

# POLICY BRIEF

# MONITORING COURT PROCEEDINGS IN MONTENEGRO



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Publisher:



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This policy brief was published within the project “Judicial reform: Upgrading CSO’s capacities to contribute to the integrity of the judiciary” implemented by the Centre for Monitoring and Research (CeMI), in cooperation with the Centre for Democracy and Human Rights (CEDEM) and the Network for the Affirmation of European Integration Process (MAEIP), financed by the European Union and co-financed by the Ministry of Public Administration of Montenegro.



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# INTRODUCTION

The Centre for Monitoring and Research (CeMI), in cooperation with the Center for Democracy and Human Rights (CEDEM), European Integration Affirmation Network (MAEIP), and with the support of the European Union and the Ministry of Public Administration of Montenegro is implementing a project entitled “Judicial Reform: Upgrading CSO’s capacities to contribute to the integrity of the judiciary” (hereinafter „the project“).

The project aims to contribute to the achievement of a higher level of rule of law in Montenegro, reflected in increasing the level of professionalism, accountability, efficiency, and integrity of the judiciary while strengthening cooperation between civil society and judicial institutions. The project aims to strengthen the capacities of local organizations and greater involvement of civil society in Reform of the Judicial System in Montenegro, as well as in accession negotiations under Chapter 23 (Judiciary and Fundamental Rights).

One of the most important activities of the project is monitoring court proceedings in Montenegro. The activity of monitoring court proceedings is implemented according to the OSCE methodology for monitoring court proceedings, which was developed by the CeMI and OSCE Mission within the trial monitoring program implemented during the period from 2007-2014.

During the reporting period, which took place during the second year of project implementation, CeMI and CEDEM observers monitored 642 cases. In the first reporting period, they monitored 150 cases (263 main hearings) by attending the main hearing, and the findings were presented within the first annual report on monitored trials in the previous year. In the second reporting period, observers monitored 492 cases by inspecting case files in all basic courts and the High Court in Podgorica and Bijelo Polje. Monitoring court proceedings are conducted in accordance with the principles defined in the Memorandum on cooperation concluded between the Supreme Court of Montenegro, CeMI, and CEDEM, at the beginning of the project realization.

In addition to the two annual reports, reports and policies on trial within a reasonable time, the implementation of plea agreements and the work of bailiffs were published.

In cooperation with the PR center, two annual reports were created to assess the respect of presumptions of innocence by the media when reporting on court proceedings.

In addition to the mentioned activities, six projects of local CSOs were supported within the project (Human Rights Action, European Youth Center, Trade Union of Media, Center for Political Education, Association of Professional Journalists of Montenegro, Association of Youth with Disabilities of Montenegro) and four seminars were organized for their representatives with the aim of strengthening their capacities in the field of judicial reform. Also, 20 in-depth interviews with representatives of the judiciary and two surveys on public opinion were conducted. Finally, the internet and media campaign on the most important findings of our research and aspects of judicial reform was conducted.

Through such trial monitoring projects, civil society organizations strengthen their own capacities to monitor court proceedings in a professional manner and in accordance with international law standards, with a focus on the reliability of their reporting to relevant national and international bodies.

The standards of the right to a fair trial that have been the subject of monitoring and analysis are related to the respect for the presumption of innocence, the rights of suspects / accused persons and rights of persons deprived of their liberty, the right to an interpreter, the right to a trial without delay, the principle of independence and impartiality of justice, the principle of truth and justice, the right to public hearing, the right to the public pronouncement of a verdict, the right to a defense, the right to a trial within a reasonable time and the conduct of the court and other participants in the criminal proceedings.

In accordance with the methodology and principles of trial monitoring that is conducted in many European countries, CeMI and CEDEM observers, within this project, consistently applied following principles of monitoring court proceedings: the principle of non-interference in court proceedings, the principle of objectivity, the principle of consent, with certain limitations that trial monitoring programs carry with them, which will also be presented.

The subject of monitoring was criminal proceedings, throughout the insight into the case file and attendance at the main hearing. Random selection of cases was the fundamental method of monitoring (100% in the case of insight into the case file), while through the attendance at the hearings, the cases of the greater public interest were additionally monitored, especially concerning organized crime, corruption, terrorism, crimes against electoral rights, crimes against freedoms and human rights and citizen, human trafficking and war crimes (attendance at the main hearing).

The majority of the cases monitored by observers were the cases of the High Court in Podgorica (118 cases - 18.38%) and Bijelo Polje (41 cases - 6.39%), as well as the Basic court in Podgorica (116 cases - 18.07%) and Niksic (44 cases - 6.85%). Insight into the case files was conducted when the case was legally terminated in 2016, 2017, 2018, and 2019.

The aim of this policy brief is to provide readers with a summary of the most significant findings made by CeMI and CEDEM observers through judicial monitoring activities, with the aim to assess the state of case-law in Montenegro concerning the application of both domestic legislation and international standards of the right to a fair trial.

Conclusions and preliminary recommendations that are an integral part of the brief, based on identified shortcomings, suggest the implementation of appropriate measures aimed at achieving a fair and efficient judicial system in Montenegro to the relevant institutions.



## Recommendations from the annual reports:

- The regulatory framework, the use of the case-law of the European Court of Human Rights, as well as its impact on the practice of domestic courts, should be the basis for the full exercise of the right to a fair trial.
- Basic courts should to a greater extent meet the deadline for scheduling an indictment review hearing
- Prosecutors, defense lawyers and defendants should attend the indictment review hearing more often.
- Basic Courts should meet the deadline for indictment confirmation to a much greater extent.
- Judges should keep the good practice of scheduling the main hearing within the statutory time limit, but also avoid drastically exceeding the prescribed period in individual cases.
- The preliminary hearing should be used to a greater extent so that the parties to the proceedings are better informed about the planned course of the main hearing.
- Reduce unnecessary adjournments of judicial proceedings and consistently apply available procedural disciplinary measures, especially with regard to defendants, witnesses, and expert witnesses, since their absence was the reason for the adjournment in 44.03% of the cases. » Courts should continue the good practice of passing and delivering judgment within the statutory time limit.
- It is necessary to organize continuous training related to the trial within a reasonable time, in order to raise awareness of the various actors in the judicial system, especially lawyers, on this issue.
- The percentage of adjourned hearings in detention cases should be lower given the 45 duty of all the bodies participating in the proceedings and the bodies providing legal assistance to them, to act with extreme urgency if the defendant is in detention.
- Analyze the handling of requests for review at the level of each court and define recommendations for overcoming the noted shortcomings in the enforcement of the Law in each court (e.g. by initiating the changes in their daily work programs, their legal positions and opinion, etc).
- When planning the construction of new courtrooms, the arrangement, and the location of the pending court proceedings should be taken into account in order to allow for the best possible communication necessary for the realization of fundamental human rights.
- The good practice of setting up and regularly updating the list of scheduled trials should continue. Courts should publish daily the information about all scheduled hearings and main hearings that are being held, including the main hearings that discuss plea agreements;
- It is necessary to seriously consider the possibility of constructing new court buildings, which would contribute to improving the working conditions of judges and court staff. Among other things, care should be taken to design courthouse buildings in such a way as to construct as many medium capacity courthouses that would allow the most efficient use of the court's spatial capacities, as well as to modernize equipment that will provide more efficient control at the entrances to court buildings;

- The Supreme Court should consider establishing objective criteria according to which it will consider requests for public transfer of court proceedings uniquely;
- It is necessary to implement a uniformed security practice for all courts in Montenegro. This can be done through the establishment of special police units that will exclusively care of the security of court personnel and administration within the court buildings;
- It is necessary for trial observers to have unhindered access to all main hearings, with the obligation to comply with all the provisions of the agreement concluded between the Supreme Court of Montenegro and CeMI;
- It is necessary to continue activities aimed at solving the problem to access of the persons with disabilities in the Basic Courts in Montenegro, and especially in the Basic Court in Herceg Novi.
- When the main hearing takes place in a courtroom or office, judges must respect the rule that parties must not be present in the courtroom or office before the formal commencement of the hearing;

## **Recommendations from the Report on Right to a trial within the reasonable time:**

- Analyze the handling of control requests at the level of each court and define recommendations for overcoming the observed deficiencies in the implementation of the Law in each court individually (e.g. by initiating changes to the annual work schedule, taking legal views and opinions, etc.).
- Consider the possibility of amending the Protection of the Right to a Trial within a Reasonable Time Act, so as to allow the right to judicial protection due to the violation of the right to trial within a reasonable time in proceedings before the misdemeanor courts that are the part of the regular court system since 2015.
- Develop appropriate forms for the practical implementation of the Law, especially in the segment related to prescribing the form of a control request and a just satisfaction claim (Slovenian model), in order to facilitate the use of these legal remedies for citizens.
- Analyze reasons why a certain share of citizens refers directly to the Ombudsman, before they exercise remedies provided by the Law on the right to a trial within a reasonable time, and in this regard take appropriate actions to raise citizens' awareness.
- Improve statistical reporting about the work of courts and create conditions for full implementation of CEPEJ guidelines and standards to enable better monitoring of cases where control requests have been filed, to measure their effectiveness through fully trusted judicial statistics.
- Supplement the Reports of the Ministry of Justice of the Government of Montenegro with statistical indicators and data on the time period in which courts act after the adoption of the control request, in order to contribute to a better assessment of the effectiveness of these remedies in practice.
- Reduce unnecessary delays in court proceedings and consistently apply available legal mechanisms to prevent abuse by entities that knowingly influence the delay in court proceedings. Delay hearings only in such cases where the law expressly provides for, while respecting the instructive deadlines for the implementation of procedural actions in the procedure.

## **Recommendations from the Report on implementation of the Plea Agreement:**

- Continuously encourage the implementation of a plea agreement concept, especially at the level of those courts which implement this legal concept modestly, or which have no plea agreement concluded;
- Intensify activities to encourage a proactive approach by the Public Prosecutor's Office to propose a plea agreement whenever the conditions are met;
- Develop negotiation guidelines and procedures that will include specific guidance on proposals of sanctions, with a view to harmonizing penal policy
- Consistently publish concluded and confirmed plea agreements, especially those in which public officials appear as defendants or suspects;
- Introduce a system of control of the intended use of funds which under the plea agreement and deferred prosecution belongs to public institutions, foundations or other legal entities engaged in humanitarian activities under a plea agreement and deferred prosecution
- Provide clear information on cases and reasons for rejecting plea agreements in the reports on the work of the judiciary and the Public Prosecutor's Office; Amendments should exclude the implementation of plea agreements in criminal offenses with elements of corruption and in criminal offenses of organized crime. The application of the principle of opportunity in the criminal prosecution of domestic violence should be completely excluded, as well as in acts pertaining to sexual offenses committed against minors.
- When deciding on a plea agreement, the court should establish and justify the existence of the prescribed conditions, or provide an explanation for their lack of fulfillment. The court must also state whether the proposed sentence corresponds to the gravity of the crime and the consequences imposed upon the accused person
- In cases of organized crime, in parallel with investigations, file a motion for temporary seizure of property, i.e. conduct a financial investigation of the origin of property and money, in order to prevent that defendants pay their penalty with the illegally acquired property;
- Insist on greater protection of the injured party when concluding a plea agreement; inform the injured party whenever possible of the progress and outcome of the negotiation process;
- Make available to the public the analysis of the past work in cases related to plea agreements prepared by the Prosecutor's Office in 2018

## **Recommendations from the Policy on work of Bailiffs:**

- Improve the capacities of the Managing Board members and the President of the Chamber regarding management skills and knowledge, with a focus on financial and human resources management
- As part of its annual report, the Chamber of Bailiffs should publish data on annual income and expenditure, in order to improve the transparency of its financial operations.
- It is necessary to provide bailiffs with access to the PRIS (Judicial Information System), as well as databases and records held by the Ministry of the Interior, the Real Estate Administration, i.e. the real estate cadastre and the Central Depository Agency.

- The Chamber of Bailiffs must improve its business policy, which should be based on the principle of equal access to clients (creditors) from both public and private sectors, for all bailiffs. Considering that the system of even distribution of cases involving state authorities as enforcement creditors have been a positive step further, the Chamber should take active steps towards establishing a dialogue with the largest private sector clients and, based on the principles of fair and decent conduct, establish mechanisms for even distribution of cases when it comes to the largest enforcement creditors (banks, companies, etc.) from the private sector. This will significantly reduce the existing gap between the number of ongoing cases and income of bailiffs.
- The Agency for Prevention of Corruption should initiate misdemeanor proceedings against bailiffs who fail to comply with the legally prescribed procedure and submit the report on their property and income immediately after the enforcement of the provisions of the Law on Bailiffs, which prescribes the obligation of bailiffs to submit a report on their property and income, as well as those of their spouses and children living in a shared household;
- The Ministry of Justice should strengthen its capacity to carry out efficient supervision of the bailiffs' work. Supervision should be conducted continuously, alongside the establishment of a detailed methodology for monitoring the work of bailiffs, which would define the actions of the Ministry's inspectors.
- Presidents of the courts should more proactively use the possibility of initiating a procedure to supervise the legality of bailiffs' work in accordance with Article 73 of the Law on Bailiffs. It is necessary to initiate discussions at the level of the Chamber of Bailiffs, the Ministry of Justice and Presidents of all courts in Montenegro, in order to consider adopting a protocol/procedure regarding the cases when complaints about the work of bailiffs are filed with the competent courts.

## **Recommendations from the Analysis of work of Media:**

- Journalists and editors, when reporting on court and investigative proceedings, should respect the Code of Journalists of Montenegro and the laws that govern this matter;
- Journalists and editors are advised to avoid sensationalist headlines when reporting on court and investigative proceedings;
- It is recommended that the media, within their newsrooms, determine the journalists who will be in charge of reporting on court and investigative proceedings and investing in their training;
- It is recommended to organize training for editors, journalists and photo reporters with the aim of professional reporting on court and investigative proceedings, in order to fully respect the presumption of innocence;
- The Code of Journalists of Montenegro should be amended in the part that the media shall sign in full by name and surname of the authors of articles in the press/portals, as well as TV reports, which contributes to the overall perception of credibility - both the message and the media;
- It is necessary to educate citizens, through public events (forums, debates ...), about their rights in case of a violation of the right to the presumption of innocence;
- Journalists and editors must be especially careful when reporting on court and investigative proceedings, in which minors are mentioned, and to protect their integrity.







