CENTRE FOR MONITORING AND RESEARCH

HUMAN RIGHTS ACTION MONTENEGRO | AKCIJA ZA LJUDSKA PRAVA

# ANNUAL REPORT ON MONITORING
## JUDICIAL PROCEEDINGS IN MONTENEGRO
June 2022 – September 2023

**October 2023. godine**

CEMI
CENTRE FOR MONITORING AND RESEARCH

HRA MONTENEGRO
HUMAN RIGHTS ACTION | AKCIJA ZA LJUDSKA PRAVA

# ANNUAL REPORT ON MONITORING
## JUDICIAL PROCEEDINGS IN MONTENEGRO
## June 2022 – September 2023

**October 2023. godine**

# ANNUAL REPORT ON MONITORING JUDICIAL PROCEEDINGS IN MONTENEGRO

## JUNE 2022 – SEPTEMBER 2023


**Publisher:**

CENTAR ZA MONITORING I ISTRAŽIVANJE

Centre for Monitoring and Research CeMI
Bul. Svetog Petra Cetinjskog 96, VI/12
e-mail: info@cemi.org.me
www.cemi.org.me

**Editors:**
Zlatko Vujovic
Tea Gorjanc-Prelevic



**Authors**
Vladimir Simonovic
Ognjen Mitrovic
Milica Bulatovic Jokanovic
Tatjana Gogic



**Project team:**
Teodora Gilic
Ognjen Mitrovic
Vladimir Simonovic
Milica Bulatovic
Tatjana Gogic

**Print:**
SmartPrint

**Circulation:**
100

**Year of publication:**
2023




Ministarstvo javne uprave

# CONTENT

# 1. INTRODUCTION

Montenegro's aspiration to become a full-fledged member of the European Union requires putting significant efforts in the field of judicial reform, as well as eliminating systemic deficiencies pointed out by the European Commission in its reports. However, the judicial system of Montenegro has been facing numerous challenges for many years, which limits its ability to effectively serve the public interest. The latest report of the European Commission states that no progress has been made in the field of judicial reform.

Delays in judicial proceedings, lack of staff and uneven application of the law constitute only some of the problems that contribute to the low efficiency in the functioning of the judicial apparatus. Poor harmonization with European standards and EU legal acquis is noticeable, the lack of political will to pass key laws in the field of justice has been a serious problem in the last few years, while weaknesses in the implementation of existing laws also remain unresolved. All these problems both enable violation of the rights of citizens seeking justice, and justifiably reduce their trust in the judicial system.

Non-governmental organizations Centre for Monitoring and Research (CeMI) and Human Rights Action (HRA), which deal with the monitoring of the judicial reform process and protection of human rights, strive to actively contribute to solving some of the mentioned problems and shortcomings in these areas. In order to make them as concrete as possible, CeMI and HRA implemented a project called "Access to justice and human rights in Montenegro - trial monitoring project 2021-2023" (hereinafter: the Project), which is funded by the European Union and co-funded by the Ministry of Public Administration.

The main goal of this project is to encourage democratic values in Montenegro by strengthening the foundations of the rule of law and expanding the culture of observance of human rights, as well as to strengthen the role of civil society as a catalyst in the promotion of human rights, with a special emphasis on access to justice and the rule of law.

As the name suggests, one of the key activities of the Project was a monitoring of court proceedings. This referred specifically to criminal proceedings. This type of monitoring is significant for its contribution to increasing transparency and improving judicial processes. Through diligent and systematic data collection, the monitoring of court proceedings enables in-depth analysis and identification of key problems in the work and functioning of the courts, which can serve as a basis for coming up with recommendations for improvement.

This Report presents the results obtained during the trial monitoring period from June 2022 to September 2023. It contains data that indicate the degree of compliance of the actions carried out by courts and public prosecutor's offices with domestic legislation and international standards in the field of criminal law. One of the main tasks of this Report is to provide an analytical overview of the situation in the judiciary, with a special focus on criminal law, in order to identify key areas in which steps need to be taken to improve the criminal justice system, with the ultimate goal of achieving greater observance for fundamental human rights.

Excluding the introduction, the Report consists of four main parts: legal and institutional framework, methodology, analysis of the court proceedings monitoring and conclusions and recommendations.

In the section of the Report dedicated to the legal and institutional framework, we deal with the analysis and interpretation of legal and institutional elements relevant to the monitoring of criminal cases. The chapter begins with an insight into the international standards of the right to a fair trial. The standards of the European Convention on Human Rights (hereinafter: ECHR) and the practices of the European Court of Human Rights (hereinafter: ECtHR) are especially emphasized, and a review of international standards on the rights of victims of criminal offenses is also provided. Additionally, this chapter covers the basic national legal and institutional framework, i.e. relevant national regulations in the field of criminal law and the protection of fundamental human rights, as well as the role and responsibility of the courts and the public prosecutor's office, as the essential institutions of the system which the administration of justice depends on.

The third chapter talks about the goals and basic principles of court proceedings monitoring programs and describes how these programs are used to monitor judicial proceedings and support the fairness, transparency and efficiency of the judiciary. This part describes the basic goals and principles of trial monitoring, as well as trial monitoring methodology used by the observers.

The fourth, and at the same time the most extensive chapter that forms the core of this report, is dedicated to the analysis of the data gathered by observers who monitored the court proceedings in the period from June 2022 to September 2023. This chapter contains qualitative and quantitative data, which were structured by units, in accordance with standardized forms that observers filled out during the monitoring of court proceedings.

The last chapter is dedicated to the conclusions reached by the observers and recommendations for improving the criminal justice system, with the aim of increasing the level of respect for human rights, both of the accused, and of victims and injured parties in criminal proceedings.

# 2. LEGAL AND INSTITUTIONAL FRAMEWORK

## 2.1. GENERAL LEGAL FRAMEWORK

### 2.1.1. International standards

The right to a fair and just trial is considered one of the key standards in international human rights law. These standards are enshrined in the most significant acts of international legal character that were enacted after World War II. For instance, Art. 10 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly, provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Similarly, Art. 14 para. 1 of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and tribunals, and that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

However, the rights guaranteed by these acts are not the only standards that determine the right to a fair and just trial. The ECtHR's case law indicates the existence of additional standards and guarantees that should be taken into account when assessing compliance with this right. For example, the ECtHR developed the concept of "justice within a reasonable time" as an integral part of the right to a fair trial. This standard serves to assess whether the proceedings lasted too long to be considered fair and just. Also, the ECtHR found that the right to a fair trial includes the right to access evidence, the right to defence, and the right to public trial. All these guarantees together form a unique standard of respect for the right to a fair and just trial, and all the mentioned aspects must be taken into account when assessing whether this standard was met.

In its decisions, the ECtHR emphasized that the right to a fair trial, guaranteed by Art. 6 of the ECHR, represents one of the most fundamental rights that need to be ensured to individuals. This standard applies to all stages of court proceedings, including the review of court decisions, which indicates its extremely wide scope. In addition, the ECtHR emphasized that the right to a fair trial implies not only the formal protection of rights, but also the essence of those rights in each individual case, which means that individuals must have real access to justice.

In the process of applying fair trial standards in their national law, states are obliged to harmonize their legislation and practice with the provisions of the ECHR. In the event of a violation of this key standard, individuals have the right to lodge application to the ECtHR, which will review the case in detail and issue a decision on a possible violation of Art. 6 of the ECHR. Accordingly, in the event of a violation of the right to a fair trial, the state has the obligation to provide an adequate just compensation to the individual whose rights have been violated.

In the context of the ECtHR's practice, Art. 6 of the ECHR is applied through different components, which have been developed as a result of judicial interpretation and development of jurisprudence. Regarding the protection of the rights of parties in civil proceedings, court standards rest on the cumulative presence of elements such as the existence of a "dispute" over "right" or "obligation",[1] the basis of the right or obligation in domestic law,[2] and right and obligations must be "civil" in nature.[3] On the other hand, to be applicable to criminal matters, Art. 6 must fulfil different criteria: the offense must be qualified as a crime under domestic law (the first criterion from Engel case), the nature of the offense (the second criterion from Engel case), the degree of severity of the possible penalty (the third criterion from Engel case). Therefore, in order to ensure the application of Art. 6 of the ECHR, it is crucial to keep in mind these standards that have been developed through the practice of the ECtHR.[4]

Taking into account the systematic approach from the comments and doctrinal interpretations, the following elements of the right to a fair trial can be listed: 1) the right to access the court; 2) the right to defence and legal aid; 3) the right to procedural equality; 4) the right to a public and adversarial trial; 4) the right to a hearing; 5) the right to evidence; 6) the right to public pronouncement of the judgement; 7) the right to a court established by law; 8) the right to independence and impartiality in the trial; 9) the right to a trial within a reasonable time; 10) prohibition of arbitrary treatment.[5]

The following rights should also be mentioned: 1) the right to be informed of the reasons for the arrest and of any charges pressed against an individual; 2) the right to a hearing in the presence of defendant; 3) presumption of innocence; 4) the right to an interpreter and translation; 5) immunity from self-incrimination; 6) the right to a reasoned judgement; 7) the right to a legal remedy against the judgement; 8) the right to compensation due to a court's mistake; 9) the right not to be tried or punished twice in the same legal matter.[6]

Although the ECHR does not contain specific provisions that specifically relate to the rights of injured parties and victims of criminal acts, and ECtHR's practice is predominantly based on decisions made on the basis of accused persons' appeals, it would be incorrect to conclude that the right to a fair trial does not also apply to victims and injured parties. The practice of the ECtHR emphasizes the important rights of victims and injured persons in the context of Art. 6 of the ECHR. In particular, the ECtHR confirmed in its judgments that the right to access the court and the right to a trial within a reasonable time, as elements of the right to a fair trial, also apply to the injured party.[7] It is important to emphasize that these rights are derived to the greatest extent from the right to the protection of civil rights that are protected within the framework of criminal proceedings.

[1] Benthem v. The Netherlands, application no. 8848/80, 23 October 1985

[2] Roche v. The United Kingdom, application no. 32555/96, 19 October 2005

[3] Ringeisen v. Austria, application no. 2614/65, 23 June 1973

[4] Engel and others v. The Netherlands, applications no. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976

[5] Uzelac, Alan, The right to a fair trial: general and civil aspects of Article 6 paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (2010). p. 3

[6] Drašković, Dragoljub, Right to a fair trial, Matica crnogorska no. 71, 2017, p. 18-19.

[7] In the case Anagnostopoulos v. Greece (application no. 54589/00, 3 April 2003), the ECtHR explained the violation of the right of access to the court by stating that the injured party had legitimate expectations that the court would decide on his request for compensation for damages, and that the statute of limitations for the criminal prosecution occurred due to the delay of the judicial authorities. In the case Atanasova v. Bulgaria (application no. 72001/01, 2 October 2008), in addition to the violation of the right to access the court, the Court also established a violation of the right to trial within a reasonable time, because the national court did not decide for two years whether it should examines the claim for compensation submitted by the injured party after the criminal proceedings have ended.

In addition to the ECHR and the practice of the ECtHR, the rights of victims of criminal offenses are also guaranteed by the European Convention on the Compensation of Victims of Violent Crimes from 1983.[8] Directives of the European Union and recommendations of the Council of Europe also represent important sources in the field of victims' rights in criminal proceedings. Special mention should be made of the Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crimes,[9] which treats the rights of victims of crimes in the most comprehensive way,[10] as well as the Recommendation of the Council of Europe Rec(2006)8 on assistance to victims of crimes.[11]

The question of the application of the ECHR in relation to Montenegro was raised in the first judgment of the ECtHR against Serbia and Montenegro, in the case Bijelić v. Montenegro and Serbia.[12] This judgment is considered significant because it undoubtedly establishes that this Court has had jurisdiction to examine applications concerning human rights violations committed by Montenegrin state authorities since 3 March 2004, when Serbia and Montenegro informed the Council of Europe of the ratification of the ECHR. Although Montenegro declared itself an independent state only in 2006, the ECtHR found that Montenegro is bound by the European Convention, including its Protocols.[13]

The ECtHR passed a number of relevant judgments in proceedings against Montenegro. We will mention only a few, in order to illustrate the significance of this court's jurisprudence for the national legal order.

Bearing in mind that victims' rights are one of the focuses of this project, it is worth referring at the beginning to the judgment in the case of Brajović and others v. Montenegro.[14] Namely, in this judgment, the court established a violation of Art. 6 para. 1 because the Court of Appeal unjustifiably failed to decide on the applicant's appeal against the decision on costs in the criminal proceedings. In the judgment passed in the case of Mugoša v. Montenegro,[15] the Court established a violation of Art. 5 para. 1 of the ECHR due to the duration of detention and failure to meet the statutory deadline when extending the detention, as well as the violation of Art. 6 para. 2 of the ECHR, i.e. the violation of the presumption of innocence, due to the fact that the High Court declared him guilty passing a decision on the extension of detention before his guilt was proven on the basis of the law.

ECtHR's judgements based on which the effectiveness of legal remedies have been established are of particular importance. According to the ECtHR, in order to be effective, legal remedy must act preventively and compensate for damages if the proceedings were delayed. The effectiveness of the legal remedies prescribed in the Law on the Protection of the Right to a Trial within a Reasonable Time was recognized by the ECtHR in the case of Vukelić v. Montenegro[16] (review request) and Vučeljić v. Montenegro[17] (claim for just satisfaction), while in the case of Siništaj and others v. Montenegro[18] it established the effectiveness of a constitutional appeal as a legal remedy.

[8] Available at: https://rm.coe.int/1680079751

[9] Available at: https://eur-lex.europa.eu/legalcontent/HR/TXT/PDF/?uri=CELEX:32012L0029&from=SK

[10] In addition to this directive, we can also mention Directive 2004/20/EC on compensation for victims of violent international crimes, Directive 2011/36/EU on preventing and combatting traffincking in human beings and protectring its victims, Directive 2011/99/EU on the European Protection Order etc.

[11] Available at: https://rm.coe.int/16805afa5c

[12] Application no. 11890/05, 28. april 2009.

[13] See more at: Human Rights Action HRA: https://www.hraction.org/2009/04/30/obavjestenje-za-javnost-povodom-presude-evropskog-suda-za-ljudska-prava-u-predmetu-bijelic-protiv-crne-gore-i-srbije/

[14] Application no. 52529/12, 30 January 2018

[15] Application no. 76522/12, 21 September 2016

[16] Application no. 58258/09, 4 June 2013

[17] Application no. 59129/12, 18 October 2016

[18] Application no. 1451/10, 7260/10 and 7382/10, 24 November 2015

## 2.1.2. NATIONAL LEGISLATION

Activities aiming at the full implementation of the international and European standards of the right to a fair trial in Montenegro can be associated with the beginning of criminal justice reform at the end of 1998. But before referring to the criminal legislation, it is important to point out that the Constitution contains guarantees of the right to a fair and just trial, which are prescribed by the European Convention and other ratified and published international treaties and which derive from the practice of the ECtHR.

### CONSTITUTION

The ECHR forms an integral part of the legal system of Montenegro, in accordance with Art. 9 of the Constitution of Montenegro, which stipulates that ratified and published international treaties and generally accepted rules of international law form an integral part of the internal legal order, have supremacy over the domestic legislation and are directly applied when they regulate the relations differently from the internal legislation.[19]

First of all, the exercise of rights and freedoms guaranteed by ratified and published international agreements is prescribed by **Art. 17**. The Constitution also contains a guarantee of the right to a fair trial, contained in **Art. 32**, which pledges everyone the right to a fair and public trial within a reasonable time before an independent, impartial and legally established court. This article guarantees several previously mentioned elements of the right to a fair trial, primarily the right to access the court, but also the right to a court established by law and the right to a trial within a reasonable time. Impartiality and independence of the court are prescribed as a constitutional guarantee in **Art. 118 para. 1**, while the public nature of the trial, as another element of the right to a fair trial, is contained in **Art. 120** of the Constitution. The presumption of innocence is prescribed in **Art. 35**, and the right not to be trialled or punished twice in the same legal matter (ne bis in idem) in **Art. 36**, while **Art. 37** stipulates the right to defence. The right to a legal remedy against a judgment, i.e. the right to a legal remedy, is prescribed in **Art. 20** while the right to legal aid is prescribed by **Art. 21**. The right to be informed about the reasons for deprivation of liberty and charges is found in **Art. 30 para. 2** of the Constitution, while the right to compensation due to a court's mistake is found in **Art. 38**.

### CRIMINAL PROCEDURE CODE

For the trial monitoring project, which primarily deals with the monitoring of criminal proceedings, the Criminal Procedure Code (hereinafter: CPC) is certainly of utmost importance. At the very beginning, it is important to point out that the CPC does not distinguish between the injured party and the victim of a criminal offense, but uses the term "injured party" which it defines as "a person whose personal or property right of some type has been violated or threatened by a criminal offense".[20]

The CPC contains a large number of provisions related to the standards of the right to a fair trial, and we will single out the most important ones in chronological order.

[19] Constitution of Montenegro (Official Gazette of Montenegro 1/2007 and 38/2013 – Amendments I-XVI)..

[20] Art. 22 para. 1 item 5.

The first standard is the **presumption of innocence and the principle of *in dubio pro reo***, contained in Art. 3 of the CPC, which stipulates that everyone is presumed innocent until proven guilty by a court's final judgement. Accordingly, state authorities, the media, citizens' associations, public figures and other persons are obliged to comply with this principle, ensuring that their public statements about ongoing criminal proceedings do not violate rules of the proceedings, the rights of accused and injured parties and the principle of judicial independence. In the event that, despite gathering all available evidence and presenting it in criminal proceedings, only a doubt remains of the existence of any of the significant features of the crime, or of the application of some provisions of the Criminal Code or Criminal Procedure Code, the court's decision would be the one more favourable to the accused person.

The CPC also guarantees **the rights of suspects/accused persons and the rights of persons deprived of their liberty** in criminal proceedings through a series of legal provisions which are based on the principles defined in Art. 4 and 5. Suspects must be informed at the first hearing about the criminal offence they are charged with and the grounds for suspicion against them. They have a right of say on/right to make a statement regarding all the facts and evidence charged with, as well as a right to present all the facts and evidence in their favour. It must be brought to the attention of suspects or accused at the first hearing, that they are not obliged to make any statements or answer the questions, and that whatever statements they make can be used as evidence.

**The right to an interpreter** is one of the rights guaranteed by Art. 8 of the CPC. The criminal proceedings are conducted in Montenegrin language. However, parties, witnesses and other participants in the proceedings have the right to use their own language or language they understand during the proceedings. If the proceedings are not conducted in any of these languages, translation of testimony, documents and other written evidence will be provided. Parties, witnesses and other participants in the proceedings may waive their right to interpretation if they can speak the language used in the proceedings. It will be entered in the records that participants in the proceedings were properly instructed and that they presented their statements thereof. Pursuant to the CPC, interpretation is entrusted to an interpreter.

**The right to a defence** is governed by Art. 12 and 66 of the CPC. Art. 12 stipulates that accused has the right to defend themselves in person or through legal assistance by an attorney of their own choosing. Also, an accused has the right to have their defence attorney present at the hearing, as well as to receive information before the first hearing of the right to have a defence attorney, to agree the defence strategy with him, and to have him present at the hearing. The accused will be appointed an attorney *ex officio*, if they fail to do it by themselves, and that they must be given sufficient time and opportunity to prepare their defence. According to Art. 66, accused is entitled to a defence attorney. Defence attorney may also be appointed by accused person's legal representative, spouse, their immediate family members, adoptive parent, or the person they adopted, brother, sister and foster parent, as well as by the person with whom the accused lives in the extramarital union. Only an attorney can perform defence activities under this article. The defence attorney is obliged to submit a power of attorney to the body in charge of the proceedings and accused can grant their defence attorney a verbal power of attorney, to be entered in the records kept by the body in charge of the proceedings.

**The impartiality of judges** under the provisions of the CPC, is regulated through setting the grounds for the exemption of judges referred to in Art. 38. Pursuant to this article, a judge may not exercise judicial duty in the following circumstances:

1) if they were an injured party in a criminal offense;

2) if the accused person, their defence attorney, prosecutor, injured party, their legal representative or those given power of attorney are their spouse, ex-spouse or live in the extramarital union with them, or any direct blood relative or descendant to the accused, collateral blood relative up to a fourth line, and in-laws up to a second line;

3) if they are in one of the following relationships with accused, their defence attorney, prosecutor or injured party: a guardian, a protégé, an adoptive parent, a person they adopted, a foster parent or foster child;

4) if they acted in the same criminal case as an investigating judge, prosecutor, defence attorney, legal representative or those given power of attorney by injured party or prosecutor, or was examined as a witness or an expert witness;

5) if they participated in the same case in delivering a judgement of a lower court, or issued a decision on a plea agreement, or participated in rendering a decision that is contested by an appeal in the same court;

6) in case of circumstances which cast doubt on their impartiality.

**The right to a trial without delay** is governed by Art. 15 of the CPC. Pursuant to provisions of this article, an accused has the right to be brought to court and to be tried without delay in the shortest period of time. The court is obliged to conduct the proceedings without delay and to prevent any abuse of the rights belonging to participants in the proceedings. This article stipulates that the duration of detention or other restrictions of the liberty must be kept to a minimum.

**The principle of truth and fairness** is one of the key general principles that form an integral part of the right to a fair and just trial and is governed by Art. 16 of the CPC. Pursuant to this principle, a court, public prosecutor and other public authorities involved in criminal proceedings are obliged to truthfully and fully establish the facts that are important for reaching a lawful and fair decision, and with equal care examine and determine the facts against the accused and those in their favour. The court is also obliged to ensure equal terms with regard to accessing and presenting evidence, and approach and method of their presentation.

**The right to get acquainted with the evidentiary material and the right to propose evidence** from Art. 58 of the CPC, enables the injured party to point out relevant facts and propose evidence during the investigation. At the main hearing, the injured party can propose evidence, ask questions and make comments regarding the statements. The injured party also has the right to inspect files and objects that serve as evidence; however, this right may be denied until the moment of passing the order on conducting the investigation or until he/she is heard as a witness. This article also demonstrates that the concept of injured party in the CPC also includes the concept of victim, because this article states that if the **injured party is a victim** of a criminal offense against sexual freedom, he/she is guaranteed the right to be treated by a judge of the same sex, if the personnel composition of the court allows it. In addition, if the criminal proceedings are conducted for a criminal offense for which a prison sentence of more than three years has been prescribed, and the injured party is unable to bear the costs of representation due to his financial circumstances, an attorney may be appointed to him at his request, while the court will assess during the entire proceedings ex officio, whether the injured party, as a minor, needs to be appoint an attorney.

**The right of the injured party to continue the criminal prosecution** is reflected in the possibility of the injured party to take over or continue the prosecution if the public prosecutor finds that there are no grounds for prosecuting the criminal offense for which he/she is being prosecuted ex officio.

In that case, the injured party can initiate or continue the prosecution within 30 days from the day he/she received the notification about the dismissal of the criminal complaint, i.e. within 30 days from the day he/she received the notification from the immediately higher public prosecutor's office about the action on the complaint. Also, the injured party may stick to the indictment filed or file a new one in the event that the public prosecutor dismissed the charges or suspended the investigation, within 30 days from the day when he/she received notification from the competent public prosecutor that there are no grounds for criminal prosecution ex officio or from on the day he/she received the notification from the immediately higher public prosecutor regarding the complaint he/she submitted (Art. 271a). In the event that the injured party is not informed that the prosecutor has not initiated criminal prosecution or that he/she has dropped charges, he/she has the right to file a subsidiary charge within six months from the day when the decision to suspend the proceedings was made. The spouse of the injured party, the person with whom the injured party lives in a cohabitation, children, parents, adopted children, adoptive parents, brothers and sisters of the injured party also have this right, if the injured party dies within three months of the death of the injured party. Even during the procedure on the subsidiary charge, the legislator provided that the public prosecutor can, if considered relevant, take over again and continue the proceedings (Art. 62 para. 2).

## 2.1.3. INSTITUTIONAL FRAMEWORK

Basic judicial institutions consist of courts and the public prosecutor's office.

### JUDICIARY

Courts are the primary mechanism for the protection of human rights. The organization and jurisdiction of courts is governed by the Law on Courts.[21]

SPursuant to the Law on Courts, the courts in Montenegro are: the misdemeanour court, the High Misdemeanour Court of Montenegro, the basic courts, the high courts, the Commercial Court of Montenegro, the Administrative Court of Montenegro, the Court of Appeal Montenegro and the Supreme Court of Montenegro.[22]

Bearing in mind that the observers followed the work of the basic and high courts, in this part we will refer to their organization and jurisdiction.

There are 15 basic courts in Montenegro, as follows:

1) Basic Court in Bar – for the territory of the municipality of Bar;
2) Basic Court in Berane – for the territory of the municipalities of Berane, Andrijevica and Petnjica;
3) Basic Court in Bijelo Polje – for the territory of the municipalities of Bijelo Polje and Mojkovac;
4) Basic Court in Cetinje – for the territory of the Royal Capital Cetinje;
5) Basic Court in Danilovgrad – for the territory of the municipality of Danilovgrad;
6) Basic Court in Herceg Novi – for the territory of the municipality of Herceg Novi;
7) Basic Court in Kotor – for the territory of the municipalities of Kotor, Budva and Tivat;
8) Basic Court in Kolašin – for the territory of the municipality of Kolašin;
9) Basic Court in Nikšić – for the territory of the municipalities of Nikšić and Plužine;
10) Basic Court in Plav – for the territory of the municipalities of Plav and Gusinje;
11) Basic Court in Pljevlja – for the territory of the municipality of Pljevlja;
12) Basic Court in Podgorica – for the territory of the municipalities of Podgorica and Tuzi;[23]
13) Basic Court in Rožaje – for the territory of the municipality of Rožaje;
14) Basic Court in Ulcinj – for the territory of the municipality of Ulcinj;
15) Basic Court in Žabljak – for the territory of the municipality of Žabljak and Šavnik.

The Basic Court has a wide range of jurisdiction.[24]

In criminal cases, the basic court delivers judgements in the first instance for criminal offenses charged with a fine or imprisonment of up to ten years, regardless of the circumstances in which the offense was committed, unless otherwise prescribed by law.

There are two high courts in Montenegro:

1) The High Court in Bijelo Polje, for the territories of basic courts in Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje, and
2) The High Courts in Podgorica, for the territories of basic courts in Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi and Cetinje.

[21] Law on Courts (Official Gazette of Montenegro 11/2015 and 76/2020)

[22] Art. 8 of the Law on Courts

[23] The Basic Court in Podgorica also has jurisdiction for the territory of the municipality of Zeta, which received the status of a municipality in 2022

[24] Art. 14 of the Law on Courts

The High Court has special jurisdiction in the judicial system.[25] In criminal cases, it decides in the first instance on criminal offenses for which an imprisonment exceeding ten years is prescribed, regardless of the circumstances of their execution, as well as for a number of specific criminal offenses including, but not limited to, manslaughter, rape, endangering air traffic safety, and unauthorized production and trafficking of narcotic drugs. The High Court also has jurisdiction to pass judgements in the first instance for criminal offenses for which a special law prescribes its jurisdiction.

This court also decides on appeals against the decisions rendered by the basic courts and conducts the procedure of determining circumstances regarding the request for the extradition of accused and convicted persons.

Its tasks also include international criminal legal assistance in criminal matters based on rogatory letter for hearing a person, conducting special evidentiary actions, as well as other forms of international criminal legal assistance.

Regardless of the rules on territorial jurisdiction, the High Court in Podgorica is particularly responsible for the trial of organized crime, high level corruption, money laundering, terrorism and war crimes, which is why a special division was formed in the Court.

The Judicial Council is responsible for determining the number of judges in courts. The number of judges is determined by the Decision on the Number of Judges in Courts,[26] in accordance with the Rulebook on the framework standards of work for determining the required number of judges and civil servants and state employees in courts,[27] which is prescribed by the Ministry of Justice on the proposal of the Judicial Council.

The estimated number of judges in the basic and high courts, i.e. in the courts that were the focus of the project, is 197, of which 148 in the basic and 49 in the high courts:

1) Basic Court in Bar – court president and 10 judges
2) Basic Court in Berane – court president and 9 judges
3) Basic Court in Bijelo Polje – court president and 11 judges
4) Basic Court in Cetinje – court president and 4 judges
5) Basic Court in Danilovgrad – court president and 3 judges
6) Basic Court in Herceg Novi – court president and 6 judges
7) Basic Court in Kotor – court president and 15 judges
8) Basic Court in Kolašin – court president and 2 judges
9) Basic Court in Nikšić – court president and 15 judges
10) Basic Court in Plav – court president and 2 judges
11) Basic Court in Pljevlja – court president and 5 judges
12) Basic Court in Podgorica – court president and 41 judges
13) Basic Court in Rožaje – court president and 4 judges
14) Basic Court in Ulcinj – court president and 5 judges
15) Basic Court in Žabljak – court president and 1 judge
16) High Court in Bijelo Polje – court president and 16 judges
17) High Court in Podgorica – court president and 39 judges

[25] Art. 16 of the Law on Courts

[26] Decision on the Number of Judges in Courts (Official Gazette of Montenegro 25/2015, 62/2015, 47/2016, 83/2016, 79/2018 and 52/2023)

[27] Rulebook on the framework standards for determining the required number of judges and civil servants and state employees in courts (Official Gazette of Montenegro 17/2015)

## PUBLIC PROSECUTOR'S OFFICE

The Constitution of Montenegro stipulates that the Public Prosecutor's Office is a unique and independent state authority that performs the tasks of prosecuting perpetrators of criminal offenses and other punishable acts that are prosecuted ex officio.[28] Pursuant to Art. 135 of the Constitution, the tasks of the public prosecutor's office are performed by the heads of public prosecutor's offices and public prosecutors.

The organization and competence of the Public Prosecutor's Office is carried out according to the Law on the Public Prosecutor's Office,[29] and the internal operations are carried out according to the Rulebook on the Internal Operations of the Public Prosecutor's Office.[30]

Pursuant to the Law on the Public Prosecutor's Office, the following will be established within the Public Prosecutor's Office: Supreme Public Prosecutor's Office, Special Public Prosecutor's Office, High Public Prosecutor's Offices and Basic Public Prosecutor's Offices.

The Supreme Public Prosecutor's Office and the Special Public Prosecutor's Office are established for the territory of Montenegro, with headquarters in Podgorica, the High Public Prosecutor's Office is established for the territory of the high court, while the Basic Public Prosecutor's Office is established for the territory of one or more basic courts.

The basic public prosecutor's offices are:

1) Basic Public Prosecutor's Office in Bar, for the territory of the Basic Court in Bar;
2) Basic Public Prosecutor's Office in Berane, for the territory of the Basic Court in Berane;
3) Basic Public Prosecutor's Office in Bijelo Polje, for the territory of the Basic Court in Bijelo Polje;
4) Basic Public Prosecutor's Office in Cetinje, for the territory of the Basic Court in Cetinje;
5) Basic Public Prosecutor's Office in Herceg Novi, for the territory of the Basic Court in Herceg Novi;
6) Basic Public Prosecutor's Office in Kolašin, for the territory of the Basic Court in Kolašin;
7) Basic Public Prosecutor's Office in Kotor, for the territory of the Basic Court in Kotor;
8) Basic Public Prosecutor's Office in Nikšić, for the territory of the Basic Court in Nikšić;
9) Basic Public Prosecutor's Office in Plav, for the territory of the Basic Court in Plav;
10) Basic Public Prosecutor's Office in Podgorica, for the territory of the Basic Court in Podgorica and Basic Court in Danilovgrad;
11) Basic Public Prosecutor's Office in Rožaje, for the territory of the Basic Court in Rožaje;
12) Basic Public Prosecutor's Office in Pljevlja, for the territory of the Basic Court in Pljevlja and Basic Court in Žabljak;
13) Basic Public Prosecutor's Office in Ulcinj, for the territory of the Basic Court in Ulcinj.

[28] Art. 134 of the Constitution of Montenegro

[29] Law on Public Prosecutor's Office (Official Gazette of Montenegro 11/2015, 42/2015, 80/2017, 10/2018 and 76/2020)

[30] Rulebook on the internal operations of the Public Prosecutor's Office (Official Gazette of Montenegro 51/10 and 44/12)

In performing its activities, the Public Prosecutor's Office is guided by the prescribed actual and territorial competences, unless otherwise determined by law. In this sense, the organization and jurisdiction of the Special Public Prosecutor's Office is prescribed by the Law on the Special Public Prosecutor's Office.[31]

Pursuant to this Law, the Special Public Prosecutor's Office has the jurisdiction to prosecute the perpetrators of certain criminal acts. This includes organized crime, regardless of the level of the prescribed sentence. Special Public Prosecutor's Office also has jurisdiction in cases of high-level corruption, with public officials involved who have committed criminal offenses such as abuse of office, fraud in the conduct of an official duty, trading in influence, inducement to illegal influence, receiving and giving bribes. Jurisdiction also extends to cases in which property benefits exceeding the amount of EUR 40,000 have been obtained through abuse of position in economic operations or abuse of authority in the economy. The Special Public Prosecutor's Office also responsible for prosecuting criminal offenses of money laundering, terrorism, war crimes, as well as violations of electoral rights prescribed in Chapter 16 of the Criminal Code.

The number of public prosecutors for each public prosecutor's office is determined by the Prosecutorial Council, with the Decision on the number of public prosecutors,[32] nbased on the Rulebook on the framework standards of work for determining the required number of public prosecutors and civil servants and state employees in the public prosecutor's office,[33] which is prescribed by the Ministry of Justice on the proposal of the Prosecutorial Council.

The expected number of prosecutors in public prosecutor's offices is 137, of which 89 in basic and 48 in high public prosecutor's offices:

1) Basic Public Prosecutor's Office in Bar – head and 7 public prosecutors
2) Basic Public Prosecutor's Office in Berane – head and 4 public prosecutors
3) Basic Public Prosecutor's Office in Bijelo Polje – head and 7 public prosecutors
4) Basic Public Prosecutor's Office in Cetinje – head and 3 public prosecutors
5) Basic Public Prosecutor's Office in Herceg Novi – head and 3 public prosecutors
6) Basic Public Prosecutor's Office in Kolašin – head and 1 public prosecutor
7) Basic Public Prosecutor's Office in Kotor – head and 9 public prosecutors
8) Basic Public Prosecutor's Office in Nikšić – head and 8 public prosecutors
9) Basic Public Prosecutor's Office in Plav – head and 1 public prosecutor
10) Basic Public Prosecutor's Office in Pljevlja – head and 3 public prosecutors
11) Basic Public Prosecutor's Office in Podgorica – head and 24 public prosecutors
12) Basic Public Prosecutor's Office in Rožaje – head and 3 public prosecutors
13) Basic Public Prosecutor's Office in Ulcinj – head and 2 public prosecutors
14) High Public Prosecutor's Office in Bijelo Polje – head and 6 public prosecutors
15) High Public Prosecutor's Office in Podgorica – head and 16 public prosecutors
16) Special Public Prosecutor's Office – head and 12 public prosecutors
17) Supreme Public Prosecutor's Office – head and 10 public prosecutor

[31] Law on Special Public Prosecutor's Office (Official Gazette of Montenegro 10/2015 and 53/2016)

[32] Decision on the number of public prosecutors, (Official Gazette of Montenegro 21/2015, 13/2018 and 7/2023)

[33] Rulebook on the framework standards of work for determinig the required number of public prosecutors and civil servants and state employees in the public prosecutor's office (Official Gazette of Montenegro. 17/2015)

# 3. METHODOLOGY

## 3.1. TRIAL MONITORING: OBJECTIVES AND BASIC PRINCIPLES

There are numerous and diverse objectives and basic principles of programs aimed at monitoring judicial proceedings. These programs represent a key element in the supervision of judicial proceedings and play a significant role in supporting the fairness, transparency and efficiency of the judiciary. Their methodology has, for the first time, been formulated and presented to the professional public through the publication "Trial Monitoring - A Reference Manual for Practitioners" developed by the OSCE.[34] This manual provides a comprehensive overview of a range of objectives and fundamental principles of trial monitoring. Among these principles and objectives, there are some that stand out and are of key importance for the understanding and application of these programs:

- **Trial monitoring – a multifaceted tool:** this objective puts particular emphasis on trial monitoring programs to serve not only as a tool, but as a multifaceted instrument in the process of enhancing the effectiveness and transparency of judicial systems. In order to maximize the effectiveness of this tool, organizations should be aware of the different aspects and possibilities of trial monitoring. More specifically, they should design program that best suits the needs and particularities of their domestic context, to ensure the best possible outcome.

- **Trial monitoring as a diagnostic tool in the judicial reform process:** In line with the OSCE's experience in conducting trial monitoring programs, the collection and dissemination of objective information on judicial proceedings in individual cases, and drawing of conclusions regarding the broader functioning of the justice system is considered one of the key principles. As part of these programs, organizations which conduct the monitoring activities, not only collect information about the practices and conditions surrounding the judicial proceedings, but also follow the development of judicial systems, providing objective findings and conclusions to all participants in judicial proceedings. Defining recommendations and advocating their full implementation is recognized as extremely important segment of the trial monitoring program. This is achieved through continuous communication with the judicial authorities and all stakeholders in the judicial reform process. Through this approach, trial monitoring programs provide a basis for the continuous improvement of judicial systems, promoting transparency, efficiency and fairness at all levels.

- **Exercising the right to a fair trial:** The very act of monitoring trials is an essential expression of the right to a public trial and at the same time serves as powerful tool for increasing the transparency of the judicial system. It is also one of the main segments of the right to a fair trial - by adhering to this principle, the judicial systems send clear message to citizens that courts and courtrooms are open spaces where justice is achieved on their behalf. The presence of trial observers in courtrooms is not just a mere formality, but is considered to be a reflection of the public interest. This hypothesis is the basic starting point of all trial monitoring programs. Through its continuous implementation, trial monitoring program contributes to raising awareness of the right to a public trial within the judiciary and among other legal actors, enabling greater awareness of international human rights and fair trial standards, which additionally encourages their acceptance and integration into the justice system.

[34] See more: Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012, OSCE/ODIHR, available at: https://www.osce.org/odihr/94216

**Capacity building vehicle:** Trial monitoring can be understood not only as a means of monitoring the judicial system, but also as a vehicle of capacity building and training of local NGOs and civil society organizations on international standards and domestic law. By hiring local lawyers as observers and legal advisers, the trial monitoring programs provide interested legal professionals with an opportunity to become indirectly involved in the legal reform process, thereby contributing to strengthening the legal profession. The partnership and support program for national monitoring groups also increases the capacity of interested local organizations and networks to engage, independently or as partners, in trial monitoring programs. In this way, these programs can facilitate the development of local trial monitoring capacities that will persist even after the completion of certain programs, thus ensuring continuous supervision of judicial processes.

## 3.2. BASIC PRINCIPLES OF CEMI AND HRA'S TRIAL MONITORING PROGRAMS

The principles of trial monitoring applied by the CeMI and HRA in their projects and activities are based on the principles developed in cooperation between CeMI and the OSCE Mission to Montenegro, as part of the trial monitoring program, implemented in the period 2007-2014. In accordance with the methodology and principles of trial monitoring conducted in many European countries, CeMI and HRA's observers have consistently applied the following principles for monitoring judicial proceedings within this Project:

**The principle of non-intervention in the judicial process:** essentially, this principle refers to the absence of engagement or interaction with the court regarding the merits of a case or attempts to indirectly influence the outcome through informal channels. However, adherence to this principle should not serve to limit public criticism of judicial authorities in the conduct of court proceedings. On the contrary, this principle supports a critical approach based on analysis and providing conclusions and recommendations aimed at promoting institutional reforms.[35]

**The principle of objectivity:** this principle implies that trial monitoring programmes provide accurate information using clearly defined and accepted standards, free of bias against parties or cases. The principle of objectivity requires a balanced approach to selection of trials to be monitored, as well as to formulation of findings, conclusions and recommendations.[36]

**Principle of agreement:** achieving this principle requires entering into agreement, building working relationships, sharing information, explaining program goals and methods, making recommendations for improving judicial policies, and cooperating with judicial institutions to ensure a more efficient implementation of these principles.[37]

## 3.3. TRIAL MONITORING METHODOLOGY

In order to achieve its purpose, the project gathered trial observers who, together with the team coordinator, examined case files in all Basic Courts, as well as in the High Court in Bijelo Polje and the High Court in Podgorica. In addition to case files of final court decisions, the Report also includes observer's findings based on their direct monitoring of trials.

The focus of the research was put on respecting the fundamental human rights of parties in criminal proceedings, as well as the rights of injured parties. Also, the application of the rights defined by the Criminal Code, the Criminal Procedure Code and ratified international treaties was checked. All activities were documented through forms, which were the basis for collecting quantitative and qualitative data. Based on these data, final conclusions and recommendations were presented.

It is important to emphasize that the names of the judges and parties to the proceedings are not stated in the Report in order to protect the right of privacy and personal data.

[35] Ibidem

[36] Ibidem

[37] Ibidem

### 3.3.1. TRIAL MONITORING TEAM

Trial observers were tasked with monitoring the course of criminal proceedings, including hearings to confirm indictments, in order to collect and analyse all the data necessary to prepare this Report. In addition to attending the trials, the observers collected relevant documents such as final judgements, plea agreements, indictments, motions for indictment, private lawsuits, as well as reports of the Prosecutorial and Judicial Councils.

In addition to monitoring the trial, the observers, together with the team coordinator, interviewed the presidents of all the Basic Courts in Montenegro as well as the High Courts in Podgorica and Bijelo Polje, and jointly they examined the case files, which were randomly selected by the court.

During the trial monitoring, the observers used a standardized questionnaire form with predefined questions and prepared individual reports on the cases monitored. The forms used when attending the main hearing contain basic questions about the participants in the proceedings, the offense, the duration of the proceedings, the number of adjournments and the reasons thereof. On the other hand, the forms filled out when examining the case files in the archives, contained many additional questions which were relevant for reporting in this project, such as trial within reasonable time, plea agreements, international legal aid, detention, etc. All the collected data were entered into a special internal application that was developed for the purposes of this project, in order to facilitate the analysis of the collected quantitative and qualitative data and to eliminate the risk of errors.

The content of findings that the observers entered in the forms are the basis of this report, which represents a systematized set of observations, together with the conclusions and recommendations.

### 3.3.2. SAMPLE OF THE MONITORED TRIALS

Observers monitored **196** cases by attending **231** hearings. This included main trials and indictment confirmation hearings. Also, the observers examined the files of **470** cases in all basic courts for which final judgements were passed, as well as in the High Courts in Podgorica and Bijelo Polje. The observers monitored the work of the courts in a total of **666** criminal cases, while the overall number of analysed situations and forms filled out by observers, both at the hearings and by examining the files of final court decisions, is **701**.

The largest number of the monitored and analysed cases were prosecuted by the Basic Court in Podgorica (199 cases – 29,83%) and the High Court in Podgorica (106 cases - 15,89%).

It is important to note that, although the observers analysed individual proceedings, they focused their attention on different criminal acts in order to gain insight into the diversity of legal issues and processes that arise during criminal trials. This approach ensured a broader picture of the legal practice and identification of potential problems or shortcomings in the application of criminal law. The files examined by observers were provided to them by the court using the method of free selection of cases.

| Court | Number of monitored cases |
|---|---|
| Basic Court in Bar | 22 |
| Basic Court in Berane | 18 |
| Basic Court in Bijelo Polje | 28 |
| Basic Court in Cetinje | 19 |
| Basic Court in Danilovgrad | 23 |
| Basic Court in Herceg Novi | 32 |
| Basic Court in Kotor | 32 |
| Basic Court in Kolašin | 44 |
| Basic Court in Nikšić | 21 |
| Basic Court in Plav | 18 |
| Basic Court in Pljevlja | 20 |
| Basic Court in Podgorica | 199 |
| Basic Court in Rožaje | 20 |
| Basic Court in Ulcinj | 20 |
| Basic Court in Žabljak | 20 |
| High Court in Bijelo Polje | 25 |
| High Court in Podgorica | 105 |
| **Total** | **666** |

Table 1: overall number of hearings, i.e. cases monitored by attendance of the main trial and case file examination, by courts

In the largest number of cases monitored by attendance in the courtroom, the accusation was related to the criminal offense of **endangering public traffic**, i.e. in 25 (11.82%) cases. In most of the cases monitored by case file examination, the charges concerned the criminal offense of **failure to comply with health regulations for the suppression of a dangerous infectious disease,** i.e. **in 112 (23.82%) cases.**

Based on the year when judgements became final, observers analysed 66 (14.04%) judgments that became final in 2020, 82 (17.44%) judgments that became final in 2021, 266 (56.59%) judgments that became final in 2022 and 56 (11.91%) judgments that became final in 2023.

# 4. ANALYSIS OF OBSERVANCE OF THE RIGHT TO FAIR AND JUST TRIAL IN CRIMINAL PROCEEDINGS – EFFICIENCY OF CRIMINAL PROCEEDINGS

Taking into consideration the standards of fair and just trial that we listed in the previous chapter, a conclusion can be drawn about the actual meaning of the notion of criminal proceedings efficiency.

In short, the efficiency of criminal proceedings refers to how efficiently and quickly the justice system can process and resolve criminal cases, while observing the rights of all parties. Efficiency does not only refer to the pace of processing cases in order to respond to the request for a trial within a reasonable time, but also ensuring that the rights of defendants and victims are not violated. Therefore, the efficiency implies respect for the rights of all parties in order to ensure a fair trial.

In order to assess whether proceeding are considered efficient, it is necessary to determine which moments should be considered the beginning (*dies a quo*) and which the ending (*dies ad quem*) of the criminal proceedings.[38]

According to the ECtHR's practice, and when it comes to proceedings on criminal charges, the period that should be considered when assessing whether the proceedings lasted for a reasonable amount of time, begins on the day when a certain person "*...was officially notified by the competent authority of an allegation that he/she has committed a criminal offence...*" - Deweer v. Belgium - 1980 para. 46, i.e., from the day on which it can be considered that the actions carried out by the competent investigative body during pre-criminal proceedings "...begin to have substantial repercussion on the suspect's situation..." - Neumeister v. Austria -1968.[39]

While according to Art. 19a of the CPC, the beginning of criminal proceedings can be linked to several moments, theoretical views on this issue can be divided into two groups. The first one consists of authors who consider that the proceedings begin when a court expressed a certain position in relation to the accusation, whereas the second group relates this moment to the accusatorial principle, and considers filing of the motion for indictment as the beginning of criminal proceedings.[40]

For the needs of this project, we opted for the second view, considering the beginning of the proceedings as the moment when the indictment was filed.

The Project deals with the issue of the efficiency of the criminal proceedings not only in this Report, but also in the thematic report on the protection of the right to a trial within a reasonable time, published by the Human Rights Action. Also, the thematic report on the implementation of the plea bargain agreement published by CeMI, presents the results that are significant for the efficiency of the proceedings, taking into account that this institute was introduced aiming at faster completion of the proceedings and lower costs of the proceedings.

The information presented in this report, which refer to level of compliance with the right to a fair and just trial, resulted from case files examined by observers had access. An important limitation that should be mentioned results from the above.

[38] Kolaković-Bojović, Milica, The concept of the effectiveness of criminal proceedings - do we understand the ideal to which we strive?, Institute for Criminological and Sociological Research, Belgrade, 2013, p. 376

[39] Judgement by the Supreme Court of Montenegro Tpz 21/2017 from 19 June 2017, available at: https://sudovi.me/vrhs/odluka/238457

[40] Ibidem

Namely, the observers noted that not all case files are equally in order, and that sometimes certain information is missing, such as, for example, orders for scheduling the main trial or the decision on the appointment of an ex officio defence attorney. Therefore, it is important to point out that some actions not outlined in the Report were not carried out, but that the observers did not find it officially recorded in the case file that the action was carried out. However, case files and records are a formal and legal reflection of the proceedings, outside of which it is not possible to confirm the validity of those actions.

## 4.1. REVIEW OF THE STATE OF JUDICIAL INFRASTRUCTURE AND THE STATE OF AFFAIRS IN COURTS

Apart from attending the hearings and examining the files, the observers recorded basic data on the infrastructure and state of affairs in the courts, i.e. on the conditions in which the courts work, with a view to obtaining a more complete picture of the situation in the judiciary. The observers recorded as basic indicators: the general condition of the building in which the court is located, the spatial and personnel capacities of the court, the accessibility of the court to persons with disabilities, the security and technical equipment of the court. However, it is important to point out that this was not the focus of the project, and that the observers did not carry out a detailed analysis of the condition of the court infrastructure, which is why this section of the Report is limited to what the observers could observe during their visits to the courts and based on data collected from relevant reports.

### 4.1.1. PERSONNEL CAPACITIES

When it comes to the personnel capacities of the courts, it should be mentioned that most of the courts worked for a long period with a smaller number of judges than provided for in the Decision on the Number of Judges in the Courts. During the monitoring, the Basic Court in Danilovgrad did not have a judge to act in criminal cases from 12 December 2022 to 8 September 2023. Also, in the Basic Court of Herceg Novi, during the first visit to the court in December 2022, the president of the court conducted duties of court secretary and was the only judge in criminal cases.

On the other hand, the number of judges in Montenegro is still more than double the European average. Montenegro is still the second country in Europe concerning the number of judges in relation to the number of inhabitants, right after Monaco.[41]

| Court | Envisaged number of judges[42] | Current number of judges[43] |
|---|---|---|
| Basic Court Bar | 11 | 6 |
| Basic Court Berane | 10 | 6 |
| Basic Court Bijelo Polje | 12 | 9 |
| Basic Court Cetinje | 5 | 4 |
| Basic Court Danilovgrad | 4 | 2 |
| Basic Court Herceg Novi | 7 | 4 |
| Basic Court Kotor | 16 | 15 |
| Basic Court Kolašin | 3 | 2 |
| Basic Court Nikšić | 16 | 14 |
| Basic Court Plav | 3 | 2 |
| Basic Court Pljevlja | 6 | 3 |
| Basic Court Podgorica | 42 | 38 |
| Basic Court Rožaje | 5 | 2 |
| Basic Court Ulcinj | 6 | 4 |
| Basic Court Žabljak | 2 | 1 |
| **Basic courts** | **148** | **112** |
| High Court Bijelo Polje | 17 | 13 |
| High Court Podgorica | 40 | 38 |
| **High Courts** | **49** | **51** |
| **Total** | **197** | **163** |

Table 2: stipulated and current number of judges in basic and high courts in Montenegro

[41] According to the latest report by CEPE, the average number of judges per 100.000 citizens is 22,2, while that figure amounts to 49,8 in Montenegro: https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279

[42] The number of judges includes the court president

[43] Kisjelica, Darka, Analysis of the application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the Period 2017-2022, Human Rights Action, Podgorica, 2023, p. 18

The ECtHR has indicated in several cases that the domestic courts have the responsibility to ensure the avoidance of unnecessary delays in the proceedings, whereas the High Contracting Parties, according to Art. 1 of the Convention, are obliged to organize their legal systems in such a way as to ensure compliance with Art. 6.[44] As a rule, referring to financial or practical difficulties cannot justify failure to meet those requirements.

During their visits and discussions with the presidents of the courts, observers continuously received information that the lack of personnel hinders the efficient functioning of the courts. The courts which up to now have successfully completed their tasks on time, are predicting that this situation may change in the next two years.

There are two main factors that stand out as contributing to this problem. The first factor is the duration of training for judges, which lasts 18 months and makes it even more difficult to promptly fill vacant positions. This problem became even more pronounced after the adoption of the Law on Amendments to the Law on Pension and Disability Insurance[45] (hereinafter: Law on PIO),[46] which reduced the retirement age, and which led to the unplanned retirement of 27 judges throughout countries. It is particularly important to point out the decisions of the Judicial Council on the retirement of female judges, which subjects them to discrimination compared to their male colleagues. This is because the lower number of years necessary for retirement prescribed for women is, in fact, an example of affirmative action measure. The Administrative Court also established that there was discrimination in its decision based on the lawsuit of one of the female judges, who was terminated as a judge, as a result of the amendments to the Law on PIO.[47] Discrimination based on gender is contrary to Art. 1 of Protocol 12 of the ECHR[48] and Art. 2 of the Law on Prohibition of Discrimination.[49] In accordance with the prohibition of discrimination based on gender, women can decide not to use the acquired right to retire until they meet the conditions prescribed for men.

Another important factor is the way judges are assigned. According to the current legal solution, the candidate who has been elected as a judge is assigned based on the decision of the Judicial Council according to the order on the ranking list. However, if the candidate refuses such an assignment, his/her employment is automatically terminated by force of law,[50] which is an additional discouragement to potential candidates. Courts, especially those in the northern parts of Montenegro, face challenges related to the lack of staff, as a small number of potential candidates for judges express interest in working in the courts in the north of the country. This becomes especially problematic if the candidates are not local residents, but come from other places, which requires a daily trip to the court and back. This difficulty is not only theoretical, but has already produced consequences. For example, a judge who was transferred outside his place of residence in 2021 decided to retire from the judicial service in 2022, after less than a year in office, due to experiencing difficulties in balancing his professional and personal obligations. Another judge warned the observers of the gravity of the situation, pointing out how difficult it is to balance professional and family obligations when one is assigned to a workplace outside of one's place of residence. According to the information the observers received, these problems are also present to a lesser extent in the courts in the southern region, where the cost of living, which is sometimes significantly higher than in the central and northern regions, is highlighted as one of the issues that discourages potential candidates.

[44] Salesi v. Italy, para. 46, application no. 13023/87, from 26 February 1993

[45] Available at: https://wapi.gov.me/download-preview/6e6d8621-b96a-4c0a-b645-e658da4da038?version=1.0

[46] It is also important to point out that in September 2020, the Judicial Council submitted an initiative to the Constitutional Court for the constitutional review of amendments to the Law on Pension and Disability Fund. It is expected that the Constitutional Court will rule on this issue by the end of 2023.

[47] Judgement of the Administrative Court U no. 12497/2022, from 20 December 2022, available at: https://sudovi.me/uscg/odluka/504326

[48] "The enjoyment of all rights established by law is ensured without discrimination on any basis such as sex, race, skin color, language, religion, political or other opinion, national or social origin, connection with a national minority, property status, birth or other status . No authority may discriminate against anyone on any basis, as stated in para. 1."

[49] Law on Prohibition of Discrimination (Official Gazette of Montenegro 46/2010, 40/2011 – state law, 18/2014 and 42/2017)

[50] Art. 55 of the Law on Judicial Council and Judges (Official Gazette of Montenegro 11/2015, 28/2015 and 42/2018)

The Ministry of Justice acknowledged these problems and proposed a solution the development of the Draft Law on Amendments to the Law on the Judicial Council and Judges.[51] NNamely, under the Draft, the training for candidates for judges will last 12 months. An official apartment or compensation for rent and expenses for living apart from the family is also provided for judges assigned to a court that is more than 50 km away from their place of residence. This Draft Law was published on 11 July 2022, but the amendments have not been adopted yet.

It is also important to emphasize that the Judicial Council delayed for almost five months the election and assignment to the courts of 11 candidates for judges, who completed the training and were evaluated as early as in April 2023.[52] RThe reason is the failure of the Judicial Council to properly rank the candidates for judges during their election, that is to determine by draw the order in the ranking list of those candidates who achieved the same number of points, so that they would then exercise the right to priority in the selection of the court to which they will be assigned, in that order.[53] It was not explained how the problem was solved. Most likely, all the candidates were assigned to the courts of their choosing. The problem was de facto solved because there were no objections to the assignment.[54]

At the session held on 20 July 2023, the Judicial Council selected 10 candidates for judges of the basic courts of the northern region, who were sent assigned to 18 months of initial training.[55]

### 4.1.2. RATIONALIZATION OF THE JUDICIAL NETWORK

In cooperation with the Human Rights Action (HRA), CeMI developed and published the analysis "Rationalization of the Judicial Network in Montenegro - Effects and Phases from 2013 to 2016". On the other hand, in October 2020, the Ministry of Justice published an Analysis for the Needs of the Rationalization of the Judicial Network (hereinafter: Analysis 2020).[56] Several recommendations and conclusions that CeMI highlighted in the 2016 Analysis were noted in the Ministry's analysis.

Part of CeMI's analysis refers to the number of judges in Montenegro, which exceeds the European average by almost 100%. Therefore, further work on rationalization should be focused, among other things, on reducing the number of judges and court administration. In Analysis 2020, it is stated that Montenegro has about three times more judicial employees per capita compared to the European average and that the efficiency of the system needs to be improved. We can say that the issue of the number of both judges and other court employees, as well as the need to increase the efficiency of the system, is still problematic today, in 2023. Also, one of the conclusions of CeMI's analysis indicates the necessity for the process of rationalization of the judicial network to be accompanied by thorough quantitative analyses as well as qualitative data, and it was indicated that this segment was completely absent during the first phase of the rationalization of the judicial network. The need for a detailed (in-depth) analysis (in the part of setting time frames for the processing of cases) was highlighted in the recommendations of 2020 Analysis, and it is evident that this problem is still relevant today.[57]

[51] Available at: https://www.gov.me/dokumenta/b46f9733-50a5-4db2-8c48-cfa45dcf5b8c

[52] Press release from the VIII session of the Judicial Council, available at the link:: https://sudovi.me/sdsv/sadrzaj/WXAx

[53] Explanation of the Judicial Council to the addressing of the HRA - assignment of candidates for judges to basic courts, announcement of the Judicial Council dated 26 July 2023, and HRA commentary, all available at: https://www.hraction.org/2023/07/26/sudski-savjet-priznao-gresku-ali-bez-odgovora-kad-ce-je-i-kako-ispraviti-akcija-za-ljudska-prava-oceku-je-hitnu-reakciju-sudskog-savjeta/

[54] "Judicial Council finally assigns judges but keeps silent about its failure", Human Rights Action, 11 September 2023, available at: https://www.hraction.org/2023/09/11/sudski-savjet-konacno-rasporedio-sudije-ali-cuti-o-svom-propustu/

[55] Press release from the XVII session of the Judicial Council, available at the link: https://sudovi.me/sdsv/sadrzaj/owOR

[56] Georg Stawa, Analysis of the need for rationalization of the judicial network, with reference to the current situation and recommendations for further work, September 2020, available at: https://wapi.gov.me/download/273215a3-10ab-409b-991c-8dfa652ddbb1?version=1.0

[57] The 2020 analysis provides a number of key recommendations for rationalization of judicial network. It emphasizes the need for a review of the procedure for determining the Framework Criteria that determine how many employees are needed in the courts. Institutions in charge of these standards should regularly check and update them according to real needs. In addition, it is proposed to adopt new Framework Criteria that will clearly define the productivity of judges and other employees. These standards should be flexible and adapted to current needs, taking into account the complexity of the cases considered in the courts. The introduction of the categorization of the complexity of cases in the PRIS system is also foreseen, with clear criteria and training for officials who will deal with this task. Periodic testing of these benchmarks through simulations in pilot courts is also recommended, with the aim of their possible revision. The methodology, forms and instructions for such studies have already been submitted to the relevant judicial bodies. The plan is to introduce a new statistical tool for tracking data, as well as to provide court presidents with regular access to that data. Finally, the duties of court presidents in relation to monitoring the complexity of cases should be clearly defined in the Judicial Rules of Procedure, in order to monitor the structure of the complexity of cases compared to the total number of cases, with the possibility to review the standards if changes are observed.

In addition, in its analysis, CeMI highlighted the need for the continuation of the rationalization of the judicial network, with a special emphasis on reducing the number of first-instance courts. Essentially, it is necessary to develop a rationalization plan that would primarily entail "shutting down" courts that cannot justify their existence from the point of view of sustainability. Improvements in the traffic infrastructure in the central part of Montenegro in the last few years go in favour of this view. The recommendation to merge courts with the aim of reducing costs is not only related to the current situation, but it is also in line with the 2020 Analysis. Since nothing has changed in this regard, this proposal remains relevant.

In the 2016 Analysis, CeMI also concluded that the funding allocation for digitalization, i.e. the improvement of the use of information and communication technologies (ICT) in the judiciary is very low, given that Montenegro allocates insignificant budget funds for these purposes (less than 1% of the total judicial budget for the purpose of improving ICT and digitalization of the judicial system). The situation has remained largely unchanged until today. In 2020 Analysis, the recommendations highlighted the need to adapt ICT in order to create a virtual link between the courts, and the need to improve the situation in this segment still exists today.

Last year's "hacker attack" on the information system of the Government of Montenegro, which also affected the courts due to the centralization of the information system, is evidence of the need to improve the information and communication capacities of the courts. The Government of Montenegro has not yet published a detailed analysis of the causes and consequences of the attack, which makes it difficult to elaborate on how the attack occurred and the degree of damage suffered by the Montenegrin institutions that were affected by this attack, including the judicial authorities. What is known and what the observers also encountered, bearing in mind that the consequences of the hacker attack still lasted during the trial monitoring period, is that a number of hearings, mainly in the High Court in Podgorica, had to be postponed due to a lack of technical conditions for conducting some evidentiary actions. Also, due to the non-functionality of the e-mail server, the communication of the participants in the proceedings with the courts was difficult. Bearing in mind that the consequences of the hacker attack lasted for several months, it is surprising that the Report on the Work of the Judicial Council for 2022 did not address the consequences that the courts suffered in they work after the hacker attack.

The development of information and communication technologies is, at least on paper, one of the priorities in judicial reform. Namely, the development of the new Single Judicial Information System, which is supposed to replace the existing Judicial Information System (PRIS), is recognized as one of the most significant activities in the reform of the judiciary and the fulfilment of requirements on Montenegro's path to EU integration.[58] In the final report on the implementation of the measures provided for in the Action Plan for the Implementation of the Strategy for Information and Communication Technologies of the Judiciary 2016-2020 for the period 17 June 2016 – 31 December 2020, it is also stated that **the fulfilment of all recommendations from Chapter 23 is practically impossible without improving the information system and raising the quality and accuracy of statistical reporting.**[59]

The implementation of the Judiciary Information System was foreseen by the Strategy for Information and Communication Technologies of the Judiciary 2016-2020, whereby 80% of the work on the implementation of the system was supposed to be completed by 2020.[60] The final activities were foreseen in the 2021-2023 Program for the Development of Information and Communication Technologies of the Judiciary. However, there was a delay in the introduction of Judiciary Information System. The reason for the delay is the non-fulfilment of obligations by the partners in the implementation of the project.[61] As a result, the Judicial Council decided to continue the maintenance of PRIS, as well as its upgrading and functional improvement.

The fact that to this day the courts for misdemeanours and the High Court for Misdemeanours of Montenegro do not even have an existing PRIS is particularly surprising.

[58] Final Report on the implementation of measures defined in the Action Plan for the Implementation of the Strategy for Information and Communication Technologies of the judiciary 2016-2020 for the period 17 June 2016 – 31 December 2020, p. 4

[59] Isto

[60] Action Plan for the Implementation of the Strategy for Information and Communication Technologies of the judiciary 2016-2020

[61] Annual report on the work of the Judicial Council and the overall state of play in the judiciary for 2022, p. 26

### 4.1.3. INFRASTRUCTURE AND ACCESS FOR PEOPLE WITH DISABILITIES

According to the observers' assessment, with regard to infrastructure, i.e. the conditions of the court buildings, most of them are generally poor. Particular focus should be placed on the Basic Court in Kotor, which is currently being renovated. The court in Berane was also in the renovation phase during the observers' visit to this court. Furthermore, it can be noted that the spatial capacities of most courts are not at an enviable level. The lack of space is not a new challenge and is often associated with litigations where judges conduct trials in their offices instead of courtrooms. However, in one specific criminal case attended by observers before the High Court in Podgorica, the hearing had to be postponed due to the lack of available courtrooms. Namely, another trial had already been scheduled in the so-called "big" courtroom, while the "small" one was not suitable for the situation.

One of the observers' criteria for assessing the conditions in the courts was access for people with disabilities. Namely, the observers noted that the conditions for persons with disabilities are the poorest in the Basic Courts in Žabljak and Bijelo Polje, as well as the High Court in Bijelo Polje. Namely, these courts do not have optimal access to the court, nor is the interior of the building adequately equipped for people with disabilities. The Basic Court in Danilovgrad has a path for wheelchairs, but it is impossible to access the entrance to the building from the sidewalk. Access to the court for persons with disabilities is also not adequate in the Basic Court in Herceg Novi, primarily due to the very location of the building where the court is located.

Most of the courts that the observers visited do not have an elevator, including: Basic Courts in Bar, Berane, Bijelo Polje, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Nikšić, Plav, Pljevlja, Rožaje, Ulcinj, and Žabljak, as well as the High Court in Bijelo Polje, which is located in the same building as the Bijelo Polje Basic Court. Only the Basic Court in Podgorica and the High Court in Podgorica have an elevator.

Although the Basic Court in Cetinje does not have an elevator for wheelchairs, people with disabilities can access the court through another entrance shared with the Municipality of Cetinje, using the elevator. However, doors between institutions can only be opened by authorized personnel.

The Basic Court in Pljevlja, which was recently renovated, uses the premises on the ground floor of the building to hold hearings for persons with disabilities, in coordination with the Court for Misdemeanours in Bijelo Polje - Pljevlja department.[62]

We would also like to point out that we received information from the Supreme Court that the reconstruction is ongoing in the courts in Podgorica (Basic Court Podgorica, High Court Podgorica, Court of Appeal of Montenegro and Supreme Court of Montenegro), as well as in the Basic Courts in Kotor, Nikšić, Bijelo Polje (Basic Court Bijelo Polje and High Court Bijelo Polje) and Berane. We received information from the President of the Basic Court in Kotor that the renovation of the court building also includes the installation of an elevator.

### 4.1.4. SECURITY OF COURTS

Court security requires special attention.[63] During the period of monitoring court proceedings, i.e. on 3 March 2023, a person detonated an explosive device in the lobby hallway of the Basic Court in Podgorica.[64] The tragic incident, in which the attacker lost his life and several people suffered physical injuries, once again highlighted the long-standing problem of inadequate court security.

[62] Communication with the President of the Basic Court in Pljevlja, Ms. Marinom Jelovac, April 2023

[63] Offices of the prosecutor's office are located in the buildings of some courts, so the security issues in these cases apply to them as well.

[64] https://www.slobodnaevropa.org/a/podgorica-bomba-eksplozija/32297718.html

During visits to different courts, observers noticed that they are secured by members of the Police Directorate, but not all courts are equipped with metal detectors. Metal detectors are present in the Basic Court in Podgorica (which was not previously operating) and Nikšić, the Basic and High Courts in Bijelo Polje and the High Court in Podgorica, while only the High Court in Podgorica has a scanner for belongings.

However, despite these security measures in the High Court in Podgorica, observers noted that some journalists attending the hearings, as well as family members of the defendants and victims, were bringing mobile phones into the courtroom, contrary to the clear instructions of security to leave them in the lockers provided for that purpose. This indicates that the security does not pay enough attention to details, which can be a treat to the overall security. It should be noted that controlling the entry of phones and other means of communication is particularly important in the context of respecting the confidentiality of proceedings and procedural guarantees in cases in which the public is excluded.

We would like to remind that in 2005, a judge of the Basic Court in Bar was killed at her workplace, and that in 2016, the clerk's office of the Basic Court in Podgorica burned down, when the fire destroyed or damaged the evidence stored there. In March 2023, one person was killed and five were injured in an explosion in the Basic Court in Podgorica. In addition, on 31 July 2023 an attempt was made to forcefully enter the building of the Basic Court in Pljevlja, when a security guard was also physically attacked and suffered minor bodily injuries.

It should also be emphasized the continued inability of the competent institutions to adequately respond to false bomb alarms that were reported on several occasions in 2022 and 2023, including in the courts. False reports about planted bombs in courts occurred on three occasions during the period of implementation of project activities. Court buildings that were the target of reports had to be evacuated and hearings postponed. The target in all three cases was the High Court, namely: 1) on 8 December 2022,[65] when a false report was sent to the email address of the High Court (bearing in mind that the Court of Appeal and the Supreme Court are located in the same building , work was suspended in these two courts as well), 2) on 2 March 2023,[66] a false report about a bomb planted in the High Court was made to the police and 3) the last false report arrived on 8 June 2023, targeting 125 locations, among which were the High Court in Podgorica, but also the Court for Misdemeanours in Podgorica, the Basic Court in Bar, the Court for Misdemeanours in Budva and the division of this court in Kotor.[67]

Bearing in mind the above, as well as the fact that in September 2023 a tunnel leading to the court evidence archive was discovered in the High Court in Podgorica, the question of the security of evidence, i.e. the premises of state bodies where they are kept, inevitably arises.

## 4.2. PRELIMINARY PROCEEDINGS

### 4.2.1. LEGAL FRAMEWORK

The first stage of the preliminary proceedings is preliminary investigation. Under Art. 257 of the CPC, if there are grounds for suspecting that a criminal offense has been committed which is prosecuted ex officio, the police are obliged to inform the public prosecutor and, on their own initiative or at the request of the public prosecutor, take the necessary measures to find the perpetrator of the criminal offense, to ensure that the perpetrator or the accomplice does not hide or escape, to discover and secure traces of the criminal offense and objects that can serve as evidence, as well as to collect all information that could be useful for the successful conduct of criminal proceedings.

[65] https://www.slobodnaevropa.org/a/32167667.html

[66] https://www.slobodnaevropa.org/a/dojava-bomba-sudovi-crna-gora/32295967.html

[67] https://www.vijesti.me/vijesti/crna-hronika/660283/prijetece-poruke-stigle-na-125-adresa-evakuisano-vise-institucija

The investigation is the second part of the preliminary proceedings. The investigation is conducted on the basis of an order to conduct an investigation against a specific person when there is a well-founded suspicion that he/she has committed a criminal offense. The investigation includes the implementation of evidentiary actions in order to obtain the necessary elements for making a decision on filing an indictment or suspending the proceedings (Art. 274 of the CPC).

The order to conduct an investigation, issued by the public prosecutor, is a key instrument at this stage. It is issued on the basis of reasonable suspicion that the suspect has committed a criminal offense (Art. 275 of the CPC). The injured party, the attorney of the injured party, the accused and his defence attorney have the right to be present at certain evidentiary actions, which enables them to be informed and participate in the process of gathering evidence. Secrecy may be ordered in order to protect the interests of criminal proceedings, public order, morals or privacy of the injured party or defendant.

After the termination of the investigation, the public prosecutor issues a decision on filing an indictment or suspending the proceedings. In situations where the investigation is not completed within the statutory deadline, the high public prosecutor is notified, who will take the necessary steps to ensure the continuation of the process.

The injured party also has the right to file an immediate indictment if he/she considers that the collected data is sufficient for that. This possibility provides additional legal protection to the injured party, allowing him/her to take an active role in the criminal prosecution process. Also, Art. 62 para. 2 of the CPC acknowledges and leaves the possibility and gives the right and authority to the public prosecutor to take over the criminal prosecution and representation of the prosecution until the main trial.

After the termination of the investigation, as well as in situations where it is possible to file an indictment without a preliminary investigation in accordance with Art. 288 of the CPC, proceedings before the court can be initiated solely on the basis of the indictment submitted by the public prosecutor or the injured party as a prosecutor.

### 4.2.2. ANALYSIS OF THE STATE OF AFFAIRS

At the stage of the preliminary proceedings, through a detailed examination of the case files, the observers analysed the data and discovered certain deficiencies that indirectly indicate a violation of the principles of the CPC. Although they noted that public prosecutors provided instruction to parties about their rights during hearings, they also noted some problematic practices.[68]

- In one case, there was a well-founded suspicion that a public official - a public bailiff, had committed the criminal offense concerning the abuse of official position in connection with the criminal offense of confiscating someone else's property. However, we noticed that the Basic Public Prosecutor's Office dismissed the criminal charges due to the lack of reasonable suspicion that the said person committed the criminal offense of abuse of official position. After that, the defence attorney of the injured party as a subsidiary prosecutor filed a private lawsuit with the court, but it was dismissed by a decision for procedural reasons (failure to act according to the decision on the regulation of the private lawsuit). This case should be resolved by dismissing both the criminal charges and the private lawsuit due to the lack of jurisdiction of the Basic Public Prosecutor's Office and the Basic Court, since the suspect was a public official, which falls under the jurisdiction of the Special Public Prosecutor's Office, i.e. the High Court according to the Law on Courts (Official Gazette of Montenegro 11/15 and 76/20). Similarly, in another case that was conducted against a public bailiff based in Herceg Novi, she was initially convicted by the Basic Court in Herceg Novi for the criminal offense of abuse of official position. However, the High Court in Podgorica overturned the first-instance decision due to the lack of jurisdiction of the Basic Court.

[68] Examination of case files conducted by CeMI and HRA's observers is enabled by Art. 203a para. 1 of the CPC. The limitation of the right to examine case files is contained in Art. 203b. This provision was the subject of an assessment by the Constitutional Court under the Initiative for the initiation of proceedings for the review of constitutionality and legality, which the Constitutional Court rejected (Constitutional Court of Montenegro U-I no. 7/17, 14 June 2023, published in the Official Gazette of Montenegro 087/23, dated 27 September 2023). The provision stipulates that, exceptionally, persons referred to in Art. 203a of the CPC in the preliminary investigation and investigation may be denied the right to examine part of the case file, if this would jeopardize the purpose of the investigation, national security and witness protection, which in further proceedings must not jeopardize the right to defense. Bearing in mind the relevant provisions of the Constitution, as well as the relevant international regulations and practice regarding the application of the disputed norm, the Constitutional Court assessed that the contested provision of Art. 203b para. 1 of the CPC meets the requirements of legal certainty and the rule of law from the Constitution, as well as the standard of legality, in terms of the views of the ECtHR.

■ In addition to the above, in some prosecutor's files the observers did not notice the existence of an official note or statement on the record of the hearing of the witness, the hearing of the witness/injured party about the fact that the accused and the defence attorney attended the hearing or the reason why they failed to attend, i.e. that the record states that the injured party declared that he/she did not want to attend the hearing of the accused/injured party (Art. 262 para. 2 and 3 in connection with Art. 282 para. 4 of the CPC). Also, it was not stated in the record of the hearing of the accused whether he/she wanted to attend the hearing of the injured party/witness and be appropriately informed about it by the public prosecutor (Art. 282 para. 1 of the CPC).

■ The public prosecutor's failure to conduct an open investigation in the manner prescribed by law, which implies a timely and convenient way of notifying the parties in the proceedings and other persons participating in the proceedings about the place and time of the hearing, as well as the failure to document these actions as previously explained, hinders the gathering of evidence and their further use, and violates the rights of the accused and the injured party. If the judgment was passed on the basis of evidence which is funded on such an omission, it represents a significant violation of the provisions of the criminal proceedings (Art. 386, para. 1, point 7 of the CPC) and the basis for the defence at the main trial to demand the exclusion of evidence because the evidentiary action was not taken in the manner prescribed CPC (Art. 211).

■ Observers also noticed that questions asked by prosecutor were not specified in the records of the hearing of the accused, but instead there was a following statement: "On a special question by the prosecutor, the accused party/injured party/witness stated...", which leaves the possibility of asking suggestive questions and leads to a violation of Art.100 para. 6 of the CPC, stipulating that when the defendant finishes his/her testimony, he/she will be asked questions if it is necessary to fill in gaps or remove contradictions and ambiguities in his/her statement.[69]

■ In the prosecutor's files, the existence of written summons for hearings was not observed either, because the available data has shown that state prosecutors contact parties and injured parties by phone in the majority of proceedings, although this is not provided for in the CPC (Art. 195 and Art. 112 of the CPC) in the pre-criminal procedure stage of the proceedings.

■ When it comes to the administrative aspect of keeping minutes and maintaining case files, it was noticed that the prosecutor's files were glued to each other in most of the cases, and in some cases they were stapled and delivered to the court in two joined sheets of paper taken from the middle of the notebook), instead of being delivered in separate envelopes, as prescribed by the Rulebook on Internal Operations of the Public Prosecutor's Office. Although this may not seem relevant at first glance, in formalized state proceedings of general importance such as a criminal trial, respecting the form is important per se, but also for the authority of the court.

■ Also, prosecutorial case files are missing in certain case files in the Basic Court in Ulcinj marked by "Kv.br.", which complicities the monitoring and determining the sequence of actions taken in the proceedings in which the criminal panel acted.

## 4.3. FIRST INSTANCE PROCEEDINGS

Regular criminal proceedings consist of the first instance criminal proceedings and proceedings based on legal remedy. The first instance criminal proceedings comprise two stages: the preliminary criminal proceedings and the main trial. Further, the stage of preliminary criminal proceedings consists of two phases: investigation and prosecution. Once the indictment becomes final, the preliminary proceedings stage ends,[70] and the main trial begins, addressing the subject of the proceedings. The main criminal proceedings consist of three parts: preparation of the main trial, main trial and passing of judgement.[71]

[69] HRA also proposed to the Ministry of Justice amendments to Art. 257 of the Criminal Procedure Codes, including mandatory recording of every collection of information from citizens, as well as every taking of a statement or questioning of citizens in any capacity, whereas the recordings are attached to the record, that is, to the official note. However, judging by the report on the public debate on the Draft Law on Amendments to the Law on Criminal Procedure, that proposal was not adopted.

[70] Radulović, Drago, Criminal Procedural Law, Universitry of Montenegro, Faculty of Law, Podgorica, 2009, p. 282

[71] Grubač, Momčilo, Criminal Procedural Law, Official Gazette Beograd, 2006, str. 73; some use the phrase "adjudication, and pronouncing a judgement" instead of "passing" the judgement, see: Radulović, Drago, Criminal Procedural Law, University of Montenegro, Faculty of Law, Podgorica, 2009, p. 282

During the case file examination in first instance proceedings, CeMI and HRA's observers filled forms with standardized questions. These forms covering different aspects of the proceedings, including indictment review, scheduling of the main trial, number of hearings held and adjourned, right to public pronouncement of the judgement and average duration of the first instance proceedings.

The findings presented in this Report are aligned with the structure of the form, which is why this part (first instance proceedings) is divided into several units. Such structure enables a detailed presentation of relevant information and provides insight into the processes that take place during the first instance criminal proceedings.

## 4.3.1. INDICTMENT REVIEW

### *4.3.1.1. INDICTMENT REVIEW PROCEDURE*

After receiving the indictment, president of the Council schedules a hearing to review the legality and justification for the indictment. Prosecutor, accused person and defence attorney are all summoned to the hearing, and it's brought to their attention that the hearing will take place in their absence if they fail to appear. A hearing will also take place when the summons could not have been served to the known address of the accused.

Having verified that all the summoned persons have appeared and that the summons have been duly served to them, president of the Council opens the hearing and presents the indictment before the court for review and approval. Prosecutor presents evidence for the indictment, and accused and their defence attorney can point to omissions made in the investigation or to unlawful evidence, or the lack of evidence for reasonable doubt that the accused committed the criminal offense charged with, as well as to point to evidence in favour of the accused.

When the court finds that there are errors or shortfalls in the indictment or in the very proceedings, or identifies the need for a better clarification of the state of affairs with the aim of reviewing the justification of the indictment, it will return the indictment in order to address the noted shortfalls or in order for the investigation to be to supplemented or carried out. The prosecutor is obliged to file a revised indictment within three days from the date when they received the court decision, or complete or conduct the investigation within two months. For justified reasons, at the request of the prosecutor, this time limit may be extended. If the public prosecutor fails to meet the deadline, they are obliged to directly inform immediately higher public prosecutor's office about the reasons thereof. If the injured party as prosecutor fails to meet the above deadline, it will be considered that they have dropped the charges, and the proceedings will be suspended.

If further clarification is required to examine the justification of the indictment of the injured party as prosecutor, the court will refer the indictment to the investigating judge, in order to gather evidence within two months.

According to the practice of the Supreme Court of Montenegro, in the long-term indictment review procedure, where the court assessed that if the indictment confirmation procedure has not been completed even after two and a half years, and the decision made in the indictment review procedure was overturned three times by the Court of Appeal Montenegro, there was a violation of the right to a trial within a reasonable time guaranteed by the provisions of Art. 6 para. 1 of the ECHR and the right to fair compensation is recognized.[72]

### *4.3.1.2. ANALYSIS OF THE STATE OF AFFAIRS*

By examining case files in the cases for which final judgements were passed, the observers analysed 101 cases in which an indictment was filed out of a total of 470 examined cases. The largest number of analysed cases in which indictment was filed took place in the High Court in Podgorica (58) and in the High Court in Bijelo Polje (24). A smaller number of files in which the indictment was filed, and which were the subject of analysis, were also in the basic courts in Podgorica (5), Kotor (4), Bar (2), Danilovgrad (2), Herceg Novi (2), Nikšić (2), Rožaje (1) and Ulcinj (1).

[72] Supreme Court of Montenegro, Tpz no. 24/16 from 27 September 2016

By examining these case files, the observers concluded that the indictment confirmation hearings were, in most cases, held without significant delays. The exception to this are the three cases that the observers monitored by attending the High Court in Podgorica,[73] and which attracted great public interest. In these three cases, the indictment review hearings were adjourned several times at the request of the attorneys. According to Art. 293 para. 3 of the CPC, the deadline for scheduling indictment review hearing is **15 days** following the receipt of the indictment.

Of the cases monitored by case file examination, this deadline was met in **45 (44.55%)** of the analysed cases, and not met in **56 (55.45%)** analysed cases.

The longest time by which this deadline was exceeded was in two cases before the High Court in Podgorica: **124 days** and **109 days** and in three cases in the High Court in Bijelo Polje: **115 days**, **107 days** and **101 days**. Overall, at the level of high courts, the statutory deadline was met in **43,90%**, while this deadline was not met in **56,10%** of cases.

With regard to basic courts, the longest time by which this deadline was exceeded was recorded in the Basic Court in Kotor, in a case in which the deadline for indictment review was **83 days** following the receipt of indictment in the court, and in the Basic Court in Bar, in a case in which this deadline was **55 days** following the receipt of the indictment in court. Overall, at the level of basic courts, the deadline for scheduling the indictment review hearing was met in **47.37%** of cases examined by observers, while in **52.63%** of cases this deadline was not met.

| Court | No. of indictments | Deadline for indictment review (average in days) |
|---|---|---|
| Basic Court Bar | 2 | 33 |
| Basic Court Danilovgrad | 2 | 19 |
| Basic Court Herceg Novi | 2 | 42 |
| Basic Court Kotor | 4 | 32 |
| Basic Court Nikšić | 2 | 14 |
| Basic Court Podgorica | 5 | 22 |
| Basic Court Rožaje | 1 | 19 |
| Basic Court Ulcinj | 1 | 13 |
| **Basic Courts** | **19** | **24** |
| High Court Bijelo Polje | 24 | 26 |
| High Court Podgorica | 58 | 29 |
| **High Courts** | **81** | **25** |
| **Total** | **101** | **24** |

Table 3: Overview of the cases monitored by case file examination, based on the number of indictments and deadline for its review, by types of courts

With regard to the presence of prosecutor, accused person and defence attorney at the hearings for indictment review in the cases monitored by case file examination, it could be noticed that public prosecutors in most cases do not attend the indictment review hearings. Out of the 59 cases before the High Court in Podgorica that the observers had access to, the public prosecutor did not attend the indictment review hearing in **55** cases, i.e. **93.22%**. Before the High Court in Bijelo Polje, the prosecutor did not attend the indictment review hearing in **8** out of 24 cases, i.e. **33.33%**. Before the basic courts, the absence of the prosecutor from the indictment review hearing was recorded in **two** out of 19 cases, i.e. **10.52%**. There is no information in the case files about the reasons for absence from the indictment review hearing.

In only one case before the High Court in Podgorica, an objection to the indictment was registered by the defence attorney of the accused, who believed that the indictment should be returned for the purpose of supplementing the investigation, as well as that it contains illogical qualifications that cannot be included in its operative part. However, no case was registered in which the indictment was returned to the prosecutor for amendment.

[73] The reason for the lower number of the monitored indictment review hearings is that the dates of the indictment review hearings are not published on courts' websites, which is why the observers obtained information about the dates of individual hearings through the media and other sources of information

The deadline for confirming the indictment is **eight days**, and in complex cases **15 days** following the day when the hearing for indictment review took place (Art. 296 para. 1 of the CPC).

The analysis of the monitored cases showed that the 15-day deadline was not exceeded. In the largest number of cases, i.e. in **80 out of 102** cases, the indictment was confirmed on the same day when the hearing for the indictment review was held **(78.43%)**. In the High Court in Podgorica, the indictment was confirmed on the same day when the hearing for indictment review was held in **43 out of 59** cases **(72.81%)**, and in the High Court in Bibelot Pole in **22 out of 24** cases **(91.66%)**. In basic courts, the indictment was confirmed on the same day in **15 out of 19** cases **(78.94%)**.

In a smaller number of cases, this deadline was between nine and 14 days. However, it was not possible to identify the methodology for determining the degree of complexity of each monitored case, and consequently whether the eight-day deadline for less complex cases was violated.

| Court | No. of indictments | Deadline for indictment review (average in days) |
|---|---|---|
| Basic Court Bar | 2 | On the same day |
| Basic Court Danilovgrad | 2 | 8 days |
| Basic Court Herceg Novi | 2 | On the same day |
| Basic Court Kotor | 4 | 2 days |
| Basic Court Nikšić | 2 | 3 days |
| Basic Court Podgorica | 5 | On the same day |
| Basic Court Rožaje | 1 | On the same day |
| Basic Court Ulcinj | 1 | 14 days |
| **Basic Courts** | **19** | **3 days** |
| High Court Bijelo Polje | 24 | 2 days |
| High Court Podgorica | 59 | 2 days |
| **High Courts** | **82** | **2 days** |
| **Total average** | **102** | **3 days** |

Table 4: Overview of the cases monitored by case file examination, based on the number of indictments and timeline in which decision for confirmation of indictment was issued, by types of courts

Although the researchers involved in this Report did not analyse the effectiveness of indictment review, we ,would like to point out that HRA concluded in a report published as part of the same project that the indictment review procedure lacks effectiveness in practice, that the indictment review hearing should serve more to exclude unlawfully obtained evidence, instead of doing it through extraordinary legal remedies, which contributes to unjustified disruption of the realization of criminal justice.[74]

## 4.3.2. PRELIMINARY HEARING AND MAIN TRIAL

### *4.3.2.1. LEGAL FRAMEWORK*

Before the start of the main trial, it is possible to hold a preliminary hearing, which is regulated by Art. 305 of the CPC. The purpose of the preliminary hearing is to determine the future course of the main trial and plan the way of presenting evidence, the time schedule and other details. Within two months, if the president of the Council deems it necessary, the parties, defence attorneys, injured party, attorneys of the injured parties, those granted the power of attorney by injured party, as well as, if necessary, expert witness and other relevant persons are summoned to the preliminary hearing.

[74] "Extraction of illegally obtained evidence in criminal proceedings - principles from the practice of the ECtHR and rules and judicial practice in Montenegro", human Rights Action, June 2023, p. 18, available at the link:" https://www.hraction.org/wp-content/uploads/2023/07/Izdvajanje-nezakonito-pribavljenih-dokaza-u-krivicnom-postupku.pdf

President of the Council is obliged to inform those present about the planned course of the main trial and request that they present their opinion on the issue. In addition, they are requested to present their proposed evidence and, in particular, specify whether they are able to respond to the court summons and attend the main trial at specified days and time, as scheduled by the president of the Council.

The parties are specifically advised to present their proposed evidence at the preliminary hearing. In case they present the new proposed evidence at the main trial, they will have to explain in detail why they failed do so at the preliminary hearing. The court will reject these proposals if the parties do not prove that at the time of the preliminary hearing they were not aware or could not have been aware of the evidence or facts that need to be proven, which were the subject of the preliminary hearing.

The main trial is the second phase of the main criminal proceedings, and the President of the Council is in charge of conducting the main hearing. During the main hearing, the Council President presides over the hearing, examining defendant, witnesses and expert witnesses, and giving the floor to members of the Council, parties to the proceedings, injured party, legal representatives, those with a power of attorney, defence attorneys and expert witnesses.

The parties to the proceeding have the right to object during the presentation of evidence. President of the Council decides on the proposals and objections of the parties, unless this is done by the Council. The Council decides on both proposals where the consent of the sides involved was not reached, and those where the consent was reached, but were not adopted by president. The Council also decides on the objections against the measures imposed by president of the Council, concerning the conducting of the main hearing.

It is the duty of the Council's president to ensure the comprehensive examination of the case, establishing the truth, and eliminating anything that causes delays to the proceedings and does not serve to resolving the case.

The course of the main hearing is determined by the CPC, but the Council can change it in special circumstances, such as the number of defendants, the number of crimes or the volume of evidence. For important reasons, at the proposal of the parties and defence counsel or *ex officio*, the president of the Council can issue an order to adjourn the day of the main trial, for a maximum of 15 days, of which all summoned persons will be immediately informed.

The court is obliged to protect its reputation, the reputation of the parties involved and other participants in the proceedings against slander, threat and any other kind of attack. President of the Council has duty to maintain order in the courtroom. They can order the search of persons attending the main hearing and immediately after the opening of the session they can request that those present behave appropriately and not obstruct the work of the court. The Council may order removal from the session of all those attending the main hearing as audience, if the legal measures for keeping order provided for in this Code could not ensure that hearing is carried out without obstructions.

Audio and audio-visual equipment cannot be brought into the courtroom unless approved by president of the Supreme Court for a specific main trial. If recording is approved at the main trial, the Council may, for justified reasons, issue a decision prohibiting the recording of some parts of the hearing.

### *4.3.2.2. ANALYSIS OF THE STATE OF AFFAIRS*

Observers from CeMI and HRA analysed various aspects of the main trial, including scheduling of the main trial, number of hearings held, number of adjourned hearings, reasons for adjournment, number of interruptions, reasons for interruptions, pronouncement of the judgement, delivery of the judgement, average duration of second-instance proceedings and average duration of the proceedings.

Observers monitored 196 cases by attending 231 hearings. When it comes to the cases that the observers observed by direct attendance at the hearings, we highlight the following observations:

- In the case that was conducted before the Basic Court in Podgorica, for the criminal offense concerning aggravated theft, the judge did not inform the accused about his rights and the hearing process in accordance with Art. 100 of the CPC. In addition, when the accused expressed the need for a defence attorney, emphasizing the lack of financial means to hire an attorney, he asked the judge if he could be provided with a defence attorney free of charge. The judge then entered into record the false information, i.e. that the accused stated that he did not need a defence attorney, and replied to the accused that he had no right to a defence attorney. When the judge asked the accused party if he had any objections, the judge answered himself instead and noted in the record that the accused had no objections, while the accused remained silent. It remains unfamiliar whether the accused was familiar with what an objection to the record means. A similar thing happened after the expert witness's report was read, when the judge did not ask either the prosecutor or the accused if they had any comments. Although, in accordance with the CPC, an ex officio defence attorney is not required for the criminal offense charged against the accused, Art. 70 of the CPC mandates that in cases where there are no conditions for mandatory defence, and the interests of justice require it, the accused may be appointed a defence attorney at his request if he has not sufficient means to afford the defence costs due to his financial situation. This provision of the CPC almost literally quotes Art. 6 para. 3 item c of the ECHR.[75] It is also important to emphasize that the accused in this case was a person who was treated for alcohol addiction, and that the judge ordered a psychiatric examination, which indicates that the judge had doubts about mental abilities of the accused party. In similar situations, the ECtHR determined that there was a violation of Art. 6.[76] According to Art. 100, para. 10 of the CPC, if the accused was not instructed about the rights from para. 2 of this article or if the statements of the accused referred to in para. 9 of this article about the need for a defence attorney to be present were not entered into the records, such testimony cannot be used as evidence in criminal proceedings.

- In the case before the Basic Court in Podgorica, which was conducted for the criminal offense concerning enabling the consumption of narcotic drugs, the accused person expressed his intention to exercise the right to remain silent. However, when addressing those present in the courtroom, the judge wrongly stated that such a decision by the accused implies that he has no right to ask questions to the witnesses, make objections or make any observations regarding the statements. This statement of the judge has no basis in the law, i.e. the CPC does not stipulate that someone who has declared that he will defend himself by remaining silent in the moment immediately before presenting his defence, cannot, at a later stage of the proceedings, ask questions of the witnesses, make objections and propose new evidence.

By misinterpreting the rights of the suspect or the accused party during the first hearing, within the meaning of the provisions of Art. 4 para. 2 of the CPC[77] and the right to be properly instructed on proposed evidence at the main trial in terms of the provision of Art. 337 para. 1 of the CPC,[78] at the stage of the evidentiary proceedings, and if the accused has not expressly declared during the proceedings that he/she will constantly use the right to defend himself/herself by remaining silent during the proceedings, the accused is denied the right to ask questions to witnesses, other accused persons, make objections, that is, all of them represent a violation of the defendant's right to active action in the next phase of the procedure. In this way, procedural guarantees provided for in Art. 14 of the CPC are violated.[79]

---

[75] "Anyone who is charged with a criminal offense has the following minimum rights: ... to defend himself or with the help of an attorney of his choosing or, if he/she does not have the means to bear the costs of an attorney, to be appointed one free of charge, when the interests of justice so require."

[76] Vaudelle v. France, application no. 35683/97, 30 January 2001, Padalov v. Bulgaria, application no. 54784/00, 10 August 2006

[77] "During the first hearing, the suspects and the accused parties shall be informed that they are not obliged to give any statements whatsoever nor answer the questions, and that all statements they make may be used as evidence".

[78] "President of the Council will bring to the attention of the defendant to follow the course of the main hearing carefully and shall instruct them about the possibility to present the facts and propose evidence in their favour, aks questions to co-defendants, witnesses and expert witnesses, make objections and provide explanations regarding their statements".

[79] "The court, public prosecutor and state authorities participating in the proceedings will inform a suspect, i.e. accused party or any other person who participates in the proceedings, and could fail to perform an action in the proceedings or to exercise their rights due to ignorance, about the rights that they have according to this Code and consequences of failing to act."

The right to a silent defence is not stated as such in the ECHR; it rather derives from immunity from self-incrimination[80] and the presumption of innocence,[81] which makes it an element of the right to a fair trial. According to the ECtHR, the right to remain silent and immunity from self-incrimination represent generally recognized international standards that lie at the heart of the concept of fair proceedings according to Art. 6 of the Convention.[82] The practice of the ECtHR does not recognize the waiver of these rights as a condition on which the existence of the accused person' right to procedural equality and equality of arms will depend. These are specific rights exercised by accused persons, along with other rights that are guaranteed to other participants in the procedure.

■ In the case before the High Court in Podgorica, which was conducted for the criminal offense concerning the abuse of position in business operations, the judge, made negative comments in communication with the defence attorneys, on the evidence which served as a basis for confirming the indictment. This is particularly delicate considering that it is a serious case in which the property benefit amounting to EUR 1,500,000 was realized, according to the available information. The judge should avoid commenting on the prosecution's failings in this context, as such behaviour may give the impression of bias in favour of the defendants.

In one case before the High Court in Podgorica, which was conducted for the criminal offense of smuggling, the judge violated the provisions of Art. 343 of the CPC. Under this provision, the judge was obliged to inform the interrogated person about the statements given by the previously heard co-defendants and ask if he/she had any objections to the statements that were later given by other co-defendants, but he failed to do so.

■ At three hearings conducted before the Basic Court in Podgorica, attended by one of the observers, a judge was not wearing a judge's robe, while at another hearing the public prosecutor failed to do so, and in the hearings conducted before the High Court in Podgorica, the public prosecutors from the Special Public Prosecutor's Office did not wear prosecutor's robe at any of the hearings. The judge is obliged to wear the judge's robe in accordance with Art. 97 para. 1 of the Judicial Rules of Procedure,[83] while the state prosecutor is obliged to wear the prosecutor's robe in accordance with Art. 100 para. 1 of the Rulebook on the Internal Operations of the State Prosecutor's Office.[84]

■ In one case before the High Court in Podgorica conducted for the criminal offense of unauthorized production and placing on the market of narcotic drugs in complicity, the prosecutor made a serious failure in terms of compliance with the provisions of Art. 16 para. 1 of the CPC (principle of truth and fairness), which requires equal attention when examining and establishing facts that incriminate the accused and those in his favour. In particular, the prosecution hired a translator specialized in the Spanish language to translate all relevant evidence from English and Spanish. After this fact was revealed, a new translation was issued that differed significantly from the original and was more favourable to the defendants. The prosecutor had no objection to the new translation, so the court took it into account and removed the original translation from the list of evidence. However, in his closing argument, the prosecutor unjustifiably referred to the content of the original translation, even though that translation had already been excluded from the evidence.

■ In the case conducted before the High Court in Podgorica for the criminal offense of unauthorized production and distribution of narcotic drugs, the Constitutional Court of Montenegro adopted the appeal of the accused persons[85] and violated the right to personal freedom, because the decision on custody was not adequately explained, especially in regarding reasonable suspicion. The Constitutional Court found that the reasoning for the custody was neither precisely nor clearly connected to the facts that would indicate a well-founded suspicion that the appellants committed the criminal offense charged with.

[80] Funke v. France, application no. 10828/87, 25 February 1993 and Sanders v. United Kingdom, application no. 19187/91, 17 December 1996

[81] Salabiaku v. France, application no. 10519/83, 7 October 1988

[82] Sanders v. the United Kingdom, op.cit., p. 68..

[83] „Official Gazette of Montenegro 26/11, 44/12 and 2/14

[84] Official Gazette of Montenegro 54/10 and 44/12

[85] Decision of the Constitutional Court U-III no. 544/22, 12 July 2022

Although the Constitutional Court established a violation of the right to freedom while the proceedings were still ongoing, the Appelate Court confirmed the initial decision of the High Court, and the accused remained in custody. After that, the defence filed another appeal to the Constitutional Court, which was also accepted,[86] but the defendants still remained in custody until the day of the first-instance acquittal, which was five months after the first decision of the Constitutional Court was presented to the court.

We would like to remind you that Art. 3 of the Law on the Constitutional Court of Montenegro[87] stipulates that everyone is obliged to act in accordance with the decisions of the Constitutional Court. Positions on certain issues expressed in the decisions of the Constitutional Court are binding for all state bodies, state administration bodies, local self-government bodies, i.e., local administrations, legal entities and other entities that exercise public authority. Also, according to Art. 77 of the same Law, when the Constitutional Court revokes an individual act and returns the case for retrial, the competent authority is obliged to address the case immediately, and no later than within 30 days from the date of receipt of the decision of the Constitutional Court. In the repeated procedure, the competent authority is obliged to respect the legal reasons of the Constitutional Court expressed in the decision and to issue a decision in the repeated procedure within a reasonable time.

- In two proceedings before the Basic Court in Nikšić, when pronouncing the judgement, the judge ordered only the accused party to stand up, which is contrary to Art. 375 para. 5 of the CPC, which stipulates that all those present will listen to the reading of the operative part of the judgement while standing.

- In the case held before the Basic Court in Podgorica against two accused persons, one of whom is an adult and other a minor, charged with the criminal offense of aggravated theft in complicity, after the adult accused gave a statement, the judge asked why it differed from the statement given before the Basic Public Prosecutor's Office in Podgorica. The accused party replied that he was beaten by four inspectors from the Security Centre in Podgorica. This statement produced no reaction of the judge, while the minor accused plead guilty.

- In another case before the Basic Court in Podgorica, which was conducted for the criminal offense of aggravated theft, the accused party and the witness claimed that they were subject to torture during interrogation by police officers in the Security Centre Podgorica. The accused pressed criminal charges against one of the police officers. That case is currently being investigated.

- In one case before the Basic Court in Podgorica, the accused who was remanded in custody complained to the judge that the therapy prescribed by the doctor at the Clinical Centre of Montenegro was cut in half while in custody due to the lack of medication in that institution. He also claimed that there was not enough medicine for all the prisoners, which causes them to not feel well.[88] It should be noted here that Art. 185 of the CPC prescribes judicial supervision over the execution of detention, with clear authority, actions and measures implied by the supervision.[89]

According to Art. 304 para. 2 of the CPC, the president of the Council shall determine the date of **the main trial no later than two months after the confirmation of the indictment**. If the date is not set within that period, the president of the Council will inform the president of the court about the reasons for such postponement. If needed, the president of the court will take measures to determine the date of the main trial.

---

[86] Decision of the Constitutional Court U-III no. 723/22, 9 November 2022

[87] Official Gazette of Montenegro 011/15 from 12 March 2015

[88] In this example, there was no reaction by the acting judge. However, it is important to mention that the observers also attended the hearings in which the defendants made similar statements, in which the acting judge reacted adequately. Specifically, in the case before the Basic Court in Podgorica conducted for the criminal offense under Art. 221 of the Criminal Code of Montenegro, the defendant who was in custody complained about the lack of medication, but the judge acting in that case pointed out that he would investigate his allegations and ensure the necessary therapy.

[89] Supervising the conditions of custody is the responsibility of the president of the court, who has the authority to carry out that duty. He or the judge chosen by him are obliged to visit the prisoners at least twice a year, check their conditions of nutrition, provision of needs and their general treatment. These visits can be carried out without the presence of prison supervisors and guards. If any irregularities are noticed during these visits, the president of the court or the appointed judge should take appropriate measures to correct those irregularities. Also, it is necessary to prepare a report on each visit and submit it to the President of the Supreme Court and the Ministry of Justice. In addition, the president of the court and the investigating judge have the right to visit detained persons at any time, talk with them and hear any complaints.

This deadline was met in **69 (67.64%)** cases examined by the observers, while the deadline was exceeded in **32 (31.37%)** cases.

The longest time by which the deadline was exceeded was recorded in the High Court in Podgorica, with **nine** recorded cases in which the main trial was scheduled more than 100 days after the confirmation of the indictment, namely: **100** days, **101** days, **111** days, **120** days, **126** days, **135** days, **141** days, **148** days and **167** days.

| Court | The average period in which the main hearing was scheduled after confirmation of the indictment, expressed in days |
|---|---|
| Basic Court Bar | 22 |
| Basic Court Danilovgrad | 33 |
| Basic Court Herceg Novi | 42 |
| Basic Court Kotor | 44 |
| Basic Court Nikšić | 34 |
| Basic Court Podgorica | 37 |
| Basic Court Rožaje | 37 |
| Basic Court Ulcinj | 70 |
| **Basic Courts** | **38** |
| High Court Bijelo Polje | 38 |
| High Court Podgorica | 63 |
| **High Courts** | **55** |
| **Total average** | **52** |

Table 5: Overview of cases with an indictment monitored by examination of case files, based on the deadline in which the main hearing was scheduled, by types of courts

The timeline for scheduling the main hearing for bills of indictment is shorter. Namely, according to Art. 451 para. 4 of the CPC, if the main trial is not scheduled **within 30 days from the date of receipt of the indictment** or a private lawsuit, the judge is obliged to inform the president of the court of the reasons, so that they can take measures to schedule the main hearing as soon as possible.

Observers examined a total of 368 cases with the bill of indictment.

| Court | No. of motions for indictment |
|---|---|
| Basic Court Bar | 20 |
| Basic Court Berane | 18 |
| Basic Court Bijelo Polje | 28 |
| Basic Court Cetinje | 19 |
| Basic Court Danilovgrad | 21 |
| Basic Court Herceg Novi | 30 |
| Basic Court Kotor | 27 |
| Basic Court Kolašin | 44 |
| Basic Court Nikšić | 18 |
| Basic Court Plav | 18 |
| Basic Court Pljevlja | 20 |
| Basic Court Podgorica | 46 |
| Basic Court Rožaje | 19 |
| Basic Court Ulcinj | 19 |
| Basic Court Žabljak | 20 |
| High Court Bijelo Polje | 1 |
| High Court Podgorica | 0 |
| **Total** | **368** |

Table 6: Overview of cases with filled motion for indictment monitored by case file examination

Out of 15 basic courts, **12 did not meet this deadline**, while only three did. The deadline was met by the Basic Court in Bijelo Polje, the Basic Court in Cetinje and the Basic Court in Žabljak.

| Court | Average deadline for scheduling the main trial, calculated in days |
|---|---|
| Basic Court Bar | 35 |
| Basic Court Berane | 39 |
| Basic Court Bijelo Polje | 29 |
| Basic Court Cetinje | 27 |
| Basic Court Danilovgrad | 58 |
| Basic Court Herceg Novi | 71 |
| Basic Court Kotor | 31 |
| Basic Court Kolašin | 80 |
| Basic Court Nikšić | 57 |
| Basic Court Plav | 41 |
| Basic Court Pljevlja | 52 |
| Basic Court Podgorica | 43 |
| Basic Court Rožaje | 36 |
| Basic Court Ulcinj | 47 |
| Basic Court Žabljak | 24 |
| High Court Bijelo Polje | 28 |
| High Court Podgorica | No motions for indictment |
| **Average** | **47** |

Table 7: Overview of cases with a motion for indictment monitored by case file examination, according to the deadline in which the main hearing was scheduled, by types of courts

| Court | Number and percentage of cases in which the deadline for scheduling the main trial is up to 30 days | | Number and percentage of cases in which the deadline for scheduling the main trial exceeded 30 days | |
|---|---|---|---|---|
| Basic Court Bar | 9 | 45,00% | 11 | 55,00% |
| Basic Court Berane | 11 | 61,11% | 7 | 38,89% |
| Basic Court Bijelo Polje | 15 | 53,57% | 13 | 46,43% |
| Basic Court Cetinje | 15 | 78,95% | 4 | 21,05% |
| Basic Court Danilovgrad | 2 | 9,52% | 19 | 90,48% |
| Basic Court Herceg Novi | 14 | 46,67% | 16 | 53,33% |
| Basic Court Kotor | 3 | 6,82% | 40 | 90,91% |
| Basic Court Kolašin | 17 | 62,96% | 10 | 37,04% |
| Basic Court Nikšić | 2 | 11,11% | 16 | 88,89% |
| Basic Court Plav | 10 | 55,56% | 8 | 44,44% |
| Basic Court Pljevlja | 12 | 60,00% | 8 | 40,00% |
| Basic Court Podgorica | 17 | 36,96% | 29 | 63,04% |
| Basic Court Rožaje | 9 | 47,37% | 10 | 52,63% |
| Basic Court Ulcinj | 6 | 31,58% | 13 | 68,42% |
| Basic Court Žabljak | 14 | 70,00% | 6 | 30,00% |
| **Basic Courts** | **156** | **42,51%** | **210** | **57,22%** |
| High Court Bijelo Polje | 1 | 100% | 0 | 0% |
| High Court Podgorica | 0 | 0% | 0 | 0% |
| **High courts** | **1** | **100%** | **0** | **0%** |
| **Total** | **157** | **42,66%** | **210** | **57,07%** |

Table 8: Number and percentage of cases in which the deadline for scheduling the main trial was met or not met, compared to the total number of cases with motion for indictment (368)

In **24 (6.52%)** cases, the main trial was scheduled on the same day when the motion for indictment was submitted to the court.

### 4.3.3. HEARING WITHIN THE MAIN TRIAL

A total number of hearings within 470 cases monitored by examination of the final court decisions in the High and Basic Courts was **1.940**, of which **1.583** in **Basic and 357 in High Courts**. A total number of the hearings held was **889 (45,82%)**, while **1.051 (54,18%)** hearings were adjourned. At the same time, it is important to say that by postponed hearings, in the context of this report, we mean those hearings where procedural actions were not undertaken, i.e. hearings at which the court, after establishing that procedural prerequisites were not met, issued a decision on adjournment. The adjourned hearings do not include the so-called "adjourned-held" hearings where certain procedural actions were undertaken.

#### *4.3.3.1. ADJOURNMENT OF THE HEARINGS*

The analysis of the cases showed that **the number of hearings adjourned in 10 Basic Courts was higher than the number of hearings held**. The Basic Courts in which the number of hearings held exceeded the number of those adjourned are: Basic Court in Berane, Basic Court in Kotor, Basic Court in Plav and Basic Court in Rožaje.

| Court | Number and percentage of the hearings held | | Number and percentage of the hearings adjourned | |
|---|---|---|---|---|
| Basic Court Bar | 50 | 40,32% | 74 | 59,68% |
| Basic Court Berane | 31 | 57,41% | 23 | 42,59% |
| Basic Court Bijelo Polje | 77 | 43,75% | 99 | 56,25% |
| Basic Court Cetinje | 22 | 39,29% | 34 | 60,71% |
| Basic Court Danilovgrad | 60 | 46,15% | 70 | 53,85% |
| Basic Court Herceg Novi | 54 | 41,54% | 76 | 58,46% |
| Basic Court Kotor | 36 | 62,07% | 22 | 37,93% |
| Basic Court Kolašin | 85 | 48,30% | 91 | 51,70% |
| Basic Court Nikšić | 44 | 31,88% | 94 | 68,12% |
| Basic Court Plav | 30 | 55,56% | 24 | 44,44% |
| Basic Court Pljevlja | 30 | 46,15% | 35 | 53,85% |
| Basic Court Podgorica | 95 | 36,96% | 162 | 63,04% |
| Basic Court Rožaje | 22 | 70,97% | 9 | 29,03% |
| Basic Court Ulcinj | 41 | 46,59% | 47 | 53,41% |
| Basic Court Žabljak | 28 | 60,87% | 18 | 39,13% |
| **Basic courts** | **705** | **44,54%** | **878** | **55,46%** |
| High Court Bijelo Polje | 55 | 67,07% | 27 | 32,93% |
| High Court Podgorica | 129 | 46,91% | 146 | 53,09% |
| **High courts** | **184** | **51,54%** | **173** | **48,46%** |
| **Total** | **889** | **45,82%** | **1.051** | **54,18%** |

Table 9: Overview of the cases monitored by examination of files, based on the number and percentage of adjourned and held hearings, by types of courts

Based on the information presented in the table, it can be noted that the number of adjourned hearings in the cases monitored by the observes is higher in the Basic Courts than in the High Courts. In terms of percentage, the largest number of adjourned hearings in cases examined by the observers was recorded in **the Basic Courts in Nikšić, Podgorica and Cetinje** (over 60%).

By analysing the sample and data obtained by the examination of case files that were available to the observers, on the adjournments in all the cases that the observers examined, we determined the average number of days between the hearings that were adjourned and the first hearing that followed. National holidays are excluded from the calculation.

| Court | No. of cases monitored | No. of hearings adjourned | Total number of days from the adjourned to the scheduled hearing | Average number of days from the adjourned to the scheduled hearing |
|---|---|---|---|---|
| Basic Court Bar | 22 | 74 | 2.213 | 30 |
| Basic Court Berane | 18 | 23 | 1.235 | 54 |
| Basic Court Bijelo Polje | 28 | 99 | 3.969 | 40 |
| Basic Court Cetinje | 19 | 34 | 1.063 | 31 |
| Basic Court Danilovgrad | 23 | 70 | 1.701 | 24 |
| Basic Court Herceg Novi | 32 | 76 | 4.029 | 53 |
| Basic Court Kotor | 31 | 22 | 792 | 36 |
| Basic Court Kolašin | 44 | 89 | 4.908 | 54 |
| Basic Court Nikšić | 20 | 94 | 3.932 | 42 |
| Basic Court Plav | 18 | 24 | 730 | 30 |
| Basic Court Pljevlja | 20 | 35 | 1.493 | 43 |
| Basic Court Podgorica | 51 | 162 | 7.058 | 44 |
| Basic Court Rožaje | 20 | 9 | 207 | 23 |
| Basic Court Ulcinj | 20 | 47 | 1.282 | 27 |
| Basic Court Žabljak | 20 | 18 | 503 | 28 |
| **Basic courts** | **386** | **878** | **35.115** | **38** |
| High Court Bijelo Polje | 25 | 27 | 780 | 29 |
| High Court Podgorica | 59 | 146 | 7.741 | 53 |
| **High courts** | **84** | **173** | **8.521** | **41** |
| **Total/Average** | **470** | **878** | **43.636** | **37** |

Table 10: Overview of cases monitored by examination of the case files based on the average duration of adjournment, calculated in days, by types of courts

The longest period of time between the adjourned hearing and the first subsequent hearing was recorded in the Basic Courts in Berane and Kolašin **(54)**, while the shortest was recorded in the Basic Court in Rožaje **(23)**. This is a fairly large difference on average, especially considering that both courts are located in the northern region. When we take into account the reasons for the adjournment, which will be presented in the next segment, it can be observed that the duration of the adjournment is not in accordance with the 15-day period provided for in Art. 311 of the Criminal Procedure Code.

### *4.3.3.2. REASONS FOR ADJOURNMENT*

In accordance with the CPC, the reasons for adjournment are:

1. If the parties and their defence attorney have well-founded reasons or *ex officio*;
2. failure of defendant to appear (Art. 324);
3. failure of defence attorney to appear (Art. 325),
4. gathering new evidence (Art. 328, para. 1);
5. if it is established in the course of the main hearing that the defendant has experienced a temporary mental disorder after committing the criminal offense (Art. 328, para. 1);
6. if there are other obstacles to successful completion of the main hearing (Art. 328, para. 1).

The most common reason for adjournment of hearings within the monitored cases is the failure of defendant to attend, which was recorded in **459 (43,67%)** adjourned hearings.

| Reasons for adjourning | No. and percentage of reasons for adjournment | |
|---|---|---|
| Defendant's absence | 459 | 43,67% |
| Prosecutor's absence | 27 | 2,57% |
| Expert witness's absence | 38 | 3,62% |
| Witness's absence | 81 | 7,71% |
| Defence attorney absence | 32 | 3,04% |
| Lack of technical conditions | 4 | 0,38% |
| Judge's absence | 116 | 11,04% |
| Gathering new evidence | 4 | 0,38% |
| Findings were not submitted by other state authorities within the stipulated deadline | 11 | 1,05% |
| Attorney's request | 99 | 9,42% |
| Other issues | 180 | 17,13% |

Table 11: Reasons for adjournment in the cases monitored by examining case files of the final judgements

Apart from the absence of the accused, most common reason for the adjournment was other issues. These issues were predominantly related to the situation caused by the COVID-19 pandemic (25) and the lawyers' strike (76).

In one case that was trailed before the Basic Court in Nikšić, in which the accused was detained, the main trial was postponed due to the failure of the Directorate for Enforcement of Criminal Sanctions to bring the accused party to the main trial. In another case conducted before the High Court in Podgorica, the Court made a mistake by failing to serve a summon to the Directorate for bringing the defendant, which resulted in the adjournment of the main trial.

It is also important to point out that in 45 of the 99 cases in which the hearing was adjourned at the request of the attorney, the reason was the initiation of negotiations for the conclusion of a plea agreement. In four such cases, hearings were postponed twice each, because the attorneys were waiting for the main trial to begin before submitting a proposal for concluding a plea agreement. Also, the hearings were postponed for a period of one year in two criminal proceedings conducted before the Basic Court in Herceg Novi due to the epidemic of the COVID-19 virus.

Observers also noticed that hearings were often adjourned due to improper delivery of summons to the parties and other participants in the proceedings. However, considering that the information about whether the summons was properly delivered to the parties or not is not always included in the minutes from the main hearings which the observers had access to, the observers could not determine the precise percentage in which the summons was or was not properly delivered.

#### *4.3.3.3. REASONS FOR INTERRUPTION*

Pursuant to Art. 330 para. 1 of the CPC, the reasons for interruption of the main trial are the following:

1. rest or end of working hours;
2. gathering certain evidence in a short period of time;
3. preparation of prosecution or defence.

In the cases examined by the observers, the main trial was interrupted in a small number of cases, i.e. in only nine cases the main trial was interrupted 10 times, which occurred in the Basic Courts in Berane (1), Bijelo Polje (1), Danilovgrad (3), Podgorica (2) and Ulcinj (1), as well as in the High Courts in Podgorica (1) and Bijelo Polje (1).

Bearing in mind such a small number of recorded cases in which hearings were interrupted, we will list them exhaustively, by types of courts.

- In the Basic Court in Berane, the interruption lasted for five days, due to the preparation of closing arguments.

- In the Basic Court in Bijelo Polje, the interruption lasted for three days because the expert witness could not attend the hearing, and the parties did not agree to read his testimony and report.

- In the Basic Court in Danilovgrad, two cases were interrupted: in one case the interruption lasted one day due to a change in the factual circumstances, while in the other case the hearing was interrupted twice for eight days each. The first interruption occurred due to the preparation of the charges. The second interruption was due to the preparation of the defence, i.e. the defendant's defence attorney requested an adjournment due to the preparation of closing arguments.

- In the Basic Court in Podgorica, the proceedings were adjourned for eight days due to the preparation of the defence, while in another case, with a different acting judge, the interruption also lasted eight days for the same reason.

- In the Basic Court in Ulcinj, the main hearing was postponed for seven days due to the preparation of defence.

- In the High Court in Bijelo Polje, the duration of interruption due to the preparation of closing arguments was not noted in one case.

- In the High Court in Podgorica, the interruption in one case lasted five minutes, due to the decision on the concluded plea agreement.

### *4.3.3.4. PROCEDURAL DISCIPLINE MEASURES*

Procedural discipline measures are governed by Art. 324, 325 and 327 of the CPC. By examining 470 files, the observers noted more frequent use of compulsory apprehension, compared to imposing fines. Also, it was noticed that in some cases the members of the Police Directorate did not act upon the orders of the court regarding the compulsory apprehension, without providing the reasons thereof. This was noted in 16 monitored cases.

This refers particularly to two cases in the Basic Court in Nikšić. In one case, the Police Directorate did not act on the order for compulsory apprehension as many as nine times, without providing any explanation, while in another, it failed to do so as many as five times. The same is applicable on the cases that were conducted before the Basic Courts in Bar (1), Cetinje (1), Herceg Novi (1), Kolašin (4) and Podgorica (6), as well as before the High Court in Podgorica (1).

Procedural discipline measure concerning "compulsory apprehension" which ensures an interrupted proceedings was pronounced in **96** monitored cases.

| Court | No. of cases monitored | No. of cases in which procedural discipline measure concerning "compulsory apprehension" was pronounced |
|---|---|---|
| Basic Court Bar | 22 | 13 |
| Basic Court Berane | 18 | 3 |
| Basic Court Bijelo Polje | 28 | 7 |
| Basic Court Cetinje | 19 | 4 |
| Basic Court Danilovgrad | 23 | 3 |
| Basic Court Herceg Novi | 32 | 3 |
| Basic Court Kotor | 31 | 5 |
| Basic Court Kolašin | 44 | 8 |
| Basic Court Nikšić | 20 | 15 |
| Basic Court Plav | 18 | 3 |
| Basic Court Pljevlja | 20 | 0 |
| Basic Court Podgorica | 51 | 15 |
| Basic Court Rožaje | 20 | 2 |
| Basic Court Ulcinj | 20 | 0 |
| Basic Court Žabljak | 20 | 4 |
| High Court Bijelo Polje | 25 | 1 |
| High Court Podgorica | 59 | 10 |
| **Total** | **470** | **96** |

Table 12: Overview of cases monitored by examining the case files, based on the number of imposed procedural discipline measures concerning "compulsory apprehension", by types of courts

In addition to examining the files, the observers attended six hearings in which the Security Centre failed to act upon orders for compulsory apprehension, without providing explanation whatsoever. In one such case, which was conducted for the criminal offense concerning non-payment of child support in the Basic Court in Podgorica, the attorney of the minor injured party objected to the court because the hearing was adjourned four times for the same reason, after which the judge reminded the attorney that an urgent order for the execution of the order for compulsory apprehension is being sent only the second time.

The warrant was issued in seven monitored cases, i.e. in the Basic Courts in Herceg Novi (1), Kolašin (1), Podgorica (3) and the High Court in Podgorica (2).

Due to the very nature of things, a large number of these hearings was adjourned. In the case conducted before the Basic Court in Kolašin, in all **five** adjourned hearings for the main trial, the reason was the absence of the defendant, while in Herceg Novi, out of eight hearings, **seven** were adjourned for the same reason. In addition, the Security Centre Herceg Novi did not act on the order for compulsory apprehension on thre**e occasions, and the court was not informed of the reasons thereof. Out of** 18 adjourned hearings in one case before the Basic Court in Podgorica, **14** were adjourned due to the absence of the defendant, while in another case, this figure was **10 out of a total of 13** adjourned hearings. In two cases before the High Court in Podgorica, in which the court issued a warrant, **four** out of five, i.e. **four** out of six adjourned hearings were adjourned due to the absence of the defendant.

Fines were imposed only in three cases,[90] in the amount of **EUR 100** to a witness for unjustified failure to appear at the main hearing, and twice to an expert witness. In one case, the expert witness was fined **EUR 1,000** due to his failure to appear at the main trial five times, while in another case he was imposed the same fine due to **his absency from the main trial three times.**

### 4.3.4. RIGHT TO PUBLIC PRONOUNCEMENT OF JUDGEMENT

According to Art. 375 para. 2 of the CPC, if the court is unable to pronounce a judgement immediately after the end of the main trial, it will be postponed for a maximum of three days. The court will also determine the new time and place for pronouncing a judgment. If the judgment is not pronounced within three days following the termination of the main hearing, president of the Council is obliged to inform president of the Court about that immediately after the expiry of the time limit and of the reasons thereof.

[90] Twice in the Basic Cour in Herceg Novi and once in the Basic Court in Nikšić

The statutory time limit was met in the majority of cases. Observers noted only four cases in which this deadline was not met: Basic Court in Herceg Novi (1), Basic Court in Kotor (2) and Basic Court in Podgorica (1).

A technical irregularity was noticed in one case of the Basic Court in Kolašin. Namely, instead of a publicly pronounced decision, the judge stapled the operative part of the judgement to the last record, as it is done in a civil proceeding.

Before commenting on the delivery of judgements, it should be mentioned that the observers noted that the courts in the south of the country determined a larger amount of court lump sums for the costs of criminal proceedings in their judgements, compared to those determined in proceedings of the same or similar complexity and duration in other regions. It would be desirable to determine the scale of court lump sums at the level of the courts with the amounts that would be paid, based on the duration of the proceedings, bearing in mind Art. 226 para. 3 of the CPC, which stipulates that the lump sum is determined according to the duration and complexity of the procedure and the financial condition of the person obliged to pay that amount, in order to avoid unequal treatment.

Judgment must be delivered within the statutory deadline governed by Art. 378 of the CPC. Namely, the judgment that has been pronounced must be presented in writing and delivered within one month. An exception was made in complex cases, where the deadline was extended to 2 months. In case the judgement is not delivered within this deadline, president of the Council is obliged to inform president of the court in writing about the reasons for delay. President of the court will take steps to ensure that the judgment is drafted as soon as possible.

Since it was not possible to identify methodology for determining the degree of complexity of each monitored case, the following information will mostly refer to breaches of more than one but less than two months, which is the longest time allowed for the complex cases. When it comes to the number of cases in which the period from the passing of the judgement to the delivery of the written verdict lasted more than one month but less than two months, this was recorded in 10 cases, namely: in the Basic Court in Bar (1), Berane (1), Nikšić (1), Plav (1), Pljevlja (3), Rožaje (1) and Ulcinj (1).

The deadline for submitting a written judgement was exceeded by more than two months in nine cases, as follows: in the Basic Court in Bar (1), Kolašin (1), Kotor (1), Nikšić (2), Ulcinj (1) and Plav (3).

## 4.4. SECOND INSTANCE PROCEEDINGS

The judgement may be challenged if the following actions take place:

1. significant violations of the provisions of the criminal proceedings;
2. violations of the Criminal Code;
3. factual circumstances of the case were inaccurate or incomplete;
4. decisions on criminal sanctions, confiscation of property gain, costs of criminal proceedings, claims under property law (Art. 385 CPC).

The trial before the second-instance court is prescribed by Art. 395 para. 1 of the CPC. In the second instance proceedings, decisions can be made in a session of the Council or at a hearing. A hearing will be held only if it is necessary to present new evidence or to repeat previously presented evidence due to erroneous or incomplete establishment of the facts. There must be reasonable grounds not to return the case to first-instance court for retrial.

The total number of cases monitored by case file examination in which the second instance proceedings were held is 137 (29,14%). Most of them took place in the High Courts (26 in Podgorica and 13 in Bijelo Polje), while in Basic Courts, the most proceedings in which an appeal against the court's decision was lodged took place in the Basic Court in Podgorica (13) and the Basic Court in Bijelo Polje (12).

| Court | No. of cases monitored | No. of second instance proceedings |
|---|---|---|
| Basic Court Bar | 22 | 5 |
| Basic Court Berane | 18 | 6 |
| Basic Court Bijelo Polje | 28 | 12 |
| Basic Court Cetinje | 19 | 2 |
| Basic Court Danilovgrad | 23 | 4 |
| Basic Court Herceg Novi | 32 | 7 |
| Basic Court Kotor | 31 | 3 |
| Basic Court Kolašin | 44 | 8 |
| Basic Court Nikšić | 20 | 5 |
| Basic Court Plav | 18 | 5 |
| Basic Court Pljevlja | 20 | 8 |
| Basic Court Podgorica | 51 | 13 |
| Basic Court Rožaje | 20 | 5 |
| Basic Court Ulcinj | 20 | 9 |
| Basic Court Žabljak | 20 | 5 |
| High Court Bijelo Polje | 25 | 14 |
| High Court Podgorica | 59 | 26 |
| **Total** | **470** | **137** |

Table 13: Overview of cases monitored by case file examination, by number of second instance proceedings, by types of courts

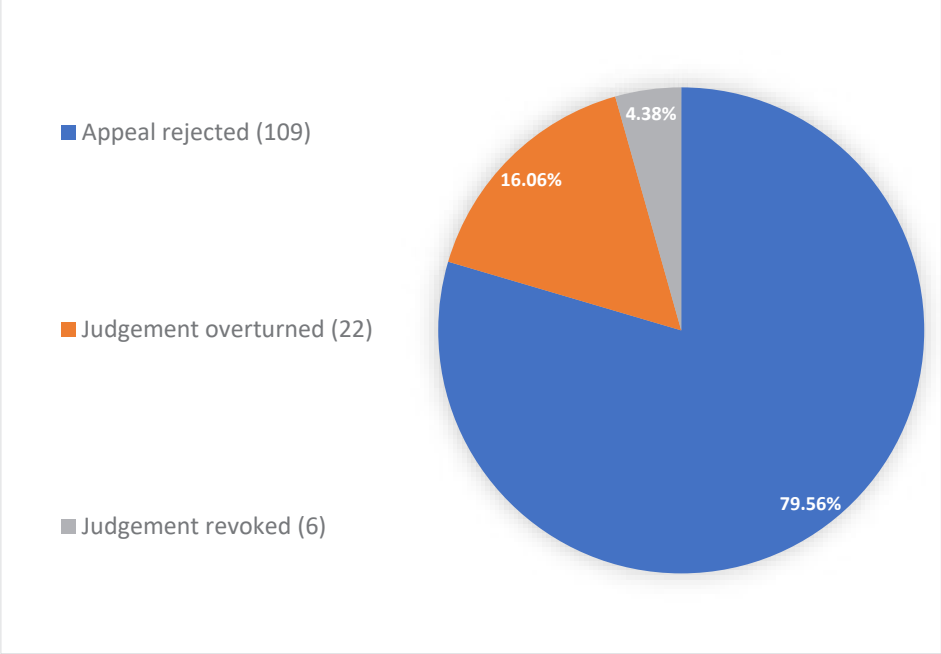
**In all the monitored cases in which the second instance proceedings were conducted, the decision was made in the Council session.**

The second instance proceedings on appeals against the Basic Courts' judgements lasted **109 days** on average, and **103 days** in cases of the appeal against decisions of the High Courts.

| Court | No. of second instance proceedings | Average duration of the second instance proceedings (calculated in days) |
|---|---|---|
| Basic Court Bar | 5 | 133 |
| Basic Court Berane | 6 | 71 |
| Basic Court Bijelo Polje | 12 | 76 |
| Basic Court Cetinje | 2 | 82 |
| Basic Court Danilovgrad | 4 | 127 |
| Basic Court Herceg Novi | 7 | 100 |
| Basic Court Kotor | 3 | 111 |
| Basic Court Kolašin | 8 | 146 |
| Basic Court Nikšić | 5 | 139 |
| Basic Court Plav | 5 | 59 |
| Basic Court Pljevlja | 13 | 132 |
| Basic Court Podgorica | 8 | 164 |
| Basic Court Rožaje | 5 | 53 |
| Basic Court Ulcinj | 9 | 133 |
| Basic Court Žabljak | 5 | 39 |
| **Basic Courts** | **96** | **109** |
| High Court Bijelo Polje | 14 | 73 |
| High Court Podgorica | 26 | 120 |
| **High Courts** | **40** | **103** |
| **Total** | **137** | **107** |

Table 14: Average duration of the second instance proceedings calculated in day, by types of courts

**Based the obtained sample, it was determined that the most prevalent decision in the second instance proceedings was rejection of appeal (79,56%).** There were no cases in which the appeal was dismissed.




Graph 1: Overview of types of decisions issued in second instance proceedings in percentage, in cases monitored by case file examination

Within the analysed cases, in a number of analysed court decisions, one case stands out for the amount of the overturned sentence. The High Court in Podgorica overturned the judgement of the Basic Court in Herceg Novi, by which foreign nationals were convicted for the crime of illegal crossing of the state border and people smuggling from Art. 405 para. 3 in connection with para. 2 and Art. 23 para. 2 of the Criminal Code of Montenegro from a prison sentence of 4 years to a prison sentence of 1 year and 5 months.

In addition to this case, an extraordinary legal remedy was pronounced in only one of the 137 cases in which legal remedies were pronounced, and in which the observers had insight. This case was conducted before the Basic Court in Podgorica. In this case, a request for the protection of legality was filed and rejected as unfounded.

## 4.5. AVERAGE DURATION OF PROCEEDINGS

**International standards do not define the exact length of a reasonable time,** in terms of the specific timeframe for completing the proceedings. However, **there is an approach for determining the criteria for assessing weather something constitutes reasonable time in each particular case.** In this respect, the ECtHR uses the following wording: *the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case-law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities.*

An analysis of the case-law of the ECtHR conducted by the European Commission for the Efficiency of Justice (CEPEJ) in 2018[91] reveals the following guidelines relating to length of proceedings:

[91] Calvez, Françoise and Regis, Nicolas, Length of court proceedings in the member states of the Council of Europe based on the case law of the ECtHR, third edition – CEPEJ Studies no. 27, p. 5

- The total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases has generally been regarded as reasonable. When proceedings have lasted more than two years, the Court examines the case closely to determine whether there are any objective reasons, such as the complexity of the case, and whether the national authorities have shown due diligence in the process;

- In complex cases, the Court may allow longer time, but pays special attention to periods of inactivity which are clearly excessive. The longer time allowed is however rarely more than five years and almost never more than eight years of total duration;

- In the so-called priority cases in which a particular issue is at stake, the court may depart from the general approach, and find a violation even if the case lasted less than two years by level of jurisdiction. This will be the case, for example, where the applicant's state of health is a critical issue or where the delay could have irreparable consequences for the applicant;

- The only cases in which the Court did not find a violation in spite of manifestly excessive length of proceedings were cases in which the applicant's behaviour had been a major factor.

On the basis of the case file examination of the cases for which final judgement was passed and which were analysed by the observers, it can be concluded that **the longest average duration of proceedings** was noted in the cases monitored in the Basic Court in Nikšić (406 days) and Danilovgrad (369 days), Ulcinj (321 days), Podgorica (304 days), as well as in the High Court in Podgorica (342 days). On the other hand, based on the cases analysed, the shortest duration of proceedings was noted in the Basic Court in Rožaje (83 days). The proceedings lasted an average of **248 days in the Basic Courts**, and **311 days in High Courts.**

Bearing in mind that the observers examined a relatively small number of cases compared to the total number of cases in a year, it is important to put into context the circumstances that mostly affected the length of the average duration of the procedure, at least in those courts where the longest average duration was recorded. First of all, it should be noted that the observers, among other things, examined the case files that were conducted in the circumstances of the COVID-19 pandemic and the lawyers' strike. These are extraordinary circumstances that should be especially taken into account, given their potential to significantly change statistical data in a small number of analysed cases and show a state of affairs that does not correspond to the regular state of affairs in the courts, especially bearing in mind that these circumstances did not have a visible impact on the effectiveness in the work of the courts.[92]

In this regard, the average duration of proceedings which the observers attended in the Basic Court in Nikšić, was mostly affected by the adjournment of the hearing due to the absence of the defendant. For example, in three of the 20 cases that the observers examined, the accused failed to appear eight times at the hearing for the main trial. As previously stated, in one of those two cases, the Security Centre Nikšić did not comply with the court's orders for compulsory apprehension five times without explanation. The total duration of the adjournment was 190 days in this case, while in another case in which the defendant also failed to attend eight hearings, the adjournment lasted a total of 373 days, of which 150 days were due to the absence of the defendant. In this case, the judge was absent twice due to infection with the COVID-19 virus, and the hearing was once adjourned due to the absence of the prosecutor for the same reason. In the third case, the court issued a warrant for the defendant who failed to appear at the hearing eight times. In this case, the delays lasted a total of 382 days. In several cases, a greater number of postponements were recorded precisely due to the circumstances caused by the COVID-19 pandemic, as we previously elaborated on in the section on adjournment of hearings.

[92] "Analysis of the application of the Law on the Protection of the Right to a Trial within a Reasonable Time 2017-2023", Human Rights Action, June 2023, p. 22, available at the link: https://www.hraction.org/wp-content/uploads/2023/07/HRA_Analiza-primjene-Zakona-o-zastiti-prava-na-sudjenje-u-razumnom-roku.pdf

In one case before the Basic Court in Danilovgrad, the total duration of the adjournment was 315 days. This was due to the failure of other state authorities to submit certain findings to the court within the stipulated time period. In another case, eight hearings were adjourned for a total duration of 331 days, for different reasons: twice due to the absence of the defence attorney who was infected with the COVID-19 virus and once due to the absence of the defendant for the same reason, twice due to the initiated negotiations on the conclusion of plea agreement and once each due to the lawyers' strike, failure of the acting judge to appear due to exercising official duties and due to the absence of the expert witness who was busy in another court.

Observers noted a similar situation in other courts.

As the aforementioned examples illustrate, it is important to understand that beyond the figures indicating the average duration and postponement of hearings, there is a number of complex and sometimes objective factors that affect the efficiency of the judicial system. The mentioned factors that contributed to the average duration of hearings adjournment are not always technical in nature and exclusively the responsibility of the courts, but often referred to external, objective circumstances that caused unplanned adjournments, which ultimately contribute to the quantitative data presented in this report.

| Court | Number of cases monitored | Average length of proceedings measured in days (from filing the indictment to final judgement) |
|---|---|---|
| Basic Court Bar | 22 | 259 |
| Basic Court Berane | 18 | 230 |
| Basic Court Bijelo Polje | 28 | 298 |
| Basic Court Cetinje | 19 | 130 |
| Basic Court Danilovgrad | 23 | 369 |
| Basic Court Herceg Novi | 32 | 248 |
| Basic Court Kotor | 31 | 137 |
| Basic Court Kolašin | 44 | 272 |
| Basic Court Nikšić | 20 | 406 |
| Basic Court Plav | 18 | 178 |
| Basic Court Pljevlja | 20 | 235 |
| Basic Court Podgorica | 51 | 308 |
| Basic Court Rožaje | 20 | 83 |
| Basic Court Ulcinj | 20 | 321 |
| Basic Court Žabljak | 20 | 147 |
| **Basic Courts** | **386** | **249** |
| High Court Bijelo Polje | 25 | 240 |
| High Court Podgorica | 59 | 342 |
| **High Courts** | **84** | **311** |
| **Total** | **470** | **260** |

Table 15: Overview of cases monitored by case file examination, based on the average length of the proceedings (from filing the indictment to final judgement), by type of courts

# CONCLUSIONS AND RECOMMENDATIONS

- Based on examined information, it is evident that functionality of courts in Montenegro is threatened due to untimely filling of vacant judicial positions, which undermines their efficiency.

- It has been noted that courts do not sufficiently meet certain deadlines. The deadline for scheduling the indictment review hearings was not met in more than half of analysed cases, whereas the deadline for scheduling the main trial following the confirmation of the indictment was not met in almost one third of analysed cases. A statutory deadline for delivery of the judgement in writing was not met in fewer number of cases.

- The issue concerning the adjournment of the main trail is particularly emphasised, having in mind that **more than half (1,051 out of 1,940) of all hearings for the main trial in cases examined by observers were adjourned**, which can have negative effect both on the rights of defendants and the rights of victims.

- Absence of defendant is one of many factors that contribute to adjourning and prolonging the completion of criminal proceedings. This issue, among other things, is affected by the untimely delivery of summons to the parties, which may be related to the lack of efficiency in the work of courts and untimely checking if the procedural prerequisites for holding the main trial have been fulfilled. However, bearing in mind that the number of judges in courts is smaller than prescribed, these deficiencies can also indicate excessive workload that judges have to cope with. This issue is also affected by failure of the Police Directorate to act upon orders for compulsory apprehension, which in some cases remains unexplained. Also, it seems that courts do not sufficiently use the possibility of issuing orders for compulsory apprehension.

For those reasons, it is primarily recommended that Judicial Council not postpone the assignment of the elected judges. Also, the Government of Montenegro should consider as soon as possible the Proposal for the Law on Amendments to the Law on Judicial Council and Judges and communicate this to the Venice Commission and the European Commission in order to harmonise it with their recommendations. The Proposal should then be delivered to the Parliament for adoption.

After the adoption of the amendments, it is necessary to continue with a regular monitoring of courts' work, in order to establish whether the adopted amendments produced the desired effect. The issue of timeliness and efficiency in resolving criminal cases could be addressed though preventing the absence of accused parties and avoidance of the delivery of writings. This would be achieved by taking additional steps towards establishment of electronic delivery of data and by ensuring electronic access to data between courts and the Police Directorate, in line with the Decree on Method of Management and other Issues Significant for Functioning of a Single System for Electronic Data Exchange, and the Law on Electronic Administration, and following the examples of the misdemeanour courts that have networked with the Tax Administration. It should be noted that the Action Plan does not envisage this as a goal that should be reached, whereas the same activity has been stipulated with regards to public notaries and bailiffs. Judges should also check the fulfilment of procedural prerequisites in a timely manner in order to reduce the number of situations in which the adjournment is caused by courts' mistakes which could have been removed. Additionally, the courts should increasingly apply available procedural discipline measures, in particular with regards to the accused, whereas the Police Directorate should consistently inform courts on reasons for failing to act upon compulsory apprehension orders.

Also, in light of the noted challenges concerning the duration and effectiveness of the proceedings and the indictment review system, as well as consistent adherence to the principle of contradiction and the right to defence, we find that the courts should continue with the implementation and improvement of the system for protection of the right to a trial within a reasonable time and the right to effective access to justice, by strengthening the efficiency and effectiveness of indictment review procedures.

■ Having in mind that the number of judges in Montenegro exceeds the European average, the fact that the current situation which implies a reduced number of judges still has a negative impact on the functionality of courts shows that the process of rationalisation and optimisation has not adequately advanced. Despite the recommendations from the Judicial Network Rationalisation Analysis, as well as findings of CEMI and HRA from 2016, only a few concrete steps have been taken towards optimisation of the judicial system. Although last three years have been marked by challenges of COVID 19 pandemic, it does not diminish the necessity of intensifying work in this area. It is important to emphasise that CEMI and HRA in 2016 analysis recommended that the second stage of the judicial network rationalisation should be focused on reducing the number of first-instance courts, and that it was necessary to prepare network rationalisation plan of the first-instance courts, that will primarily include the "shutdown" of courts that cannot justify their existence from the point of view of sustainability. From today's perspective, such recommended activities are additionally justified by the fact that in the last few years the transport infrastructure in the central region of Montenegro has been significantly improved. Merging of courts in order to reduce costs was also recommended in the Analysis of the Ministry of Justice from 2020, and since nothing has been done regarding this issue, this recommendation is still relevant. Therefore, the rationalization of the judicial network must be a priority within the judicial reform, and accordingly it is recommended to approach the implementation of the existing recommendations from the Judicial Network Rationalisation Analysis.

■ Recorded situations that indicate a lack of understanding and implementation of the ECtHR standards (such as the principle of truth and fairness, the right to defence and the right to personal freedom) may be the result of a lack of professional training and the need for continuous education and professional development of judges and prosecutors in the field of the fundamental human rights and the principle of fair trial. Continuous education is extremely significant for the maintenance and improvement of judicial capacities, given that legal standards and practices are continuously changing and developing. Thus, it is recommended that trainings on standards of fair and just trial continue and, if possible, intensify.

■ In order to ensure competent and efficient processing of complex cases in the criminal department of the High Court in Podgorica, it is recommended to introduce special additional training in the Special Department, intended for judges who transferred from basic courts to the High Court in Podgorica. These trainings would be particularly useful for judges who previously worked exclusively on civil cases and who are now transferred to the criminal department. This approach would ensure continuous quality of case processing and ease the transition period caused by the change of judges.

■ Although examples of the lack of compliance with the principles of the right to a fair trial can be partially explained by the lack of understanding and implementation of the ECtHR's standards, it is difficult to find justification for ignoring the decisions of the Constitutional Court which found a violation of the right to personal freedom, i.e. legality of detention. Although such situation occurred only once during the trial attended by the observers (more details on p. 38), it is important to emphasize that all courts should act in accordance with the decisions of the Constitutional Court, particularly when those decisions are directly related to the violation of the fundamental human rights. Not only does ignoring of the Constitutional Court's decisions contributes to a lower level of respect of human rights, but it also undermines the authority of the Constitutional Court and weakens public confidence in the judicial system.

In accordance with their constitutional obligation, courts should act in a timely manner in cases based on the judgments of the Constitutional Court, respecting the legal reasons that the Constitutional Court of Montenegro expressed therein. Also, in order to ensure understanding and observance of human rights and fundamental freedoms at the national level, it is necessary to establish an open dialogue between the Supreme Court, as the highest instance of the regular judiciary, and the Constitutional Court

■ Generally speaking, courts' infrastructure in Montenegro is not at a satisfactory level. The majority of courts are not fully accessible for people with disabilities, while most of them do not even offer basic accessibility, such as ramps and elevators. Therefore, it is necessary to make additional adjustments to the facilities, regarding both the access to the courts and their interior.

■ The working conditions of judges are not at an optimal level. A large number of judges adjudicate in their offices instead of courtrooms, while some courtrooms are often inadequate for the number of participants in the proceedings. This issue is particularly highlighted in cases of serious criminal offences, where due to complex logistics of the trial, it is essential to adequately separate defendant and victims or injured parties, as well as in cases with a larger number of defendants. In addition to affecting the course of the trial itself, the lack of spatial capacity also limits the access of public to the hearings, which violates the principle of publicity. The start of construction works on the planned Palace of Justice in Podgorica should be considered as one of the priorities, in order to solve the issue of spatial capacities in the Basic and High Courts in Podgorica. In addition, the possibility of changing the organization of work in the courts should be considered. This could be achieved by introducing overtime work (in the basic and high courts) or possibly by referring judges from other courts (higher instance court) to the High Court in Podgorica. Also, presidents of courts can establish lists of priority cases and continuously monitor the effectiveness of proceedings.

■ The state of the information and communication infrastructure also raises concerns, primarily because the problem has been ongoing for a very long time. In its reports on Montenegro, the European Commission has continuously, since 2012, pointed out the unreliability and unavailability of statistical data on the judiciary's work. The courts still lack an advanced case management system. This issue is further emphasized in light of last year's hacker attack, which highlighted vulnerabilities in the existing system. This problem was not adequately addressed, and general impression is that decision makers do not recognize the importance of this topic, due to the continuous lack of budget intended for the improvement of ICT in the judiciary. In this sense, it is necessary to give this area the attention it deserves. First of all, future financial plans should include greater financial resources for the development and maintenance of the ICT infrastructure, with the aim to ensure its security and efficiency. It is necessary to urgently continue work on the implementation of the new Judiciary Information System, which is currently not operating.

In addition, the functioning of the judiciary information system should not depend on the functioning of the Government of Montenegro's information system. Thus, it is necessary to find a way to ensure a certain level of decentralization that would ensure that the judiciary's information system functions smoothly, regardless of the state in the Government of Montenegro's information system.

■ Bearing in mind the previously mentioned shortcomings in the proceedings and efficiency of the election of judges, management of courts' work, courts' working space, and the need to improve the information system of the judiciary, implementing both legislative and organizational measures to comply with the requirements under Art. 6 para. 1 of the ECHR is necessary.

■ We also recommend increasing the number of brochures on the right to legal aid that would be available to citizens in all courts, as well as on the websites of the Ministry of Justice and the courts, as provided for in the Action Plan within the Justice Reform Strategy from 2019. In addition, boxes with complaints and petitions should be installed in all courts, as stipulated in Art. 81 of the Judicial Rules of Procedure, since the observers noticed the boxes only in the Basic Court in Nikšić. Also, direct phone numbers of clerk's offices should be published on the website of each court, to ensure their better communication with parties, as it was done in the High Court in Podgorica.

There is also a pronounced need to improve security measures and practices in Montenegrin courts, due to events that took place in the previous period, i.e. the murder of a judge of the Basic Court in Bar at her workplace in 2005; the fire in the Basic Court in Podgorica in 2016, when the criminal clerk's office burned down, with more than 1,400 cases of execution of criminal sanctions (at that time, the case files were destroyed or damaged); and especially after March this year, when there was an explosion in the Basic Court in Podgorica in which one person was killed and five were injured. This is followed by the event of July 31 this year, when a person tried to forcefully enter the building of the Basic Court in Pljevlja, causing minor bodily injuries to a security guard. Numerous reports of fake bombs in certain judicial institutions also speaks about the situation in the field of security.

In light of these challenges, it is necessary to implement a series of measures to improve security in Montenegrin courts. The first measure refers to equipping all courts with functional metal detectors and scanners, which will enable a thorough check of all visitors and reduce the risk of bringing in prohibited items. It is also necessary to increase the level of professionalism and consistency of the existing security staff through adequate training and obligation to strictly implement all security procedures. This includes, among other things, a rigorous supervision over compliance with the rules on bringing items into the courtroom.

A proactive response by the competent prosecutor's office and the police is also necessary, with the view to quickly identifying and prosecuting the persons responsible for anonymous reports about planted explosive devices. Also, it is recommended to consider the possibility of amending the Criminal Code, in order to introduce stricter legal frameworks and sanctions for causing panic and disorder, as an additional measure of deterring from such actions.

Furthermore, we must point out that in addition to the issue of the safety of people who work and come to judicial institutions, the competent authorities also have to deal with securing evidence in criminal proceedings. The fire in the archives of the Basic Court in Podgorica, as well as the discovery of the tunnel dug to the depot of the High Court in Podgorica in 2023 prove this necessary.

Having in mind the serious allegations of abuse made by accused persons in some cases monitored by observers, it is necessary to pay maximum attention to this issue, in order to preserve the integrity of the justice system and protect fundamental human rights. For the purpose of suppressing the maltreatment by the police and prison officers, it is necessary for judges to promptly take all necessary measures to effectively investigate reports of maltreatment presented to them at the main trial.

# LITERATURE


- Calvez, Françoise and Regis, Nicolas, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, third edition – CEPEJ Studies no. 27
- Drašković, Dragoljub, Right to a Fair Trial, Matica crnogorska no. 71, 2017
- European Judicial System: CEPEJ Evaluation Report, Council of Europe, 2022
- Council of Europe Annual Penal Statistics - SPACE I
- Annual report on the work of the Judicial Council and the overall state of play in the judiciary for 2022
- Grubač, Momčilo, Criminal Procedural Law, Official Gazette, Belgrade, 2006
- Kisjelica, Darka, Analysis of the application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the Period 2017-2022, Human Rights Action, Podgorica, 2023
- Kolaković-Bojović, Milica, The concept of the effectiveness of criminal proceedings - do we under stand the ideal to which we strive?, Institute for Criminological and Sociological Research, Belgrade, 2013
- Decision on the number of public prosecutors (Official Gazette of Montenegro 21/2015, 13/2018 and 7/2023)
- Decision on the number of judges in courts (Official Gazette of Montenegro br. 25/2015, 62/2015, 47/2016, 83/2016, 79/2018 and 52/2023)
- Rulebook on the framework standards of work for determining the required number of judges and civil servants and state employees in courts (Official Gazette of Montenegro 17/2015)
- Rulebook on the framework standards of work for determining the required number of public prosecutors and civil servants and state employees in the public prosecutor's office (Official Ga zette of Montenegro 17/2015)
- Rulebook on the Internal Operations of the Public Prosecutor's Office, Official Gazette of Montenegro 54/10 and 44/12
- Radulović, Drago, Criminal Procedural Law, University of Montenegro, Faculty of Law, Podgorica, 2009
- Judicial Rules of Procedure, Official Gazette of Montenegro 26/11, 44/12 and 2/14
- Stawa, Georg, Analysis of the need for rationalization of the judicial network, with reference to the current situation and recommendations for further work, September 2020
- Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012, OSCE/ODIHR
- Constitution of Montenegro (Official Gazette of Montenegro 1/2007 and 38/2013 - Amendments I-XVI)
- Uzelac, Alan, Rights to a fair trial: general and civil law aspects of Article 6 paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (2010)
- Law on Public Prosecutor's Office (Official Gazette of Montenegro 11/2015, 42/2015, 80/2017, 10/2018 and 76/2020)
- Law on Special Public Prosecutor's Office (Official Gazette of Montenegro 10/2015 and 53/2016
- Law on Courts (Official Gazette of Montenegro 11/2015 and 76/2020)
- Law on Prohibition of Discrimination (Official Gazette of Montenegro 46/2010, 40/2011 – state law, 18/2014 and 42/2017)

# CASE LAW


- Anagnostopoulos v. Greece, application no. 54589/00, 3 April 2003
- Atanasova v. Bulgaria, application no. 72001/01, 2 October 2008
- Benthem v. The Netherlands, application no. 8848/80, 23 October 1985
- Bijelić v. Montenegro and Serbia, application no. 11890/05, 28 April 2009
- Brajović and others v. Montenegro, application no. 52529/12, 30 January 2018
- Engel and others v. The Netherlands, applications no. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976
- Funke v. France, application no. 10828/87, 25 February 1993
- Ingeisen v. Austria, application no. 2614/65, 23 June 1973
- Mugoša v. Montenegro, application no. 76522/12, 21 September 2016
- Supreme Court's Judgement U-III no. 723/22, 12 October 2022
- Padalov v. Bulgaria, application no. 54784/00, 10 August 2006
- Administrative Court's Judgement U no. 12497/2022, of 20 December 2022
- Roche v. The United Kingdom, application no. 32555/96, 19 October 2005
- Salabiaku v. France, application no. 10519/83, 7 October 1988
- Salesi v. Italy, application no. 13023/87, of 26 February 1993
- Sanders v. The United Kingdom, application no. 19187/91, 17 December 1996
- Siništaj and others v. Montenegro, applications no. 1451/10, 7260/10 and 7382/10, 24 November 2015
- Vaudelle v. France, application no. 35683/97, 30 January 2001
- Vučeljić v. Montenegro, application no. 59129/12, 18 October 2016
- Vukelić v. Montenegro, application no. 58258/09, 4 June 2013
- Supreme Court of Montenegro, Tpz no.24/16 of 27 September 2016

# MEMBERS OF THE PROJECT'S STEERING COMMITTEE

- **Mladenka Tesic**, Delegation of the European Union to Montenegro
- **Ksenija Jovicevic Korac**, Supreme Court of Montenegro
- **Ivana Macanovic**, Ministry of Justice of Montenegro
- **Predrag Tabas**, Judicial Council of Montenegro
- **Milica Bogojevic**, Protector of Human Rights and Freedoms of Montenegro
- **Vukas Radonjic**, Special State Prosecutor's Office of Montenegro
- **Zlatko Vujovic**, Centre for Monitoring and Research (CeMI)
- **Tea Gorjanc-Prelevic**, Human Rights Action (HRA)

CEMI
CENTRE FOR MONITORING AND RESEARCH

HRA MONTENEGRO
HUMAN RIGHTS ACTION | AKCIJA ZA LJUDSKA PRAVA