



PLEA BARGAINING AGREEMENT CONCEPT IN MONTENEGRIN LEGISLATION AND PRACTICE

Analysis 2020 – 2023

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Editor:

Ana Nenezić, MA

Authors:

Marijana Laković Drašković
Zlatko Vujović, PhD

Research Team:

CeMI/Legal Department



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I INTRODUCTION

The Centre for Monitoring and Research (CeMI) in cooperation with the Human Rights Action (HRA) is implementing the project “Access to justice and human rights in Montenegro - trial monitoring project 2021-2023” which is supported by the European Commission (EIDHR) and the Ministry of Public Administration.

The project aims to contribute to further democratization and raising the level of the rule of law enforcement and respect for human rights in Montenegro, through an advocacy campaign aimed at key decision makers for legislative and institutional changes in the application of the criminal justice system in Montenegro. One of the goals of the project is to strengthen public awareness of the most important aspects of equal access to justice, including new legal mechanisms and human rights.

Another goal of the project is to strengthen the role of civil society in promoting human rights and good governance, especially with regarding access to justice and rule of law.

The project activities will be accompanied by thematic and annual reports on topics relevant for the protection of human rights in the criminal justice system, one of which is this report.

Methodology

The first part of the Analysis contains introductory remarks about the Project and presents the methodological framework of the research. These are followed by an overview of the legal and institutional framework for the application of the plea bargaining agreement concept in Montenegro, as well as a comparative overview of plea bargaining agreements in comparative legal criminal systems. In addition, it gives an overview of the plea bargaining agreement application in Montenegrin practice, based on the reports produced by the judicial institutions, but also on the information obtained through direct examination of the judgements which the courts passed on the basis of concluded agreements. The key part of this study is the analysis of plea bargaining agreements, based on which conclusions and recommendations for further action of judicial institutions were drawn.

For the purposes of the Analysis, a special questionnaire was developed, containing key indicators for monitoring the penal policy and evaluation of the duration of criminal proceedings. After a direct insight into 541 final judgements which were passed on the basis of plea bargaining agreements, the questionnaire was filled with quantitative and qualitative data, which served as a basis for drawing conclusions and making recommendations concerning further actions to be undertaken by judicial authorities in order to provide an effective response to all forms of criminal activities.

II LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF THE PLEA BARGAINING AGREEMENT

The plea bargaining agreement concept was first introduced into Montenegrin procedural legislation under the Criminal Procedure Code¹, which entered into force on 26 August 2009. The Criminal Procedure Code stipulates that the application of Articles related to the plea bargaining agreement begins 6 (six) months after the entry into force of the Criminal Procedure Code, i.e. from February 2010. Thus, it has been thirteen years since application of this concept has begun.

This concept was introduced into our criminal legislation with the aim of ensuring faster completion of many criminal proceedings and reducing costs, without jeopardizing the interests of legality and fairness. The plea bargaining agreement is mostly applicable to Anglo-Saxon criminal proceedings, but today it is very widely accepted in many criminal procedure legal systems in the continental Europe.

A year later, on 26 August 2010, the application of the Criminal Procedure Code began in proceedings initiated for criminal offences concerning organized crime, corruption, terrorism and war crimes, while its full application began on 1 September 2011. *Vacatio legis* period of one year, or two years, was foreseen, aiming at more effective application of the Criminal Procedure Code, enabling all subjects of criminal proceedings to prepare for the application of the new legal solutions, as well as creating psychological conditions for their better acceptance.

The most significant features of the criminal proceedings are: the transition to a public prosecutor's investigation, the absence of lay judges, the effort to improve the position of the injured party, the introduction of plea bargaining agreement, the expansion of the range of criminal offences to which secret surveillance measures can be applied, the introduction of a procedure for the temporary confiscation of material benefit, as well as financial investigations for the extended confiscation of property whose lawful origin was not demonstrated in the criminal proceedings, while the obligation to prove it was transferred to the defendant.

Among other things, the rulings at the time stipulated that the plea bargaining agreement:

- » can be applied for criminal offences liable to a term of imprisonment of up to 10 years,
- » can be submitted both before and after the indictment is filed, and that the subject of the agreement is a full admission of guilt to crime, as well as the scope of sanction, the costs of the procedure, the decision on property claim and waiver of the right to appeal.

¹ Criminal Procedure Code, Official Gazette of Montenegro 57/09, of 18 August 2009

Therefore, an agreement as referred to in the provisions of Chapter XX was possible only between the public prosecutor and the defendant and only in cases of criminal offences liable to a term of imprisonment of up to 10 years. Such limitation of the agreement allowed for a large number of criminal offences to be a subject of the agreement, except for the most serious criminal offences, which was justified by the fact that it represented a completely new legal mechanism that required a dose of necessary caution.

Following the implementation of the new Criminal Procedure Code and in accordance with the activities from the Criminal Procedure Code Implementation Plan, the Ministry of Justice prepared Information on the implementation of the Criminal Procedure Code, which was adopted by the Government in January 2013. By adopting the above Information, it was concluded, among other things, that the current application of the new concept requires, among other things, the need to improve certain legal solutions from the aspect of efficiency and practical application of the Criminal Procedure Code, including the application of the plea bargaining agreement concept.

Although it was an entirely new concept that represents a novelty even in the wider legal system which we are part of (Italy being the first country of the continental legal system to adopt it in 1981), this concept was not subject to any amendments in the legal text for a relatively long time, until the amendments of the Code from 2015, which concerned primarily the catalogue of criminal offences to which it is applied, so now it can be applied to all criminal offences that are prosecuted *ex officio*, except for criminal offences concerning terrorism and war crimes. The amendments also addressed the uncertainty of the existence of the agreement without the text of the indictment, which is why the valid legal solution stipulates the necessity to submit an indictment along with the agreement, if it was not previously filed.

Furthermore, the amendments concerned giving the possibility to conclude an agreement before filing a private lawsuit. However, it remains unclear what the legislator meant by that, bearing in mind that the agreement can only be concluded by the public prosecutor. Also, the possibility of initiating the agreement was provided to the suspect, which significantly expanded the scope for its application. These changes were not preceded by an analysis of the previous application of the aforementioned concept ², but it should be emphasized that the working group included practitioners, i.e. representatives of the judiciary, the public prosecutor's office and the Bar Association of Montenegro.

Thus, Chapter XX of the Criminal Procedure Code regulates the plea bargaining agreement concept, by prescribing the conditions and procedure for its conclusion. By concluding a plea bargaining agreement, the suspect or the defendant fully admits to the criminal offence charged with, i.e. admits to one or more concurrent criminal offences charged with. Negotiations are possible only between the public prosecutor and the suspect, i.e. the defendant, thus it is not possible to conclude an agreement with other types of authorized prosecutors – plaintiff and injured parties as subsidiary prosecutor. A public prosecutor can make a proposal for the conclusion of a plea bargaining agreement to the suspect, defendant and defence lawyer, or the suspect, defendant and defence attorney can propose the conclusion of such an agreement

² Plea bargaining agreement concept in Montenegrin legislation and practice-comparative analysis 2016-2020, p. 9, January 2020, published by CEMI

to the public prosecutor. A plea bargaining agreement can be concluded for criminal offences prosecuted *ex officio*, with the exception of criminal offences concerning terrorism and war crimes.

While this analysis is being drafted, amendments to the Criminal Procedure Code are underway. The foreseen amendments to this Code include, among other things, the plea bargaining agreement concept.

During the preparation of the Analysis, the draft Criminal Procedure Code was sent to the European Commission for its opinion.

Procedure and conditions for entering into plea bargaining agreements

Provision of Article 300 paragraph 1³ of the Criminal Procedure Code stipulates that in case of criminal offences prosecuted *ex officio*, with the exception of the criminal offences concerning terrorism and war crimes, a suspect, defendant and defence lawyer may be made a proposal for the conclusion of a plea bargaining agreement, or a suspect, defendant and defence lawyer may propose such agreement to a public prosecutor.

Thus, both parties to the plea bargaining agreement – a defendant or their defence lawyer, and public prosecutor acting in the case – have the possibility of initiating a plea bargaining agreement, which aims to ensure a level playing field for parties regarding the proposal of the plea bargaining agreement.

Most often in practice, a defendant or their defence lawyer decide to initiate conclusion of a plea bargaining agreement. In order to avoid contradictory evidentiary proceedings and making additional efforts to prove guilt, and in order to achieve efficiency, public prosecutor often opts for initiating the conclusion of an agreement. Furthermore, it is in the prosecution's interest to prove the guilt of other co-perpetrators who did not confess to the crime in the contradictory evidence procedure, which is made easier for them if one perpetrator confessed the crime. Certainly, it is in the interest of the defence lawyer, i.e. the defendant, because the aim is to reduce the sentence below the legal minimum. It is important to point out that there is no mandatory form when submitting a proposal for reaching a plea bargaining agreement.

Unless a court adopts the agreement, defendant's guilty plea cannot be used as evidence in the criminal proceedings. Instead, it will be annulled, and the criminal proceedings will continue as if no agreement has been reached.

The plea bargaining agreement may be filed with the court no later than the first hearing in the first instance court. The negotiation process has two basic stages. The first one is a negotiation of the plea, when a prosecutor, as well as a defendant and their defence lawyer, present and analyse the facts. The second one is negotiation about a punishment on the basis of the prior consent about the existence of the facts based

3 Official Gazette of Montenegro 035/15, of 7 July 2015

on which each party interprets the guilt of the defendant. This process is documented through the Record on Bargaining, Record of the hearing of the defendant in the negotiation of the plea bargaining agreement, and plea bargaining agreement.

The Record on Bargaining must contain information on who initiated the conclusion of a plea bargaining agreement, as well as the proposal for the conclusion of the agreement, the conditions for its conclusion and the legal remedy. Record of the hearing of a defendant in negotiation of the plea bargaining agreement must bring to defendant's attention that, regardless of the verbal agreement reached, they may withdraw from the agreement, until the court issues a final confirmation, as well as the defendant's statement claiming to understand what criminal offence they are charged with, what sentence that offence is liable to, and the circumstances surrounding the offence⁴.

Once the proposal is submitted, the parties and defence lawyer can negotiate the terms of pleading guilty for the criminal offence or several criminal offences the suspect or the defendant are charged with. The plea bargaining agreement must be concluded in writing and signed by both parties and defence lawyer, and may be filed no later than at the first hearing in the first instance court. If the plea bargaining agreement was concluded prior to the indictment, the bill of indictment or a private lawsuit, a public prosecutor shall also submit the indictment or bill of indictment to the court, as an integral part of this agreement (Article 300 paragraph 5).

If no indictment has been brought, or no bill of indictment or private lawsuit have been filed, the plea bargaining agreement shall be submitted to a president of the Council referred to in Article 24 paragraph 7 of the Criminal Procedure Code, which shall decide on appeals against the decision of the investigating judge and other rulings, as determined by this Code, issue first instance decisions outside the main hearing, conduct proceedings and pass a judgment upon a request for the enforcement of a foreign court's convicting verdict, and make proposals in cases prescribed by the Criminal Procedure Code or other law. After the indictment has been brought, or the bill of indictment or a private lawsuit have been filed, the plea bargaining agreement will be submitted to a president of the Council (Article 302 paragraph 3).

The court shall decide on the plea bargaining agreement without delay, at a hearing attended by a public prosecutor, defendant and their defence lawyer, while injured party and their lawyer shall be informed of the hearing. The role of the court is highly important, since it evaluates whether the prosecutor acted in accordance with the rules of substantive criminal law when agreeing on the sentence. The court may dismiss, reject or adopt the agreement by decision. The president of the Council will reject the plea bargaining agreement if it was filed after the deadline prescribed by law and if a defendant who was duly summoned, failed to appear at the hearing. No appeal is allowed against the decision rejecting the plea bargaining agreement (Article 302).

Pursuant to Article 302 paragraph 8 of the Criminal Procedure Code, a court shall issue a decision on adoption of the plea bargaining agreement and pass a judgement appropriate to the content of the agreement, if the following is determined:

1. a defendant knowingly and voluntarily admitted to the criminal offence, or several offences charged with, the guilty plea is in line with the evidence

⁴ Report: Application of the plea bargaining agreement concept and deferred prosecution in the practice of judicial institutions in Montenegro, Centre for Monitoring and Research, CeMI, Podgorica, July 2016, p. 37.

contained in the case files, and the possibility of defendant admitting guilt under the misapprehension is excluded;

2. the agreement is concluded in accordance with Article 301 of the Code, which defines the subject-matter of the agreement;
3. a defendant has fully grasped the implications of entering a plea bargaining agreement, and in particular they waive the right to a trial and the right to appeal against a court decision issued based on the agreement;
4. the agreement did not violate the rights of the injured party;
5. the agreement is consistent with the interests of justice and the punishment serves its purpose.

When one or more of the above conditions are not met, the court will issue a decision rejecting the plea bargaining agreement and the defendant's guilty plea provided in the agreement cannot be used as evidence in the criminal proceedings. The decision adopting, dismissing or rejecting a plea bargaining agreement is entered into records of the court. The injured party may file an appeal against the decision adopting the plea bargaining agreement, while a public prosecutor and a defendant can do so against the decision rejecting the agreement. When the decision on adoption of the plea bargaining agreement becomes final, the court shall, without delay, and no later than within three days, pass a judgement finding the defendant guilty under the agreement (Article 303 paragraph 1). If the judgment is not in line with the concluded agreement, an appeal can be filed against it (Article 303 paragraph 2).

Seizure and confiscation of material benefit

Article 112 of the Criminal Code of Montenegro stipulates that no one shall be allowed to retain any material benefit acquired through an unlawful act which is defined as a criminal offence by the law, i.e. the benefit will be confiscated under the conditions provided for by the Code and court's decision. Therefore, the plea bargaining agreement also imposes obligation on defendants to return, within a specified period of time, the items that must be seized under the Criminal Code of Montenegro, as well as the material benefit acquired through the commission of a criminal offence (Article 301 paragraph 2 of the Criminal Procedure Code).

It should be noted that the procedure for the permanent confiscation of goods derived from criminal activity, in accordance with the Law on seizure and confiscation of material benefit derived from criminal activity⁵, is initiated only after the judgement in the criminal proceedings has become final. This means that a defendant and a public prosecutor could consent in a plea bargaining agreement on a method of temporary seizure of goods acquired through the commission of a criminal offence, while property would be permanently confiscated after the judgement reached based on the plea bargaining agreement has become final.

⁵ Official Gazette of Montenegro 58/15 and 47/19, of 12 August 2019

A defendant may be bound by a plea bargaining agreement to fulfil obligations related to the conditional opportunity in prosecution (deferral of prosecution referred to in Article 272 paragraph 1 of the Criminal Procedure Code), provided that, given the nature of the obligations, the defendant is able to fulfil or start fulfilling those obligations by the time a plea bargaining agreement is submitted to the court.

Concluding plea bargaining agreements and passing judgments adopting such agreements do not limit the possibility to conduct financial investigations. The procedure for initiating and conducting financial investigations, as well as the enforcement of measures to freeze and confiscate the material benefit, are regulated by the Law on seizure and confiscation of material benefit derived from criminal activity. As criminal and legal proceedings can be viewed in parallel or separately from property-related proceedings, a financial investigation can be initiated before and after the criminal proceedings, i.e. after the court decision, or after the conclusion of the plea bargaining agreement. This concept can be applied to the convicted person, their legal predecessor, legal successor and family members, but also to third parties, if there is a suspicion that the property was acquired through the commission of a criminal offence, and the person fails to demonstrate the lawful origin of the property.

Material benefit derived from criminal activity may be confiscated from the offender if gained before and/or after the commission of the criminal offense until the judgment has become final, when the court finds that there is a correlation between the time in which the material benefit was acquired and other circumstances of the particular case that justify the confiscation of the material benefit. During the financial investigation, a public prosecutor may propose a temporary security measure (freezing of assets) if there is a reasonable doubt that the material benefit has been acquired through the commission of an offence, and the risk that the confiscation of that material benefit will be prevented or impeded. The temporarily seized property is kept until the judgement in the criminal proceedings becomes final.

The Law on seizure and confiscation of material benefit derived from criminal activity from 2015 stipulates that a competent public prosecutor may initiate a financial investigation if three conditions have been met cumulatively: 1) reasonable grounds to suspect that property of the holder is significantly disproportionate to their lawful income; 2) reasonable doubt that the material benefit was derived from criminal activities and 3) reasonable grounds to suspect that the criminal offense for which Article 2 of the said Law prescribes the possibility of extended confiscation of the material benefit derived from criminal activity, has been committed. Adoption of the Law on Amendments to the Law on seizure and confiscation of material benefit derived from criminal activity of 12 August 2019 deleted the provisions of Article 11 relating to the first condition, as it was assessed that the fulfilment of all three conditions for initiating a financial investigation was too strict, and that initiating these investigations should be made easier and faster, since a disproportion will be determined during the financial investigation.

Criminal justice sanction

Prescribing and applying criminal sanctions constitutes one of the key elements of any country's criminal justice system, as its basic protective function is exercised through appropriate penal policy. Article 32 sets out **the purpose of punishment, the types of penalties and the conditions for their imposition**. Pursuant to Article 32 (in conjunction with Article 4), the purpose of the punishment is: 1) to prevent a perpetrator from committing a crime and to influence them not to commit crimes in the future; 2) to influence others not to commit crimes; 3) to express social condemnation for the crime, and obligation to comply with the law; 4) to raise moral and influence the development of social responsibility.

The following punishments may be imposed on the perpetrator of the criminal offense: a) long-term imprisonment; b) imprisonment; c) fine; and d) community service (Article 33 of the Criminal Code of Montenegro). The types and range of criminal sanctions are also very significant in the case of plea bargaining agreements, bearing in mind the aforementioned Criminal Procedure Code's provisions, which stipulate that the agreement must be consistent with the interests of fairness, while the sanction must correspond to the purpose for which it was imposed.

The Criminal Code of Montenegro⁶ provides for a wide range of punishments: from three months to two years; up to five years; from one to three years; from one to fifteen years; from two to eight years; from five to eighteen years; at least eight years or long-term imprisonment.⁷

Article 42 of the Criminal Code lays down the general rules that a court must take into account when imposing a sentence, having regard to the purpose of punishment, as well as any mitigating and aggravating circumstances, if any. The Criminal Code does not provide an exhaustive list of mitigating and aggravating circumstances that the court should take into account when imposing a sentence, but only *exempli causa* lists those that should be considered, including degree of guilt; motives for committing a crime, severity of the threat or violation of the protected property; circumstances surrounding the committed offense; perpetrator's background and their personal circumstances, behaviour following the crime, treatment of the victim etc.

Article 42 paragraph 3 prescribes that a circumstance which is a feature of a criminal offense cannot be considered to be either aggravating or mitigating, except if it exceeds a threshold necessary for an act to be considered as a criminal offense or if two or more such circumstances exist, and only one is needed for an act to be considered as a serious or less serious crime. The facts which can determine the decision on punishment are considered decisive in criminal justice, and as such have to be proven during the proceedings. Some facts, such as motives and circumstances surrounding

⁶ Official Gazette of the Republic of Montenegro 70/2003, 13/2004 - corrigendum and 47/2006, and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 64/2011 - state law, 40/2013, 56/2013 - corrigendum, 14/2015, 42/2015, 58/2015 - state law, 44/2017 and 49/2018.

⁷ To enable illustration, the basic form of the criminal offense concerning money laundering under Article 268 of the Criminal Code will be punished by a prison sentence ranging from six months to five years. The same sentence will be imposed on the person who was the perpetrator or the accomplice in the criminal offense resulting in acquisition of money or property (paragraph 2).

the commission of the offense, the severity of the threat or violation of the protected property, are directly linked to the offense and as such have to be proven at the main hearing.

Article 45 of the Criminal Code prescribes that a court may mitigate a sentence when it finds that there are particularly mitigating circumstances and when it assesses that the purpose of the punishment can also be achieved by imposing a mitigated sanction.

However, when it comes to the plea bargaining agreement, the sanction imposed by the court is not based on rules according to which penalties must be specific to the offender⁸, but instead it is agreed between the parties. The court only passes such a sentence because it is unable to determine the relevant circumstances (mitigating or aggravating) through the presentation of evidence, meaning it is not able to determine the sentence without the presented evidence.⁹ This is because guilty plea implies the admission of all allegations of the indictment, and therefore the degree of guilt, the circumstances of the commission of offense and other facts from the indictment are considered indisputable and are not subject to further proving. However, during a plea bargain, the prosecutor has the opportunity to gain insight into the offender's personality, their motives, personal circumstances, and should take these circumstances into account when negotiating the sentence. In addition, the court should reject the agreement if it considers the proposed sentence is in compliance with the law (i.e. does not fall outside the envisaged sentence range), but does not correspond to the particular case, i.e. it does not fulfil the purpose for which it was imposed.

Legal protection of defendant and rights of injured party

Article 69 paragraph 7 of the Criminal Procedure Code of Montenegro stipulates that a defendant must have a defense lawyer from the beginning of negotiation of the guilty plea conditions, until the decision of the court on appeal against the judgment has been issued (mandatory defense).¹⁰ This norm stems from one of the fundamental principles of the criminal law, proclaimed by Article 1 paragraph 1 of the Code. This Article stipulates that no innocent person can be convicted, and the role of defense lawyer is to contribute to the implementation of that principle.

8 Vanja Bajović, *Sentencing and Plea Bargaining Agreement*, UDK: 343.234/.235 Faculty of Law of the Belgrade University, <https://scindeks-clanci.ceon.rs/data/pdf/0354-8872/2015/0354-88721502179B.pdf>

9 In practice, it can be the case that an agreement was concluded before the indictment was filed to the court, immediately after the investigation order was issued, in a situation where all the evidence was not collected.

10 **The US legal system does not provide for mandatory defence, but the defendant has full discretion to decide whether to be defended by themselves or with the assistance of a lawyer.** There have been numerous instances in the case of plea bargaining, in which violation of the defendant's right to a defence was noted, for hiring an incompetent defence lawyer, because the defence lawyer did not explain to the defendant all the legal consequences of the plea, or because they advised the defendant to conclude a plea bargaining agreement, without being well acquainted with the circumstances of the case, etc. Taken from V. Bajovic: *Plea Bargaining Agreement: Comparative Legal Review*, op. cit. p. 29.

Namely, when entering a plea bargaining agreement, a defendant is primarily guided by the criminal sanction that will be imposed on them on the basis of the guilty plea, i.e. by a particular legal qualification of the act. The guilty plea of the defendant must be complete, voluntary and conscious, so as to cover all the factual elements of the charge, as well as the legal qualification of the offense.¹¹ This kind of admission can only be undertaken with expert guidance by the defence lawyer. In addition, the agreement imposes certain obligations on a defendant, and therefore the legislator acted correctly when prescribing mandatory defense throughout the duration of the conditions for mandatory defense.

The defendant will be appointed a lawyer *ex officio*, from the list of lawyers kept by the Bar Association, unless they appoint one themselves (Article 69 paragraph 8). The head of the competent public prosecutor's office shall decide on an *ex officio* lawyer while pending the indictment. This responsibility will be transferred to a court president, from the moment the indictment has been launched until the final judgement is passed. If a defendant remains without a lawyer during the mandatory defense in the proceedings, and does not appoint one themselves, they will be appointed a lawyer *ex officio* by the president of the acting court.

Pursuant to Article 302 paragraph 8 indent 4, with respect to the position of the injured party, the court will issue a decision adopting a plea bargaining agreement and pass a judgement that corresponds to the content of the agreement, *inter alia* if it finds that the agreement did not violate the rights of the injured party. Pursuant to Article 301 paragraph 1 indent 2, the defendant and the public prosecutor agree, *inter alia*, on the costs of the criminal proceedings and the property claim.

In case the authorized person has not filed a property claim, a public prosecutor will instruct them to do so before concluding the agreement. If there is no consent by the defendant regarding a property claim, the injured party should be instructed to exercise their rights through litigation. Although the position of the injured party in the process of concluding a plea bargaining agreement is not satisfactory, the legal solutions stipulate that the injured party must declare on their property claim before the conclusion of the agreement. However, the prosecutor's obligation to inform the injured party about the completion of the negotiation process is not specified.

¹¹ Bajović V. *Plea Bargaining Agreement*, Review for Criminology and Criminal Law, Belgrade, 2009, p. 323. 14

III PLEA BARGAINING AGREEMENT IN COMPARATIVE LEGAL SYSTEMS

United States of America (USA)

The USA has the most advanced practice of plea bargaining. In the US system, a defendant in court can plead guilty, plead not guilty or decide not to dispute the allegations in the indictment (lat. *nolo contendere*). The basic assumption is that the parties concluding the agreement are equal and that there is a concurrence of wills, which is why it is emphasized in a legal theory that such agreement has the character of a dispute. A judge is not authorized to participate in negotiation process or in conclusion of the agreement. The parties must disclose the concluded agreement at a public hearing for guilty plea (the public may be excluded for justified reasons, based on the proposal of the parties). The judge has the option of accepting the agreement, rejecting it or postponing the decision, until the report of the authority in charge of sentencing is submitted. In practice, the courts reject plea bargains in a negligible percentage of cases (0.2%).¹²

Republic of Croatia

There are two forms of summary proceedings implemented in Croatian criminal procedural legislation: deferred criminal prosecution (conditioned opportunity) and the process of passing a judgment based on parties' agreement. The Criminal Procedure Code of the Republic of Croatia¹³ provides that the parties may negotiate the terms of plea bargaining and agree on a sanction (at the stage of prosecution and judicial review of the indictment). The judgment based on the agreement of the parties may be passed as part of the regular proceedings for all offenses, regardless of the gravity of the offense and the sanction imposed, but also in summary proceedings for offenses with a prescribed sentence of imprisonment of eight to twelve years. Although negotiation can be conducted in the prosecution phase at the latest, it is most often conducted in the pre-trial procedure. During the negotiation process, the defendant must have a defence lawyer (mandatory defence, as in Montenegro).¹⁴

¹² *Supra*, p. 147

¹³ Official Gazette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17.

¹⁴ Article 360 paragraph 1 of the Criminal Procedure Code of the Republic of Croatia (Official Gazette 152/08, 76/09, 80/10, 121/10, 91/12 – Decision of the Constitutional Court of Republic of Croatia, 143/12, 56/13, 145/13, 152/14, 152/08, 76/09, 80/11, 70/17).

Act on the State Attorney Office¹⁵ stipulates that the Attorney General acts in accordance with the provisions of the Criminal Procedure Code addressing the purpose of criminal prosecution, which allow a plea bargain with a defendant for the purpose of imposing a lighter sentence. When they assess that the length of the proceedings could be reduced by guilty plea, the Attorney General may inform the defendant and their defence lawyer of the terms of the bargain, and initiate the agreement on the type and measure of the criminal sanction.

The plea bargaining agreement is a statement, i.e. a mutually expressed will of the parties, signed by Attorney General and defendant (and their defence lawyer). A written statement of the parties' agreement shall be submitted to the Prosecution Council, which will determine, upon receipt of the written statement, whether the parties agree on the content of the request and will enter this into records. Then, the Council decides whether or not to accept the agreement. If it does, a judgement on the punishment will be issued; if it doesn't, it will issue a decision rejecting the agreement and continue with examining the indictment in the regular course of proceedings.

The Council will not accept a plea bargaining agreement if, given the circumstances, it is not in accordance with the sentencing prescribed by law, or the agreement itself is not in accordance with the law, as it is the case in Montenegro. No appeal is allowed against the decision rejecting the agreement. The parties may withdraw from the agreement pending judgment, and in that case the draft agreement and all other information are removed from the case files and cannot be considered or used as evidence in the proceedings.

When it comes to the right to appeal against a judgment passed based on parties' agreement, this judgment cannot be contested in case of a decision on criminal sanction, confiscation of material benefit, costs of the proceedings and property claims, or inaccurately or incompletely established facts, unless the defendant became aware of the evidence for exclusion of unlawfulness and guilt after the judgement was passed.

Federal Republic of Germany

The plea bargaining agreement concept is applied in the German legal system at the main hearing, which is why the role of the court in the negotiation process is very pronounced. Only the legal consequences, i.e. criminal sanction, as well as the content of the judgement and the related conclusions can be the subject of negotiation, while this does not apply to the legal qualification of the act, the operative part of the verdict, or security measures. The waiver of prosecution for a specific crime in cases where several offenses were committed, may also be the subject of negotiation.

In the negotiation process, the court announces the content of the plea bargaining agreement, with a free assessment of all the circumstances of the case, as well as general rules for sentencing, and may also state maximum and minimum punishment, or set maximum or minimum punishment, which is followed by announcement of the possible content of the agreement. Parties to the case present their opinion about these circumstances, and a settlement is reached when the defendant and the prosecution have accepted the court's proposal. The court is not bound by a settlement

¹⁵ Official Gazette 67/18 – enforced on 1 September 2018

if it is established that it is not based on legal or realistic circumstances, or when, due to the emergence of new circumstances, the court finds that the proposed criminal framework is no longer proportionate to the crime committed, or to the guilt that can be attributed to its perpetrator.

Republic of Italy

Italy is the first European country to introduce a plea bargaining agreement, i.e. a criminal sanction agreement, into its legislation with the aim of preventing the increase of crime rates. It was done in 1981, by introducing bargaining on sentence in the Criminal Procedure Code (the so-called Rocco Code), which had a very limited scope¹⁶ and was not widely applied in practice. In 1988, a new Criminal Procedure Code was enacted, significantly expanding the scope of the plea bargaining agreement (*patteggiamento*), in exchange for imposing the so-called alternative sanctions.¹⁷ This concept has taken its present form through the amendments to the Criminal Procedure Code of 2003.

It is up to parties to initiate the conclusion of the agreement, whereby the initiative can come from a prosecutor, with the consent of a suspect (defendant) or vice versa; and the initiative can be submitted by both parties together, pending the opening of the main hearing at first instance. The request must be submitted in writing, unless it was done verbally at the hearing. The Italian Criminal Procedure Code provides for an additional benefit to defendant, allowing them to file their request directly to the court and to seek a one-third sentence reduction in case the prosecutor refuses to consent to the proposed agreement. In addition, if no agreement has been reached due to prosecutor's refusal, the defence may ask the judge at the end of the trial to examine the reasons for such prosecutor's action.

It is a responsibility of the court to ensure that all conditions for the conclusion of the plea bargaining agreement have been fulfilled. If this is not the case, the court may reject the agreement, but may also issue a decision on the acquittal. In assessing the fulfilment of the conditions for concluding the agreement, the court first examines whether there are mitigating circumstances, i.e. circumstances that directly release a defendant from criminal responsibility (for example, the existence of facts that show that the crime was not committed, or the facts that the person subject to *patteggiamento* did not commit the crime, etc.). If it fails to determine the existence of these circumstances, the court will examine the content of the plea bargaining agreement, not only in terms of the legitimacy of the claim, but also in terms of assessing whether the parties properly qualified the offense and whether the proposed punishment is appropriate.¹⁸ If the court finds that these conditions are fulfilled, it accepts the agreement and passes a judgment whose operative part states that it was made on the basis of the agreement between a public prosecutor and a defendant.

¹⁶ The agreement could not have been concluded for corruption offenses but was used for offenses liable to a term of imprisonment of up to three months. There are still some limitations in this regard today: *patteggiamento* is not allowed for criminal offences relating to organized crime, kidnapping, drug trafficking and terrorist offenses, nor is it possible to conclude *patteggiamento* for recidivists, if their total sentence would exceed five years imprisonment.

¹⁷ The original name was *applicazione della pena su richiesta delle parti* (application of penalty at the request of the parties), which was later changed to *patteggiamento* and thus linguistically adapted to the American *plea bargaining* concept.

¹⁸ The court has the power only to approve or reject the plea bargaining agreement, but not to modify parties' request.

The convicting verdict cannot oblige a defendant to pay the costs of the proceedings, nor is it possible to impose accessory penalties, except in the case of mandatory confiscation (property obtained by committing an offence or items resulted from commission of the offense). When it comes to legal remedies, a cassation appeal is always allowed.¹⁹

Plea bargaining agreement in the case law of the European Court of Human Rights

The European Court of Human Rights' primary concern regarding the use of plea bargaining agreements for resolving pending cases was that their conclusion should not go against the defendant's right to a fair trial.

The European Court has thus found that the conclusion of plea bargains in circumstances where the requirements relating to investigation already considered have not been respected and where this entailed a failure to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals. Moreover, given the case law that has already considered the need for adequate penalties, it can also be expected that any penalties imposed under plea bargaining agreements that are seen as an inadequate response to conduct affecting a right under the European Convention will also be considered by the European Court as a violation of the rights concerned.

So far, the European Court has not considered from the victim's perspective the compatibility of a plea bargaining agreement concluded with one perpetrator of certain criminal offenses with the European Convention, where the goal is to initiate proceedings against others involved in the commission of criminal offenses. However, it seems unlikely that this would be regarded by it as justifying a departure from the requirements discussed in the preceding paragraph.

Even where no European Convention rights are affected by the crime, the conclusion of a plea bargaining agreement should not prevent the victim from bringing any civil claims that may arise from the contested conduct. However, a victim who joined criminal proceedings as a civil party cannot object to the termination of those proceedings by concluding a plea bargaining agreement if there is still a possibility for them to initiate appropriate proceedings before civil courts.

Although the importance that the European Court attaches to the involvement of the victim in the plea bargaining process has appeared in cases where the committed offense involved interference with the law from the European Convention that imposes the obligation to conduct a fundamental and efficient investigation, the lack of such involvement can generally lead to potential damage to the victim's civil rights and thereby lead to a violation of Article 6 and Article 1 of Protocol no 1.²⁰

It was not until 2014 that the European Court of Human Rights (hereinafter referred to

¹⁹ Veljko Turanjanin: *Plea Bargaining Agreement in the Law of European Countries: The Case of Italy - 164*, Institute for Comparative Law, Foreign Legal Life, UDC 34, Belgrade, 2011, op.cit. p. 147

²⁰ The case law of the European Court of Human Rights on Victim's Rights in Criminal Proceedings, Jeremy McBride, p. 18-20.

as “the Court”) first ruled on the compatibility of Article 6 of the European Convention on Human Rights with the plea bargaining agreement concept, in the context of the protection of the procedural rights of defendants in criminal proceedings.

The judgment in the case of *Natsvlshvili and Togonidze v. Georgia*²¹ was the first one in which the Court fully examined the compatibility of the plea bargaining agreement with the notion of fair trial within the meaning of Article 6 of the Convention. In the case of the first applicant, Mr Natsvlshvili, the agreement was reached between the defence and the prosecution. Under the Agreement, the prosecutor undertook to request the adjudicating court to convict the applicant without an examination of the merits of the case and to seek a reduction of the sentence in the form of a fine. The Georgian court approved the agreement (a decision not subject to appeal under the domestic law of this country), and imposed a fine to the applicant.

Petitioning for a violation of the right to a fair trial, Mr. Natsvlshvili stated that the procedure for the conclusion of a plea bargaining agreement, provided for by Georgian law and applied in his case, constituted an abuse of procedure and, as such, was unfair. He argued that, although he waived certain procedural rights by accepting the bargain with the prosecutor’s office, that waiver was not accompanied by effective safeguards against the abuse of due process by the prosecuting authority.

Acting on the petition The Court noted that plea bargaining agreements between the prosecution and defence are considered to be a common feature of European criminal justice systems, and that initiatives aiming at reducing the sentence or altering the charges in exchange for a guilty plea or cooperation with the prosecution authorities, are not subject to critics. The Court, however, found it important to determine whether such a procedure was also accompanied by safeguards against possible abuse.

In this case, the Court established the following: (i) the applicant had initiated and voluntarily entered into a plea bargaining agreement, in full awareness of the relevant facts of the case and the legal consequences; (ii) the applicant was represented at all stages of the case by lawyers, including during the negotiation of a plea bargaining agreement with the prosecution; (iii) the applicant confirmed on several occasions, both before the prosecuting authority and the judge assessing the legal validity of the agreement, that he had fully understood the content of the agreement and its legal consequences; (iv) the terms of the agreement signed by the applicant were fulfilled, which included a summary of the negotiations that preceded the conclusion of the agreement, submitted to the responsible court for review and consideration; (v) the judge was under no obligation to approve the agreement, but had legal power to reject that agreement depending upon its own assessment of the fairness of the terms contained in it and the process by which it had been entered into. The Court therefore found that undoubtedly the first applicant had signed the plea bargaining agreement knowingly and voluntarily, that such action was not the result of any duress or false promise made by the prosecution, and therefore found that there has been no violation of Article 6 of the Convention.²²

21 *Natsvlshvili and Togonidze v. Georgia*, application no. 9043/05, judgement of 29 April 2014

22 Overview of the Court’s practice from 2015, Council of Europe - European Court of Human Rights, Strasbourg, February 2016, p. 43 - 44, https://www.echr.coe.int/Documents/Short_Survey_2014_BOS.pdf, decisions are published annually, https://www.echr.coe.int/Documents/Short_Survey_2017_ENG.PDF, available via the link: a www.echr.coe.int

Reports of the European Commission on Montenegro the application of the plea bargaining agreement

The European Commission Report on Montenegro from 2020 stated that Montenegro needs to improve track records on repression and prevention of corruption, including by imposing of effective sanctions and take concrete measures to limit the use of plea bargains to exceptional cases, in order to improve the transparency and credibility of the judicial response to corruption through a more deterrent and consistent sanctioning policy. In the area of the fight against organized crime, Montenegro is *invited to take concrete measures to limit the application of plea bargaining agreements to exceptional cases, in order to increase the transparency and credibility of the judicial response to organized crime through a more deterrent and consistent sanctioning policy.*

Evaluations were identical in the Report from 2021. In the last Report of the European Commission (2022), however, more specific problems regarding the application of the plea bargaining agreement concept were noted as follows: *The use of plea bargaining agreements must be exercised with extreme care, for the right purposes and observing all necessary safeguards. A legal cost-benefit analysis in the interests of justice should be conducted systematically when this mechanism is used. **In no case can the sanctions be below the legal statutory minimum. To improve its effective use, guidelines for the specialized courts and prosecution services need to be drafted.***

In the area of fight against organized crime, *an external assessment of Montenegro's sentencing policy, ordered by the Supreme Court, concluded that courts are not making full use of the sentencing ranges and tend to impose sentences in the bottom third or lower half of the sentencing ranges. Plea bargains continued to be widely used in organised crime cases and resulted in sentences, fines and asset confiscations, that were disproportionally low given the gravity of the crime. Sentences in the context of plea bargains ranged from 2 and a half months to 3 years and 8 months of imprisonment and fines from EUR 1 500 to EUR 50 000. Plea bargains should be used with care and should be regulated by implementing guidelines to enhance the transparency and credibility of the judicial response to organised crime and to provide a more deterrent and consistent sanctioning policy.*

In this regard, it was concluded that Montenegro **has yet to address some systemic deficiencies that exist across the board in its criminal justice system, including the way organised crime cases are handled in courts. This will require a more deterrent sentencing policy and a revision of the use of plea bargains in organised and serious crime cases.**

Analysis of the Supreme Court of Montenegro

In the Analysis of the Penal Policy for the Most Serious Criminal Offenses (2021)²³, including high corruption cases, it was concluded that the courts are obliged to

²³ Analysis of the Penal Policy for the Most Serious Criminal Offenses, authors Radule Kojović, Ksenija Jovičević-Korać et al., Supreme Court of Montenegro, AIRE Centre, UK Embassy in Podgorica, 2021.

give greater consideration to the existence of conditions for the adoption of a plea bargaining agreement, especially in cases where the conduct of criminal proceedings and the outcome of the trial attract special attention of the public. In the investigated cases of organized crime, it was established that the legal possibility to apply plea bargaining agreements for criminal offenses in the field of organized crime can create an illusion among the perpetrators of these criminal offenses and give impression to the general public that these constitute lighter forms of crime, which can raise the question whether the general and special prevention of organized crime was achieved, especially bearing in mind the obligation assumed under the United Nations Convention against Transnational Organized Crime, which imposes obligation upon Montenegro to achieve the highest possible level of efficiency in the application of legal measures in relation to such crimes, taking into account the need to prevent the commission of organized crime. The analysis also contains specific guidelines for further harmonization of the penal policy.

IV IMPLEMENTATION OF THE PLEA BARGAINING AGREEMENT IN MONTENEGRIN PRACTICE

General statistical framework

For the purposes of the Analysis, and in the context of analysing the effectiveness of the plea bargaining agreement as a concept aimed at improving the efficiency of court proceedings, data contained in the Report on the work of the Judicial Council, which are available on the website of the Judicial Council, were used.

Montenegrin courts had a total of 118,568 ongoing cases in 2021. They entered the reporting year with 34,425 cases, received 84,143, resolved 80,485, while 37,963 cases or 32.05% remained unresolved. The number of incoming cases was higher by 4.24% compared to the previous year, while the number of resolved cases was lower by 3,27% compared to the previous year. The average monthly number of incoming cases per judge was 28.62 on an annual basis, of which 328.51 was completed, while the number of unresolved cases per judge was 154.95 annually. The quality of work was maintained at a satisfactory level, which means that 70.36% were confirmed, 19.66% of all decisions issued based on the appeals were annulled, while 5.19% were partially confirmed/reversed/annulled. Decisions were issued within the statutory deadline, with only 0.68% of decisions made outside the statutory deadline, which is one of the indicators of efficiency and effectiveness, along with respect for trials within a reasonable time. 61.60% of cases were resolved within 3 months, 12.36% within up to 6 months, 6.63% within up to 9 months, 3.96% within up to a year, while in 15.45% of cases the proceedings lasted longer than a year.

In 2020, Montenegrin courts had a total of 118,913 ongoing cases. They entered the

reporting year with 38,190 cases, received 80,723 cases, while 34,425 cases or 29.26% remained unresolved. The number of incoming cases was lower by 13.19% compared to the previous year, and the number of resolved cases decreased by 9.86% compared to the previous year. The average number of incoming cases per month per judge was 26.59 cases on an annual basis, of which 328.88 were completed, while the number of unresolved cases per judge was 136.07 cases on an annual basis. The quality of work was kept at a satisfactory level, with 70.50% of confirmed cases, 20.11% of all decisions issued based on the appeals annulled, and 4.94% partially confirmed/reversed/annulled. Decisions were issued within the statutory deadline, with only 0.53% of decisions which failed to meet the statutory deadline. Along with respect for the trial within a reasonable time, this represents one of the indicators of efficiency and effectiveness. Thus, 58.20% of cases were resolved within 3 months, 13.28% within 6 months, 7.52% within 9 months, 5.51% within a year, while in 15.49% of cases the procedure lasted longer than a year.

In 2019, all courts had a total of 131,956 ongoing cases, of which they received 92,984 cases, resolved 92,305 cases, while 38,190 or 29.26% of cases remained unresolved. The lead time rate was almost 100% at the level of the Montenegrin judiciary, while the efficiency rate was 79.7%, according to CEPEJ indicators. When it comes to the length of proceedings in complex cases at all basic courts in Montenegro, 58.82% of all cases were completed within three months, 14.16% within six months, 7.15% within nine months, and 4.52% within up to one year and 15.35% over one year.

At the end of 2019, 2,912 old cases (cases older than 3 years) remained unresolved. At the end of the reporting year 2020, 3,036 cases were unresolved, while at the end of 2021, that figure was 3,794. The number of unresolved old cases is constantly increasing, which causes concern and leads to the planning of specific activities of judicial authorities with the aim of creating policies to speed up proceedings, bearing in mind the fact that the work of Montenegrin judicial authorities is most often contested before the European Court of Human Rights precisely from the aspect of the duration of the procedure within the framework of the violation of the right to a trial within a reasonable time under Article 6 of the European Convention.

The Report on the work of the Judicial Council for 2022 was not adopted at the time of developing this Analysis, which is why the three-year statistical trend cannot be reported. However, by comparing the data on the total number of ongoing cases during the mentioned period, **it can be concluded that the number of cases the courts are dealing with is decreasing (by 13,388 cases since 2019)**, while the number of incoming cases varied, bearing in mind that in 2020, due to known circumstances (Covid pandemic and the suspension of lawyers' work), the number of incoming cases was lower than in the reporting year 2019. Also, it was observed that the number of resolved cases was drastically decreasing (from 92,305 resolved in 2019 to 80,485 resolved at the end of 2021). The same conclusion about the continuous decrease in the total number of cases can be drawn in relation to 2018, which was analysed in the previous Analysis, when a total of 136,567 cases before the courts were recorded.²⁴

24 Plea bargaining agreement concept in Montenegrin legislation and practice; comparative analysis 2016-2020; p. 20

Plea bargaining agreement: comparative overview

According to data contained in the Report on the work of the Prosecutorial Council and the Public Prosecutor's Office for 2019²⁵, public prosecutors concluded a total of 371 plea bargaining agreements with natural persons (298 agreements in 2018, 240 agreements in 2017, 167 agreements in 2016) and one agreement with a legal entity. Of the total number, 208 plea bargaining agreements were concluded in Basic Public Prosecutor's Offices (195 agreements in 2018, 55 agreements in 2017, 42 agreements in 2016), while Special Prosecutors concluded 49 plea bargaining agreements with natural persons and one agreement with a legal entity (43 agreements were concluded in 2018, 29 agreements in 2017, 28 agreements in 2016).

In the reporting year 2019, Special Prosecutors concluded 49 plea bargaining agreements with natural persons (43 agreements in 2018) and one agreement with a legal entity. In the concluded plea bargaining agreements, the imposed sentences included imprisonment, probation and fines. In some of them an accessory penalty was also imposed in the form of a fine, as well as confiscation of material benefit derived from criminal activity, and in other cases a donation to the humanitarian causes was also agreed.

Agreements were concluded for the following criminal offenses:

- » 7 plea bargaining agreements for the criminal offense concerning the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro, all of which were accepted by court's decision and served as a basis for convicting 7 persons to imprisonment. In addition to the prison sentence, EUR 2,000 fine was imposed as an accessory penalty, EUR 1,000 payment was agreed to be paid for humanitarian purposes to the NGO "Association of Children with Developmental Disabilities", while EUR 5,537.25 was paid for the costs of the criminal proceedings.
- » 5 plea bargaining agreements for the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro and the criminal offense concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro, 4 of which were adopted, and 1 is pending a court decision. On the basis of these 4 agreements, a judgment was passed sentencing the defendants to imprisonment and an accessory penalty in the form of EUR 6,000 fine, as well as a payment for humanitarian purposes in favour of the Health Institution Special Psychiatric Hospital Dobrota - Kotor in the amount of EUR 20,000, and EUR 800 for the costs of criminal proceedings.
- » 2 plea bargaining agreements for the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro. These agreements were adopted by the court's decision and served as a basis for passing the judgment sentencing the defendants to prison terms and an accessory penalty in the form of EUR 50,000 fine. EUR 50,000 was paid for humanitarian purposes to the General Hospital "Danilo I" Cetinje, while EUR 300,000 was paid for the material benefit obtained illegally

²⁵ https://tuzilastvo.me/static/drtz/doc/IZVJESTAJ_O_RADU_TUZILACKOG_SAVJETA_I_DRZAVNOG_TUZILASTVA_ZA_2019_GODINU.pdf

- through criminal activity, as well EUR 2,150 for the costs of the criminal proceedings.
- » 1 plea bargaining agreement for the criminal offense concerning the abuse of office in business operations under Article 272 of the Criminal Code of Montenegro. The agreement was adopted by the court and served as a basis for rendering the verdict by which the defendant was sentenced to imprisonment and accessory penalty in the form of EUR 2,000 fine, while EUR 200 was paid for humanitarian purposes, to the Clinical Centre of Montenegro.
 - » 2 plea bargaining agreements for the criminal offense concerning the evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro. The agreements were adopted by the court and served as a basis for passing a verdict - suspended sentence. A fine of EUR 7,000 was imposed, as well as EUR 1,750 payment to the Budget of Montenegro for the costs of criminal proceedings.
 - » 5 plea bargaining agreements for the criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro and the criminal offense concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro. The agreements were adopted by the court and served as a basis for passing the judgement - suspended sentence, and imposing EUR 78,000 fine, as well as the payment amounting to EUR 5,450 for the criminal procedure costs.
 - » 1 plea bargaining agreement for the criminal offense concerning unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro and the criminal offense concerning creation of a criminal organization under Article 401a of the Criminal Code of Montenegro. The agreement was adopted by the court and served as a basis for convicting the defendant to imprisonment. A total of EUR 3,468 was paid for the costs of the criminal proceedings.
 - » 1 plea bargaining agreement for the criminal offense concerning money laundering under Article 268 of the Criminal Code of Montenegro. The agreement was adopted by the court and served as a basis for rendering a convicting verdict imposing a prison sentence and an accessory penalty in the form of EUR 5,000 fine upon the defendant, as well as EUR 20,000 payment to the treasury account (money derived from criminal activity).
 - » 1 plea bargaining agreement with a natural person and 1 agreement with a legal entity for the criminal offense concerning money laundering under Article 268 of the Criminal Code of Montenegro and the criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro. Both agreements were adopted by the court and served as a basis for sentencing the natural person to imprisonment and an accessory penalty in a form of EUR 3,000 fine, and the legal entity to a single fine in the amount of EUR 75,000, while EUR 89,820 was paid to the account of the Tax Administration in the name of the property claim, EUR 3,000 were paid for humanitarian purposes to the Resource Centre for Education and Training "1 June" Podgorica and EUR 2,228.46 for the costs of criminal proceedings.
 - » 4 plea bargaining agreements for the criminal offense concerning illegal crossing of the state border and smuggling of persons under Article 405 of the Criminal Code of Montenegro. The agreements were adopted by the court and served as a basis for sentencing the defendant to imprisonment. EUR 1,963 were paid for the costs of the criminal proceedings.
 - » 19 plea bargaining agreements for the criminal offense concerning illegal crossing of the state border and smuggling of persons under Article 405 of the Criminal

Code of Montenegro and the criminal offense concerning creation of a criminal association under Article 401a of the Criminal Code of Montenegro. Of the total number, 18 agreements were adopted by the court and served as a basis for convicting the defendants to a term of imprisonment, while 1 plea bargaining agreement is pending court decision. The amount of EUR 19,500 was paid as a fine. A total of EUR 9,500 was paid for humanitarian purposes (to the NGO Association of Parents of Children with Developmental Disabilities Podgorica, Public Institution Care Home for Elderly in Bijelo Polje and Public Institution Centre for Day Care for Children with Disabilities and Adults with Disabilities in Danilovgrad). The costs of the criminal proceedings were paid in the total amount of EUR 16,265.31.

- » 1 plea bargaining agreement for the criminal offense concerning abuse of office under Article 416 of the Criminal Code. It was adopted by the court's decision and served as a basis for convicting the defendant to a suspended sentence. EUR 1,406.50 was paid for the costs of the criminal proceedings.

In 2019, the High Public Prosecutor's Office in Podgorica concluded plea bargaining agreements with 110 persons. The court adopted 105 agreements and passed convicting verdicts, while 5 agreements remained unresolved by the end of the reporting year. According to the plea bargaining agreements, 105 persons who were found guilty by the court were punished by term of imprisonment, of which 8 persons were to serve their sentence in living premises, and 13 persons were imposed an additional fine in the total amount of EUR 59,000.00 as an accessory penalty.

The High Public Prosecutor's Office in Bijelo Polje concluded 3 plea bargaining agreements. The Basic Public Prosecutor's Office in Podgorica concluded plea bargaining agreements with 100 defendants. All agreements were adopted, and judgements were passed, as follows: prison sentence against 50 persons, suspended sentence against 25 defendants, fine against 1 person and community service against 24 persons. In case of 2 defendants, it was decided that they should serve a prison sentence in their living premises. Based on the concluded agreements, the defendants paid fines amounting to EUR 3,400.00, EUR 4,500.00 in favour of humanitarian organizations, EUR 125,720.85 based on the adopted property claim of the injured parties, while material benefit amounting to EUR 260,742.52 was confiscated based on the adopted agreement against one person. In addition to criminal sanctions, security measures were imposed on 22 persons, of which 21 were confiscation of objects, while two security measures were imposed on one person - a restraining order and removal from an apartment or other living space.

In the reporting period, public prosecutors in the Basic Public Prosecutor's Office in Cetinje had 10 concluded plea bargaining agreements. The concluded agreements resulted in convicting court decisions - judgements against 10 natural persons. The court decisions issued according to the concluded agreements are as follows: 6 natural persons were convicted to imprisonment, and 4 natural persons were punished by suspended sentence.

Public prosecutors in the Basic Public Prosecutor's Office in Nikšić concluded 9 plea bargaining agreements, while the Basic Public Prosecutor's Office in Herceg Novi concluded plea bargaining agreements with 20 defendants, all of which were accepted by the Basic Court in Herceg Novi.

The Basic Public Prosecutor's Office in Kotor and the Basic Public Prosecutor's Office in Ulcinj concluded 6 plea bargaining agreements each.

Public prosecutors in the Basic Public Prosecutor's Office in Bar concluded 2 plea bargaining agreements, while the Basic Public Prosecutor's Office in Bijelo Polje concluded 42 plea bargaining agreements.

The Basic Public Prosecutor's Office in Berane and the Basic Public Prosecutor's Office in Plav did not conclude any plea bargaining agreements in 2019.

In the reporting period, public prosecutors in the Basic Public Prosecutor's Office in Rožaje concluded 11 plea bargaining agreements, while the Basic Public Prosecutor's Office in Pljevlja and the Basic Public Prosecutor's Office in Kolašin concluded one agreement each.

Overview of concluded plea bargaining agreements based on the Report of the Prosecutorial Council and the Public Prosecutor's Office for 2019

Public Prosecutor's Office	Plea bargaining agreement	Fees	Confiscated material benefit	Payment for humanitarian purposed	Payment to the injured party
Basic Public Prosecutor's Office Bar	2				
Basic Public Prosecutor's Office Berane	0				
Basic Public Prosecutor's Office Bijelo Polje	42			3.850,00 €	
Basic Public Prosecutor's Office Cetinje	10				
Basic Public Prosecutor's Office Herceg Novi	20				
Basic Public Prosecutor's Office Kolašin	1			2.000,00 €	
Basic Public Prosecutor's Office Kotor	6				
Basic Public Prosecutor's Office Nikšić	9			6.000,00 €	
Basic Public Prosecutor's Office Plav	0			1.500,00 €	

Basic Public Prosecutor's Office Pljevlja	1				
Basic Public Prosecutor's Office Podgorica	100	3.400,00 €	125.720,85 €	4.500,00 €	
Basic Public Prosecutor's Office Rožaje	11				
Basic Public Prosecutor's Office Ulcinj	6	2.500,00 €	1.095,00 €		
High Public Prosecutor's Office Bijelo Polje	3				
High Public Prosecutor's Office Podgorica	110	59.000,00 €			
Special Public Prosecutor's Office	50	228.000,00 €	320.000,00 €	83.700,00 €	89.820,00 €
TOTAL	371	292.900,00 €	446.815,85 €	101.550,00 €	89.820,00 €

According to the data contained in the Report of the Prosecutorial Council for 2020²⁶ public prosecutors concluded a total of 559 plea bargaining agreements, of which 555 with natural persons, 2 with legal entities, and 2 with responsible persons in legal entities (371 agreements in 2019, 298 agreements in 2018, 240 agreements in 2017), of which 289 in basic public prosecutor's offices (208 agreements in 2019, 195 agreements in 2018, 156 agreements in 2017), 158 in high public prosecutor's offices (113 agreements in 2019, 60 agreements in 2018, 55 agreements in 2017, 42 agreements in 2016), while special prosecutors concluded 112 plea bargaining agreements with natural persons (49 agreements in 2019, 43 agreements in 2018, 29 agreements in 2017). Cases against 497 natural persons, 1 legal entity and 1 responsible person were resolved by the judgment of the competent courts²⁷.

Of the stated number of agreements, special prosecutors concluded 112 plea bargaining agreements with natural persons (49 in 2019, 43 in 2018).

In the concluded plea bargaining agreements, the imposed punishments included imprisonment, probation and fines, while in some cases along with the prison sentence, an accessory penalty was imposed in the form of a fine, as well as confiscation of the material benefit derived from criminal activity, while in some agreements a payment to the humanitarian causes was also agreed.

²⁶ See the link: https://www.tuzilastvo.me/static/drtz/doc/IZVJESTAJ_O_RADU_ZA_2020_GODINU.pdf

²⁷ See the link: https://www.tuzilastvo.me/static/drtz/doc/IZVJESTAJ_O_RADU_ZA_2020_GODINU.pdf

Agreements were concluded for the following criminal offenses:

- » 1 plea bargaining agreement for the criminal offense concerning money laundering under Article 268 of the Criminal Code of Montenegro, evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro and creation of a criminal association under Article 401a of the Criminal Code of Montenegro. The agreement was adopted by the court and served as a basis for sentencing the defendant to imprisonment and an accessory penalty in a form of EUR 3,000.00 fine, while EUR 1,000 was paid for humanitarian purposes to the National Coordination Team, as well as EUR 600.00 for the costs of the criminal proceedings.
- » 20 plea bargaining agreements for the criminal offense concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro, of which 10 agreements were adopted by court decision. They served as a basis for convicting 7 persons to imprisonment, 1 person was imposed a suspended sentence and an additional accessory fine in the amount of EUR 10,000.00, while 2 persons were sentenced to correctional measures concerning community service or humanitarian work. EUR 2,000.00 was paid for humanitarian purposes to the Care Home for Elderly in Bijelo Polje and EUR 10,000.00 to the National Coordination Team. The amount of EUR 3,900.00 was paid for the costs of the criminal proceedings.
- » 5 plea bargaining agreements for the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro and the creation of a criminal association under Article 401a of the Criminal Code of Montenegro. Of this number, 4 agreements were adopted and served as a basis for imposing prison sentences and an additional accessory penalty in the form of EUR 15,000.00 fine. An amount of EUR 35,000.00 was paid to the budget for material benefits acquired through criminal acts. 1 security measure was imposed, concerning seizure of the vehicle, as well as the permanent confiscation of 61 packages of drugs (marijuana). The costs of the criminal proceedings amounted to EUR 1,000.00. The agreement against 1 person is pending court decision.
- » 1 plea bargaining agreement for the criminal acts concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro, unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro and the creation of a criminal association under Article 401a of the Criminal Code. The agreement was adopted by the court's decision and served as a basis for convicting the defendant to imprisonment and an accessory penalty in the form of a fine amounting to EUR 40,000.00. An amount of EUR 200,000.00 was paid for material benefit acquired through criminal activity, as well as EUR 8,200.00 for the costs of the criminal procedure.
- » 21 plea bargaining agreements for the criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro. On the basis of 5 adopted agreements, the court imposed suspended sentences, while accessory penalties were imposed in the form of EUR 78,000.00 fines, as well as EUR 12,300.00 payment for costs of the criminal proceedings, while 16 agreements were pending the court's judgement in the reporting period.
- » 44 plea bargaining agreements for the criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro and the creation of a criminal association under Article 401a of the Criminal Code of

Montenegro, which were all adopted by the court. On the basis of 3 agreements, suspended sentences were imposed, as well as accessory penalties in the form of fines amounting to EUR 57,000.00. In 2 agreements, prison sentences were imposed, as well as accessory penalties in the form of fines amounting to EUR 80,000.00. EUR 6,361,450.72 payment was made to the Budget of Montenegro due to illegally acquired material benefits, and EUR 5,000.00 to the National Coordination Team for humanitarian purposes, as well as EUR 15,400.00 payment for the costs of criminal proceedings. 8 agreements are still pending the court decision.

- » 1 plea bargaining agreement for the criminal offense concerning unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro and the creation of a criminal association under Article 401a of the Criminal Code of Montenegro. The agreement is still pending the court decision.
- » 2 plea bargaining agreements for the criminal offense concerning illegal crossing of the state border and smuggling of persons under Article 405 of the Criminal Code of Montenegro. The agreements were adopted by the court and served as a basis for convicting the defendant to imprisonment and an accessory penalty in the form of EUR 1,500.00 fine. An amount of EUR 800.00 was paid for the costs of the criminal proceedings.
- » 10 plea bargaining agreements for the criminal offenses concerning illegal crossing of the state border and smuggling of persons under Article 405 of the Criminal Code of Montenegro and the creation of a criminal association under Article 401a of the Criminal Code of Montenegro. Of the total number of the agreements, 7 were accepted by the court and served as a basis for passing a judgment sentencing the defendants to imprisonment and accessory penalty in the form of EUR 6,500.00 fine. The costs of the criminal proceedings amounted to EUR 800.00, while 3 plea bargaining agreements are pending the court's decision.
- » 1 plea bargaining agreement for the criminal offense concerning abuse of official position under Article 416 of the Criminal Code, which was adopted by the court's decision and on the basis of which no judgment was passed.
- » 6 plea bargaining agreements for the criminal offenses concerning smuggling under Article 265 of the Criminal Code of Montenegro and creation of a criminal association under Article 401a of the Criminal Code of Montenegro. A total of 5 agreements were accepted by the court and served as a basis for convicting the defendants to imprisonment and a fine in the amount of EUR 27,000.00 as an accessory penalty. A payment amounting to EUR 5,500.00 was made for humanitarian purposes to the Clinical Centre of Montenegro. The costs of the criminal proceedings were paid in the amount of EUR 900.00, while 1 plea bargaining agreement is pending the court's decision.

Public prosecutors in the High Public Prosecutor's Office in Podgorica concluded agreements with 151 persons. Regarding the decision on the agreement, the court approved the agreements against 144 persons and issued convictions, while the agreements against 2 individuals were rejected. As for 5 individuals, the agreements remained unresolved by the end of the reporting year. Pursuant to the plea bargaining agreements, 144 persons who were convicted by the court were punished by term of imprisonment, of which 65 persons were to serve their sentences in their living premises, while 79 persons were sentenced to prison, of which 68 persons were also imposed an accessory penalty in the form of EUR 335,650.00 fine.

In 2020, public prosecutors in the Basic Public Prosecutor's Office in Podgorica concluded plea bargaining agreements with 230 defendants. All agreements were adopted, and verdicts were pronounced, as follows: prison sentences against 61 persons, suspended sentences against 48 defendants, fines against 22 persons and community service against 13 persons. House arrest was imposed to 86 defendants. Based on the concluded agreements, the defendants paid EUR 4,800.00 in fines, and EUR 50,000.00 for the benefit of humanitarian organizations. In addition to criminal sanctions, security measures were imposed on 20 persons, of which 19 persons were subject to confiscation of objects and 1 person was imposed a restraining order.

Public prosecutors in the Basic Public Prosecutor's Office in Cetinje concluded 2 plea bargaining agreement, 4 agreements in Nikšić, 10 agreements in Kotor, 7 agreements in Herceg Novi, 4 agreements in Bar, 2 agreements in Ulcinj, 8 agreements in Bijelo Polje, 1 agreement in Rožaje, while no agreement was concluded in Plav, Kolašin and Berane.

Overview of concluded plea bargaining agreements based on the Report produced by the Prosecutorial Council and the Public Prosecutor's Office for 2020

Public Prosecutor's Office	Plea bargaining agreement	Fees	Confiscated material benefit	Payment for humanitarian purposes	Payment to the injured party
Basic Public Prosecutor's Office Bar	4				
Basic Public Prosecutor's Office Berane					
Basic Public Prosecutor's Office Bijelo Polje	8			3.500,00 €	
Basic Public Prosecutor's Office Cetinje	2				
Basic Public Prosecutor's Office Herceg Novi	9				
Basic Public Prosecutor's Office Kolašin	0				
Basic Public Prosecutor's Office Kotor	10	5.200,00 €		3.000,00 €	214,60 €

Basic Public Prosecutor's Office Nikšić	6			7.000,00 €	420,00 €
Basic Public Prosecutor's Office Plav	0				
Basic Public Prosecutor's Office Pljevlja	0				
Basic Public Prosecutor's Office Podgorica	247	4.800,00 €		50.000,00 €	
Basic Public Prosecutor's Office Rožaje	1				
Basic Public Prosecutor's Office Ulcinj	2	5.000,00 €			
High Public Prosecutor's Office Bijelo Polje	7				
High Public Prosecutor's Office Podgorica	151	335.650,00 €		8.000,00 €	
Special Public Prosecutor's Office	112	318.000,00 €	6,596.450.72 €	23.500,00 €	
TOTAL	559	668.650,00 €	6,596.450.72 €	95.000 €	634,60 €

According to the Report on the work of the Prosecutorial Council and the Public Prosecutor's Office for 2021²⁸, in this period public prosecutors concluded plea bargaining agreements with 253 natural persons and 10 legal entities, as presented by the public prosecutor's offices, with the exception of the Basic Public Prosecutor's offices in Nikšić, Kotor, Bar, Bijelo Polje, Berane and Kolašin, which reported on the 27 concluded agreements.

Of these, in 2021 special prosecutors concluded plea bargaining agreements with 55 natural persons and 10 legal entities (81 in 2020, 49 in 2019, 43 in 2018). In the concluded plea bargaining agreements, the imposed punishments included imprisonment, probation and fines, while in some cases an accessory penalty was imposed in the form of a fine in addition to the prison sentence, as well as confiscation of the material benefit derived from criminal activity, and in other cases a payment for humanitarian purposes was also agreed upon. Penalties concerning termination of the legal entity

²⁸ See the website: https://tuzilastvo.me/static/tzsv/doc/IZVJESTAJ_O_RADU_TUZILACKOG_SAVJETA_I_DRZAVNOG_TUZILASTVA_ZA_2021_GODINU.pdf

by deletion from the Central Register of Business Entities were imposed on 9 legal entities, while a suspended sentence was passed to 1 legal entity.

Agreements were concluded for the following criminal offences:

- » 14 plea bargaining agreements for the criminal offence concerning the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro, which served as a basis for convicting the defendants to 7 prison terms, an accessory penalty in the form of EUR 42,000.00 fine, the amount of EUR 3,699.60 for the costs of criminal proceedings, and confiscation of 1 yacht in the name of illegally acquired material benefits, while 5 plea bargaining agreements are pending the decision, and 2 agreements have been rejected by the court.
- » 1 plea bargaining agreement for the criminal offense concerning the creation a criminal association under Article 401a of the Criminal Code of Montenegro, smuggling under Article 265 of the Criminal Code of Montenegro and the criminal offense concerning unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro, which was adopted by the court and served as a basis for rendering a verdict sentencing the defendant to imprisonment, an accessory penalty in the form of EUR 2,000.00 fine, an amount of EUR 1,000.00 to be paid for humanitarian purposes, while EUR 192,234.53 was paid in the name of illegally acquired material benefits.
- » 4 plea bargaining agreements for the criminal offense concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro and the criminal offense concerning unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro, which were accepted by the court and on the basis of which a verdict was rendered sentencing defendants to 4 terms of imprisonment, an accessory penalty in the form of EUR 3,000.00 fine, an amount of EUR 1,500.00 to be paid for humanitarian purposes, while a 7.62 mm automatic rifle and 2 frames were confiscated as illegally acquired material benefits.
- » 13 plea bargaining agreements for the criminal acts concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro and evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for rendering verdicts sentencing the defendants to 1 prison term and 12 suspended sentences, and an accessory penalty in the form of EUR 51,500.00 fee, as well as the cost of the criminal proceedings in the amount of EUR 10,300.00, while 1 plea bargaining agreement was rejected by the court.
- » 1 plea bargaining agreement for the criminal offense concerning the abuse of official position under Article 416 of the Criminal Code of Montenegro, which was accepted by the court and served as a basis for rendering verdict sentencing the defendant to imprisonment, as well as the costs of the criminal proceedings in the amount of EUR 368.50, while 1 agreement was rejected by the court.
- » 3 plea bargaining agreements for the criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for rendering the verdict sentencing the defendants to 1 prison sentence and 2 suspended sentences, an accessory penalty in the form of EUR 103,000.00 fine, the amount of EUR 3,500.00 for the costs of the criminal proceedings, as well as the amount of EUR 364,094.93 for the unlawfully acquired material benefit.

- » 2 plea bargaining agreements for the criminal offenses concerning money laundering under Article 268 of the Criminal Code of Montenegro and fraud under Article 244 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for passing the judgement sentencing the defendants to 1 prison sentence and 1 suspended sentence, and an accessory penalty in the form of EUR 3,000.00 fine, as well as EUR 594.00 payment for the costs of the criminal proceedings.
- » 2 plea bargaining agreements for the criminal offenses concerning the creation of a criminal association under Article 401a of the Criminal Code of Montenegro, money laundering under Article 268 of the Criminal Code of Montenegro and criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for passing a judgement sentencing the defendants to 1 prison sentence and 1 suspended prison sentence and an accessory penalty in the form of EUR 83,000.00 fine, while EUR 1,000.00 was paid for humanitarian purposes, as well as EUR 12,458.85 for illegally acquired material benefits.
- » 1 plea bargaining agreement for the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro, which is still pending the court decision.
- » 4 plea bargaining agreements for the criminal offense concerning creation of a criminal association under Article 401a of the Criminal Code of Montenegro and for the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for passing judgements sentencing the defendants to 4 prison sentences, an accessory penalty in the form of a EUR 14,000.00 fine, while 2 plea bargaining agreement were rejected.
- » 1 plea bargaining agreement was concluded for the criminal offense concerning the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro, unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro, and for to the criminal offense concerning bribery under Article 424 of the Criminal Code of Montenegro. The agreement was adopted by the court and served as a basis for passing a judgement sentencing the defendant to imprisonment and a fine as an accessory penalty in the amount of EUR 7,000.00.
- » 5 plea bargaining agreements for the criminal offense concerning the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro and the criminal offense concerning illegal crossing of the state border and smuggling of persons under Article 405 of the Criminal Code of Montenegro, which were accepted by the court and served as a basis for passing judgements sentencing the defendants to 5 prison terms and an accessory penalty in the form of a EUR 20,000.00 fine, as well as EUR 27,610.50 payment for the costs of the criminal proceedings, while EUR 3,015.00 was paid for the unlawfully acquired material benefit.
- » 1 agreement for the criminal offense concerning aggravated theft under Article 240 of the Criminal Code of Montenegro, which was rejected by a court decision.

**Overview of concluded plea bargaining agreements based on the Report
produced by the Prosecutorial Council and the Public Prosecutor's Office for 2021**

Public Prosecutor's Office	Plea bargaining agreement	Fee	Confiscated material benefit	Payment for humanitarian purposes	Payment to the injured party
Basic Public Prosecutor's Office Bar	7	2.800,00 €			
Basic Public Prosecutor's Office Berane	2			500,00 €	
Basic Public Prosecutor's Office Bijelo Polje	11	200,00 €			
Basic Public Prosecutor's Office Cetinje	15				
Basic Public Prosecutor's Office Herceg Novi	14	9.900,00 €	109.314,00 €	4.000,00 €	
Basic Public Prosecutor's Office Kolašin	2				
Basic Public Prosecutor's Office Kotor	1				
Basic Public Prosecutor's Office Nikšić	6				
Basic Public Prosecutor's Office Plav	0				
Basic Public Prosecutor's Office Pljevlja	0				
Basic Public Prosecutor's Office Podgorica	81	24.500,00 €			
Basic Public Prosecutor's Office Rožaje	0				
Basic Public Prosecutor's Office Ulcinj	6			5.000,00 €	

High Public Prosecutor's Office Bijelo Polje	12	20.000,00 €			
High Public Prosecutor's Office Podgorica	74	241.100,00 €		20.000,00 €	
Special Public Prosecutor's Office	65	328.000,00 €	571.803,31 €	114.500,00 €	56.417,06 €
TOTAL	296	626.500,00 €	681.117,31 €	144.000,00 €	56.417,06 €

While analysing the data from the annual reports produced by the Prosecutorial Council and the Public Prosecutor's Office, **an inconsistency in reporting by public prosecutors' offices was observed**, which questions the relevance of the final number of concluded agreements and persons.

In the Report on the work of the Judicial Council, there is no data on the number of verdicts reached based on plea bargaining agreements at the level of all courts, which is why these data will not be processed.

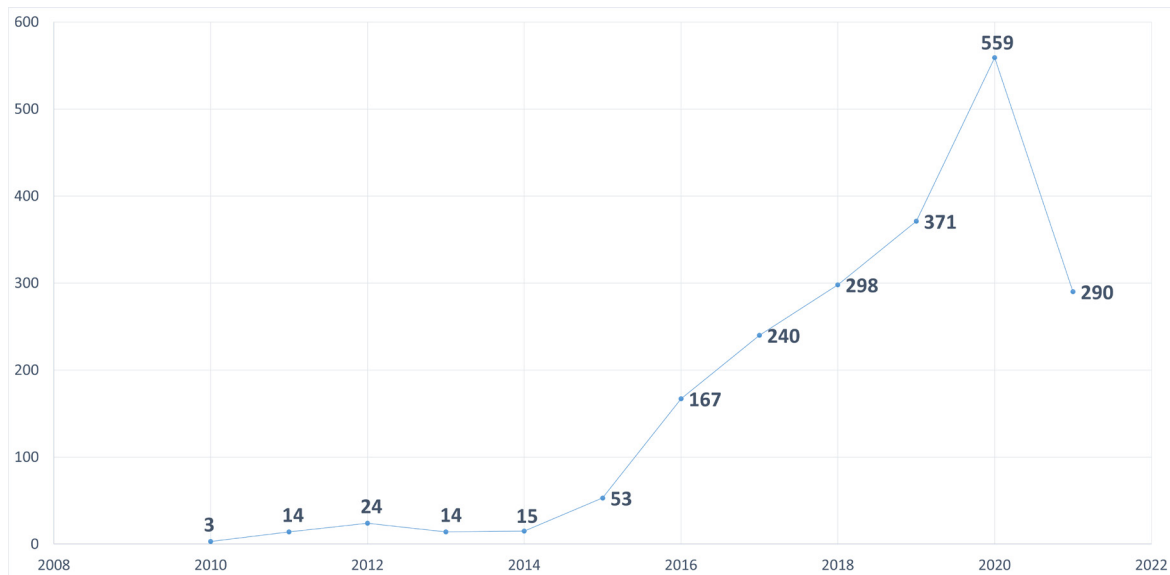


Table 1: Concluded plea bargaining agreements per years

Year	Number of concluded agreements Reports by Prosecutorial Council
2019	371
2020	559
2021	290
TOTAL	1220

V ANALYSIS OF THE PLEA BARGAINING AGREEMENTS

As already stated in the introduction, in the reporting period 2020-2023, CEMI's legal team intensively monitored trials before Montenegrin courts. A total 642 cases were monitored, of which 492 through examination of court case files and 263 through attendance at hearings. Additionally, CeMI's legal team analysed 541 verdicts reached based on plea bargaining agreements.

This part of the Analysis presents the research of cases in which the courts rendered judgments in the field of general and organized crime, on the basis of concluded plea bargaining agreements. A total of **541 final judgements in the field of general and organized crime were analysed, against a total of 554 defendants, of which 551 were natural persons and 2 were legal entities.**

Verdicts passed in general crime cases for 2020, 2021 and 2022 were analysed, while all verdicts passed in 2022 in **organized crime** cases under the jurisdiction of the High Court in Podgorica - Special Department for Trials of Criminal Offenses of Organized Crime, as well as corruption, terrorism and war crimes cases, are analysed in a separate section as well.

It is important to note that a significant sample was processed in a three-year period, and that some courts did not submit the necessary data, despite the Memorandum on Cooperation, which the non-governmental organization Centre for Monitoring and Research - CEMI concluded with the Supreme Court of Montenegro.

Table no. 2: Number of judgments passed on the basis of plea bargaining agreements²⁹

Year	Number of verdicts according to the data provided by the courts	Number of persons
2020	199 (K cases)	204
2021	128 (K cases)	136
2022	214 (K and Ks cases)	224
TOTAL	541	564

Year 2020

According to the collected data, a total of 199 verdicts were passed based on plea bargaining agreements against 204 defendants (natural persons), of which 197 men and 7 women.

In cases of general crime (134 analysed judgments in "K" cases), as many as 40% or 53 defendants were previously convicted, while some of them were convicted more than

²⁹ Judgments submitted by the courts at CEMI's request.

once (some persons 12, 10, 8, 7 or 5 times) before the verdict was passed on the basis of a plea bargaining agreement. In relation to these persons, it should be noted that the sentence was agreed, i.e. the judgement was pronounced on the basis of a plea bargaining agreement, imposing criminal sanctions, i.e. prison sentences, ranging from 6 months to 3 years and 6 months. In cases where persons were previously convicted, fines ranging from EUR 2,000 to EUR 10,000 were imposed as well.

Efficiency of the procedure

The procedure lasted from one day to slightly less than a year³⁰, or at most one year and 2 days, which was observed in one case. Data on the duration of the procedure in cases where the procedure lasted for a year may raise the question of whether the efficiency of the procedure in which the plea bargaining agreement was concluded was actually achieved in practice.

Types of criminal offences

In practice, the most represented criminal offense is the unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro.

The structure of criminal offenses can be presented in a table:

Criminal offence	Article of Criminal Code of Montenegro	No.
Domestic violence or violence in family community	Article 220	1
Unlawful possession of weapons and explosive substances	Article 403	8
Unauthorized production, possession and distribution of narcotic drugs	Article 300	123
Facilitating the use of narcotic drugs	Article 301	1
Larceny by coercion	Article 242	3
Serious offences against public transport	Article 348 paragraph 2 in conjunction with Article 339 paragraph 1	2
Serious offences against the general safety	Article 338 paragraph 2 in conjunction with 327 paragraph 1	1
Aggravated murder	Article 144 item 1	1
Manslaughter	Article 145	1
Attempted manslaughter	Article 145 in conjunction with Article 20	
Attempted murder	Article 143 in conjunction with Article 20	1

Types of criminal sanctions

Regarding the types of criminal sanctions, in 137 judgments reached based on plea

³⁰ In another five cases, the procedure lasted slightly less than a year.

bargaining agreements, 202 punishments, 126 security measures, one warning measure - suspended sentence and one corrective measure were imposed.

In addition, a material benefit amounting to EUR 1,610 was confiscated in 16 cases.

Sentencing

In 73 judgments out of a total of 137, the courts applied the provisions of Articles 45 and 46 of the Criminal Code of Montenegro on the mitigation of punishment, which indicates the widespread application of this concept in practice, which resulted in the imposition of criminal sanctions below the legally prescribed minimum.

Penalties

When it comes to penalties, prison sentences (136) appeared in the highest number, of which 51 were exercised in living premises for a duration of 6 months, while in the remaining cases, prison sentences ranging from 6 months to 4 years were generally imposed.

A total of 64 accessory penalties in the form of a fine were imposed, ranging from EUR 1,500 to EUR 10,000. A total amount of imposed fines is EUR 294,650.

Assessment of mitigating/aggravating circumstances

According to Article 302 paragraph 8 of the Criminal Procedure Code, the court will decide by a ruling on the adoption of a plea bargaining agreement and issue a decision corresponding to the content of the agreement, if it determines the following:

- » the defendant knowingly and voluntarily confessed to the criminal offense or several offenses charged with, the guilty plea is in line with the evidence contained in the case file and the possibility of defendant admitting guilt under the misapprehension is excluded;
- » the agreement was concluded in accordance with Article 301 of this Code;
- » the defendant fully understands the consequences of the concluded agreement, and in particular that they waive the right to a trial and the right to appeal against a court decision issued on the basis of the agreement;
- » the agreement did not violate the rights of the injured party; and
- » the agreement is consistent with the interests of fairness, and the punishment serves its purpose.

From the aspect of protecting the rights of the injured party and the interests of fairness, and the purpose of imposing criminal sanctions, we have analysed with particular attention how the courts evaluate mitigating and aggravating circumstances, which were a decisive factor for accepting the plea bargaining agreement. Generally speaking, in a large number of judgments, the courts considered defendant's guilty plea and their previous lack of conviction as mitigating circumstances.

Thus, in one case, the defendant, who had not been previously convicted, was sentenced to 20 years' imprisonment by a verdict rendered based on a plea bargaining agreement for the criminal offense concerning aggravated murder under Article 144 item 1 of the

Criminal Code of Montenegro. The verdict found the defendant guilty of deliberately taking life of his mother in a cruel way, in a significantly reduced state of mind, by taking her to the forest, near their family home, where he repeatedly hit her with a stone in the head and body area. He then put a metal bucket over her head, which was followed by her death as a result of the injuries, while he was aware of his doing and wanted to carry it out. When determining the length of the sentence, the court took into consideration the defendant's guilty plea as a mitigating circumstance, which contributed to the efficiency of the criminal proceedings, as well as the fact that he committed the crime in a significantly reduced state of mind, while there were no aggravating circumstances.

We believe that this kind of the court's legal reasoning is absolutely unacceptable, primarily considering the type of criminal offense for which the plea bargaining agreement was concluded, as well as the fact that the guilty plea and its contribution to the efficiency of the procedure are established as mitigating circumstance.

As in a **large number of judgments, it was observed** that the introduction of the judgment does not contain all the necessary information prescribed in Article 379 paragraph 2 of the Criminal Procedure Code, i.e. that **the verdicts do not contain the name and surname of the public prosecutor**.

In relation to the imposed penalties, an inconsistent practice was observed regarding the imposition of prison sentences and fines. For example, in one case, due to the criminal offense of unauthorized production, possession and distribution of narcotic drugs under Article 300 paragraph 1 of the Criminal Code of Montenegro, concerning the narcotic drugs buprenorphine, alprazolam and heroin, the court sentenced the defendant, who was previously convicted 12 times of other criminal offenses, **to a prison sentence to be served in his living premises for a period of 6 months, and EUR 2,000 fine**. In this case, the court applied the provisions of Articles 45 and 46 of the Criminal Code of Montenegro, finding that despite the existence of aggravating circumstances in the form of previous convictions, there is room for mitigation of the sentence, due to particularly mitigating circumstances in defendant's favour: his family background, poor financial condition, as well as his guilty plea which contributed to an efficient and quick completion of the proceedings.

In another case which deals with the same criminal offense concerning the narcotic drug cocaine, the defendant, who had previously been convicted 4 times, was sentenced to 6 months' house arrest and EUR 9,200 fine. In one of the cases, it was noticed that due to the same criminal offense concerning the narcotic drugs marijuana and cocaine, a person who had never been convicted before was sentenced to 1 year and 8 months' imprisonment and EUR 10,000 fine.

Also, in one case of the criminal offense of unauthorized production, possession and distribution of narcotic drugs under Article 300 paragraph 1 of the Criminal Code of Montenegro, concerning the narcotic drug marijuana, in concurrence with the criminal offense of unlawful possession of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro, the defendant, who had previously been convicted 8 times for related criminal offenses, was sentenced to imprisonment of 1 year and 10 months, while in another case, due to the criminal offense of unauthorized production, possession and distribution of narcotic drugs under Article 300 paragraph 1 of the Criminal Code of Montenegro, concerning the narcotic drug marijuana, prison sentence of 1 year and 7 months and a fine in the amount of EUR 6,000 were imposed on a person who was not convicted before.

Other obligations under the agreement

In accordance with Article 301 paragraph 3, in one case the defendant was obliged to make EUR 4,000 payment in favour of a public institution.

In one observed case, due to the criminal offense concerning domestic violence or violence in family community under Article 220 of the Criminal Code of Montenegro, the court rendered a verdict on the basis of a plea bargaining agreement, punishing the defendant with a suspended sentence which previously imposed a 3 months' imprisonment and at the same time determined that the sentence will not be carried out if the defendant does not commit a new criminal offense within 1 year after the judgement becomes final. When deciding on the type and amount of the criminal sanction from the plea bargaining agreement concluded between the parties, the court considered the fact that the defendant has never been convicted before as a mitigating circumstance, while there were no aggravating circumstances.

However, the fact that neither the concluded plea bargaining agreement nor the verdict that was passed on the basis of such an agreement contain information about whether the injured party agreed to the conclusion of the agreement and the agreed punishment, makes this decision controversial, since the rights of the injured party are not sufficiently protected, which the court would have to take into account when evaluating the agreement.

In cases of the criminal offense concerning domestic violence or violence in family community under Article 220 of the Criminal Code of Montenegro, public prosecutors and judges must take into account the standards contained in the Istanbul Convention, which explicitly stipulates that parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention. In this regard, when concluding a plea bargaining agreement, public prosecutors should focus on obtaining the consent of the injured party to conclude the agreement, and judges should reject the plea bargaining agreement if it does not contain the necessary consent. Also, considering the fact that amendments to the Criminal Procedure Code are underway, we find it necessary to include this amendment.

Rights of injured parties

Without exception, the injured parties are instructed to exercise the property claims through litigation in the cases in which they submitted a property claim.

Also, plea bargaining agreements should not be an option in cases of the most serious crimes against life and limb. In other words, if concluded, these agreements should not be accepted in court practice, taking into consideration the need to protect the rights of the injured party, and especially respecting the interests of fairness and the purpose of imposing criminal sanctions.

Year 2021

A total of 128 verdicts was passed based on plea bargaining agreements against 136 defendants (natural persons). Only three persons among the defendants are female.

In cases of general crime (72 analysed verdicts in “K” cases against 80 defendants), as many as 27 defendants or 34% were previously convicted, while some of them were convicted multiple times (some persons 10, 9, 8, 5, 4 and 3 times) before a judgement was passed based on a plea bargaining agreement. In relation to these persons, it should be noted that the sentence was agreed, i.e. the judgement was passed on the basis of the plea bargaining agreements, which imposed criminal sanctions, i.e. prison sentences, ranging from 6 months to 3 years and 2 months. In cases where persons were previously convicted, fines ranging from EUR 1,500 to 15,000 were imposed as well.

Efficiency of the procedure

The proceedings lasted from one day to slightly less than two years. Data on the length of the proceedings in cases where the proceedings lasted slightly less than two years may rise the question of whether the efficiency of the proceedings in which the plea bargaining agreement was concluded was actually achieved in practice.

Types of criminal offences

In practice, the most represented criminal offense is the unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro.

As in the case of 2020, we will present the structure of criminal offenses in a table:

Criminal offense	Article of Criminal Code of Montenegro	No.
Unlawful possession of weapons and explosive substances	Article 403	5
Unauthorized production, possession and distribution of narcotic drugs	Article 300	69
Intermediation in prostitution	Article 210 paragraph 1	3
Larceny by coercion	Article 242 paragraph 4 in conjunction with paragraph 1	1
Serious offences against public transport security	Article 348 paragraph 2 in conjunction with Article 399 paragraph 1	3
Trafficking in human beings	Article 444 paragraph 1	1
Manslaughter	Article 145 in conjunction with Article 20	2

Types of criminal sanctions

In the structure of criminal sanctions, in 72 judgments passed based on plea bargaining agreements, 112 sentences, two warning measures - suspended sentences and 69 security measures were imposed.

In addition, material benefits in the amount of EUR 8,260 were confiscated in 16 cases.

Sentencing

Of the total of 73 judgments, the courts applied the provisions under Article 45 and 46

of the Criminal Code of Montenegro on mitigation of punishment in 29 judgments, indicating a widespread (40%) application of this concept in practice, which resulted in the imposition of criminal sanctions below the minimum laid down by law.

Penalties

When it comes to penalties, the most represented are prison sentences (75), of which 7 sentences are executed in living premises for a duration of 6 months, while in the remaining cases, prison sentences in the range of 6 months to 3 years are generally imposed. A total of 37 fines ranging from EUR 1,500 to EUR 15,000 were imposed as accessory penalty. The total amount of imposed fines is EUR 204,500.

Assessment of mitigating/aggravating circumstances

As in the previous year, it was noticed that in a greater number of verdicts, the courts considered the confession of the criminal offense by the defendant and their previous lack of conviction as mitigating circumstances.

Other obligations under the agreement

In accordance with Article 301 paragraph 3, in one case the defendant is obliged to make a EUR 5,000 payment in favour of a public institution.

In two examined judgments, the court issued decisions on the basis of plea bargaining agreements, punishing the defendants with suspended sentences. In one case, on the basis of the plea bargaining agreement, the court punished the defendant who had not been convicted before with a suspended sentence, due to the criminal offense concerning unlawful possession of weapons and explosive substances referred to in Article 403 paragraph 1 of the Criminal Code of Montenegro, imposing a prison sentence of 4 months and at the same time determined that the sentence will not be executed unless the defendant commits a new crime within 1 year after the verdict becomes final. In the second case, due to the criminal act concerning serious offense against the safety of public traffic under Article 348 paragraph 1 in connection with Article 339 paragraph 1 of the Criminal Code of Montenegro, based on the plea bargaining agreement, the court imposed a suspended sentence on the defendant, who has also never been convicted, determining a one-year imprisonment, which will not be executed unless the defendant commits a new criminal offense within two years.

Rights of injured parties

In the available data, there is no information about property claims.

Examples of cases

In the case for the criminal offense concerning **trafficking in human beings** under Article 444 of the Criminal Code of Montenegro and the three criminal offenses of intermediation in prostitution under Article 210 paragraph 1 of the Criminal Code of Montenegro, the court issued a verdict based on the plea bargaining agreement, which sentenced the defendant to a single prison sentence of 1 year and 2 months. Among the mitigating circumstances on the part of the defendant, the court considered her previous lack of conviction, the fact that she cooperated from the beginning and admitted to the commission of the crime, which facilitated the conduct of the proceedings, while there were no aggravating circumstances. The court considered

that the above-mentioned circumstances are particularly mitigating, and therefore considered that there was room for the mitigation of the punishment prescribed by law for the criminal offense concerning intermediation in prostitution under Article 210 paragraph 1 of the Criminal Code of Montenegro.

Year 2022

According to the submitted data obtained from the courts, a total of 214 judgments were passed on the basis of plea bargaining agreements against 224 persons, of which 221 were natural persons and 3 were legal entities. Among the accused natural persons, male gender is dominant (212) compared to the female gender (9). Please note that this is a relevant sample, given the fact that all judgments based on the agreement were analysed, except for the judgments of the Basic Court in Ulcinj and the High Court in Bijelo Polje, given that these courts did not submit judgments at the request of the non-governmental organization CeMI, or published these judgements on their website.

In the analysed cases ("K and Ks" cases), as many as 35.2% or 79 defendants were previously convicted, whereby some of them have been convicted more than once (some persons 6, 5, 4 or 3 times each) before a verdict on the basis of a plea bargaining agreement was passed. In relation to these persons, it should be noted that the agreed sentence, i.e. the verdict was passed on the basis of the plea bargaining agreement, imposing criminal sanctions, i.e. prison sentences ranging from 30 days to 5 years and 4 months. In cases where persons were previously convicted, fines ranging from EUR 600.00 to EUR 40,000.00 were imposed as well. Please note that the judgments in which the defendants are foreign citizens, do not state which criminal offenses they were previously convicted for.

Efficiency of the proceedings

The proceedings lasted from one day to slightly less than a year³¹, or at most 2 years and 7 months, which was observed in one case. Data on the duration of the proceedings in cases where the proceedings lasted for a year may raise the question of whether the efficiency of the proceedings in which the plea bargaining agreement was concluded was actually achieved in practice.

Types of criminal offenses

The most represented criminal offense in practice is the unauthorized production, possession and distribution of narcotic drugs under Article 300 of the Criminal Code of Montenegro.

Criminal offenses presented in table format are as follows:

Criminal Offense	Article of Criminal Code of Montenegro	No.
Counterfeiting and misuse of credit and debit cards	Article 260	1
Counterfeiting of documents	Article 412	4
Counterfeiting of currency	Article 258	1

³¹ In another five cases, the proceedings lasted slightly less than a year.

Construction of objects without notification and construction documents	Article 326a	2
Causing general danger	Article 327	1
Larceny	Article 239	6
Smuggling	Article 265	1
Minor bodily injury	Article 152	2
Attack on a doctor while providing medical assistance	Article 152a	1
Attack on a Public Official in the Discharge of an Official Duty	Article 376	7
Violent behaviour	Article 399	4
Violent behaviour at a sports event or public gathering	Article 399a	1
Domestic violence or violence in family community	Article 220	16
Instigation to authenticate false content	Article 415	1
Failure to pay maintenance	Article 221	1
Unlawful trade	Article 284	3
Illegal crossing of the state border and smuggling of persons	Article 405	1
Unlawful possession of weapons and explosive substances	Article 403	16
Unauthorized production, possession and distribution of narcotic drugs	Article 300	78
Irregular and Improper Execution of Construction Works	Article 330	1
Facilitating the use of drugs	Article 301	2
Abduction	Article 164	1
Fraud and attempted fraud	Article 244 and Article 244 in conjunction with 20	2
Stalking	Article 168a	2
Unlawful deprivation of liberty	Article 162	2
Larceny by coercion	Article 242	4
Self-enforcement of Rights	Article 384	2
Obstructing an official in the performance of official duty	Article 375	1
Creation of a criminal organization	Article 401a	15
Serious offences against public transport security	Article 348	8
Serious offences against the general safety	Article 338	1
Aggravated larceny	Article 240	6
Serious bodily injury	Article 151	5
Attempted homicide	Article 143 in conjunction with Article 20	1
Participating in an affray	Article 153	1

Endangering public transport	Article 339	4
Endangering safety	Article 168	3
Evasion of taxes and contributions	Article 264	7
Abuse of office	Article 416	1

Types of criminal sanctions

In the structure of criminal sanctions, in 214 judgments pronounced based on plea bargaining agreements, 217 sentences, 53 warning measures - suspended sentences and 59 security measures were imposed.

In addition to the above, in 16 cases, material benefits in the amount of EUR 23,265.00, KM 490.00 and \$ 85.00 were confiscated.

Sentencing

Out of total of 214 judgments, in 68 judgments the courts applied the provisions of Articles 45 and 46 of the Criminal Code of Montenegro on mitigation of punishment, indicating a widespread (31.7%) application of this concept in practice, which resulted in the imposition of criminal sanctions below the minimum laid down by law.

Penalties

When it comes to punishments, prison sentences are the most common (136), of which 51 sentences are executed in living premises from 2 to 6 months, while in the remaining cases, prison sentences were imposed, ranging from 3 months to 5 years and 4 months.

A total of 68 fines were imposed, of which 67 as accessory penalties, ranging from EUR 500.00 to EUR 40,000 (a fine in the highest prescribed amount was imposed in one judgment against a legal entity) and one as a principal fine in the amount of EUR 1,200³². The total amount of imposed fines is EUR 375,200.00. In addition, 4 punishments concerning community service were imposed. In one case of continuing criminal offense concerning evasion of taxes and contributions under Article 264 of the Criminal Code of Montenegro, in addition to the suspended sentence imposed on the accused natural and legal person, these persons were obliged to pay a total amount of EUR 109,314 to the injured party, i.e. Revenue Administration, in the name of unpaid value added tax and personal income tax.

Assessment of mitigating/aggravating circumstances

As in the previous year, it was noticed that the courts opted for the concept of mitigation of punishment in a larger number of judgments, taking into consideration defendant's guilty plea and their previous lack of conviction, i.e. the fact that the defendant was previously convicted but not for the same or a similar crime, as particularly mitigating circumstances.

Other obligations under the agreement

³² For the criminal offense concerning irregular and improper execution of construction works under Article 330 paragraph 2 in conjunction with paragraph 1, under the jurisdiction of the basic court.

In accordance with Article 301 paragraph 3, in two cases the defendants are obliged to make payments of EUR 18,500.00 in favour of public institutions.

Rights of injured parties

The injured parties, mostly in cases in which they submitted a property claim, were instructed to exercise their property claims through litigation. In only 5 cases, the court decided on the submitted property claims and these concerned criminal offenses against property.

Examples of cases

In one case, the court rendered a verdict on the basis of a plea bargaining agreement, for the criminal offense concerning **domestic violence or violence in family community** referred to in Article 220 paragraph 1 of the Criminal Code of Montenegro. **The court sentenced the defendant, who has been previously convicted four times, to three months of imprisonment.** In this case, by applying gross violence, the defendant violated the physical integrity of his family member – common-law wife. Namely, on a certain day, after an argument, he punched the victim in the area of the jaw, as a result of which she suffered a minor bodily injury in the form of internal bleeding in the left half of the lower jaw area. The following day he woke up the victim and after arguing with her, hit her in the head with his fist, and then dragged her by the arm into the room where he threatened to set her apartment and car on fire and end her and his life, after which he removed the card from her phone and broke it.

Deciding on the sentence from the plea bargaining agreement concluded between the parties and the defence attorney, the court found that the proposal of the parties regarding the sentence is acceptable, because it is in accordance with the interests of fairness and serves its purpose. The court gave consideration to the mitigating circumstances to the defendant's benefit, i.e. **his attitude after the committed criminal offense expressed through acceptance of responsibility and guilty plea**, as well as his personal circumstances, i.e. the fact that he is in poor financial condition and unemployed, while his background, i.e. the fact that he was previously convicted, was considered as aggravating circumstance.

In the second case, due to the criminal offense of unlawful trade under Article 284 paragraph 3 in relation to paragraph 2 of the Criminal Code of Montenegro, concerning the cigarettes, the court passed a judgement based on the plea bargaining agreement, sentencing the defendant, who was previously convicted, to a prison term of 3 months, to be served in his living premises. The defendant, failing to meet the conditions under which he could engage in the sale of tobacco products wholesale and retail, bought from an unknown person goods whose circulation is limited, i.e. 1,763 packs of cigarettes, without proof of origin and excise stamps of Montenegro, while those cigarettes were intended for further sales. In the rationale, the court stated that the punishment is proportional to defendant's degree of guilt and the gravity of the committed criminal offense, and that it will fully achieve the purpose of punishment under Article 32 of the Criminal Code of Montenegro, i.e. preventing the defendant from committing criminal acts in the future, which falls within the general purpose of prescribing and imposing criminal sanctions. Apart from the fact that the defendant had been convicted once, the court **did not find any circumstances** in his favour that would determine the acceptance of such a plea bargaining agreement, which means that in the specific case **there was no adequate explanation of the decision.**

Plea bargaining agreement in the practice of the High Court in Podgorica - Special Department

In the reporting period, the Special Department of the High Court in Podgorica issued a total of 138 verdicts based on concluded plea bargaining agreements.

According to data obtained by CEMI from the High Court in Podgorica, the Special Department of the High Court in Podgorica issued 44 judgments in 2018, 41 judgments in 2019, 64 judgments in 2020, 56 judgments in 2021 and 18 verdicts in 2022. That department rejected 5 agreements in 2022.

When it comes to property claims, the value in the concluded agreements amounts to EUR 29,362,443.40, of which the transfer of real estate from the defendants to the injured party, the Municipality of Budva, amounts to 21,776,490.48 euros.

In a total of 6 Ks cases, 18 judgments were passed against 19 defendants (18 natural persons and one legal entity).

Sentencing

Of a total of 18 verdicts, the courts applied the provisions under Articles 45 and 46 of the Criminal Code of Montenegro on mitigation of punishment in 9 judgments, i.e. in 50% of cases, indicating a widespread application of this concept in the practice of the Special Department as well. This resulted in the imposition of criminal sanctions below the minimum laid down by law, for criminal offenses concerning the creation of a criminal organization under Article 401a paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Montenegro in concurrence with the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 paragraph 1 of the Criminal Code of Montenegro, the criminal offense concerning unauthorized production, possession and distribution of narcotic drugs under Article 300 paragraph 1 of the Criminal Code of Montenegro, the creation of a criminal organization under Article 401a paragraph 2 in connection with paragraph 1 of the Criminal Code of Montenegro in concurrence with the extended criminal offense concerning evasion of taxes and contributions through aid under Article 264 paragraph 3 in connection with paragraph 1 in connection with Article 25 and 49 of the Criminal Code of Montenegro, the criminal offense concerning the creation of a criminal organization under Article 401a paragraph 2 in connection with paragraph 6 in concurrence with the criminal offense concerning attempted fraud under Article 244 paragraph 4 in connection with paragraph 1 in connection with Article 20 of the Criminal Code of Montenegro.

Penalties

When it comes to penalties (26), the most represented are prison sentences (15) ranging from 1 year to 5 years and 4 months, of which 1 prison sentence for a duration of 6 months, which is executed in living premises for a duration of 6 months. Among the imposed penalties, fines were also noticed as accessory punishments (10), ranging from EUR 3,000 to EUR 15,000 for the accused natural persons, or up to EUR 25,000 for the accused legal entity, i.e. in the total amount of EUR 81,000.00.

There were 4 warning measures - suspended sentences issued against 4 defendants (three natural persons and one legal entity), imposing prison terms ranging from 5 months to 1 year and 9 months, with a probationary term of up to three years, and

accessory penalties in the form of fines, ranging from EUR 5,000 to EUR 25,000 (for the accused legal entity).

In two cases, the High Court in Podgorica rendered three judgments based on plea bargaining agreements, in which suspended sentences were imposed for the criminal offence concerning the creation of a criminal organization under Article 401a paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Montenegro, continuing criminal offense concerning evasion of taxes and contributions with aid under Article 264 paragraph 3 in connection with paragraph 1 in conjunction with Articles 25 and 49 of the Criminal Code of Montenegro and the extended criminal offense concerning evasion of taxes and contributions under Article 264 paragraph 3 in conjunction with paragraph 1 in connection with Article 49 of the Criminal Code of Montenegro.

Assessment of mitigating/aggravating circumstances

As in the previous year, it was noticed that in a greater number of verdicts, the courts considered the confession of the criminal offense by the defendant and his previous lack of conviction as mitigating circumstances.

Other obligations under the agreement

In accordance with Article 301 paragraph 3, the defendants in one case are obliged to make a payment of EUR 11,500.00 in favour of a public institution.

Rights of injured parties

In the available data, there is no information about property claims.

Examples of cases

In one special case against a natural person charged with the criminal offense concerning the **creation of a criminal organization** under Article 401a paragraph 2 in connection with paragraphs 1 and 6 of the Criminal Code of Montenegro, in concurrence with the continuing criminal offense concerning evasion of taxes and contributions under Article 264 paragraph 3 in connection with paragraph 1 in connection with Article 49 of the Criminal Code of Montenegro, and **a legal entity charged with the criminal offense concerning the creation of a criminal organization** under Article 401a paragraph 2 in relation to paragraphs 1 and 6 of the Criminal Code of Montenegro in relation to Article 5 of the Law on Liability of Legal Entities for Criminal Offenses and the continuing criminal offense concerning **evasion of taxes and contributions** under Article 264 paragraph 3 in relation to paragraph 1 of the Criminal Code of Montenegro in relation to Article 5 of the Law on Liability of Legal Entities for Criminal Offenses, a verdict was rendered on the basis of a plea bargaining agreement, by which the accused **natural person was punished by a suspended sentence** which imposed a single prison sentence of one year and 9 months, with a 3-year probationary period after the verdict becomes final and a fine in the amount of EUR 5,000, while the accused legal entity was sentenced to a single fine in the amount of EUR 25,000 and ordered to pay the amount of EUR 3,000 in favour of a public institution.

The material benefit acquired through criminal activity in the amount of EUR 101,693.08 was also confiscated from the accused legal entity.

When deciding on the criminal sanction from the plea bargaining agreement concluded between the public prosecutor of the Special Public Prosecutor's Office

and the accused natural person, the court considered the existence of mitigating circumstances; i.e. the fact that he admitted to the commission of the criminal offense, which contributed to the efficiency of the proceeding, his sincere and expressed remorse, the fact that he is a family man, father of two children, with no conviction history, and that there were no aggravating circumstances. Thus, the court considered all established mitigating circumstances as particularly mitigating within the meaning of Articles 45 and 46 of the Criminal Code of Montenegro.

In relation to the accused legal entity, the court considered the existence of the mitigating circumstance, such as the lack of conviction history and the fact that it returned the illegally acquired material benefit.

However, despite the fact that fines were imposed on the defendants, as well as the fact that the material benefit acquired through criminal activity in the amount of EUR 101,693.08 was confiscated from the accused legal entity, **it has been noted that the criminal sanction in the form of a warning measure – suspended sentence for criminal offenses concerning the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro and evasion of taxes and contributions, is inappropriate in the specific case.**

VI CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The plea bargaining agreement concept represents a specific tool used by public prosecutors and judges to conduct the proceedings, especially considering the length of court proceedings due to the unsatisfactory working conditions in public prosecutor's offices and courts, as well as the fact that there is an insufficient number of courtrooms, primarily in the High Court in Podgorica. Another reason for the application of the plea bargaining agreement is found in the fact that changes were made in the staff structure since August 2021, which resulted in a lack of human resources in the judicial bodies.

Also, the plea bargaining agreement ensures a faster confiscation of the material benefit derived from criminal activity. In addition, it represents an effective mechanism for deciding on the property claim of the injured party and significantly reduces the costs of the proceedings.

Finally, it is the way to more quickly achieve a balance of results in a specific area, especially if the state clearly defines its policy regarding the fight against a certain type of crime.

However, the advantages of plea bargaining agreements have turned into their opposite in a significant number of cases, with the lack of capability of judicial authorities to find a way to limit the use of plea bargaining agreements for certain criminal offenses, protect the interests of justice and the rights of the injured parties.

According to the data from the annual Reports on the work of the Prosecutorial Council and the Public Prosecutor's Office, a continuous increase of concluded plea bargaining agreements can be observed in the period from 2016 (in 2016-167 plea bargaining agreements; in 2017-240 plea bargaining agreements; in 2018-298 plea bargaining agreements; in 2019-371 plea bargaining agreements; in 2020-559 plea bargaining agreements) until 2021, when a drastic decrease in the number of concluded agreements was noted (290).

Considering the judgments provided by the courts at the request of CEMI for 2022, it can be concluded that the number of judgments based on plea bargaining agreements has also decreased.

The reason for the reduced number of concluded plea bargaining agreements, i.e. judgments based on plea bargaining agreements since 2021, can be found in the fact that the European Commission has been repeating its assessment concerning the excessive use of plea bargaining agreements for three years, especially in cases of organized crime and high corruption, which makes the penal policy lenient, leads to the lack of transparency and undermines the credibility of the judicial response in the mentioned areas. A similar conclusion is present in the professional and lay public. In addition, public prosecutors have been waiting for a long time for the guidelines that are being developed by the Working Group formed by the Supreme Court of Montenegro and the Supreme Public Prosecutor's Office of Montenegro in December 2022. At the time of the Analysis, the guidelines had not yet been drawn up, and the effects of their application are yet to be expected in practice.

CEMI's research included the analysis of cases in which the courts rendered verdicts on the basis of concluded plea bargaining agreements in the field of general and organized crime. A total of 541 final verdicts were analysed in this area against a total of 564 defendants, of which 561 were natural persons and 3 were legal entities.

In the sentencing process, the courts applied the mitigation principle in a large number of cases and imposed sentences below the statutory minimum. **It has been observed that the courts give too much importance primarily to the admission of guilt, which contributes to the efficiency of the proceedings, which can be considered a mitigating circumstance in regular criminal proceedings, but not in the process of adopting a plea bargaining agreement.** Also, it has been observed in practice that public prosecutors concluded agreements with persons who have been convicted multiple times (some persons even up to 12 times), while on the other hand, the courts accepted such agreements, by which the judicial system brought into question the achievement of the purpose of punishment under Article 32 of the Criminal Code of Montenegro.

In the structure of criminal sanctions penalties are dominant, with a significant number of them being served in living premises.

In several cases, it was observed that the procedure for deciding on submitted plea bargaining agreements lasted between one and two years, which does not support the thesis that the agreement is a means of achieving efficient proceedings.

According to the data provided by the Prosecutorial Council and based on the judgments submitted by the courts, a negative phenomenon was observed in the case of the criminal offense concerning human trafficking in which the verdict was reached based on a plea bargaining agreement. Namely, the Istanbul Convention

expressly stipulates that the signatory states must take the necessary legislative or other measures and prohibit mandatory alternative dispute resolution, including mediation and conciliation, in relation to all forms of violence covered by this convention. In this regard, the recommendation also applies to criminal offenses against sexual freedom, while in the case of criminal offense concerning domestic violence or violence in family community, it is necessary to insist on obtaining the consent of the injured party before concluding the agreement.

In addition, in several cases verdicts were passed on the basis of plea bargaining agreements for the criminal offense concerning money laundering, which may jeopardize the purpose of punishment in money laundering cases. In addition, one case was analysed, in which a verdict was rendered based on a plea bargaining agreement for the criminal offense concerning aggravated murder.

In one isolated case, it was noted that the choice of a criminal sanction in the form of a warning measure - suspended sentence for the criminal offenses concerning the creation of a criminal organization and evasion of taxes and contributions, is inappropriate in the specific case, because it does not achieve the purpose of punishment.

From the relevant sample of the judgments analysed in a three-year period, it can be observed that fines in the total amount of EUR 592,015, payments for humanitarian purposes, as well as confiscation of material benefits derived from criminal activity have been imposed, which is a positive information.

In several cases, it was noticed that the introduction of the judgment does not contain all the necessary requirements stipulated in the provision of Article 379 paragraph 2 of the Criminal Procedure Code, which prescribes that the judgment must contain, among other things, the name and surname of the public prosecutor.

During the preparation of the Analysis, it was noticed that verdicts rendered based on plea bargaining agreements are not published on the courts' website, which is why a part of the verdicts remained unavailable for the purpose of this analysis. Also, after the creation of a joint portal for courts and public prosecutor's offices, it can be noted that the search for documents at the website is not simple, which threatens the transparency of judicial bodies.

Recommendations

Judicial authorities should apply plea bargaining agreements in all cases that meet the conditions for their application, and justified criticism should not lead to putting an end to the application of this efficient concept in practice.

Furthermore, it is necessary to complete the process of amending the Criminal Procedure Code, by limiting the possibility of concluding plea bargaining agreements for specific criminal offences, such as human trafficking, money laundering, aggravated murder, crimes against sexual freedom, and especially if the criminal offense against sexual freedom was committed against a minor. Regarding the criminal offense of domestic violence or violence in family community, the consent of the injured party should be requested when there is an intention to conclude a plea bargaining agreement. Also,

it is recommended to consider and revise the Criminal Code of Montenegro in the part covering provisions on mitigation of punishment.

In cases of organized crime and high corruption, it is necessary to limit the application of plea bargaining agreements to exceptional cases, which can be achieved by creating guidelines for the actions of public prosecutors and judges. The guidelines should prioritize sentencing matters, which cannot be below the legal minimum in these cases.

Along with the process of legislative amendments and the development of guidelines, it is recommended that the Judicial and Prosecutorial Councils start the proactive planning of vacant prosecutorial and judicial positions, by creating a consistent policy in terms of human resources.

In addition, the Judicial Council and the Prosecutorial Council are invited to initiate the implementation of fast and high-quality specialized training for dealing with cases under the jurisdiction of the High Court's Special Department in Podgorica and the Special Public Prosecutor's Office, in close cooperation with the Centre for Training in the Judiciary and Public Prosecution, monitoring the promotion of public prosecutors and judges.

With the aim of ensuring quality and easier monitoring of trends in the area of conclusion and adoption of plea bargaining agreements, it is recommended that the Prosecutorial Council harmonizes the reporting methodology of public prosecutor's offices on all relevant information regarding concluded plea bargaining agreements.

Also, it is recommended that the Judicial Council adopts a methodology for courts' reporting on the number of verdicts based on plea bargaining agreements, number of defendants, criminal offenses and type of criminal sanctions imposed.

In the process of concluding a plea bargaining agreement, it is necessary to address the issue of the injured party's property claim.

Public prosecutors are recommended not to enter plea bargaining agreements for the criminal offense concerning human trafficking and money laundering in the future, bearing in mind that this is not in accordance with international standards in this area.

When evaluating a plea bargaining agreement, the courts must provide a clear and detailed explanation that the agreement did not violate the rights of the injured party and that the agreement is in accordance with the interests of fairness, and the sanction corresponds to the purpose of imposing criminal sanctions, in accordance with Article 302 of the Criminal Procedure Code.

Courts should not accept plea bargaining agreements for serious crimes against life and limb, because in those cases the agreements are not in accordance with the interests of fairness.

It is recommended to limit the application of suspended sentence for criminal offenses concerning organized crime and high corruption, bearing in mind that this does not achieve the purpose of punishment, because punishments should be effective, proportionate and deterrent.

We refer to the consistent application of the provision under Article 379 paragraph 2 of the Criminal Procedure Code, which stipulates that the judgment must contain,

among other things, the name and surname of the public prosecutor.

It is recommended that the courts, particularly the Special Department of the High Court in Podgorica, establishes a mechanism for monitoring sentences imposed based on plea bargaining agreements, in order to ensure the uniformity of the penal policy at the court level.

The transparency of judicial authorities should be improved, by ensuring that verdicts based on plea bargaining agreements are published regularly and in a timely manner on the courts' website and putting efforts into improving the internet portal of courts and public prosecutors' offices.

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