1,500 euros for non-pecuniary damage was not appropriate redress for such a complaint.

As concerned the complaint of ill-treatment, the Court noted that the domestic bodies – the State Prosecutor and the disciplinary commission – had established that the prison guards had hit the applicants with rubber batons. Furthermore, the external forensic doctor who had examined Mr Nikezić confirmed that he had sustained injuries. Indeed, the domestic courts had accepted in the compensation proceedings that the guards' use of force had been excessive and this had been acknowledged by the Government, albeit without accepting that this treatment constituted torture or inhuman and degrading treatment. The Court therefore considered that the guards' actions on

27 October 2009 as described in the domestic proceedings and the injuries noted in the medical reports had constituted ill-treatment within the meaning of Article 3. There had therefore been a violation of Article 3 as concerned both applicants.

As concerned the effectiveness of the investigation into the applicants' complaint of ill-treatment, the Court noted in particular that, although the investigating judge had immediately undertaken a number of steps to investigate, the State Prosecutor's second dismissal of the applicants' criminal complaints in October 2010 took place after both the Ombudsman and the disciplinary commission had given their opinions on the incident, which both found that excessive force had been used against the applicants. The Court was not therefore convinced that the State Prosecutor's decisions to discontinue the criminal proceedings had been based on an adequate assessment of all the relevant facts in the case or had taken into account either the Ombudsman's or disciplinary commission's findings. There had therefore been a violation of Article 3 as concerned both applicants in respect of the investigation into their complaints of ill-treatment on 27 October 2009.

Given that finding, the Court further held that there was no need to examine the applicants' complaint under Article 13 that there had been no effective investigation.

[Article 41 \(just satisfaction\)](#)

The Court held that Montenegro was to pay the applicants 4,350 euros (EUR) each for non-pecuniary damage. It further awarded EUR 3,520 to Mr Milić and EUR 1,160 to Mr Nikezić for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.